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What are the issues affecting the implementation of Armenia's freedom of information law?

I'd like to begin my presentation with an old anecdote.

In 1941, a colonel's wife went down to the stream to fetch some water and happened upon some other womenfolk there talking on about Germany attacking the Soviet Union and commencing a war. The colonel's wife came home and recounted what she had heard to her husband. The colonel became annoyed, saying that if such a thing were true he would be the first to know about it. But sure enough, the war began and stretched on for four years. The husband, fatigued from the war, sent a letter home to his wife from the front. In it, he asked his wife if she would please go down to the stream and find out from the womenfolk when the war would be over.

What are the issues affecting the implementation of Armenia's freedom of information law?

I have divided the issues affecting the implementation of the FOI law in Armenia into two groups:

They are: positive issues and negative issues.

Positive issues include:

- FOI existing legislation in RA: Universal declaration of HR-1948, European convention of HR-1950, RA Constitution articles 27 and 27.1-1995, 2005, The Law about FOI-2003.
- With some serious exceptions the FOI law becomes operative.
- About 5 NGOs working through various means towards implementing FOI and increasing literacy among officials holding information and the general public including: workshops and seminars, TV PSAs, booklets, monitoring, benchmarking and strategic litigation for information access.
- Courts in Armenia in cases of FOI in general making just and legal decisions.

Negative issues include:

- Unawareness about FOI among officials holding information. A serious drawback of the system is that the officials in charge of the data know little to nothing about RA's FOI law, nor are they aware that, among their other lawful obligations, they are responsible for the publication of large amounts of information at least once a year.
- Unawareness about FOI among the general public and information-user activists' groups -journalists, students, NGOs and partisan staffs.
- The absence of 2 regulatory codes foreseen by the FOI Law of Armenia:
 1. Official information registration, classification, and maintenance Code or Order adoption by RA Government, foreseen by the 5th article of RA FOI law.
 2. Information distribution regulatory Code or Order adoption by RA Government, foreseen by the 10th article of RA FOI law.

- Corruption: corrupt motives of officials holding information and corrupted content of official decisions, orders.
- Ingrained negative customs with respect to government-public relations: a vast array of citizens thinking that authorities are “above” and the public is “below”.

On September 23rd, 2003 the National Assembly of RA adopted the law on the “Freedom of Information”, which many local and foreign experts consider relatively progressive. It regulates the information requesting process of physical and legal entities from RA’s state and local authorities as well as from institutions of public importance. It also confirms and secures that right.

The law does not contain a large amount of articles, with only 15. The law’s main tenets can be classified in two groups. First, it describes in detail and provides information about the methods for acquiring information including the methods for applying and receiving information from the officials of important state and community public institutions (articles 6, 9 and 10). Second, it describes the responsibilities of these officials towards the population, including the periodical publication of information, regardless of whether any requests have been made for them or not (articles 5, 7, 12, 13 and 14).

In the six years that Journalists Club “Asparez” NGO has been in this field, it has observed that approximately 70% of the population is still unaware of this law and the opportunities it affords for receiving information. In addition, according to our research, more than 1/3 of the journalists working in Armenia’s regions are also unaware of the opportunities afforded by this law. This directly affects them professionally, hindering their ability to provide factually true and complete information to mass media outlets.

During the past six years, approximately 45 court cases have been initiated against the officials guilty of negligence and malfeasance; from this, 10 cases were initiated by Journalists’ Club “Asparez” NGO, 15 by Freedom of Information Center NGO, 6 by Drivers’ Rights Defenders “Achilles” NGO, 5 by Helsinki citizens’ Assembly Vanadzor office. In addition, various other advocates, lawyers and ordinary citizens have initiated cases for information access.

These cases specifically targeted access to official documents: senate decisions for municipalities, data about official internal police investigations, taxing and procurement, presidential letters and vacancies lists for community institutions, etc. The courts, in the majority of such cases of suppression, have ruled in favor of the accessibility of information and the requested information has been given to the applicant. In an unprecedented case, two months ago the courts subjected a village mayor to administrative penalties for withholding information from RA (Freedom of Information center v. Elpin village mayor).

Generally speaking, Armenian citizens are simply unaware of their community budget, how the income is generated and how the community funds are being spent. They are also insufficiently informed about the structure of the regional and community governing bodies, the personnel, how skilful and knowledgeable the officials are, etc.

As result of this ignorance, we now have the situation in Armenia where the local and state officials and official institutions – entities that use public funds – are neither transparent nor accountable.

The officials that have this “disease” are unfortunately the ones that have never realized and will never realize that their salary, the expenses for their company car and fuel are generated from the taxes paid by the people who apply to them for information. Given this, the negligence of these officials is not very surprising. They often treat citizens as if they were “their property” and hardly consider themselves public servants - that is to say, temporary employees that are directly or indirectly appointed by the public to serve.

We are perpetually faced with the obstacle of officials who do not have a sense of civic subordination to the public, while tax payers very often eschew many of their own civic rights, the right to information being just one on the list. It is understandable that the officials’ level of insubordination is directly proportional to the quality of their superiors and, of course, to the political climate. That is to say, the honest official is always ready to serve the public, even if the country does not have a law on Freedom of Information.

Unfortunately, there is a whole layer of community, state and public officials that refuse to provide information, adding with unrestrained cynicism: “why does he want the information? Tell him to come and meet me”, “who are you to photograph the trees of Tsaghkadzor” or “let journalists wear special clothes, so that we can differentiate them from others”. These retorts are all very well known by the public. Recently, there were approximately ten NGOs that were trying to get copies of voters’ lists from some of the voting places from the Central Electoral Committee’s November 27th 2005 Constitutional referendum, while the CEC stubbornly refused to provide the lists of voters violating the law.

In the way that many officials are not aware of their responsibilities within the framework of the law, the same is true of half the members of society (including journalists). In spite of the fact that many NGOs, amongst them also JCA, organize different programs (TV discussions, seminars and workshops for different groups of society, etc.), the level of awareness remains very low. Very often the state, community and local officials take bribes in exchange for providing ordinary information to unaware citizens (for example, to provide a reference-certificate about their home address), though RA FOI law states that only information longer than ten pages requires payment (the payment, further, being only for the purpose of covering copying expenses).

Let me cite an incredible example: A month ago, I applied to RA’s minister of defense requesting a copy of his order, by which the defense ministry’s armed services committees determine whether draftees are fit or unfit for military service based on their overall state of health. The head of the ministry’s legal administration sent a written reply stating that minister was unable to provide me a copy of the order, because they were unable to copy it, apparently because it was too bulky.

I sent a new request, in which I asked them to please explain how many pages the order was, how many copies they had of it, why the order was not posted on the defense ministry's web site, etc. Then, probably realizing that if we continued on this course we would be meeting in court, they finally acquiesced, copied the order and sent it. Since then, many NGOs who had made numerous similar attempts to acquire the same order, now receive copies of the order from us.

It is obvious that a great part of the mass media - especially the broadcasting media-TV companies and radio stations - in Armenia are not independent in their policy. They are dependent on different political and clannish influences especially from the government and the main bodies that regulate this field - i.e. RA National Commission of TV and Radio. The mass media in Armenia also has different connections to and dependencies on local authorities who are the main offenders of citizens' rights to information. Journalists are often subjected to censorship or have become accustomed to self-censorship and do not, rather cannot completely realize their responsibilities. If the officials create difficulties for them in acquiring information then we often see cases where the mass media manager or the chief editor protects not the journalists but the officials violating the law. Journalists therefore often remain alone on their quest of exploring information.

Any society that is unaware cannot be democratic, and it is very easy to take advantage of an unaware public. In this regard, FOI law can be a very effective tool for promoting transparency and fighting against corruption.

A couple of words about the mass media situation in Armenia: as you know, after the presidential elections in Armenia, there were 10 days of demonstrations at the end of February 2008, and after struggles and fighting breaking out in the streets in the heart of Yerevan, former president Robert Kocharyan declared a state of emergency throughout all of Yerevan's jurisdiction for 20 days, beginning on March 1st. But the state of emergency was actually implemented throughout all of Armenia's territory. On the evening of March 1st, officers from Armenia's national security service start making visits to the Yerevan based, regional TV companies and main regional newspapers, stipulating that any news outlets reporting on events in Yerevan can be interpreted as a violation of the presidential order for a state of emergency: they were to publish only official press releases about the situation in Armenia. . After that, for 20 days none of the regional TV/radio companies' broadcasted any news or analysis about the existing political situation in Armenia.

In that period, for the 1st time in the history of Armenia's third republic, Armenia's government implemented direct censorship against and froze none state controlled shut down independent print media. About 10 print outlets in that period were unable to print their newspapers because national security services officers stationed in their publishing houses were controlling the print content. Internet access to the electronic versions of these newspapers, Radio Liberty, A1+ and other independent outlets were banned and blocked. This was a period of total censorship of information to the public.

Local TV Station GALA TV was attacked by numerous governmental offices half a year before the presidential elections, simply for providing the people with a diversity of information, analysis and opinion about political developments in Armenia.

In Armenia we have 41 TV companies: from these 17 broadcast programs concerning Yerevan, covering some 60 percent of Armenia's population, and are located in and around the capital, while another 4 have programs geared towards Armenia in general. The rest of the stations are regional TV companies; they are small firms with equipment ranging from \$20,000 to \$200,000 and an audience base ranging 30,000 to 220,000 people.

GALA TV was one of such stations. It is based in my home city of Gyumri, the second largest city of Armenia and is one of 4 local TV stations. However, among all of Armenia's TV companies, GALA TV is the youngest. So, after airing former president Levon Ter-Petrosyan's first speech after 10 years of political silence, 4 officials from the president's office, tax department, national security service and national commission of TV and Radio, started to lean on the owner of GALA TV to stop airing any more interviews or news about radical opposition activities, political persons affiliated with Levon Ter-Petrosyan or any of his proponents. In the end, the owner of GALA TV made the decision to continue providing a diversity of information and analysis about political developments in Armenia. After 3 days of latent actions against GALA TV, it lost 33 of its 34 clients/advertisers. In response, GALA TV started to air public service announcements about human rights and especially about the freedom of speech and expression. Not one to be outdone, the tax department of the government of Armenia began auditing GALA TV's accounts, and after a 10 day commission, made the decision that GALA TV was accountable for 26M Drams (about \$85,000) in tax violations, far more than even the company's total equipment cost for that period. To regain these alleged violations in revenue, the tax department initiated a lawsuit against GALA TV.

In addition to this, Gyumri's Regional Council petitioned the court to remove GALA TV's broadcasting antenna from Gyumri's main broadcasting tower; this was also a period of heated political debates before the presidential elections. We along with our partner organizations and activists from civil society decided that it was time to create a body or organization to defend this TV Company and with it the freedom of speech. And so the GALA TV and Freedom of Speech headquarters was created. In the case of Tax department v. GALA TV, the court decided in favor of the Tax department.

After that we applied to the public for help and funding and decided to create a TV and internet marathon to gather donations for GALA TV. During the course of 7 days of active fundraising, about \$90,000 was collected from people from all regions of Armenia as well as the Armenian Diaspora. About 10,000 people, it is 2,220 donations were for GALA TV surviving. This money supported GALA TV enough to cover the cost for freedom of expression. The story of this 8 month battle is provided on our web site www.asparez.am as well as the list of the thousands of donors which we are calling GALA TV'S Glory list. After raising the money and still having our petitions rejected by the courts, GALA TV applied to the Human Right court in Strasbourg. Now, GALA TV remains as the singular TV company in Armenia that airs a real diversity of opinions, news and analysis about the

social-political situation in Armenia. We are calling this success story a small and measured victory in the war for freedom of expression.

I brought up this example to highlight the difficult circumstances for freedom of speech and expression in Armenia. Unfortunately control over broadcasting media has become a major tool for the promulgation and maintenance of power in my country, this tactic still being abused by the ruling bodies and the other players in our autocratic political system.