

The compliance of Artsakh's (Nagorno-Karabakh) Media Regulations with the internationally recognized standards of Media freedom

Introduction

Media, as a means of communication, plays a crucial role in our society and one that is more prevalent than ever before. From social media, television, magazines, radio, music, and books, media is an extremely powerful tool. Media can be useful and constructive by providing easy access to information, increasing public awareness, helping us with constant self-education, promoting transparency and plurality, and acting as a watchdog for democracy.

Given the role of media in a democratic society, several international organizations supervise and assess the state of media in countries worldwide. However, only a few of them extend their activities to unrecognized states. As a result, these countries become even more vulnerable to media manipulation or misuse. When there is international supervision and pressure, authorities act more responsibly, as there is more possibility for accountability and vice versa. Moreover, when the country is recognized and allowed to participate in international structures, other states and international organizations provide guidance and financially support democratic reforms, including reforms in media. Unfortunately, that is not the case for unrecognized countries.

One of these countries is the Republic of Artsakh (aka Nagorno-Karabakh Republic, or simply Artsakh or Nagorno-Karabakh) which declared its independence in 1991 and continues to operate as a sovereign, but unrecognized state. However, throughout its 31 years of existence, Artsakh has

unilaterally ratified major international human rights instruments¹ and pursues its democratic path without any help from the international community.

This paper argues that even while engaged in armed conflict for three decades and largely economically and diplomatically isolated from the outside world, including international legal structures, Artsakh has managed to maintain media regulations that comply with minimum international standards under a democratic framework. Further, this paper argues that some of these regulations are outdated or undeveloped, and therefore unable to enhance freedom of expression and media. Lastly, this paper provides an analysis of what role local media played in active phases of the conflict.

Background information on the Artsakh conflict

The Artsakh conflict has more than a century-long history. In 1917 the Russian empire fell and lost control over the South Caucasus, after which three Caucasian ethnic groups – Armenians, Georgians and Azerbaijanis declared their independence through the formation of nation States. The newly formed Republic of Azerbaijan backed by the Turkish army claimed the predominantly Armenian populated region of Artsakh, an integral part of historic Armenia from ancient times. Despite the violence and massacres carried out against the Armenian population, Azerbaijan failed to subject the Armenians of Artsakh to its rule.

In 1920, the Russian Red army regained control over the South Caucasus and began the Sovietization of three Republics, recognizing Artsakh as disputed territory. However, in 1921 the Caucasus Bureau of the Central Committee of the RCP(B) without any legitimate ground decided to

¹ Artsakh Republic Parliament, *On Ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms*, Apr. 20, 2015, <http://www.nankr.am/hy/839>

include Artsakh, with a 94% Armenian population, in the Azerbaijani SSR, later forming the Nagorno-Karabakh Autonomous Oblast within Azerbaijani SSR.

In the following decades, the Armenians of Artsakh faced systematic and consistent discrimination and human rights violations by the Azerbaijani authorities. By forcing Armenians to leave the region the Azerbaijanis aimed for a demographic shift and to “solve” the Artsakh issue. As a result of this criminal policy, the Armenian population shrunk to 76% by the 1970s and continued decreasing.

In 1988, to stop the ethnic cleansing and protect their Armenian identity, hundreds of thousands of Armenians started mass demonstrations in Stepanakert (capital of Artsakh) demanding unification with the Armenian SSR. Azerbaijani authorities responded with pogroms against Armenians in Sumgayit, Kirovabad and Baku (Azerbaijani big cities) and with Koltso (ring) operation, the forced deportation of Armenians from Shahumyan region (Armenian populated region north to NKAO). The armed forces of Azerbaijan then launched a large-scale offensive against NKAO but encountered resistance from Armenian voluntary military units.

On September 2, 1991, a joint session of deputies of all levels of NKAO and the Shahumyan region proclaimed the independence of the Nagorno Karabakh Republic (NKR) as an expression of “the will of the people... and its desire for freedom, independence, equality, and good-neighborliness.”² Military hostilities came to an end with the Bishkek ceasefire agreement signed by the parties in 1994. As a result, Artsakh gained control over the former NKAO and seven regions adjacent to it.

However, on September 27, 2020, Azerbaijan backed by Turkey and mercenaries launched a new aggression, and in 44 days took control over seven adjacent regions and parts of the former NKAO. The 44-day war was stopped by issuance of a Russia-brokered November 9 trilateral declaration signed

² COUNCIL OF PEOPLE’S DEPUTIES OF THE NKAO, *Declaration on Proclamation of the Nagorno Karabagh Republic*, Sep. 2, 1991, <http://president.nkr.am/en/nkr/nkr1>

by Armenia, Azerbaijan and Russia. Since the declaration, Russian peacekeeping forces have been deployed in the territory of Artsakh.

1. Media-related legal framework complies with the minimum international standards.

1.1. Freedom of expression and Media

As Justice Holmes stated in one of his dissenting opinions, “the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which [our] wishes safely can be carried out.”³ The Universal Declaration of Human Rights (hereafter UDHR), the International Covenant on Civil and Political Rights (ICCPR), the European Convention of Human Rights (ECHR) and several other documents acknowledge the freedom of opinion and expression as a fundamental human right. Everyone’s right to freedom of opinion and expression is enshrined in Article 19 of the UDHR. The right includes “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 10 of the ECHR and Article 19 of the ICCPR have similar articulations. Freedom of expression is also applicable to information or ideas that, in the words of the European Court of Human Rights, “offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’” The Resolution 1535 of the Parliamentary Assembly of the Council of Europe provides that “freedom of expression and information in the media includes the right to express political opinions and criticize the authorities and society, expose governmental mistakes, corruption and organized crime, and question religious dogmas and practices.”⁴

³ *Abram v. U.S.*, 250 U.S. 616, 40 S.Ct. 17, 63 LEd. 1173 (1919), Holmes, J., Dissenting

⁴ Parliamentary Assembly of the Council of Europe, *Resolution 1535*, Jan. 25, 2007, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17510&lang=en>

On September 2, 1991, the Nagorno Karabakh Republic declared independence in full respect of “the principles of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, the Concluding Document of the Vienna Meeting of the Conference on Security and Cooperation in Europe and other universally recognized norms of international law.” To this end, being in isolation and deprived of any international support and guidance, the Republic of Artsakh has enhanced its ties with the Republic of Armenia in various spheres, including economic, cultural, social, etc. Alongside these, the legislation of Artsakh, and media regulations in particular, are significantly affected and influenced by Armenia’s legislation.

Artsakh has adopted adherence to major international instruments and recognizes the supremacy of international law upon its national legislation. Article 42 of the Constitution of Artsakh ensures everyone’s right “to freely express his/her opinion,” including the right “to hold own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers.” The Article further guarantees the freedom of the press, radio, television and other means of information and imposes the obligation on the State to guarantee the activities of independent public television and radio offering a diversity of informational, educational, cultural and entertainment programs. The last provision of the Article provides the possibility of restricting freedom “for the purpose of state security, protecting public order, health and morals or the honor and good reputation of others and other basic rights and freedoms thereof.”⁵

Article 4 of the Law on Mass Media of Artsakh, as a guarantee to freedom of speech in the media sphere, prohibits censorship, coercion to disseminate information or refrain from its dissemination, obstruction of legitimate professional activities of a journalist, discrimination in the civil

⁵ The Constitution of the Republic of Artsakh, Feb. 20, 2017, <http://www.nankr.am/en/1838>

circulation of equipment and materials necessary for the media activities, and restrictions on media usage, including those produced and distributed in other countries.⁶ The same Article provides that media activities are not subject to prior or ongoing state registration, licensing, accreditation or notification to the state or any other body.⁷ The only exception to this is Radio and TV broadcasting, licensing of which is regulated by the “Law on television and radio broadcasting.” This exception is in line with the freedom of expression, as Article 10 of the ECHR provides that freedom of expression “shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”⁸ However, case law of the ECtHR shows that some licensing criteria must be followed. Arbitrariness must be excluded from the licensing process and the licensing authority’s decision denying a broadcasting license must be properly reasoned.⁹ Domestic law regulating broadcasting must be sufficiently accessible, precise, and foreseeable for a person to be able to adapt his/her behavior to it.¹⁰ “The Law on television and radio broadcasting” of the Republic of Artsakh provides that the licensing and control of television and radio broadcasters is carried out by the National Commission – an independent institution separately funded by the state budget. The National Commission issues licenses and provides frequencies by competition. The exhaustive grounds for refusing and revoking licenses are expressly prescribed and the decision on refusing and revoking the license may be appealed in court.

1.2. Freedom of information

Freedom of expression and media is correlated with freedom of information. This correlation is why most of the above-mentioned major international instruments have included the right to seek and

⁶ Artsakh Republic Parliament, *Law on Mass Media*, Oct. 20, 2004, <http://www.nankr.am/hy/564>

⁷ *Id.*

⁸ Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, https://www.echr.coe.int/documents/convention_eng.pdf

⁹ Council of Europe, *Freedom of Expression and the Broadcasting Media*, Apr. 2016, <https://rm.coe.int/1680631e3c>

¹⁰ ECtHR, *Case of Groppera Radio AG and Others v. Switzerland*, Mar. 28, 1990, <https://hudoc.echr.coe.int/eng?i=001-57623>

receive information in freedom of expression. For example, the EU Charter of Fundamental Rights in Article 11 states that the right to freedom of expression includes “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”¹¹

The Recommendation of the CoE Committee of Ministers to member states on Access to Official Documents REC (2002) recognizes the role of freedom of information in endeavoring democratic society, fostering the efficiency and effectiveness of public administration, promoting transparency, avoiding the risk of corruption, strengthening the public’s confidence in public authorities, etc.¹² To this end, the document sets out minimum standards of freedom of information for the member states to be guided in their law and practice.

Similarly, non-governmental organization Article 19 establishes nine general principles of the Public’s Right to Know. Analyses of some of these principles and the Law on Mass Media of Artsakh are introduced below.

Principle of Maximum disclosure

Maximum disclosure assumes the Constitution should clearly enshrine access to official information as a basic right. There is a presumption that all information is subject to disclosure, and “where a public authority seeks to deny access to information, it should bear the onus of justifying the

¹¹ EUROPEAN UNION, *EU Charter of Fundamental Rights*, Oct. 2, 2000, <https://fra.europa.eu/en/eu-charter/article/11-freedom-expression-and-information>

¹²COUNCIL OF EUROPE, *Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents*, Feb. 21, 2002, <https://rm.coe.int/16804c6fcc#:~:text=Member%20states%20should%20guarantee%20the,including%20that%20of%20national%20origin.>

refusal at each stage of the proceedings.”¹³ In addition, definitions of the terms “information” and “public bodies” should be given broadly.

Article 51 of the Constitution of the Republic of Artsakh enshrines that “everyone shall have the right to receive information and get familiar with documents relating to the activities of state and local self-government bodies and officials. The right to receive information may be restricted only by law, for the purpose of protecting public interests or the basic rights and freedoms of others. The procedure for receiving information, as well as the grounds for liability of officials for concealing information or for unjustified refusal of providing information thereby, shall be prescribed by law.”¹⁴

Article 6 of the “Law on Freedom of Information” of the Republic of Artsakh (the Law) provides that “each person has the right to address an inquiry to information holder to get acquainted with and/or get the information sought by him as defined by the law. Foreign citizens can enjoy the rights and freedoms foreseen by the following law as defined by the Republic of Artsakh Law and/or in cases defined by international treaties.”¹⁵

According to Article 2 of the Law, “information holder” relates to “state bodies, local self-government bodies, state offices, state budget sponsored organizations as well as organizations of public importance and their officials.”¹⁶ “Information” is defined as “records/data of facts, people, subjects, events, phenomena, processes that are received and formed as defined by legislation, despite of the way those are possessed or their material carrier (electronic or hard copy documents, records,

¹³ ARTICLE 19, *The Public’s Right to Know: Principles on Right to Information Legislation*, 2016, https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf

¹⁴ THE CONSTITUTION OF THE REPUBLIC OF ARTSAKH, Feb. 20, 2017, <http://www.nankr.am/en/1838>

¹⁵ National Assembly of Artsakh, *Law on Freedom of Information of the Republic of Artsakh*, <http://www.nankr.am/hy/1159>

¹⁶ *Id.*

videos, films, photos, drawings, schemes, notes, maps, etc.)”¹⁷ Thus, the requirement of a broad definition is met.

Obligation to Publish Information

Freedom of information also assumes public bodies’ obligation to publish and disseminate key information of public interest (for example functions, objectives, organizational structures, standards, achievements, manuals, policies, procedures, rules, and key personnel of public bodies), even if there is no special request made.

Article 7 of the Law provides that “if it is not otherwise foreseen by the Constitution and/or the Law, information holder at least once a year publicize the following information related to his activity and or changes to it: a) activities and services provided (to be provided) to the public; b) budget; c) forms for written inquiries and the instructions for filling those in; d) lists of personnel... f) influence on the environment; g) public events program, etc.”¹⁸

The Limited Scope of Exceptions

A refusal to disclose information is justified only if meets the following three-part test: 1) the information must relate to a legitimate aim as provided for in international law; 2) disclosure must threaten to cause substantial harm to that aim; 3) the harm to the aim must be greater than the public interest in having the information.

Article 8 of the Law meets the first prong of the test, as it provides a complete list of narrowly tailored exceptions directed to the protection of the following legitimate interests a. state, official, bank, or trade secret; b. privacy of a person and his family, including the privacy of correspondence, telephone

¹⁷ *Id.*

¹⁸ *Id.*

conversations, post, telegraph, and other transmissions; c. pre-investigation data not subject to publicity; d. data requiring accessibility limitation, conditioned by professional activity (medical, notary, attorney secrets). e. copyright and associated rights.

Nevertheless, Article 8 doesn't require the likely harm **to legitimate aim** to be substantial and greater than the public interest in having the information and thus falls short of the second and third prongs of the test. This weakness of the Article is partly compensated by the 3rd part of it, providing that information requests on urgent cases threatening public security and health, as well as natural disasters and their aftermaths, the real situation in the spheres of nature and environment protection, health, education, agriculture, trade and culture and overall economic situation of the Republic of Armenia cannot be denied. The same is also the case "if the decline of the information request will have a negative influence on the implementation of state programs of the Republic of Artsakh directed to socio-economic, scientific, spiritual and cultural development."¹⁹

Processes to facilitate the Access

According to this principle, open and accessible internal systems should be established by public bodies to guarantee the public's right to request and receive information. Time limits for the processing of requests should not exceed one month. Also, the legislation should provide for the right of appeal at three levels a) within the public body b) appeals to an independent administrative body and c) appeals to the courts.²⁰

Article 9 of the Law provides that in case of oral inquiry, the answer must be given immediately or within the shortest possible time. In the case of written inquiries, the time is 5 days. However, when

¹⁹ *Id.*

²⁰ Article 19, *The Public's Right to Know: Principles on Right to Information*, 2016, https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf

additional work is needed for providing the requested information, then the public body has 30 days for the answer but must notice about it within 5 days after the application has been received.²¹

Here, the requirement to provide the right of appeal at three levels is also met. According to Article 11 of the Law, “the decision not to provide information can be appealed either in the state government body defined by Legislation or in the court.” The Ombudsman’s office stands as an independent administrative body. Article 16 of the “Law on Human Rights Ombudsman” of the Republic of Artsakh states that in case of violations of his/her rights and freedoms by state or local self-government bodies, everyone has the right to apply to the Ombudsman.²²

Free of Charge Nature of Public Information

The information must be provided at no cost or must be limited to the actual cost of reproduction and delivery. The purpose is to not allow deterrence from obtaining public information by costs.

Article 10 of the Law enshrines that the information shall be provided free of charge in the following cases: response to oral inquiries, for up to 10 pages of printed or copied information, for information via e-mail (internet), declining the information request, etc.²³ In other cases, the cost to be paid for information cannot exceed the costs of providing that information.

In sum, internationally recognized principles on freedom of information are mostly reflected in the legislation of Artsakh.

²¹ *Supra* note 15

²² NATIONAL ASSEMBLY OF THE REPUBLIC OF ARTSAKH, *Law on Human Rights Ombudsman*, Dec. 21, 2017, https://artsakhombuds.am/en/ombudsman_law

²³ *Supra* note 15

1.3 Defamation and “insult” laws

Defamation and insult are not considered a crime and no criminal punishment is provided by the Criminal Code of Artsakh. Instead, laws against defamation and insult are embodied in the Civil Code. It means that both public officials and private persons, when seeking redress, should apply to civil court as a plaintiff. These regulations comply with internationally recognized standards, according to which Civil defamation and “insult” laws are able to achieve the legitimate goal of providing the victims with redress, thus criminal regulations for redress purposes are unnecessary.

However, Article 355 of the Criminal Code provides that “threatening or insulting or showing undisguised disrespect to the Human Rights Defender with regard to the exercise of powers thereof” is punishable by a fine or by detention.

Making insults to a public official, such as Human Rights Defender, distinct from insult to a private person is incompatible with the concept of freedom of speech established by main international instruments. The ECtHR in *Lingens v. Austria* held that limits of tolerable criticism for public officials are wider than for private persons, as “the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.”²⁴ In addition, the term “insult” itself is subjective and imprecise.

Article 368 of the Criminal Code of Artsakh provides that contempt of court expressed by insulting the participants of a trial, as well as the judge in relation to exercising official powers shall be punished by fine or by detention. In contrast to other public officials, limits of tolerance for judges are narrow, and thus, this Article is in line with international standards. The doctrine of contempt of court is

²⁴ *Lingens v. Austria*, Eur. Ct. H.R., 1986.

widely recognized worldwide and is aimed at the protection of administration of justice. As described by Lord Diplock, “it is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.”²⁵ The ECtHR in *Prager and Oberschlick v. Austria* stated that to carry out its duty of guaranteeing justice, the judiciary must enjoy public confidence, and therefore it is necessary “to protect such confidence against destructive attacks that are essentially unfounded, especially in view of the fact that judges who have been criticized are subject to a duty of discretion that precludes them from replying.”²⁶

1.4. Accreditation of Foreign Journalists

International standards provide that accreditation is necessary for access to places with limited capacity or closed places, including dangerous areas.²⁷ During the last three decades, border skirmishes and serious escalations have been taking place constantly. In this context, the accreditation of foreign journalists for the purposes of their protection and assistance is justifiable. In addition, the only way into Artsakh is from Armenia. The Azerbaijani authoritarian regime headed by Ilham Aliyev prohibits the access of foreign journalists to Artsakh from Azerbaijan and those visiting from Armenia soon find their names on the blacklist of Azerbaijan. For example, a group of Russian journalists, namely Alexander Shmelev, Dmitry Bavyrin, Marina Skorikova and Svetlana Shmeleva were included in that list

²⁵Article 19, *Background Paper on Freedom of Expression and Contempt of Court*, Nov. 2000, <https://www.article19.org/data/files/pdfs/publications/foe-and-contempt-of-court.pdf>

²⁶ *Id.*

²⁷ OSCE, *Accreditation of Foreign Journalists in the OSCE region*, May 2016, <https://www.osce.org/files/f/documents/2/8/245146.pdf>

immediately after visiting Artsakh in 2014.²⁸ Journalist and editor-in-chief at Swiss monthly magazine Schweizer Monat, Ronnie Grob was included in that list for his visit to Artsakh in 2019.²⁹

To obtain accreditation, a foreign journalist must apply to the Ministry of Foreign Affairs of the Republic of Artsakh according to clearly defined procedures available on the Ministry's website. The procedure is mostly in line with the recommendations on the accreditation of foreign journalists in the OSCE region provided by the OSCE (Organization for Security and Co-operation in Europe). Freelancers also have the right to be accredited.³⁰

The list of grounds for accreditation refusal is legitimate and exhaustive. Nevertheless, one of them, articulated as "dissemination of biased information about Artsakh" seems problematic. By the OSCE standards, accreditation should not be used as a means to control the content of critical reporting and should be only aimed at facilitating the work of journalists.³¹ In this context, the refusal of accreditation for "bias information" falls short of international standards. Moreover, the term "bias information" is a subjective notion and lacks certainty. Nevertheless, the journalist has the right to appeal the refusal in court. Moreover, as of now, not a single case of accreditation refusal on the ground of "disseminating bias information" has been reported by any foreign journalist. Representatives of media entities from different countries have enjoyed largely unrestricted entry to Artsakh.

²⁸Artsakhpress, *A group of Russian journalists and experts declared persona non grata in Azerbaijan*, Aug. 26, 2014, <https://artsakhpress.am/eng/news/4417/gruppa-rossiyskikh-zhurnalistov-i-ekspertov-stala-personoiy-non-grata-v-azerbaiydzhane.html>

²⁹Francesco Benini, *Azerbaijan takes action against Swiss journalists*, NZZ magazine, Dec. 21, 2019, <https://magazin.nzz.ch/schweiz/aserbajdschan-geht-gegen-schweizer-journalisten-vor-ld.1530224?reduced=true>

³⁰Ministry of Foreign Affairs Republic of Artsakh, *Accreditation for Foreign Media Representatives*, <http://www.nkr.am/en/media-accreditation>

³¹OSCE, *Special Report: Accreditation of Journalists in the OSCE Area*, Oct. 25, 2006, <https://www.osce.org/files/f/documents/0/b/22065.pdf>, OSCE, *Accreditation of Foreign Journalists in the OSCE region*, May. 2016, <https://www.osce.org/files/f/documents/2/8/245146.pdf>

Over 800 foreign journalists from 290 media were accredited by the Government of Artsakh to cover the 44-day war.³² Canadian journalist, analyst, and freelancer for the Guardian and CNN Neil Hauer, who was covering the war live from the frontlines in Artsakh testified, “broadly speaking there weren’t any restrictions that were beyond the pale.”³³ However, some of the journalists working on the ground were deliberately targeted by Azerbaijani armed forces. As a result, a local fixer was killed, and 7 journalists were heavily injured. Ad Hoc report of the Artsakh Ombudsman “On the Azerbaijani Attacks on Journalists Covering Hostilities in Artsakh” states that Azerbaijan’s deliberate attacks on journalists were carried out with the help of drones and were aimed at keeping foreign media out of Artsakh.³⁴

After the 44-day war, foreign journalists often get their access denied to Artsakh. This change is mostly due to the Russian peacekeeping mission deployed there, which monitors traffic into and out of Artsakh. For example, the same Neil Hauer and British journalist Mark Stratton reported on their denial to get permission to visit Artsakh.³⁵

2. De facto State of the Media System in Artsakh

Television is one of the most popular media and one of the primary sources of news in the country. Artsakh TV, the public television channel that covers major national and international events, local issues, as well as offers political, cultural, entertainment and many other programs, gets financial support from the state budget.

³²Human Rights Ombudsman of The Republic of Artsakh, *Ad Hoc Public Report on The Azerbaijani Attacks On Journalists Covering Hostilities In Artsakh (Nagorno-Karabakh)*, 2020, <https://www.artsakhombuds.am/ru/document/783>

³³Regional Post, *Covering the Nagorno-Karabakh Conflict and War as a Foreign Journalist*, Jun. 9, 2021 <https://regionalpost.org/en/articles/covering-the-nagorno-karabakh-conflict-and-war-as-a-foreign-journalist.html>

³⁴ Human Rights Ombudsman of The Republic of Artsakh, *Ad Hoc Public Report on The Azerbaijani Attacks On Journalists Covering Hostilities In Artsakh (Nagorno-Karabakh)*, 2020, <https://www.artsakhombuds.am/ru/document/783>

³⁵ Reporters Without Borders, *Russian peacekeepers deny foreign reporters access to Nagorno-Karabakh*, Apr. 9, 2021, <https://rsf.org/en/russian-peacekeepers-deny-foreign-reporters-access-nagorno-karabakh>

Public television plays a crucial role during election campaigns. Article 20 of the Electoral Code of the Republic of Artsakh provides that “Presidential candidates and political parties running in elections of the President and National Assembly shall have the right to use the airtime (including by live broadcasting) of public radio and public television on equal conditions, free of charge and for pay.”³⁶ The Article further imposes an obligation on public radio and public television to ensure non-discriminatory conditions for and to provide impartial and non-judgmental information on candidates and political parties running in elections. The obligation to ensure non-discriminatory and impartial conditions for candidates, political parties during the period of the election campaign is envisaged also for newspapers and magazines founded by state or local self-government bodies. Even if a candidate or political party fails to organize events or provide information on her/his activities, mass media is still obliged to publish information on the campaign of the candidate. All candidates can participate in debates organized by public television. For example, Freedom House in its report on Artsakh describes the 2020 election as one with extensive in-person and social media campaign activities and assesses televised debates of presidential candidates as the culmination of the campaign.³⁷

No other television channel exists. There remains financial difficulty in funding the necessary equipment and technology and the challenge of profitably creating local media tailored to the relatively small population, rather than the larger Armenian-language market in nearby Armenia. This may have a negative effect on dissenting voices.

Nevertheless, most people prefer to get their daily dose of information from social media, mainly from Facebook. Especially after the 44-day war, many believe that information disseminated by official sources is not accurate. Others simply find it more convenient to follow the news using their

³⁶ National Assembly of Artsakh, *Electoral Code of the Republic of Artsakh*, <http://www.arlexis.am/>

³⁷ Freedom House, *Freedom in the World-2022: Nagorno-Karabakh, 2022*, <https://freedomhouse.org/country/nagorno-karabakh/freedom-world/2022>

smartphones. Government officials also actively use social media platforms for the dissemination of information. The current president of the country Arayik Harutyunian has 464.000 followers on Facebook. Artsakh information center, a united official information platform, has 85.000 followers. For a country with 120,000 (before the 44-day war-150,000) population, these are very big numbers. Other followers are mostly Armenians from Armenia and the diaspora. Opposition leaders and political activists also widely use social media. Tigran Petrosian, a political activist well-known for his harsh criticism of the authorities, is followed by more than 6,000 profiles and his live streams on various political topics usually capture tens of thousands of views. It should be noted that the negative effect the lack of private TV channels has on dissenting voices is partly remedied by social media, as expressing political views through social media accounts is costless.

Although legislation directly prohibits censorship, domestic journalists sometimes practice self-censorship on conflict-related topics that are of high sensitivity. For example, before the 44-day war, only a few of them would write about anything different from the “not an inch of land to the enemy” viewpoint. Another example is that official and reputable private media entities, referring to Azerbaijan and the Azerbaijani side, use the term “adversary” rather than “enemy.”

3. The role of the local media in the active phases of the conflict

As recognized worldwide, the primary task of the media is to impart information on all matters of public interest and to ensure the right of the public to be informed. Development of this media function is in many ways set back in the states of the former Soviet Union where media was under the strict control of the Communist party and was used merely for propaganda purposes. Although at the end of the 1980's “perestroika” was launched and some steps were being taken for social pluralism and open access to information, Soviet media was not inclined to provide objective information and coverage of the 1988 Karabakh Movement and the] tragic events which followed. For example,

communist authorities propagated that both mass demonstrations in Stepanakert and Yerevan by Armenians and the massacre of Armenians in Sumgait by Azerbaijanis had been organized by “nationalist” and “hooligan” groups, and that the majority of both ethnic groups of the region “had long lived together in harmony and wished to continue doing so.”³⁸

Soviet Media was reluctant to publish any news related to national issues. Among that news, reporting about the February 20 decision of the Council of People's Deputies' 20th convocation of NKAO was also quashed. This is where the Artsakhian local newspaper “Sovetakan Karabakh” (Soviet Karabakh) played its role for the first time. Ignoring censorship, “Sovetakan Karabakh” published the text of the Decision asking “to demonstrate a sense of deep understanding of the aspirations of the Armenian population of Nagorno Karabakh and resolve the question of transferring NKAO from the Azerbaijani SSR to the Armenian SSR, at the same time to intercede with the Supreme Council of the USSR to reach a positive resolution on the issue of transferring the region from the Azerbaijani SSR to the Armenian SSR.”

The assessment of media at the time of the First Artsakh war is not an easy task, since only a few media entities were in existence due to the collapse of the Soviet Union. The newly declared war ravaged republic faced an uphill climb in establishing media institutions. However, analyses of the official newspaper of the NKR Supreme Council "Artsakh" shows that even during the heaviest phases of the war, no misinformation or disinformation was provided by the Artsakh government about the situation on the battleground. At that time, the newspaper immediately reported the loss of control over the Shahumyan region, Martakert city and some of the villages of the Askeran region.³⁹ In the words of military correspondent and historian Mher Harutyunyan, “during the first Artsakh war, the

³⁸ Brian McNair, *Glasnost, Perestroika and the Soviet Media*, 1991, https://monoskop.org/images/5/55/McNair_Brian_Glasnost_Perestroika_and_the_Soviet_Media.pdf p. 60

³⁹ Hayk Ghazaryan, *The fateful days of the First War in the pages of "Artsakh" newspaper*, CivilNet, May 22, 2021, <https://t.ly/WVf3>

experience showed that presenting the situation in the frontline truthfully was positive for us. We didn't give in to the temptation to falsify the facts because we had the ridiculous experience of our adversary. After losing Shushi, they persisted for a long time in trying to convince their compatriots that the city was still under their control. Then they invented the scenario of betrayal."⁴⁰

After the 1994 ceasefire, the Artsakh Republic adopted hundreds of laws to regulate various fields of public affairs. Among them was the “Law on Martial Law.” Article 8 of the law of the Republic of Artsakh on Martial Law envisages “restriction of freedom of speech, as well as temporary confiscation or detention of printing equipment, radio broadcasters, amplifiers, reproduction equipment, special rules for accreditation of journalists, special rules for the use of means of communication.” So, when the 44-day war started, the rule came into force.

For 44 days the primary and official source for the Armenians living both in Armenia and Artsakh was the regular public briefings about the war provided by the representative of the Ministry of Defense of Armenia Artsrun Hovhannisyan at the Armenian Unified Information Center.⁴¹ All the media entities in Armenia and Artsakh, including the Artsakh information center, were sharing the information provided by him. From time to time, a spokesman of Artsakh’s President Vahram Poghosyan was also making announcements.

However, as has been revealed later, most of this information was “disinformation,” and Armenians who were sure *#hakhteluenq* (we are going to win), were suddenly informed about the painful November 9 declaration. For example, on October 4, Vahram Poghosyan posted on his Facebook page that “Ganja military airport (in Azerbaijan) is gone.”⁴² Later, it became clear that the news was

⁴⁰ *Id.*

⁴¹ Freedom House, *Disinformation and Misinformation in Armenia Confronting the Power of False Narratives*, Jun. 2021, https://freedomhouse.org/sites/default/files/2021-06/Disinformation-in-Armenia_En-v3.pdf

⁴² Armenpress, *Ganja military airbase is 'no more' - Artsakh says*, Oct. 4, 2020, <https://armenpress.am/eng/news/1030235/>

false. Satellite images taken in late November showed that the airport hadn't changed before and after the war.⁴³

The editor-in-Chief of CIVILNET Karen Harutyunyan later testified, "from the very beginning of the war, official state information and the information we received from CIVILNET journalists in Artsakh and from our military contacts were in direct contradiction to each other."⁴⁴

It is worth mentioning that Azerbaijani authorities have also been carrying out a policy of spreading disinformation. An inflated number of casualties of the Armenian side was provided to the Azerbaijani society. For example, on October 28, the President of Azerbaijan Ilham Aliyev in an interview with the Russian "Interfax" agency said that "the toll of the Armenian party during the hostilities in the zone of the Nagorno-Karabakh conflict since September 27 amounts to about 5 thousand."⁴⁵ The disinformation was "confirmed by documents stolen by the Azerbaijani hackers from the Armenian MoD's system."⁴⁶ In reality, the so-called "document" was composed by Azerbaijan using various non-military databases, containing data on the population of Armenia and Artsakh.⁴⁷

After the 44-day war, the martial law regime in Artsakh has been amended by more comprehensive regulations. According to Article 321.4 of the Criminal Code of Artsakh adopted in 2021, "violation of the rules of publication or dissemination of information during the legal regime of martial law, which has caused significant damage to the rights or legitimate interests of individuals or organizations or the legitimate interests of society or the state" is a crime punishable by a fine or

⁴³ Fact Investigation Platform, *Has Ganja airport "exploded"? satellite photos prove otherwise*, Nov. 27, 2020, <https://fip.am/14023>

⁴⁴ Karen Harutyunyan, *The Karabakh War, Media, Propaganda, and Immorality*, CivilNet, Dec. 16, 2020, <https://www.civilnet.am/en/news/474655/the-karabakh-war-media-propaganda-and-immorality/>

⁴⁵ JAMnews, *Misinformation in the Karabakh conflict: analysis of Azerbaijani media from Armenia*, Oct. 16, 2021, <https://jam-news.net/misinformation-in-the-karabakh-conflict-analysis-of-azerbaijani-media-from-armenia/>

⁴⁶ *Id.*

⁴⁷ *Id.*

imprisonment. On April 15, 2022 President Arayik Harutyunyan signed a decree establishing rules for publishing or disseminating information during the legal regime of martial law, according to which “proceeding from the necessity to ensure state and public security of external and internal nature, any military information, non-military information related to state security, information and publications on the border situation of the Artsakh Republic, publication and transmission of information materials, interviews, reports, other information on military equipment, republic's Armed Forces and other troops, as well as any information directly related to them, (hereinafter all together referred to as reports), including on websites, social networks (hereinafter referred to as publications), should be done exclusively with reference to official information provided or published by state bodies (hereinafter referred to as official information), fully reflecting the official information (without editing).”

To see if the above mentioned restrictions are in line with the international standards on media freedom, they must be analyzed along with international law and guidelines.

The European Court of Human Rights stated that in case of interference with Article 10 of the Convention, the following three criteria must be taken into account: 1) whether the impugned measures are “prescribed by law”, which means that the legal rules in question must have a certain quality, be accessible and foreseeable, 2) whether the interferences pursue a legitimate aim, which means an aim listed in the Article 10 of the Convention 3) whether they are “necessary in a democratic society”, which means that a proportionate balance must be between the “measures chosen to satisfy a legitimate aim” and “the degree of injury inflicted on expression rights.”⁴⁸

The President’s decree clearly states that the restrictions are based on the necessity to ensure state and public security of external and internal nature, thus the criterion of “legitimate aim” is

⁴⁸ EUROPEAN COURT OF HUMAN RIGHTS, *Guide on Article 10 of the European Convention on Human Rights*, Mar. 31, 2020, <https://rm.coe.int/guide-art-10-eng/16809ff23f>

satisfied. However, the same couldn't be said about the 1st and 3rd criteria. Imposing such broad reporting restrictions on Media and providing the government with such an extent of exclusive informational authority falls short of "proportionate balance." Moreover, measures derogating from the state's international obligations must be prescribed by "the exigencies of the situation."⁴⁹ In this regard, it is unclear how the government can assess the extent of the exigencies of the situation properly.

Conclusion

Freedom of expression and media is an indicator and a core element of a democratic society. Restriction of the person's right to report on any matter of public concern deprives the public of an essential check on the powers of government. In contrast, the protection of that right leads to a sustainable and strong democracy. To achieve the latter goal, states and various universal and regional organizations cooperate, provide mutual assistance, organize seminars, etc. By deprivation of such opportunities, unrecognized countries face serious challenges.

Based on the conducted research and analyses, this paper concludes that one such unrecognized country, the Republic of Artsakh, has been able to overcome the challenges of diplomatic and economic isolation and has media regulations that comply with the minimum standards recognized in international law. However, some norms of the legislation need to be amended, as they have a "chilling effect" on freedom of expression and freedom of information. Moreover, a lot of steps should be taken to match the real-life state of the media with the existing legal framework.

⁴⁹ Council of Europe, *Journalism in situations of conflict and aggression*, <https://rm.coe.int/compilation-of-coe-standards-relating-to-journalism-in-situations-of-c/1680a5b775>

