

**MEDIA IN UNRECOGNIZED COUNTRIES:
CHALLENGES AND LESSONS FROM ARTSAKH
(NAGORNO-KARABAKH) IN THE FACE OF
ISOLATION AND MISINFORMATION**

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I. INTRODUCTION

Media, as a means of communication, plays a crucial role in our society and is more prevalent than ever before. From social media, television, magazines, radio, music, and books, the media is an extremely powerful tool. It 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.

Nonetheless, the media can sometimes be manipulated with devastating consequences. It may be abused by dictatorships for propaganda purposes, to disseminate racist ideas, incite ethnic hatred, and even provoke acts of genocide. For example, during the Rwandan genocide, radio—used by the Hutu majority—served as a primary instigator, spreading anti-Tutsi conspiracy theories, dehumanizing the Tutsi population, circulating calls to action, and coordinating killings.¹ More recently, social media have played a central role in spreading and promoting ethnic violence before and during the Rohingya genocide.

This paper asserts that people in non-recognized countries face significant barriers to using media as an effective tool for internal development, while simultaneously being more susceptible to external media manipulation and misuse. Domestically, their exclusion from international structures denies them access to critical resources such as guidance, strategies, and financial support, all of which are vital for promoting democratic reforms, including efforts to bolster media independence and uphold professional standards. On the global stage, the lack of participation in international platforms and cross-border partnerships is further exacerbated by the dominance of narratives shaped by recognized states, often involved in conflicts or disputes with these unrecognized regions. These narratives frequently marginalize the voices of unrecognized states, allowing perpetrator states to advance criminal agendas and whitewash their atrocities.

One such country was the Republic of Artsakh (also known as the Nagorno-Karabakh Republic, or simply Artsakh or Nagorno-Karabakh), which declared its independence in 1991 and operated as a sovereign but unrecognized state for 32 years. Throughout its

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¹ HUMAN RIGHTS WATCH, *The Rwandan Genocide: How It Was Prepared* (2006), <https://www.hrw.org/legacy/background/africa/rwanda0406/rwanda0406.pdf>.

existence, Artsakh unilaterally ratified major international human rights instruments and steadfastly pursued a democratic path, despite receiving no support from the international community. Tragically, in 2023, Artsakh was subjected to ethnic cleansing of its indigenous Armenian population following an unprovoked and illegal attack by Azerbaijan. In the meantime, the international community stood by as a silent witness, failing to intervene or hold Azerbaijan accountable for its blatant violations of international law and human rights, culminating in the fall of the Republic.

This paper argues that even while enduring three decades of armed conflict and facing significant economic and diplomatic isolation, including exclusion from international legal structures, the Republic of Artsakh managed to maintain media regulations that adhered to minimum international standards within a democratic framework. However, certain aspects of Artsakh's media regulations remained outdated or underdeveloped, limiting their ability to foster greater freedom of expression and media independence. Alongside an analysis of Artsakh's legislation, this paper also examines the media regulations of other unrecognized countries to allow readers to draw comparisons more effectively. Finally, it addresses how Azerbaijani false narratives frequently overshadowed and marginalized the voice of Artsakh's people and enabled Azerbaijan to advance its criminal agendas and whitewash its atrocities. With limited media resources, Artsakh was unable to effectively counter these narratives, contributing to its vulnerability.

II. ETHNIC ARMENIAN ASPIRATIONS IN ARTSAKH: THE EMERGENCE OF AN AUTONOMOUS STATE—AND MEDIA FREE OF STATE CONTROL

The Artsakh conflict spans over a century. After the Russian Empire collapsed in 1917, Armenia, Georgia, and Azerbaijan declared independence. Azerbaijan, supported by Turkey, claimed Artsakh, a historically Armenian region. Despite violence and massacres, Azerbaijan failed to subdue the Armenians of the region. In 1920, the Russian Red Army regained control and recognized Artsakh as disputed. In 1921, the Soviet government arbitrarily included the region, with a 94% Armenian population, in the Azerbaijani SSR, establishing the Nagorno-Karabakh Autonomous Oblast.

Over the decades, Armenians faced systemic discrimination and violence. By the 1970s, the Armenian

population had dwindled to 76% due to forced expulsions. In 1988, Armenians protested for unification with Armenia, leading to pogroms in Azerbaijani cities. Azerbaijan launched an offensive but met resistance from Armenian forces.

On September 2, 1991, Artsakh declared independence, leading to a ceasefire in 1994 after military hostilities, with Artsakh controlling the former NKAO and seven surrounding regions. However, on September 27, 2020, Azerbaijan, backed by Turkey, launched a new assault, regaining parts of the region after 44 days, with a ceasefire brokered by Russia.

On December 12, 2022, Azerbaijan blocked the Lachin Corridor, the only land route connecting Artsakh to Armenia and the outside world, trapping Artsakh's population without essential supplies. After a months-long blockade, on September 19, 2023, Azerbaijan launched another military attack to take control of the region, forcing the entire indigenous population to flee and completing its ethnic cleansing campaign.

III. THE MEDIA-RELATED LEGAL FRAMEWORK OF THE ARTSAKH REPUBLIC COMPLIED WITH MINIMUM INTERNATIONAL STANDARDS; HOWEVER, SOME MEDIA REGULATIONS REMAINED OUTDATED OR UNDERDEVELOPED.

Given the role of media in a democratic society, several international organizations and non-governmental networks annually publish reports on the state of media and the safety of journalists and issue alerts on violations of media freedom in countries worldwide. For example, The Platform for the Protection of Journalism and Safety of Journalists functions as a mechanism with the aim of “electronically collecting, analyzing and exchanging information on violations of journalistic and media freedom.”² Reporters Without Borders (RWB) informs about censorship and abuses against journalists daily and issues the annual World Press Freedom Index that rates the state of press freedom in 180 countries.³ However, only a few of the above-mentioned organizations extend their activities to unrecognized states.

² *Who We Are*, Safety of Journalists Platform, <https://fom.coe.int/en/apropos> (last visited Jul. 30, 2023).

³ *Who Are We?*, Reporters Without Borders, <https://rsf.org/en/who-are-we> (last visited Jul. 30, 2023).

Another benefit for a country to be recognized and allowed to participate in international structures is that other countries and international organizations provide guidance and strategies, and financially support democratic reforms, including reforms in the media. For example, various UN agencies, the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe list the promotion and support of democracy and good governance all over the world as a key priority of their mandate and, to this aim, take political and diplomatic actions to cooperate with and assist various countries. Unfortunately, that is also not the case for unrecognized countries.

In this chapter, the legal framework of the Republic of Artsakh concerning the media is examined, highlighting its alignment with international standards and addressing certain gaps in its normative development. The chapter explores the country's endeavors to adhere to global norms regarding media freedom and regulation, while also identifying areas where outdated or underdeveloped regulations persisted. Through this analysis, the chapter assesses both the progress made and the challenges encountered by the Republic of Artsakh in establishing a reliable media landscape.

A. 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.”⁴ The Universal Declaration of Human Rights (hereafter UDHR), the International Covenant on Civil and Political Rights (hereafter ICCPR), the European Convention of Human Rights (hereafter 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 UDHR⁵. 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

⁴ *Abram v. United States*, 250 U.S. 616, 630 (1919).

⁵ G.A. Res. 217 (III) art. 19, Universal Declaration of Human Rights (Dec. 10, 1948).

10 (1) of the ECHR⁶ and Article 19 of the ICCPR⁷ have similar articulations. 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.”⁸

The European Court of Human Rights (hereafter ECtHR), in the landmark case *Handyside v. the United Kingdom*, concluded that freedom of expression is also applicable to information or ideas that “[o]ffend, shock, or disturb. . . such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’”⁹ The ECtHR has also emphasized that freedom of expression extends not only to the content of information but also to the means of transmission or reception of that information, as any limitation placed on the means inevitably interferes with the right to receive and impart information.¹⁰

On the other hand, Article 10(2) of the ECHR allows specific limitations on the right to freedom of expression “as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The ECtHR 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,” meaning that the legal rules in question must have a certain quality, be accessible, and foreseeable; (2) whether the interferences pursue a legitimate aim, such as those aims listed in

⁶ *Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, 233 U.N.T.S. 213 [hereinafter ECHR]

⁷ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter Int’l Cov.]

⁸ Parliamentary Assembly of the Council of Eur., Res. 1535, *Threats to the Lives and Freedom of Expression of Journalists* (Jan. 25, 2007), <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17510&lang=en>.

⁹ *Handyside v. United Kingdom*, App. No. 5493/72, ¶ 49, Eur. Ct. H.R. (Dec. 7, 1976), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57499%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57499%22]}).

¹⁰ *Autronic AG v. Switzerland*, App. No. 12726/87, ¶¶ 47-48, Eur. Ct. H.R. (May 22, 1990), <https://hudoc.echr.coe.int/?i=001-57630>.

Article 10 of the Convention; and (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.”¹¹

To have a better understanding of how Article 10 is applied by the Court, it is worth scrutinizing *Handyside* in a more detailed way. Richard Handyside, a British proprietor, purchased and distributed a book called “The Little Red Schoolbook,” which was aimed at pupils and teenagers and contained a 26-page section concerning sex, contraception, abortion, etc. Following multiple complaints, the Metropolitan Police conducted an investigation. A successful request was made for a warrant, resulting in the provisional seizure of 1,069 copies of the book, along with leaflets, posters, showcards, and correspondence pertaining to its publication and sale. Later, Handyside was found guilty of possessing obscene publications. In 1972, an application was lodged before the ECtHR by Handyside claiming to be the victim of a violation of Article 10 of the ECHR. The Court held that to understand whether the interferences by public authority entail a “violation” of Article 10, the following questions should be answered: 1) whether the “restrictions” and “penalties” complained of by Mr. Handyside have been prescribed by law, 2) whether the interferences have had a legitimate aim under Article 10 (2), in this particular case, the aim in question has been the protection of morals in a democratic society, 3) whether the protection of morals in a democratic society necessitated the various measures taken against Mr. Handyside. As of the first question, the Court found that the measures taken have been based on the 1959/1964 Acts of the UK legal system. As of the second and third questions, the Court found that there is no uniform European conception of morals and that “State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements.” In other words, the Court recognized the margin of appreciation of the contracting parties to the ECHR, at the same time providing that the domestic margin of appreciation is not unlimited, and it goes hand in hand with European supervision. Exercising its supervisory jurisdiction and based on the different data and evidence available, the Court held that no breach of Article 10 has been established in *Handyside*.

¹¹ Council of Eur., *Guide on Article 10 of the European Convention on Human Rights* (Mar. 31, 2020), <https://rm.coe.int/guide-art-10-eng/16809ff23f>.

B. GUARANTEES FOR THE FREEDOM OF EXPRESSION AND MEDIA PROVIDED BY THE CONSTITUTION OF ARTSAKH AND OTHER LEGAL DOCUMENTS.

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.”¹² To this end, being in isolation and deprived of any international support and guidance, the Republic of Artsakh enhanced its ties with the Republic of Armenia in various spheres, including economic, cultural, social, etc.¹³ Alongside these, the legislation of Artsakh, and media regulations in particular, were significantly affected and influenced by Armenia’s legislation.¹⁴

Artsakh adhered to major international instruments and recognized the supremacy of international law over its national legislation.¹⁵

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.”¹⁶ 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.¹⁷ The last provision of the Article provides the possibility of restricting freedom “for the purpose of state security, protecting

¹² HRCH‘AKAGIR LERNAYIN GHARABAGHI HANRAPETUTYAN PETAKAN ANKAKHUTYAN MASIN [STATE INDEPENDENCE DECLARATION OF THE NAGORNO KARABAGH REPUBLIC], SEP. 2, 1991 (Artsakh)

¹³ Ararat Institute for Near Eastern Studies, *Legal Aspects of Relations Between Republics of Armenia and Artsakh: Past, Present and Future* (Jan. 9, 2021), <https://araratinstitute.org/2021/01/09/legal-aspects-of-relations-between-republics-of-armenia-and-artsakh-past-present-and-future/>

¹⁴ AGBU, Nagorno Karabakh – The Artsakh-Armenia-Diaspora triad, AGBU Magazine (Dec. 2012) <https://agbu.org/building-republic/nagorno-karabakh>

¹⁵ SAHMANADRUTYUN, [CONSTITUTION] (Artsakh) art. 5.

¹⁶ *Id.* art. 42

¹⁷ *Id.*

public order, health and morals or the honor and good reputation of others and other basic rights and freedoms thereof.”¹⁸

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 circulation of equipment and materials necessary for the media activities, and restrictions on media usage, including those produced and distributed in other countries.¹⁹ 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.²⁰

Even though the European standards provide that the requirement of media technical registration does not, per se, violate freedom of expression when it meets certain conditions, nevertheless, it also finds that the registration requirement is unnecessary and opens a window for abuses. In this context, the above-mentioned regulations of Artsakh completely conform to the democratic concept of freedom of the media.

The only exception to the general licensing rule in Artsakh was the licensing of Radio and TV broadcasting, which was regulated by the “Law on television and radio broadcasting.”²¹ However, this exception is also in line with international standards. The reason is the following:

It is well-recognized that different media require different regulatory approaches. Article 10 of the ECHR provides that freedom of expression “shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”²² As can be seen, States have a wider margin of discretion when it comes to broadcast media.

However, the case law of the ECtHR shows that some licensing criteria must be followed. The body with the licensing authority must be independent of the government. Arbitrariness must be excluded from the licensing process, and the licensing authority’s decision denying a broadcasting license must be

¹⁸ *Id.*

¹⁹ ZANGVATSAYIN LRATVUTYAN MASIN ORENK’ [LAW ON MASS MEDIA] (Artsakh)

²⁰ *Id.*

²¹ HERUSTATESUTYAN EV RADIOYI MASIN ORENK’ [LAW ON TELEVISION AND RADIO BROADCASTING] (Artsakh)

²² ECHR, *supra* note 6, art. 10.

properly reasoned.²³ Domestic law regulating broadcasting must be sufficiently accessible, precise, and foreseeable for a person to be able to adapt his/her behavior to it.²⁴

“The Law on television and radio broadcasting” of the Republic of Artsakh provides that the licensing and control of television and radio broadcasters are carried out by the National Commission, an independent institution separately funded by the state budget. The National Commission issues licenses and provides frequencies through competition. The exhaustive grounds for refusing and revoking licenses are expressly prescribed, and the decision to refuse and revoke the license may be appealed in court.

*C. RESTRICTIONS ON FREEDOM OF EXPRESSION ENVISAGED
BY THE LAW ON MASS MEDIA AND THE CRIMINAL CODE OF
ARTSAKH*

Article 7 of the Law on Mass Media of Artsakh states the following restrictions on the freedom of expression in the sphere of the media:

It is prohibited to disseminate 1) secret information as stipulated by law, 2) information advocating criminally punishable acts, 3) information violating the right to privacy of one’s personal or family life, as well as 4) information obtained by video and audio recording conducted without notifying the person of the fact or recording, when the person expected to be out of sight or earshot of the implementer of video and audio recording and has taken sufficient measures to ensure it, except for situations when such measures were obviously not sufficient. The same Article states that the third and the fourth restrictions can be legitimately bypassed when it is necessary for the protection of public interest.²⁵

According to Article 19 of the ICCPR, freedom of expression may be subject to restrictions that are provided by law and are necessary: (a) For respect of the rights or reputations of others; and (b) For the protection of national security or of public order (order public), or of public health or morals.²⁶ As can be seen

²³ See COUNCIL OF EUR., PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS, FREEDOM OF EXPRESSION AND THE BROADCASTING MEDIA (Apr. 2016) <https://rm.coe.int/1680631e3c>

²⁴ See *Groppera Radio AG & Others v. Switzerland*, App. No. 10890/84, ¶ 65-68 (Mar. 28, 1990), <https://hudoc.echr.coe.int/eng?i=001-57623>

²⁵ ZANGVATSAYIN LRATVUTYAN MASIN ORENK, art. 7.

²⁶ Int’l Cov., *supra* note 7, art. 19.

from the wording, the list is exhaustive and restrictions on grounds not specified in Article 19 are not acceptable.

Analyzing Article 7 of the Law in light of Article 19 of the ICCPR, it should be noted that although Article 7 mostly meets the requirements of Article 19, some terms, such as “information advocating criminally punishable acts” lack legal clarity and might be misused. Further, under Article 19, restrictions are allowed only if they are necessary in a democratic society, while there is no similar articulation in Article 7.

To compare, the Law on Mass Media of Transnistria prohibits the use of mass media for purposes of 1) committing criminally indictable deeds, 2) divulging information making up a state secret or any other law-protective secret, 3) the performance of extremist activities, and also 4) for the spreading of broadcasts propagandizing pornography or the cult of violence and cruelty. It is also prohibited to “use... information texts belonging to special mass information media concealed in-sets influencing the subconscious of human beings and/or affecting their health.”²⁷ Further, it is prohibited to “disseminate information on the means, methods of development, production and use, places of trade of narcotics, psychotropic substances and their precursors, propagating of any advantages of use of separate narcotics, psychotropic substances, their analogues and precursors ... as well as any other information, dissemination of which is prohibited by federal laws.”²⁸

Restrictions on freedom of expression are also provided by the Criminal Code of Artsakh. According to Article 226 “Incitement of national, racial, or religious hostility- actions targeted at the incitement of national, racial, or religious hostility, at racial superiority or humiliation of national dignity” is a punishable crime. When any of these acts have been committed: (1) publicly or *by use of mass media*, (2) by use of violence or threat thereof, (3) by use of official position, or (4) by an organized group, then more serious punishment is envisaged by law.²⁹

Another restriction is provided by Article 424 of the code which states that, “Denial, extenuation, upholding or justification of genocide and other crimes against peace and safety of humanity provided for in other articles of this Chapter, by disseminating materials to the public by a computer system or otherwise making

²⁷ Zakon o Sredstvakh Massovoï Informatsii [Law on Mass Media], art. 4 (Transnistria) https://mincifra.gospmr.org/?page_id=2356

²⁸ *Id.*

²⁹ K‘reakan Orensgirk‘ [K‘r. Or.] [Criminal Code] (Artsakh), art. 226.

those materials available, where those have been committed based on racial background, color, national or ethnic origin or religious background, for the purpose of provoking hatred, discrimination or violence against a person or a group of persons,” is a punishable crime.³⁰

It is internationally well-recognized, that “freedom of speech” protects not every kind of speech. Hate speech, incitement to violence, racism and denial of genocide fall outside the protection provided by international instruments.

Council of Europe in Recommendation No. R (97) 20 defines hate speech as covering “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”³¹ It further stresses public authority’s and official’s special responsibility in refraining from statements, in particular to the media, which may reasonably be understood as hate speech, as well as the necessity for the member states “to establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech.”³²

Article 20 of the ICCPR states that “any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” shall be prohibited by law.³³

International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter CERD) in Article 4 also obliges states to “condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form,” and to “undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.”³⁴

³⁰ *Id.* at art. 226(2).

³¹ Council of Eur., Recommendation. No. R (97) 20 of the Comm. of Ministers to Member States on “Hate Speech” (Oct. 30, 1997), <https://rm.coe.int/1680505d5b>.

³² *Id.*

³³ Int’l Cov., *supra* note 7, art. 20.

³⁴ *Int’l Convention on the Elimination of All Forms of Racial Discrimination*, U.N. GAOR Res. 2106, Art. 4 (Jan. 4, 1969),

Caselaw of the ECtHR provides that incitement to violence must be prohibited when there is “an intentional and direct use of wording to incite violence” and “a real possibility that the violence occurs.”³⁵

For example, the European Commission of Human Rights in *Honsik v. Austria* found that the applicant’s denial of the existence of gas chambers and the mass extermination of the victims of the Holocaust is not protected speech, because what the applicant was seeking to use the freedom of expression as a basis for activities are “contrary to the text and spirit of the Convention” and “if admitted, would contribute to the destruction of the rights and freedoms set forth in the Convention.”³⁶

In *Özgür Gündem v. Turkey* the ECtHR found that measures imposed on the newspaper by State authorities through numerous prosecutions and convictions were disproportionate and unjustified in the pursuit of any legitimate aim.³⁷ The circumstances of the case were the following: The individuals associated with *Özgür Gündem*, an Istanbul-based newspaper, lodged an application, complaining, among other things, that the prosecutions brought against the newspaper in respect of the contents of articles and news reports were actually aimed at hindering and preventing the production and distribution of *Özgür Gündem*, and that the articles in question did not contain incitement to violence. After examining the content of the impugned articles the Court, including a cartoon depicting the Turkish Republic as a figure labelled “kahpe,” held that “the authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting.”³⁸ As of an article describing alleged attacks by security forces on villages in the south-east and attacks made by terrorists, including the killing of an imam, the Court held that no relevant and sufficient reasons for interference were

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>.

³⁵Dominika Bychawska-Siniarska, *Protecting the Right to Freedom of Expression Under the Eur. Convention on Human Rights*, Council of Eur. 23 (July 2017), <https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>.

³⁶ *Honsik v. Austria*, App. No. 25062/94, (Oct. 18, 1995), <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22666524%22%2C%22itemid%22:%5B%22001-2362%22%5D%7D>.

³⁷ *Özgür Gündem v. Turkey*, App. No. 23144/93, ¶71 (Mar. 16, 2000), <https://hudoc.echr.coe.int/?i=001-58508>.

³⁸ *Id.*

found.³⁹ As of 8 articles reporting the statements of the PKK, the Court held that “the fact that interviews or statements were given by a member of a proscribed organization cannot in itself justify an interference with the newspaper's freedom of expression,” and that what matters is “the words used and the context in which they were published, with a view to determining whether the texts taken as a whole can be considered as inciting to violence.”⁴⁰ The Court found that only 3 of 8 articles could be regarded as encouraging the use of violence, because they contain passages which “advocated intensifying the armed struggle, glorified war and espoused the intention to fight to the last drop of blood.”⁴¹

Examining Articles 226 and 424 of the Criminal code of the Republic of Artsakh in light of the relevant rules of international law, it should be noted that not only do these articles conform to international standards, but also the lack of these articles would have indicated the failure of the Republic of Artsakh to comply with the internationally imposed obligations.

D. 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 articulated the right to seek and receive information in the same article with the right to freedom of expression.

Among other international instruments, Article 10 of the ECHR should be interpreted so as to allow a broader understanding of the “freedom to receive information,” which includes the recognition of a right of person to access information held by public authorities.⁴²

For example, the ECtHR in *Jankovskis v. Lithuania* held that there was a violation of Article 10 of the ECHR, since the applicant had been refused access to a website of the Ministry of Education and Science of Lithuania (hereafter the Ministry).⁴³ The facts of the case are the following. In 2006, the applicant, who was serving a sentence in the Pravieniškės Correctional Home, requested information from the Ministry about the possibility of

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

⁴² *Jankovskis v. Lithuania*, App. No. 21575/08, (Jan. 17, 2017), <https://hudoc.echr.coe.int/?i=001-170354>.

⁴³ *Id.* ¶ 60

taking a second university degree via distance learning.⁴⁴ The Ministry replied that the requested information could be found on the website of the Ministry.⁴⁵ Based on the reply, the applicant asked the correctional home authorities to be granted Internet access to the website. However the request was denied “because at that time none of the legislation allowed the prisoners to use the Internet or to have a mailbox.”⁴⁶ The applicant then took several other steps, including an initiation of court proceedings, to no effect.⁴⁷ The ECtHR found that the state authorities interference with the applicant’s right to receive information contravened Article 10 of the ECHR.⁴⁸ In particular, the Court held that even though the interference was prescribed by law and pursued a legitimate aim, it was not necessary in a democratic society, as the state authorities could have considered the possibility of granting the applicant limited or controlled Internet access to the website of the Ministry.⁴⁹

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.⁵⁰ To this end, the document sets out minimum standards of freedom of information for the member states to be guided in their law and practice⁵¹.

Similarly, non-governmental organization “Article 19” establishes general principles of the public’s right to know.⁵² Analyses of some of these principles and the Law on Mass Media of Artsakh are introduced below.

⁴⁴ *Id.* ¶ 6

⁴⁵ *Id.* ¶ 7

⁴⁶ *Id.* ¶ 8

⁴⁷ *Id.* ¶ 9

⁴⁸ *Id.* ¶ 63

⁴⁹ *Id.* ¶¶ 65–69

⁵⁰ Council of Eur., Recommendation Rec. (2002)2 of the Comm’n of Ministers to Member States on Access to Office Documents (Feb. 21, 2002), <https://rm.coe.int/16804c6fcc#:~:text6=Member%20states%20should%20guarantee%20the,including%20that%20of%20national%20origin.>

⁵¹ *Id.*

⁵² Article 19, *The Public’s Right to Know: Principles on Right to Information Legislation*, 4 (2016), https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf

1. PRINCIPLE OF MAXIMUM DISCLOSURE AND OBLIGATION TO PUBLISH INFORMATION

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 refusal at each stage of the proceedings.”⁵³ In addition, definitions of the terms “information” and “public bodies” should be given broadly.⁵⁴ The term “public bodies” should encompass all branches and levels of government, including local authorities, nationalized industries, public corporations, non-departmental bodies, and judicial institutions, as well as private entities performing public functions or administering public funds. No body, including those in defense or security, should be exempt; private bodies should also be included where disclosure serves significant public interests or protects fundamental rights.⁵⁵ 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.

The Constitution and Law of the Republic of Artsakh reflect a firm commitment to the principle of maximum disclosure and obligation to publish information, affirming that access to official information is a fundamental right.

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.”⁵⁶

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ SAHMANADRUTYUN, *supra* note 21, art. 51.

In turn, Article 6 of the “Law on Freedom of Information” of the Republic of Artsakh 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.”⁵⁷

According to Article 3 of the “Law on Freedom of Information,” “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.”⁵⁸ “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, videos, films, photos, drawings, schemes, notes, maps, etc.)”⁵⁹

Article 7 of the “Law on Freedom of Information” 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.”⁶⁰

An analysis of the constitutional and statutory framework of the Republic of Artsakh, in light of the principles set out by Article 19, shows that the law implements the main aspects of the principle of maximum disclosure. These include the assumption that information is publicly accessible, the responsibility of authorities to explain any refusal to disclose, and the broad definitions of “information” and “public bodies.” In line with this, authorities are required publish regular updates on key aspects of their work. International standards support this approach, emphasizing that all information held by public authorities should generally be available, with exceptions allowed only in limited circumstances. Thus, the requirement of a broad definition is met.

⁵⁷ TEGHEKATVUTYAN AZATUTYAN MASIN ORENK ‘ [LAW ON FREEDOM OF INFORMATION OF THE REPUBLIC OF ARTSAKH] art. 6.

⁵⁸ *Id.* at art. 3.

⁵⁹ *Id.*

⁶⁰ *Id.* at art. 7.

2. *THE LIMITED SCOPE OF EXCEPTIONS*

A refusal to disclose information is justified only if it 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 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); and 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, which provides 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."⁶¹

3. *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. In addition, the legislation should provide for the right of appeal at

⁶¹ *Id.*

three levels: 1) within the public body 2) to an independent administrative body and 3) to the courts.⁶²

Article 9 of the Law provides that in case of oral inquiry, the answer is given immediately or within the shortest possible time.⁶³ In the case of written inquiries, the time is 5 days.⁶⁴ However, when 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 filed.⁶⁵

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 the case one’s rights and freedoms are violated by state or local self-government bodies, everyone has the right to apply to the Ombudsman.⁶⁶

4. FREE OF CHARGE NATURE OF PUBLIC INFORMATION

The information must be provided at no cost or 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: responses to oral inquiries, for up to 10 pages of printed or copied information, or information via e-mail (internet), declining the information request, etc.⁶⁷ 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.

E. DEFAMATION AND “INSULT” LAWS

⁶² ARTICLE 19, *supra* note 36.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ TEGH. AZAT, *supra* note 38.

⁶⁶ MARDU IRAVUNK’NERI PASHTPANI MASIN ORENK’ [LAW ON HUMAN RIGHTS OMBUDSMAN] (Artsakh)

⁶⁷ TEGH. AZAT, *supra* note 38.

Defamation and insult are not considered a crime, and no criminal punishment is provided by the Criminal Code of Artsakh.⁶⁸ Instead, laws against defamation and insult are embodied in the Civil Code.⁶⁹ This means that both public officials and private persons seeking redress should apply to civil court as a plaintiff. These regulations conform to internationally recognized standards, according to which Civil defamation and “insult” laws achieve the legitimate goal of providing victims with redress. Accordingly, criminal regulations for redress purposes are unnecessary. Moreover, laws criminalizing defamation risk being misused to force people into self-censorship.⁷⁰

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.⁷¹

Distinguishing insults directed at a public official, such as the Human Rights Defender, from those directed at 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.”⁷² In addition, the term “insult” itself is subjective and imprecise, and it may be misused, for example, as a tool against political opponents.

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.⁷³ 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 widely recognized worldwide and is aimed at the protection of the administration of justice. As described by

⁶⁸ K‘r. Or., *supra* note 25.

⁶⁹ K‘aghak‘ats‘iakan Orensgrirk‘ [K‘agh. Or.] [Civil Code] art. 1093 (Artsakh).

⁷⁰ COUNCIL OF EUR., *Guide on Article 10 of the European Convention on Human Rights - Freedom of Expression*, (2020) <https://rm.coe.int/guide-art-10-eng/16809ff23f>.

⁷¹ K‘r. Or., *supra* note 25, art. 355.

⁷² *Lingens v. Austria*, 9815/82, 8 EHRR 407 (Eur. Ct. H.R. July 8, 1986), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-57523%22%5D%7D>.

⁷³ K‘r. Or., *supra* note 25, art. 368.

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."⁷⁴ 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."⁷⁵

To compare, the Criminal Code of Transnistria envisages criminal punishment for "public insult of a representative of the authority," for "public insult of the President" during the discharge by him of his official duties, or in connection with their discharge, as well as for insult to the memory of Great Patriotic War- "Public actions or statements expressing obvious disrespect for society and aimed at distorting reliably proven information about the Great Patriotic War, or belittling the merits of participants in the Great Patriotic War, as well as persons who died in the fight against fascism."⁷⁶

The Criminal Code of Abkhazia envisages criminal punishment for "insult (the denigration of the honor and dignity of another person, expressed in indecent form) ... slander (the spreading of deliberately falsified information that denigrates the honor and dignity of another person or undermines his reputation), and public insult of an authority representative of the authority."⁷⁷

F. ACCREDITATION OF FOREIGN JOURNALISTS

International standards provide that accreditation is necessary [to access restricted areas, including places with limited

⁷⁴ART. 19, BACKGROUND PAPER ON FREEDOM OF EXPRESSION AND CONTEMPT OF CT., INT'L SEMINAR ON PROMOTING FREEDOM OF EXPRESSION WITH THE THREE SPECIALISED INT'L MANDATES (Nov. 29-30, 2000) <https://www.article19.org/data/files/pdfs/publications/foe-and-contempt-of-court.pdf>.

⁷⁵ *Prager & Oberschlick v. Austria*, App. No. 15974/90, ¶ 34, 21 Eur. H.R. Rep. 1 (1995), <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-57926&filename=CASE%20OF%20PRAGER%20AND%20OBERSCHLICK%20v.%20AUSTRIA.doc>.

⁷⁶ Уголовный кодекс Приднестровской Молдавской Республики [Criminal Code of the Pridnestrovian Moldavian Republic] arts. 242-1, 316, 316-1, (UK PMR) (Trans.).

⁷⁷ Уголовный кодекс Республики Абхазия [Criminal Code of the Republic of Abkhazia] arts. 124, 125, 321, (Abkh.).

capacity, closed-off spaces, or dangerous zones] for access to places with limited capacity or closed places, including dangerous areas.⁷⁸

Over the last three decades, border skirmishes and serious escalations were taking place in the region constantly. In this context, the accreditation of foreign journalists for their protection and assistance was justifiable. In addition, the only way into Artsakh was from Armenia. The Azerbaijani authoritarian regime, headed by Ilham Aliyev, prohibited the access of foreign journalists to Artsakh from Azerbaijan, and those visiting from Armenia soon found their names on Azerbaijan's blacklist. For example, a group of Russian journalists, namely Alexander Shmelev, Dmitry Bavyrin, Marina Skorikova, and Svetlana Shmeleva, were included in that list immediately after visiting Artsakh in 2014. Journalist and editor-in-chief of the Swiss monthly magazine *Schweizer Monat*, Ronnie Grob, was also blacklisted for his visit to Artsakh in 2019.

To obtain accreditation, foreign journalists had to 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 was 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 had the right to be accredited.

The list of grounds for accreditation refusal was legitimate and exhaustive. Nevertheless, one of them, articulated as "dissemination of biased information about Artsakh," appeared problematic. By OSCE standards, accreditation should not have been used as a means to control the content of critical reporting and should have been aimed solely at facilitating the work of journalists. In this context, the refusal of accreditation for "biased information" falls short of international standards. Moreover, the term "biased information" is a subjective notion and lacks certainty. Nevertheless, journalists had the right to appeal such refusals in court.

To compare, in Transnistria foreign journalists must receive accreditation in the State Media Service. For short-term accreditation, editors, journalists, and independent freelancers

⁷⁸ ELENA SHERSTOBOEVA & VALENTINA PAVLENKO, ACCREDITATION OF FOREIGN JOURNALISTS IN THE OSCE REGION (ORG. FOR SEC. & COOP. IN EUR., 2016), <https://www.osce.org/files/f/documents/2/8/245146.pdf>.

must submit a statement to the civil service. The grounds for the denial of accreditation listed in law are the following: 1) the application contains incorrect data, 2) a foreign state media or a journalist disseminated information that does not correspond to reality, degrades the honor and dignity of citizens, damages the business reputation of Pridnestrovian organizations, the interests of Pridnestrovie, as well as false or distorted information, that can harm friendly relations between states; 3) the journalist carried out activities in the PMR without having received accreditation earlier; 4) the journalist was previously deprived of accreditation on the territory of PMR.⁷⁹

Media representatives of foreign countries working in the territory of South Ossetia should apply to the State Information and Press Committee of the Republic of South Ossetia..⁸⁰ The application must be accompanied by “a copy of the accreditation of the Ministry of Foreign Affairs of the Russian Federation.”⁸¹ Official confirmation for accreditation is sent to the media “based on the results of consideration.”⁸² The State Information and Press Committee of the Republic of South Ossetia does not provide grounds for the denial of accreditation.

Returning to the regulations of Artsakh, it is worth noting that over 800 foreign journalists from 290 media outlets were accredited by the Government of Artsakh to cover the 44-day war in 2020. Canadian journalist, analyst, and freelancer for The Guardian and CNN, Neil Hauer, who covered the war live from the frontlines in Artsakh, testified, “Broadly speaking, there weren’t any restrictions that were beyond the pale.”⁸³ However, some

⁷⁹ Polozhenie o Poriadke Akkreditatsii v Pridnestrovskoi Moldavskoi Respublike Zhurnalistov Redaktsii Sredstv Massovoi Informatsii Inostrannykh Gosudarstv i Nezavisimyykh Zhurnalistov Inostrannykh Gosudarstv (Frilanserov)

[Regulation on the Accreditation Procedure in the Pridnestrovian Moldavian Republic for Journalists of the Foreign Mass Media and Foreign Independent Journalists (Freelancers)], approved by the State Service for the Ministry of Digit. Dev., Comm’n and Mass Media of the Pridnestrovian Moldavian Republic, Jun. 21, 2016, No. 37(Trans.).

⁸⁰ *Accreditation Scheme of Working in the Territory of South Ossetia for Media Representatives of Russia and Other Countries*, State InformationNews Agency “ResES,” <https://cominf.org/en/accreditation> (last visited Jul. 30, 2023).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Neil Hauer, *Covering the Nagorno-Karabakh Conflict and War as a Foreign Journalist*, Regional Post (June 9, 2021),

journalists working on the ground were deliberately targeted by Azerbaijani armed forces. As a result, a local fixer was killed, and seven journalists were heavily injured. An ad hoc report by the Artsakh Ombudsman titled *on the Azerbaijani Attacks on Journalists Covering Hostilities in Artsakh* stated that Azerbaijan's deliberate attacks on journalists were carried out with drones and aimed at keeping foreign media out of Artsakh.⁸⁴

After the 44-day war, foreign journalists often found their access to Artsakh denied. This change was primarily due to the Russian peacekeeping mission deployed there, which monitored traffic into and out of Artsakh. For example, Neil Hauer and British journalist Mark Stratton reported being denied permission to visit Artsakh.⁸⁵

Moreover, since December 2022 to the last days of its existence, Artsakh had been completely blockaded by Azerbaijan, causing a major humanitarian crisis. With the only road linking Artsakh to the outside world blocked, in the words of Reporters Without Borders, "Nagorno-Karabakh [was] turning into a news and information black hole."⁸⁶

IV. AZERBAIJANI FALSE NARRATIVES OVERSHADOWED AND MARGINALIZED ARTSAKH'S VOICE, ENABLING CRIMINAL AGENDAS AND WHITEWASHING ATROCITIES

Azerbaijan is an authoritarian state. Since 1993, the presidency has been controlled by the Aliyev family. Current president Ilham Aliyev assumed the presidency over the country from his father in 2003. Since there are no term limits, he has been "elected" for 5 consecutive terms. During that time, Azerbaijan has never had free or fair elections and international observers have documented systemic media repression, a biased electoral framework, harassment, and intimidation by authorities, resulting

<https://regionalpost.org/en/articles/covering-the-nagorno-karabakh-conflict-and-war-as-a-foreign-journalist.html>

⁸⁴ Human Rights Ombudsman of the Republic of Artsakh, *Ad Hoc Public Report on the Azerbaijani Attacks on Journalists Covering Hostilities in Artsakh (Nagorno-Karabakh)*, 18 Dec. 2020, <https://artsakhombuds.am/en/document/783>

⁸⁵ 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>

⁸⁶ *Id.*

in opposition parties having no chance to gain power through elections.⁸⁷

To have a general understanding of the status of freedom of expression and freedom of media in Azerbaijan, it is enough to mention that Freedom House, in its *Freedom in the World* annual reports, has rated Azerbaijan “not free” for several years in a row.⁸⁸

Azerbaijan is a country where defamation is a criminal offense. Many provisions are not in line with European standards on freedom of expression and media freedom, and do not allow the media to effectively exercise its role as a “public watchdog.”⁸⁹

For years, journalists and human rights activists in Azerbaijan have been subjected to murder, death threats, kidnapping, bogus criminal charges, detentions, tortures, and thorough surveillance. Victims of these horrific actions are those raising awareness about different issues. “Justice for Journalists” reports that only 215 incidents of attacks and threats against journalists were recorded in 2021.⁹⁰ For 2020 the number was 194⁹¹. In most cases, attacks are committed by government officials, and no adequate investigation is carried out. Moreover, laws criminalizing defamation continue to be used to force journalists into self-censorship. As a result of brutal persecution, many human rights activists and journalists have had to leave the country. However, even living abroad for dissent is not safe. For example, the body of a political refugee Vugar Rza was found in a river in Belgium, opposition activist Bayram Mammadov, was found dead in Istanbul, Journalist Huseyn Bakixanov “fell” from a roof of a hotel in Tbilisi.⁹²

⁸⁷ FREEDOM HOUSE, *Country Report: Azerbaijan, 2025*, <https://freedomhouse.org/country/azerbaijan>.

⁸⁸ *Id.*

⁸⁹ European Commission for Democracy through Law (Venice Comm’n), *Azerbaijan - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on Media*, 131st Plenary Sess., Doc. No. CDL-AD(2022)09 (June 17-18, 2022), [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)009-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)009-e).

⁹⁰ Khaled Aghaly, *Attacks on Media Workers in 2021: Azerbaijan and Central Asia*, JUSTICE FOR JOURNALISTS(2021), https://jff.fund/report_2021_2/#:~:text=In%20Azerbaijan%2C%202021%20incidents%20of%20the%20research%20for%202021.

⁹¹ Justice for Journalists Found., *Annual Report 2021: Attacks on Media Workers in Azerbaijan* (2021), <https://jff.fund/annual-report-2021>

⁹² Reporters Without Borders, *Azerbaijani Journalists Face Threats Abroad* (2022), <https://rsf.org/en/news/azerbaijani-journalists-face-threats-abroad>

However, among dissenters, activists who promote the peace agenda with Armenians face the cruelest treatment. One Azerbaijani correspondent who was working with a Turkish-Armenian newspaper became the victim of a hate campaign, received threats, and was called “Armenian bastard” and “traitor.”⁹³ According to her “My treason is obviously to seek peace.”⁹⁴ In addition, social media users and anti-war activists who called for a peaceful resolution to the 2020 44-day war have become a target of online harassment and threats.⁹⁵ Following the 2022 September escalation, journalists and political activists who spoke out against the war became the target of a public campaign that spread their photos stamped with the hashtag #xainitaniyaq (recognize the traitor).⁹⁶ For example, Ahmad Mammadli, the chair of Democracy 18 Movement was sentenced to 30 days in prison for stating that “Aliyev Ilham will definitely answer before the international courts... for the crimes he committed not only against the Azerbaijani people but also against the Armenian people.”⁹⁷ . Such examples are widespread.

For decades Azerbaijan has consistently employed misinformation to overshadow and marginalize Artsakh's voice while advancing its aggressive policies and excusing repeated human rights abuses. By combining state-controlled propaganda, diplomatic leverage, and the strategic exploitation of international dynamics, Azerbaijan has not only obscured its role as an aggressor but also manipulated global perceptions of Artsakh's Armenian population.

Azerbaijan weaponized disinformation to delegitimize Artsakh's struggle for self-determination, portraying the region's Armenian population as occupiers of Azerbaijani land. This narrative dismisses centuries of Armenian heritage in the region and disregards the legitimate aspirations of its people. By promoting this distorted perspective, Azerbaijan has largely

⁹³ Committee to Protect Journalists, *Harassed and Jailed: Attacks on the Press in Azerbaijan* (Apr. 6, 2016), <https://cpj.org/2016/04/attacks-on-the-press-harassed-and-jailed>

⁹⁴ *It Seems to Be Treason to Seek for Peace; Azerbaijani Journalist Reacts to Threats*, EPRESS.AM (Oct. 17, 2014, 6:19 PM), <https://epress.am/en/2014/10/17/it-seems-to-be-treason-to-look-for-peace-azerbaijani-journalist-reacts-to-threats.html>.

⁹⁵ Ismi Aghayev, *Voices of Dissent: Azerbaijan Reacts to War*, OC MEDIA (Sep. 22, 2022), <https://oc-media.org/features/voices-of-dissent-azerbaijan-reacts-to-war/>

⁹⁶ *Id.*

⁹⁷ *Id.*

succeeded in silencing Artsakh on global platforms, often denying it the opportunity to defend its rights and present its case to the international community.

Azerbaijan's influence over international organizations has been pivotal in justifying its actions. That influence allowed Azerbaijan to deflect scrutiny from well-documented war crimes, such as targeting civilians, deploying banned weapons, and destroying cultural heritage during and after conflicts.

Despite independent observers and human rights organizations thoroughly documenting these atrocities, Azerbaijan has evaded accountability. Instead, it continues to exploit its geopolitical relevance to shield itself from consequences, leveraging diplomatic and economic partnerships.

Before engaging in any of its criminal activities, Azerbaijan systematically fabricates a false narrative through various international platforms and cross-border partnerships, sometimes even bribing state officials and media outlets.

For example, on December 12, 2022, in an effort to block the Lachin Corridor—the sole lifeline connecting 120,000 residents of Nagorno-Karabakh to the outside world—a group of Azerbaijanis, disguised as environmental activists, staged a demonstration on the highway.⁹⁸ This orchestrated protest was part of a broader effort to blockade the corridor. The demonstrators, predominantly members of Azerbaijani NGOs—many of which are state-sponsored—were joined by journalists, amplifying their message.⁹⁹

The so-called "environmentalists" claimed that the Artsakh government was illegally operating and mismanaging mining sites in the region.¹⁰⁰ In reality, this claim was largely seen as a pretext for the blockade.¹⁰¹ The irony of their protest lies in Azerbaijan's own economy, which is heavily reliant on oil and natural gas, industries often criticized for their environmental impact.¹⁰² In

⁹⁸ Lusine Musayelian, *Who Are The Azerbaijani Eco-Activists?*, AZTUTYUN RADIOKAYAN, (Dec. 14, 2022), <https://www.azatutyun.am/a/32176325.html>

⁹⁹ *Id.*

¹⁰⁰ Lynn Zovighian et al., *From Blockade to War: The Ethnic Cleansing of the Armenians of Nagorno-Karabakh*, News.am (Feb. 15, 2023), <https://news.am/eng/news/797696.html>

¹⁰¹ Alex Avaneszadeh, *What Does Azerbaijan's Blockade of Nagorno-Karabakh Mean?*, Fletcher Forum of World Affairs (Feb. 14, 2023), <https://www.fletcherforum.org/the-rostrum/2023/2/14/what-does-azerbaijans-blockade-of-nagorno-karabakh-mean>

¹⁰² OCCRP, *Azerbaijan's COP29 Organizers Criticized For Oil Ties, Other Potential Conflicts of Interest*, Organized Crime and Corruption Reporting

reality, the demonstration served as a strategic maneuver to exert pressure on Artsakh by severing its vital connection to the outside world.¹⁰³

Another example is that prior to its pre-planned and unprovoked attack on Artsakh on September 19, 2023, Azerbaijan's Ministry of Foreign Affairs issued a press release stating:

"On September 19, 2023, a vehicle exploded on an anti-tank landmine planted in the Khojavand region by a sabotage group of the Armenian armed forces located in the territories of temporary deployment of the Russian peacekeeping contingent in Azerbaijan. As a result of this provocation, 2 civilians were killed. On the same day, 4 personnel of the Ministry of Internal Affairs dispatched to the area of the aforementioned terror act were killed in a landmine explosion on a new road tunnel in Taghaverd village of Khojavend region."¹⁰⁴ However, the attack, clearly coordinated and reported along the entire line of contact, occurred just hours after the press release and followed weeks of observed Azerbaijani military build-up and aggressive rhetoric.¹⁰⁵

It is also worth mentioning that Azerbaijan's practice of "caviar diplomacy" has become a central strategy in its efforts to marginalize the voice of Artsakh and manipulate global perceptions of its actions.¹⁰⁶ Through the systematic bribing of foreign officials, Azerbaijan has gained influence in key international organizations, notably the Parliamentary Assembly of

Project (Nov. 8, 2024), <https://www.occrp.org/en/project/know-your-host/azerbajians-cop29-organizers-criticized-for-oil-ties-other-potential-conflicts-of-interest>

¹⁰³ Human Rights Defender of the Republic of Artsakh & Tatoyan Foundation, *The Azerbaijani Government's "Eco-Activist" Agents Who Blockaded the Only Road of Life Connecting Artsakh to Armenia and the Outside World* (Feb. 22, 2023), https://tatoyanfoundation.org/wp-content/uploads/2023/02/ECO_ACTIVISTS_22.02.2023V2.pdf

¹⁰⁴ Republic of Azerbaijan Ministry of Foreign Affairs, No:504/23, *Press Release on the Death of Civilians and the Personnel of the Ministry of Internal Affairs as a Result of Landmine Terror in Khojavend*, <https://mfa.gov.az/en/news/no50423> (last visited Dec. 8, 2024).

¹⁰⁵ Hodge, Nathan & Matthias Williams, *Azerbaijan Launches Massive Offensive in Nagorno-Karabakh*, EurAsiaNet (Sept. 19, 2023), <https://eurasianet.org/azerbaijan-launches-massive-offensive-in-nagorno-karabakh>

¹⁰⁶ Kristof Bender, *Caviar Diplomacy: How Azerbaijan Silenced the Council of Europe*, European Stability Initiative (May 24, 2012), <https://esiweb.org/publications/caviar-diplomacy-how-azerbaijan-silenced-council-europe>

the Council of Europe (PACE).¹⁰⁷ This corrupt network has allowed Azerbaijan to suppress critical reports and evade accountability for human rights violations and its aggressive policies, particularly towards Artsakh.¹⁰⁸

One of the most striking examples of this strategy was revealed in a 2021 ruling by the Milan Court of General Jurisdiction, which directly linked the Azerbaijani regime to a €500,000 bribe paid to Luca Volontè, the former leader of the European People's Party-Christian Democrats in PACE.¹⁰⁹ This bribe was specifically intended to derail a 2013 report on political prisoners in Azerbaijan, which highlighted the country's systemic repression, including the imprisonment of political dissidents and critics.¹¹⁰ The Milan investigation uncovered a wider bribery network within PACE, where Volontè, along with other members such as Elkhon Suleymanov and Muslum Mammadov, was implicated in securing Azerbaijan's interests through illicit financial means.¹¹¹ From December 2012 to December 2014, Volontè received a total of €2.39 million funneled through offshore companies and banks in Estonia and Latvia.¹¹² The court focused on the €500,000 bribe as the clearest evidence of Volontè's efforts to conceal critical reports and promote Azerbaijan's agenda at the expense of human rights and justice.¹¹³

As demonstrated by the Milan court ruling, "caviar diplomacy" shows how Azerbaijan used financial influence to control international discourse. By silencing critical voices and promoting a distorted version of events, Azerbaijan succeeded in marginalizing the struggle of Artsakh for self-determination. This allowed Azerbaijan to present itself as a victim of aggression, diverting attention from its own violations and manipulations. The corrupt network, facilitated by Azerbaijan's strategic use of bribery and disinformation, further distorts global perceptions, making it more difficult for international bodies to hold the country accountable.¹¹⁴

¹⁰⁷ *Id.*

¹⁰⁸ European Stability Initiative, *Caviar Diplomacy: Why Every European Should Care*, <https://www.esiweb.org/proposals/caviar-diplomacy>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

While there is limited direct evidence linking these operations specifically to the marginalization of Artsakh's struggle for self-determination, it is plausible that such influence was employed to distort the narrative about the Armenian population of Artsakh and silence criticism of its actions, including the blockade of the Lachin corridor and its attack on Artsakh in September 2023. This likely contributed to a more favorable presentation of Azerbaijan's position and limited the visibility of Artsakh's claim for justice and self-determination.

For the sake of comprehensiveness, it is worth noting that despite employing the aforementioned illegal tactics, Azerbaijan's efforts to advance its false narratives and whitewash its atrocities do not always succeed. For example, the International Court of Justice (ICJ) ruled on November 17, 2023, that, while awaiting a final verdict, Azerbaijan must "(i) ensure that persons who have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner; (ii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 and who wish to depart are able to do so in a safe, unimpeded and expeditious manner; and (iii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 or returned to Nagorno-Karabakh and who wish to stay are free from the use of force or intimidation that may cause them to flee that individuals who left Nagorno-Karabakh after September 19 and wish to return can do so safely, without obstruction, and promptly."¹¹⁵

However, despite substantial evidence¹¹⁶¹¹⁷ indicating Azerbaijan's involvement in systemic corruption, human rights violations, and disinformation efforts, the international community has yet to implement significant sanctions or accountability measures. This absence of a decisive response not only allows Azerbaijan to continue such practices with relative impunity but also undermines confidence in global institutions responsible for upholding justice and human rights.

¹¹⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, 2023 I.C.J. 619 (Nov. 17, 2023), <https://www.icj-cij.org/node/203314>.

¹¹⁶ Freedom House, *Freedom in the World 2024: Azerbaijan* (2024), <https://freedomhouse.org/country/azerbaijan/freedom-world/2024>

¹¹⁷ Amnesty Int'l, *Azerbaijan 2024: Human Rights Situation in Azerbaijan* (2024), <https://www.amnesty.org/en/location/europe-and-central-asia/azerbaijan/report-azerbaijan/>

V. 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 the deprivation of such opportunities, unrecognized countries face serious challenges.

Based on the conducted research and analyses, this paper concludes that one of the unrecognized countries, the Republic of Artsakh, was able to overcome the challenges of diplomatic and economic isolation and had media regulations that comply with the minimum standards recognized in international law. However, some norms of the legislation were to be amended, as they had a "chilling effect" on freedom of expression and freedom of information.

This paper also concludes that the marginalization of unrecognized states like Artsakh highlights a significant flaw in the international system, where dominant state narratives often overshadow the voices of vulnerable populations. Azerbaijan's ability to spread misinformation about Artsakh while silencing its people illustrates the risks posed by unchecked informational dominance in global conflicts. Artsakh's limited access to media and international platforms further deepened its isolation, leaving it vulnerable to Azerbaijan's efforts to distort facts, pursue unlawful agendas, and conceal its crimes. This imbalance not only undermines justice and accountability but also perpetuates cycles of aggression and oppression, underscoring the urgent need for more inclusive and equitable representation in global discourse.