

**PROBLEMS OF  
MEDIA LEGISLATION  
IN ARMENIA AND THEIR  
POSSIBLE SOLUTIONS  
BASED ON  
INTERNATIONAL  
EXPERIENCE**

Report on the study of  
international experience in  
the media legislative  
regulation

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See the rest of the materials of the project here: **Mediametrics** - <https://www.regioncenter.info/en/media-metrics>.



“Region” research center



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# **PROBLEMS OF MEDIA LEGISLATION IN ARMENIA AND THEIR POSSIBLE SOLUTIONS BASED ON INTERNATIONAL EXPERIENCE**

Armenia needs to reform its media legislation. The current RA Law “On Mass Communication” adopted in 2003 is significantly outdated and requires modernization, given the rapid development of new media technologies, their wide spread and growing impact on the information field. The amendments and supplements made to this law over the past year have failed to yield the desired results.

The RA Law “On Audiovisual Media”, which entered into force in 2020, in its turn, did not contribute to the reform of the broadcasting sector. It did not solve a number of old problems and failed to provide responses to new challenges that emerged in the period of transition to digital broadcasting.

In 2021, the parliament adopted a number of legislative changes toughening liability for insult and defamation, while the so-called “grave insult” envisages criminal punishment that may reach to imprisonment. Furthermore, in the same year, the Government significantly limited the access to official information, including information on air travel of officials, the cost of these flight tickets and the numerical composition of delegations, on government procurement from one person without bidding, on the use of mineral resources, groundwater resources, etc.

In general, the legal mechanisms used to regulate media activities often do not meet today’s requirements and even contradict commonly accepted democratic norms. Therefore, a number of journalistic organizations of the country suggested the RA National Assembly and Government to jointly reform and modernize the media

legislation. This work obviously cannot be efficient without a comprehensive study of international experience to ensure the use of the best solutions applicable in Armenia.

To this end, within the framework of the project of “Region” Research Center, supported by the European Endowment for Democracy (EED), the Committee to Protect Freedom of Expression conducted a survey among 10 media experts from the Eastern Partnership countries and the European Union, as well as international organizations - the Council of Europe, OSCE, Freedom House<sup>1</sup>. When surveyed, foreign colleagues presented the state of affairs in their countries regarding the media legislation issues of relevance to Armenia. The approaches of international organizations to the solution of these issues were also discussed.

## DEFINITION OF “MEDIA”

What is media in today’s environment? What can be considered media, and what cannot? These are by no means idle questions, given that the rapid development of technology has expanded the possibilities of collecting, processing and disseminating information to such an extent that traditional views on media have turned out to be too narrow and have ceased to correspond to new realities. Over recent years, the journalistic community, MPs, and experts have been actively discussing the need for a new legislative definition of “media”, which would reflect modern technological conditions and types of information activities and would cover all the “players” in this field who claim to be media.

The Armenian Law “On Mass Communication” until 2020 regulated mostly the activities of traditional media. And although, according to the formulated definition of “media”, all the requirements of the law were assumed to also apply to online journals as “network media”, the latter in practice did not comply with these provisions and bore almost no responsibility. Furthermore, the online platforms using the public telecommunications network and therefore, by law, classified as media, did not even disclose their data (editorial office address, phone number, e-mail, founder, person in charge of production, etc.), and the law

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<sup>1</sup> The survey respondents were Lasha Tugushi (Georgia), Pavel Moiseev (Ukraine), Dainius Radzevičius (Lithuania), Tarmu Tammerk (Estonia), Jiří Kučera (Czech Republic), Gohar Khodjayan (Denmark), Dilshoda Mustafaeva (Sweden), Joan Barata (Council of Europe), Aidar Botagarov (OSCE), Tatiana Puiu (Freedom House).

did not force them to do so. At the same time, many other websites used the same network but did not identify themselves as media and did not at all pretend to such a status, performing completely different functions, such as presenting the activities of the state bodies that created them, public organizations, other legal entities and individuals.

Only in March 2020, an addition was made to the definition of “mass media”, according to which websites “having their own or rented domain, hosting” were classified as media. But here, too, there is a discrepancy: all sites have a domain and hosting, moreover, lots of Internet platforms may also comply with other criteria stipulated by law, but may not pretend to a media status. And on the contrary, websites having a domain and hosting, but not meeting other requirements of the law, as practice shows, consider themselves to be media, have a considerable audience, and even receive accreditation in state bodies. Thus, even after the introduced changes, the definition of “mass media” in the mentioned law fails to reflect all the nuances and take into account the current relations in this sector.

A somewhat similar picture can be observed in a number of the Eastern Partnership countries. Thus, **Ukraine** had a commitment to the Council of Europe to update its media legislation by 2019, which was then extended to 2022, but no changes were made. Now the process has been hampered by the Russian invasion of the country and large-scale hostilities. Hence, according to expert **Pavel Moiseev**, a survey participant from Ukraine, “there is no exact definition of media in the legislation.” And in **Georgia**, in the Law “On Freedom of Speech and Expression”, media is defined as “a print or electronic means of mass communication, including Internet”. As stated by Georgian expert Lasha Tugushi, this definition implies that online media also fall under the notion of “mass media”, hence they are also subject to the rights and obligations stipulated by law. However, on the Internet there are very different websites in terms of status and type of activity, many of which are not media, and, as noted above, do not aspire to be such.

It is noteworthy that in a number of countries of the European Union they preferred not to give a specific formulation of media. For example, in **Denmark** legislators considered it sufficient to indicate only what activities are regulated by media law, namely, the collection, processing and dissemination of text, photo, audio and visual information of news nature. A similar approach has been taken also in **Estonia**, where the law is called “Media Services Act”, meaning that the activity itself is regulated - television, radio broadcasting, dissemination of information in the online space - while there is no definition of “media” in the document. By the way, as Estonian expert Tarmu Tammerk noted, this law does not apply to print media: anyone in the country can publish a newspaper, and this activity is not subject to legal regulation in the media field.

The **Lithuanian** approach to the definition of “media” is also noteworthy. Here, in the law adopted back in 1996, the traditional concept of “mass media” was abandoned and another concept was introduced in its place - “information society media” (ISM)<sup>2</sup>. TV and radio companies, newspapers, news agencies and webpages were initially considered to be such. Therefore, in the future, when information websites became more widespread, there were no specific problems with the legal regulation of their activities. At the same time, as Lithuanian expert Dainius Radzevičius noted, the country has a Register of ISM declaration, where the registration is entirely voluntary, and each founder of, say, an online publication decides for him/herself what he/she creates – an information society media or a media for self-expression. If it is the first, then he/she declares him/herself in the mentioned Register, assumes the obligations stipulated by the Law “On the Provision of Information to the Public”, including self-regulation and observance of professional ethics, and, upon acquiring the formal status of ISM, enjoys great trust among the audience and advertisers, having also the opportunity of obtaining state support, which will be discussed in more detail below. An important note: the official websites of government agencies are also considered ISMs, but there is a clear distinction - they are not regulated by the Law “On the Provision of Information to the Public”, but fall under the Law “On Public Administration”, which ensures access to official information of state structures for every citizen, including journalists.

In response to a direct question on whether there is such a definition of “media” in the legislation of any country that would fully correspond to modern requirements and take into account all the peculiarities caused by the progress of information technology, **Council of Europe expert Joan Barata** said that at present such a search could lead to one of the following options:

- a) absence of a definition of “media” as such, as legislators more and more refrain from giving any formulation in order to avoid artificial restrictions;
- b) an outdated definition inconsistent with new circumstances will appear.

In the expert’s opinion, the notion of “media” should not be closely linked with technology: in the current circumstances, it should be formulated as a type of activity: this is a service - dissemination of content to inform the public, influence its consciousness. This approach ensures the openness of the definition and its “neutrality” towards technologies, which no matter how they develop and no matter what innovation undergo, can be used as a channel

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<sup>2</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2865241206f511e687e0fbad81d55a7c?jfwid=bkaxlcc0>

for disseminating information. This is the first important prerequisite for the modern interpretation of the concept of “media”. And the second is editorial responsibility, namely, the presence of a person or group of persons who are responsible for the content being disseminated. For example, according to the CoE expert, YouTube cannot fall under the definition of “media”, since it is a network with no editorial responsibility where anyone can upload any content (of course, provided it is not pornography, racism, propaganda of violence and other criminally punishable acts).

Thus, the definition of the concept of “media” in the RA Law “On Mass Communication”, including its supplement made in 2020, does not correspond to the new approaches and principles emerging in the European expert community and needs to be revised.

## WHO IS A JOURNALIST AND WHO IS NOT?

The **Council of Europe expert** believes that this is an even more complicated issue. “According to international criteria, in particular the UN Commission on Human Rights and Special Rapporteur on Freedom of Opinion and Expression, it is not recommended that the law or the state decide who is a journalist and who is not. This is very dangerous. And since any definition of the term “journalist” contains such a threat, we advise to renounce the rigid framework of a specific formulation. Journalism in modern terms should be considered in the broadest possible context - implementation of information activities that comply with the norms of professional ethics,” notes Joan Barata.

In fact, it is about an approach that significantly expands the traditional views on journalism, incorporating both professional and citizen journalism. Joan Barata illustrated this with the following example: “I am not a journalist by profession, I am a lawyer. But if I write an evidence-based article about corruption and post it on my blog or publish it in some media, this will become a journalistic (information) activity, which should be both regulated and protected by law.”

In **the Czech Republic**, for instance, they took the path of abandoning the formulation of the concept of “journalist”. Jiří Kučera, an expert from this country, considers it right that



there is no such definition: “It is better not to have one than to have a definition that significantly restricts the freedom of information activities.” There is no definition of “journalist” in the media legislations of **Sweden** and **Estonia** either.

**Georgia** has also taken this path, and as expert Lasha Tugushi notes, the logic of this approach is that any citizen can engage in informational/journalistic activities, adhering to legal requirements and ethical standards. In the other two countries of the Eastern Partnership - **Ukraine** and **Moldova** - a long and difficult process is underway aimed at changing media legislation based on international norms. Accordingly, it is planned to review the status of journalists. At the same time, according to Ukrainian expert Pavel Moiseev, some principles developed by international organizations (Council of Europe, OSCE and others), in the local context, where the media sphere is dominated by oligarchic circles, may be manipulated, and the status of media and journalists may be used as a veil, and more often as a means to advance one’s own political and financial interests.

In this context, the approach taken in **Lithuania** stands out. Here, according to the definition, a journalist is a natural person who, on a professional basis, collects, prepares and presents material to the producer and/or disseminator of public information under a contract with him and/or is a member of a professional journalists’ association. As Lithuanian expert Dainius Radzevičius explained, there is also a third option: to register with the tax office as a person engaged in individual activities in the field of journalism. Thus, in order to be considered a journalist, it is necessary to obtain an official status through at least one of the three possibilities mentioned. This also applies to freelancers, bloggers, etc. The existence of such a status is not only a matter of reputation, which is important in itself, but also of simplifying access to official information, accreditation in state bodies, etc.

The study of international experience, no doubt, suggests that when reforming or introducing amendments and supplements to the media legislation of Armenia, it is necessary to review the definition of the status of a journalist as well. In the current Law “On Mass Communication” “a journalist is an individual engaged in media activities, who searches, collects, receives, prepares, edits information on the basis of an employment or other contract concluded with him/her.” A clearly outdated definition, which either needs to be modernized, or there will be a need to completely abandon the definition of “journalist”, applying Swedish, Estonian, Czech, Georgian approaches to the issue.

# TRANSPARENCY OF MEDIA OWNERSHIP AND SOURCES OF THEIR FUNDING

All, without exception, surveyed experts highlighted the need and importance of ensuring at the legislative level the transparency of media ownership and sources of their funding. Especially under current circumstances, when more and more “political” money is invested in the information sphere. This is even more relevant for countries where there are still no serious, well-established democratic traditions, where the media are highly polarized and mostly serve, first of all, the political interests of their patrons and sponsors, placing on the back burner the mission of objectively informing the public.

Meanwhile, the transparency of ownership is essential for setting fair rules of the “game”, open relationships between the media and their audience. The society has the right to know who owns a particular TV company, online portal or newspaper in order to have a clue, metaphorically speaking, on “who is pulling the strings”, how to deal with the content distributed by a specific media, how much to trust, and in general which source of information to use, and from what to renounce. Such transparency, including financial one, is also important for the media themselves, especially the quality ones, since this also contributes to increasing credibility with the audience. At the same time, as **OSCE expert Aidar Botagarov** pointed out in our conversation, citizens' knowledge of the owners of the media they use is an integral part of media literacy.

In Armenia, until 2020, the legislation did not contain requirements to ensure the transparency of media ownership. As for the sources of funding, Article 12 of the RA Law “On Mass Communication” read as follows: “The implementer of media activity, engaged in periodical publishing must, by March 31 of the current year, publish under the title of Annual Report the financial report of the preceding year on activity pertaining to the operation of the media product, by specifying the gross income and the portion of donations in it.”

This was a rather weak regulation of the issue, as a result of which, for example, online media, as a rule, did not publish their annual financial reports, without suffering any negative consequences for that. So did private television and radio companies, which went no further than submitting such reports to the regulatory body - the Commission on Television and Radio, as required by broadcasting legislation. The only exception could be the clearly

formulated obligation for the Public TV and Radio Company to publish annual financial reports. In fact, there was also a clear discrepancy between the Law “On Mass Communication”, by which all media were required to publish financial reports, and the broadcasting legislation, which did not envisage this (as already noted, it was sufficient to submit reports to the regulatory body).

Only in the new RA Law “On Audiovisual Media” adopted in 2020, there appeared a provision (Article 19, part 2), obliging to ensure transparency of funding and publish sources of income for the previous year by May 1, as well as to disclose the founders of the company and their participants. That is, an attempt was made to cover both the transparency of ownership and the transparency of financial sources of television and radio companies through a single formulation. It is also noteworthy that in December 2021 similar changes were made to the RA Law “On Mass Communication”. However, these provisions of both laws hardly work in practice, their implementation is hindered by the fact that the system of rights, duties, control and responsibility for the non-compliance thereof has not been sufficiently thought through, and quite a superficial, formal approach to solving such an important problem has been applied.

It should be noted that in such EaP countries as Georgia, Ukraine and Moldova, the issues of ensuring the transparency of media ownership had been taken up several years earlier than in Armenia. But in all three countries the legislation imposes such a requirement only in relation to broadcast media, while the regulatory body supervises its implementation. The provisions of the European Union Directive “On Audiovisual Services” are taken as a basis. Anyway, according to **Ukrainian expert Pavel Moiseev**, in his country the National Council on Television and Radio Broadcasting often points to insufficient powers to verify the accuracy of information on the ownership of broadcasting companies.

As for online portals, **Georgian expert Lasha Tugushi** believes there is no need to oblige them to publish information about founders and owners. **Tatiana Puiu**, expert of international human rights organization **Freedom House in Moldova**, also thinks that demanding transparency of ownership from online media is “problematic, since unjustified intervention in freedom of speech may occur.”

In the Baltic countries, which are members of the European Union, the system for ensuring transparency of media ownership appears to be much more comprehensive and efficient. For

example, in **Estonia** the “Media Services Act” states that the public shall have the opportunity to know about the ownership structure of each media. As in the mentioned EaP countries, in Estonia the ownership transparency requirement applies only to audiovisual media and is enforced by the broadcasting regulatory body. However, according to the Estonian “Commercial Code”, other types of media are also obliged to publish information on the ownership structure. As for liability measures, for example, if a TV company reports untrue information about its owners, the regulatory body may impose a fine of up to 15,000 euros, and in case of repetition - up to 30,000 euros.

A somewhat different, but still very solid, multi-level system for ensuring the transparency of media ownership operates in **Lithuania** as well. Along with the above-mentioned Register of information society media (ISM) declaration, the Ministry of Culture of the country has created another platform where all information on the founders of CJSCs, LLCs, public and other organizations engaged in information activities is published. All this functions on a voluntary basis, but if any website/portal identifies itself as an ISM and wants to be treated as such, then it must enter into these registers, assuming the rights and obligations stipulated by law, as well as comply with the principles of self-regulation. The ministry itself does not have any authority to decide who can be enrolled in the register and who cannot. The editors themselves sign up there in order to get a more serious treatment towards themselves. Added to that, there is an official open access register of legal entities in the country, which also contains information on media ownership. Furthermore, the Lithuanian branch of “Transparency International” organization has developed and will soon launch a platform on ownership, which collects and will continue to collect information from all state registers, including those related to the media.

**Council of Europe expert Joan Barata** recommends that when drafting legal provisions to ensure transparency of media ownership this obligation should be clearly and unambiguously formulated, and that strict liability for its non-compliance should be envisaged. Moreover, there should be a demand to publish not only information on the primary level of ownership (for example, a specific CJSC), but also on the second (who established the CJSC), the third (who the main shareholders are), etc., that is, to present the entire chain of owners. It is clear that this is first of all demanded from broadcast media, and its fulfilment is supervised by the regulatory body. But, according to Joan Barata, the same approach may be applied to others, including online media. The expert proposes to oblige all media to publish information about their owners on their websites, or better still, to create a special platform for this, as well as a

body that would monitor the transparency of media ownership, but would not have any other powers to interfere with their activities. Such a body and the mentioned platform are merely tools giving the media the opportunity to declare to the state: “I am here. I am a media outlet. I abide by the law and I am open to society.”

## STATE SUPPORT OF MEDIA

The opinions of experts are somewhat divided on this issue. Freedom House representative in Moldova **Tatiana Puiu** considers it normal that there is no state support for the media in the country, implying that this could lead to influence on their activities by the authorities. **Ukrainian expert Pavel Moiseev** was even more direct, noting that “in a country with oligarchic media, providing them with state support will lead to support to the oligarchs.” In his opinion, in Ukraine there are sometimes proposals by the state to finance the coverage of socially significant topics such as the fight against COVID-19 pandemic, but these are sporadic cases, and there is no systematic approach to media support.

In Georgia, ministries and agencies more actively than in Ukraine offer the media to cover issues relevant to the state, and tenders are announced, contracts are concluded to this end. But all the same, according to **Georgian expert Lasha Tugushi**, all this contains serious risks of falling under the influence of state agencies, hindering the possibility of a critical perception of the government activities.

In **the Czech Republic**, too, there is no direct state support for the media. There are several schemes, which are grant programs, some of them being aimed at creating and disseminating content in national minority languages, implementing cultural projects, etc. However, at the time this survey was being conducted, as **Czech media lawyer Jiří Kučera** said, the country’s authorities together with representatives of expert community, were developing a scheme to support online media to counter disinformation and fake news, as well as to develop quality journalism in digital environment.

In the other two EU countries - **Lithuania and Estonia** - approaches to providing state support to the media differ significantly. In Estonia, it is very limited and is annually allocated only to cultural, educational and children's publications. The Public Television and Radio Company is also fully supported by the state. However, there is a reduced turnover tax for all

private media in the country. Of course, this causes some discontent among representatives of other businesses, but the authorities believe that such a privilege should be applied to the media. **Estonian expert Tarmu Tammerk** also spoke about a very specific method of state support for the media: the government provides subsidies for home delivery of newspapers in the regions of the country, especially in rural areas. It is, anyway, the postal service that receives this money, but print media also stand to benefit.

In **Lithuania**, state media support is used in a much broader way. There is a special Fund here (it has been established and is managed by representatives of journalistic organizations), which finances various projects of information society media (ISM) through the funds received from the state budget. Any editorial office registered with the ISM declaration register and other platforms mentioned above can apply to the Fund. Added to that, government agencies regularly announce calls to cover various topical issues, and the media actively take part. And finally, all ISMs enjoy tax benefits, in particular, the VAT is 2-2.5 times lower for them than for other types of business.

In the economically more advanced countries of the European Union - **Sweden** and **Denmark** - state support is envisaged for all media. Sufficiently clear criteria have been developed, including the ones related to the compliance with professional ethical standards, and if the editorial offices meet all the requirements, they receive funding. The procedure is fully transparent: everyone can find out the amount any media received.

In general, international organizations also find it acceptable to provide state support to media, but, as **CoE expert Joan Barata** notes, this should be done carefully: first, clear criteria should be developed; secondly, it is necessary to envisage strict restrictions for the state so that it cannot interfere and influence the activities of the media; thirdly, the whole procedure of providing financial resources should be as transparent as possible. According to **OSCE expert Aidar Botagarov**, state support should be aimed at creating favorable conditions for the activities of the media and in no case be used as an instrument of interference and pressure on the media.

How are things going with this in Armenia? Before the Velvet Revolution of 2018, the Publications Agency under the RA Ministry of Culture annually provided financial support to print media from the state budget. Initially, it was assumed that

all newspapers and magazines would be subsidized. But in the future, it was decided to finance cultural and educational, scientific, literary, children's and regional publications, as well as newspapers in the languages of national minorities. The proposals of journalistic organizations regarding a system of subsidies were rejected by the authorities, the participation of these professional associations in decision-making was minimized, and then completely suspended. Meanwhile, at all stages of provision of state support to periodicals, independent experts pointed to the lack of clear and reasonable criteria for selecting and determining the amount of subsidies, the procedure itself was non-transparent, and the decisions were not credible. Along with this support, individual state bodies used to announce tenders for the coverage of various topics or concluded direct cooperation agreements with the media they were interested in. Such “initiatives” were not distinguished by transparency and objectivity either, and often contained corruption risks.

After the change of power, the circle of financed media narrowed sharply, and then the institution of state support to media was dissolved. Nevertheless, the practice of concluding contracts with specific editorial offices by some state agencies has been preserved, but this is not publicized much, hardly anyone having knowledge of the subject and terms of their cooperation.

It is apparent that the institution of state support for the media in Armenia is not well-established, and based on international experience, a system that would contribute to the development of quality media is yet to be elaborated and introduced.

## ACCREDITATION OF JOURNALISTS WITH STATE BODIES

Article 6, one of the largest articles of the RA Law “On Mass Communication”, is devoted to the accreditation of journalists. It details (perhaps too thoroughly) the terms and conditions for this procedure. Nevertheless, the accreditation and activities of media representatives in state bodies have always been associated with contradictions, from time to time leading to conflicts. Over decades, the authorities have changed, but the attitude towards the

accreditation and journalists themselves has not changed for the better. This was especially evident in the parliament: the leadership of the National Assembly, its Public Relations and Communication Department often set such work rules for media representatives that ran contrary to the provisions of the mentioned law. Objections and criticism by the media community were as a rule not taken into consideration, and accreditation of journalists and cameramen was portrayed almost as some kind of favor.

The situation deteriorated further following the 2021 parliamentary elections. On the very first day of its work, the National Assembly of the 8<sup>th</sup> convocation restricted the movement of media representatives in the parliament building by an internal normative act. And in December of the same year, amendments and supplements to the RA Law “On Mass Communication” were adopted, one of the innovations introduced being a provision that envisaged a deprivation of a journalist’s accreditation if he/she violated the parliament-approved procedure for working in that institution.

There are substantial grounds to believe that the authors of this legislative initiative did not conduct a preliminary study of international experience and modern approaches to building relations between governing structures and media representatives.

In any case, as the survey of experts showed, neither in Georgia, nor in Ukraine, let alone the EU countries (Lithuania, Estonia, the Czech Republic, Denmark and Sweden), media legislation does not provide for the possibility of depriving a journalist of accreditation by a state body.

According to the position of international organizations, media accreditation procedure, in general, is incompatible with human rights principles, and the state should not have the authority to decide which media and which of its representatives can have access to a particular state body and cover its activities, and which cannot. Only two circumstances may be an exception to this rule: security concerns and limited space for receiving and accommodating journalists. But in the latter case, state bodies must create alternative conditions for the media to receive information and ask questions, as was the case during the COVID-19 pandemic. Thus, **according to Council of Europe expert Joan Barata**, under current conditions it is necessary to radically review the attitude towards the system of journalists’ accreditation - to abolish it, or apply it only in exceptional cases.



**OSCE expert Aidar Botagarov**, in his turn, referring to the 2006-2016 reports of the OSCE Representative on Freedom of the Media on the accreditation of journalists, underlined that in a number of countries this procedure is considered as a work permit tool, which does not meet the international standards of freedom of expression. In particular, the Representative's 2006 Special Report notes that accreditation system “was designed to allow journalists access to specific venues with limited space as well as access to certain ‘closed zones’, including war zones and places deemed dangerous, or sealed off by the authorities for safety reasons. It also allows journalists to participate in official events and visits.”<sup>3</sup> Accordingly, this is a privilege designed to support, and not to infringe upon the possibilities for media representatives’ activities. And any restriction should be conditioned by a pressing social need.

According to **Estonian expert Tarmu Tammerk**, the accreditation of journalists is a rudiment in the modern context. It is not applied in Estonia on a systematic level. The only exception is the government's weekly press conferences. To participate in them one needs to have accreditation. This is due to the limited room and the inability to accommodate everyone. Around 10 nationwide TV and radio stations and newspapers have permanent accreditation to cover government press conferences, while the rest of the media must register online if they wish to attend. When there are no more places left, registration is terminated. There is one important precondition: only those media that are members of the Estonian Association of Media Enterprises NGO are allowed to participate in this procedure, and by becoming a member, any media is engaged in the self-regulation system and commits itself to following the Code of Professional Ethics. In other state bodies, only a registration system is used to cover press conferences and other events, that is, the media notifies the agency that it is going to send there its employee.

In **Lithuania**, the law stipulates that no state body can approve the procedure for accreditation of media representatives without discussion and approval of journalistic organizations. According to **Lithuanian expert Dainius Radzevičius**, the law also states that accreditation is the right of the media, not state bodies. And if an editorial office applies to receive it, then rejection is impossible. It should be recalled, however, that in order to be considered a media, that editorial office must put its name on the Register of information society media declaration, which implies that it ensures transparency of ownership and sources of funding, is engaged in self-regulation and recognizes the norms of professional ethics, etc.

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<sup>3</sup> OSCE Representative on the Freedom of Media Special Report on “Accreditation of Journalists in the OSCE Area: Observations and Recommendations”, 25 October 2006. URL: <https://www.osce.org/files/f/documents/0/b/22065.pdf>

When we compare such a comprehensive system of interrelations between media legislation and media self-regulation and harmoniously integrated journalists' accreditation procedure with the state of affairs in Armenia, it becomes evident that in our country there is also a need to develop and introduce similar well-thought-out, efficient mechanisms for regulating relations in the information sphere.

## FREEDOM OF INFORMATION: DEVELOPMENT POSSIBILITIES

Although the RA Law “On Freedom of Information” adopted in 2003 was once considered one of the best in the post-Soviet space and Eastern Europe, and, moreover, it largely streamlined access to official information, nevertheless, according to local experts, it still needs modernization. Along with the need for changes conditioned by the development of technologies, various “loopholes” were discovered that are actively used by not enough bona fide part of officials responsible for freedom of information.

For example, under the law, the state structures of Armenia are obliged to respond to requests addressed to them within 5 days. But if additional work is required for the response, then state bodies must notify the individuals or legal entities who applied to them within the same 5 days, and afterwards information can be provided within 30 days. Taking advantage of such an opportunity, ministries and departments, other state structures often initially request 30 days. In the case of ordinary citizens this is perhaps not that crucial, although still unacceptable. But for the media, such a late provision of information often leads to the loss of its relevance, and its publication becomes meaningless. There have been a number of cases when, after 30 days, government agencies, especially law enforcement bodies, responded that the requested information contained a secret. It is clear that such an answer could be given within 5 days. And not to mention that sometimes it becomes a convenient runaround, along with other forms of evading the provision of information or outright ignoring of requests. And although a fairly good practice has evolved in the country of courts obliging state bodies to provide the requested information, this is still quite a long process.

In contrast, Lithuanian legislation provides for a number of privileges for the media. For example, government agencies must respond to requests for information by editorial offices or journalists within 1 day (for ordinary citizens 1 month timeframe is set). Added to that, media representatives can use various state registers for free (ordinary citizens have to pay for them), get in-depth access to court cases, etc.

Of course, in Lithuania too, although rarely, violations of freedom of information occur. But in such cases, there is no need to immediately go to court. There are other state institutions that deal with this kind of disputes. First of all, it is the Parliamentary Controller (in other words, the Ombudsman), whose functions also include issues of access to official information. In addition, the Parliament also has an Inspector of Journalistic Ethics (in other words, the Media Ombudsman), who also has the right to intervene in resolving a dispute about obtaining information from government agencies. And finally, the refusal to provide the requested information may be considered as a fact of hindering the work of a journalist, which envisages liability according to the country's Administrative Code. As for the court proceedings themselves, they go as quickly as possible, but there is no legally established procedure for accelerated proceedings, although, as **Lithuanian expert Dainius Radzevičius** noted, it is necessary.

As we can see, the issues of access to information in Lithuania are harmoniously linked with the system of media legal regulation and self-regulation, and here again some privileges are applied that encourage the voluntary engagement in the Register of information society media declaration and the assumption of commitments stipulated by media legislation and the code of journalistic ethics.

In contrast to Lithuania, in Estonia the "Public Information Act" does not envisage privileges for journalists, providing equal rights to all citizens to apply and receive from the authorities relevant information that does not constitute a state or other secret. But at the same time, as **Estonian expert Tarmu Tammerk** said, a culture of relations between government agencies and the media has been shaped in the country, and the latter are provided with official information immediately or as quickly as possible. In cases of disputes, it is possible to contact either the Data Protection Inspectorate or the Ombudsman's office, which also deal with issues of ensuring freedom of information. It is to note that both institutions have the right to fine government agencies that violate the law.

As is known, Sweden has the deepest traditions and legal culture of the development of freedom of information. Swedes were the first in the world, to adopt back in 1766 a law that gave citizens access to official information and documents. And today, as the **Swedish expert Dilshoda Mustafaeva** told us, even the correspondence of senior officials is openly available to the public - of course, provided it does not include state or other secrets. The example of Sweden was also cited by **Council of Europe expert Joan Barata**: every citizen of the country can see the list of telephone calls of the Prime Minister, where, of course, certain secret information is hidden. The logic of such openness comes down to the fact that the phone of the head of government was bought at the expense of taxpayers, and communication costs are paid from the same source: hence, the public has the right to know how their money is spent.

The example of Sweden is no doubt unique. But it is especially interesting for a comparison with the diametrically opposite practice of Armenia, where the representation allowances of the top three state officials - the president, the prime minister and the speaker of the parliament - are classified as state secrets. “This cannot have any justification in terms of freedom of speech and freedom of information in a democratic society and must be changed,” the Council of Europe expert emphasized.

## INSULT AND DEFAMATION IN MEDIA

This problem gained particular relevance for Armenia after the 44-day Karabakh war in 2020, when a deep socio-political crisis erupted, and mass protests, public speeches by politicians, public figures, ordinary citizens were accompanied by obscene insults, hate speech, disinformation and fake news, which very often ended up in media. The authorities reacted with harsh legislative changes: on March 24, 2021, in Article 1087.1 of the RA Civil Code the already high upper threshold of monetary compensation for insult and defamation was increased by three times (reaching up to 3 million and 6 million drams, respectively). And then, on July 29 of the same year, a new article 137.1 was introduced into the RA Criminal Code, which envisages punishment for the so-called “grave insult” (meaning obscenities) that may reach to imprisonment.

Both legislative initiatives triggered sharp criticism by the local journalistic community and international organizations. The changes and supplements made, according to independent

experts, are disproportionately harsh, do not solve the existing problems and are a threat to freedom of speech. After the decriminalization of insult and defamation in Armenia in 2010, the criminalization of “grave insult” has become, in fact, a setback. Especially given that the new article provides for much more severe penalties if obscenities are addressed to officials, politicians and relate to the performance of their duties by themselves. And this runs contrary to universally recognized international standards, including the precedent rulings of the European Court. That is why, on January 27, 2022, the Parliamentary Assembly of the Council of Europe, in its resolution<sup>4</sup> on Armenia, called on the country's authorities to desist from the criminalization of “grave insult”. International human rights organizations Freedom House and Amnesty International also made critical assessments.

The concern of the Armenian journalistic community is also substantiated by the fact that often officials, politicians, businessmen and other well-known persons perceive even objective criticism against them as an insult and libel and go to courts with lawsuits against journalists and media. And the judicial system, which has not emerged as an independent branch of power, does not always ensure a fair trial.

To compare the extent to which the mentioned legislative changes are in conformity with international norms, let us present quotes from the Joint Declaration<sup>5</sup> “On Politicians and Officials and Freedom of Expression”, adopted in 2021 by the OSCE Representative on Freedom of the Media, Special Rapporteurs of the UN, the Organization of American States and the African Commission on Human and Peoples’ Rights. The document in particular notes that states should “recognize, in law, policy and practice, the special imperative of providing a high level of protection to political speech, including speech which many may find unduly critical or even offensive.” Afterwards, it reads that states should abolish: “...any criminal defamation laws and replace them, where necessary, with appropriate civil defamation laws”, and also “...repeal any defamation or lèse-majesté laws which provide special protection to or provide for greater penalties for statements directed at heads of State or government, politicians or officials.”

In addition to these provisions, **OSCE expert Aidar Botagarov** highlighted one more point: apart from decriminalizing liability for insult and defamation, the special rapporteurs also emphasized the need to ensure “...that damages awards are proportionate taking into account all of the circumstances and are not so large as to exert a chilling effect on freedom of expression.”<sup>6</sup>

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<sup>4</sup> <https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisoires/2021/20211217-ArmeniaInstitutions-EN.pdf>

<sup>5</sup> <https://www.osce.org/representative-on-freedom-of-media/501697>

<sup>6</sup> <https://www.osce.org/representative-on-freedom-of-media/501697>

As can be seen, the approaches are diametrically opposite. By the way, with regards to the amount of damages awards for insult and defamation, the **CoE expert Joan Barata** said that the amounts envisaged in the RA Civil Code are too large and not efficient enough: in information disputes, the main thing is not the monetary compensation, but the refutation of defamation, a public apology for insult, the use of the right to respond in order to disseminate corrected information.

Apparently, with this very principle in mind, a very interesting judicial practice has evolved in Georgia: when considering lawsuits related to insult and defamation, monetary compensation is set at 1 Georgian lari. This prevents the temptation to “earn” significant sums by initiating court cases on information disputes or to exert financial pressure on journalists and the media, “punish” them financially. The main emphasis is, as noted above, placed on a refutation, an apology, and the publication of a response. At the same time, in information disputes over insults and defamation, an important role is given to extrajudicial decisions - through the media self-regulation system.

## ADVERTISEMENT IN MEDIA

The media related articles of the RA Law “On Advertising” contain quite clear requirements, set rights, obligations, restrictions and responsibilities in this sphere. They basically include universally accepted international principles complying with democratic norms. Therefore, in our talks with experts, we were more interested in those issues that, in our opinion, are problematic in Armenian legislation.

The first one is the distinction between political and commercial advertising: is it necessary, and if so, on what principles? According to **CoE Expert Joan Barata**, such a distinction is highly important and should be made based on the following: a) who is the advertiser? b) what is advertised (content)? c) what interest is pursued - commercial or political? This dilemma does not apply to social advertising. But, strictly speaking, if the aim of advertising is not obtaining financial and economic benefits, then there may be political interests here. Of course, sometimes there is a very fine line. Therefore, political advertising is often provided for in the legislation only during the election period.

However, as the expert survey showed, a number of European countries have opted for even greater restrictions. Thus, in **the Czech Republic**, political advertising is completely excluded on television and radio, even during elections! This has now been in force for almost 8 years. The same applies to the country's online broadcasters. A similar approach is used in **Sweden**. A ban on political advertising on the air has also been introduced in **Denmark**, while such advertising is partially allowed on the radio, with certain restrictions. There is no definition of “political advertising” in the **Estonian** legislation, everything is viewed as commercial, and international organizations are critical of that. The legislation in **Ukraine**, too, does not distinguish between these two forms of advertisement. In **Georgia** and **Moldova**, political advertising in the media is carried out only during elections. The same is true for Armenia.

The second question of interest to us was whether commercial advertising is allowed on the air of the Public TV and Radio Company. **Joan Barata** notes that this is not welcomed by international organizations, and even if in some countries the broadcasting legislation provides for this, there is a need for clear justification and strict restrictions that would prevent public companies from broadcasting advertisements in the same volume as private ones.

The survey showed that commercial advertising on public TV and radio companies is prohibited in **Sweden, Denmark, Estonia, Lithuania** (except for broadcasts of international sports, cultural and other programs that include such advertisements). In **Georgia** and **Moldova**, as well as in Armenia, it is allowed with some restrictions.

The third question was on the existence of agreements within the media industry regarding advertising policy. In the EU countries - **Sweden, Denmark, Estonia and Lithuania** - the system of media self-regulation plays a big role in matters related to the content and presentation of advertising to the audience. As for the financial and economic aspect (prevention of concentration and monopolization, unfair competition, etc.), these issues are regulated by the antimonopoly provisions of the law. However, often legislative regulation and media self-regulation in the advertising sector, as in other areas of their activities are closely intertwined and complement each other. For example, in Estonia, the so-called “hidden advertising” is prohibited by law, but that kind of information disputes may be considered from the point of view of journalistic ethics within the frames of media self-regulation.

It is noteworthy that in a similar way “umbrella branding” is prohibited by the RA Law “On Advertising”. Media often violate this requirement without assuming any liability - neither administrative and legal, nor moral and professional (within the media community, for example).

## COUNTERING FAKES AND HATE SPEECH

Obviously, fake news should be differentiated from hate speech and calls for violence (an extreme manifestation of hate speech). First of all, because they pollute the information space and consciousness of people in different ways, their content and emotional charge, as well as threats and possible consequences are different. If the main goal of fake news is disinformation and disorientation of the public at large, misleading them and creating grounds for further manipulation, then hate speech and calls for violence are used mainly to generate intolerance, enmity and incite discord. This, of course, is a topic for a separate study.

However, the proposed differentiation is also important from the point of view of legislative regulation, existence of different approaches to these two issues. And if hate speech and calls for violence are increasingly viewed by the international community in the context of discrimination - national, racial, religious, political, social, sexual, etc. - with a variety of penalties envisaged, including criminal ones, then the attitude towards the dissemination of fake news is somewhat different.

In particular, in this regard, **Council of Europe expert Joan Barata**, referring to the position of the UN Special Rapporteur on Freedom of Expression, noted that the legislation, which prohibits fake news is incompatible with human rights, since in state hands (political power, regulatory bodies, courts) there appears a tool for determining what is true and what is false, meaning fake. In his opinion, it would be a huge mistake to give the authorities such powers. "The fight against fakes should be carried out not through laws and the restrictions and bans envisaged by them, but through preventive measures that can forestall the negative impact of false information. The state should, firstly, encourage the dissemination of media literacy so that people better master information products; secondly, the state must promote quality journalism, adherence to the norms of professional ethics and media self-regulation; thirdly, promote the development of public TV and radio companies that provide the audience with quality content; and fourthly, it is necessary to create an enabling environment for the activities of diverse, pluralistic media. In that way, it will be possible to neutralize or at least minimize the negative impact of fake news," concluded Joan Barata. By the way, as the expert noted, the creation of such an environment will also help reduce the flow of hate speech and calls for violence, although the legislative barrier is also key to them.



**The OSCE** is also concerned about widespread fake news and disinformation. The organization **expert Aidar Botagarov** informed that in the previous year they had held 4 expert meetings to consider the possibilities of countering these phenomena. But discussions are ongoing, and as soon as decisions are made, the OSCE will develop recommendations for participating countries.

In the EU states, there is also an active discussion of the problems of disinformation and fake news. At the same time, approaches to solutions often differ. Thus, according to **Czech expert Jiří Kučera**, it is necessary to set legislative mechanisms - to define the concepts of “fake news” and “disinformation” and, based on that, envisage liability measures. **Estonian expert Tarmu Tammerk**, in his turn, regards as the most essential the existence of a system of media self-regulation, the promotion of media literacy, as well as the development of the activities of special platforms and teams involved in fact-checking. At the same time, in his opinion, it is necessary to strengthen the provisions in the country's legislation regarding liability measures, since, for example, calls for violence are punishable only if they contains a real threat.

In **Denmark**, as **expert Gohar Khodjayan** says, if the bans on inciting hatred, spreading libel and child pornography are violated through fakes, then criminal liability is established for this, which may reach to up to 2 years' imprisonment. And as for all other disputes related to false information, hate speech and calls for violence, they are solved through media self-regulation.

**Sweden** has advanced more than all the others in this respect. Here, at the beginning of this year, a state body was created to deal with the problems of countering fake news, hate speech and calls for violence. This body is to develop and exercise a set of measures that will prevent or at least minimize the dissemination of such content. It is not yet known whether it is going to include legislative restrictions, public initiatives and other regulatory mechanisms, or whether everything will be applied in combination, but it is obvious that here the state itself will solve the problem of revitalization of information climate. Sweden, with its democratic traditions and the level of culture of a society, can afford it without the risk of breaching the rights of its citizens.

As for Armenia and other EaP countries, in spite of the ongoing search for solutions here, the proposals under consideration still turn to be inefficient, since they contain clear threats to freedom of speech.

## BROADCASTING REGULATION

The transition from analogue to digital broadcasting in Armenia, which was officially completed in 2016, did not meet international requirements for this process on a number of parameters. In particular, more than 10 small TV companies operating in the regions of the country, due to unreasonable legislative restrictions imposed by the authorities, lost the opportunity to be digitized and continue to broadcast. Many of them closed down or were forced to switch to the Internet or cable broadcasting, having lost a considerable part of their audience. The process of digitalization did not create favorable conditions for the formation of private multiplexes, all broadcast television and radio companies were placed in the state broadcasting network, monopolization took place, and the resulting digital dividend was dissipated and used for other commercial purposes. Both at the legislative level and in practice, the notion of “social package” was discredited: all digitized broadcasters were available for free to the entire audience, depending on their coverage - national, capital city or regional. The country has retained the outdated complex system of licensing television and radio companies, in which there is ample room for subjectivism and arbitrary decisions. The new RA Law “On Audiovisual Media” adopted in 2020 did not solve all these problems, moreover, it did not help to change the situation in ensuring the independence of the Commission on Television and Radio, as well as the Council of Public Broadcaster of Armenia.

Meanwhile, in neighboring Georgia, the process of digitalization was much more successful and took place with close cooperation between state bodies and public organizations. Not a single TV or radio company, not even a small studio in any region suffered in this campaign. On the contrary, they were all engaged in the process, and new prospects for development opened up before them. In particular, the state created favorable conditions for all TV companies operating in the regions for their digitization and development of multiplexes of local value for each of them, which, apart from broadcasting the programs of a certain studio, are able to also serve small community TV and radio stations. As for national broadcasting, covering the entire territory of the country, for this purpose, besides the state multiplex, another 3 private ones were created, which, on the one hand, ensured development of competition in the field of television and radio programs broadcasting and increased the choice of services, and on the other hand - equal opportunities for access to digital broadcasting for all TV and radio companies.

Another extremely attractive aspect of the Georgian experience of transformation in the broadcasting sector was the renunciation of the traditional, largely outdated competitive licensing system of television and radio companies and the transition to a simplified, in fact, notification procedure. This approach is beyond doubt much more in line with modern digital conditions, frees the sphere from unnecessary bureaucratic barriers and the adoption of subjective and often arbitrary decisions about the granting of licenses.

Positively assessing the transformation presented above, **Georgian expert Lasha Tugushi**, nevertheless, criticized the issue of ensuring the independence of the regulatory body - Georgian National Communications Commission. It is formed by the government, president and parliament of the country. By comparing this procedure with the image of democracy in Georgia, the expert highlighted that it is necessary to revise it and make the process more inclusive, with the involvement of public organizations, independent institutions and experts. As a good example, Lasha Tugushi mentioned the procedure for the formation of the Board of the Georgian Public Broadcaster, which consists of 9 members. Of these, 2 are nominated by the Ombudsman, 3 by the parliamentary majority, 3 by the parliamentary opposition, 1 by the Autonomous Republic of Adjara. So far, this procedure has proved its value.

In **Lithuania**, too, during the transition to digital broadcasting, all companies that wanted to do that business received licenses. To this end, for example, 4 multiplexes were initially created, but later it turned out that there was no need for such a number, and now only 2 operate: one of them is state-owned, the other is private. As for the broadcasting regulatory body, the most important precondition for its independence is the method of funding used: all private television and radio companies transfer 0,8 percent of their advertising revenues to this body. Added to that, the procedure of its formation provides for the active involvement of media NGOs and creative unions. However, candidates are also nominated by the country's president and parliament, but these nominees must also be independent persons, not government officials or politicians.

Unlike Lithuania, there are certain problems with the regulatory body in **Estonia**: it is a department of the Ministry of Economics, which is often criticized. According to **Estonian expert Tarmu Tammerk**, this body's dependence on the mentioned ministry is not felt in its activities. But since the European Commission considers this status unacceptable, it will be changed, and work in this regard is already underway.

However, both in Estonia and Lithuania there are quite interesting schemes for the formation of councils of public television and radio companies, in which a significant place is given to journalistic organizations. Thus, the Public Broadcasting Council of Estonia should consist of 4 independent media experts and representatives of all parliamentary factions (their number may vary depending on the election results). In Lithuania, the Council of the Public Broadcaster consists of 12 members - 4 each from journalistic organizations, the president and the parliament.

Yet, according to **Council of Europe expert Joan Barata**, legislation, however good it may be, is not the only factor ensuring the independence of broadcasting regulatory bodies and public TV and radio companies. “Here much depends on the level of political and social culture of the country, on the traditions that have been shaped, and on how sustained the state and other institutions are,” the expert concluded.

This idea can be illustrated by the experience of funding of Czech Television and Czech Radio. As public broadcasters, they operate thanks to the mandatory monthly fees from citizens and deductions from legal entities. As **Czech expert Jiří Kučera** notes, there are times when people express dissatisfaction, saying “we do not use these channels: why should we pay?” But they are told that they pay not only for themselves, but also for the society. According to an opinion poll conducted in 2020, 79 percent of the Czech population was in favor of maintaining the so-called concession fees for public broadcasters.

## CONCLUSION

The expert survey demonstrated that international structures, the EU states and, in general, developed democracies are actively searching for responses to modern challenges in the information sphere. This refers to the very concepts of “media” and “journalist” in the digital age, the transparency of media ownership and sources of their funding, the provision of state support for the development of quality journalism, overcoming obstacles for the execution of the right to freedom of information, problems of insult and defamation in media pieces, countering fake news, regulation of the activities of television and radio companies and other issues presented in this report.

The experience of the countries where a unified, interconnected system of legislative regulation and media self-regulation has been established deserves special attention. Here, the second does not simply complement the first, as is often the case, but is an integral part of the overall framework, where every detail matters and plays its role. It goes without saying that the creation of such a system is made easier if the country has well-established democratic traditions and a developed culture of social relations. But it often happens the other way around: such traditions and culture begin to take shape on the basis of the introduction of new, fundamentally altered, carefully thought-out “rules of the game” in the media sphere.

The conducted expert survey not only confirmed the need to modernize the media legislation of Armenia, but also allowed us to study international experience using concrete examples in order to further use it to develop our own model of legal regulation and self-regulation of media.

To that end, it is recommended:

- to elaborate a development Concept for the information sphere in Armenia and the reform of media legislation. The document should present: a general vision of what this sphere should be like; problems hindering its development; international experience in solving such problems; strategy and tactics of actions aimed at creating a qualitatively new, healthy information environment; main directions and principles of reformation of media legislation;
- by using the most successful and acceptable for Armenia solutions to the problems of the media sphere from international practice, to develop a local model of legislative regulation and self-regulation (or co-regulation) of media activities, where these two systems would be closely interconnected, and the mechanisms within them would be interdependent (here the experience of Lithuania is particularly noteworthy);
- based on the fundamental principles set out in the Concept and the developed new model of legal regulation and self-regulation of the media, to carry out a reform of media legislation through the drafting and adoption of new laws that meet contemporary international standards;

- to ensure the transparency of the entire process of Concept development, the local model of legislative regulation and self-regulation of the media, as well as the drafting of new laws, initiate the creation of specialized working groups, organize broad discussions of proposed ideas and draft laws with the participation of representatives of the RA Parliament and Government, the media, journalistic organizations, international structures, independent experts.