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ARTICLE 19 Press Statement on the State of Armenia's Media Legislation

In the last four years, and particularly since joining the Council of Europe in 2001, Armenia has made important progress in developing legal guarantees for freedom of expression and media diversity.

Positive steps include:

- the passing of a modern freedom of information law in September 2003;
- the passing of a law on mass media in December 2003 which guarantees the protection of confidential sources and abolishes the registration system for the media; and
- the pledge to create a public service broadcaster in the Broadcasting Law of 2000 – although this law is problematic in other respects.

The Armenian government has also improved the processes by which it adopts laws. The final versions of the freedom of information and mass media laws were developed in a process of consultation with civil society organisations and several NGO recommendations were incorporated as part of this process.

Nevertheless, serious concerns remain and some important and legally binding commitments made to the Council of Europe have still not been realised. In some cases, the authorities have initiated retrogressive legislative measures which threaten to reverse some of the achievements noted above.

ARTICLE 19 calls on the authorities to honour the obligations it accepted upon joining Council of Europe in 2001, to bring its laws into line with European standards on freedom of expression and to refrain from reversing previous achievements.

We call on the authorities to address, in particular, the following concerns as a matter of urgency:

Criminal Defamation:

In April 2003, a new Criminal Code was passed which includes the offences of libel, insult and slander, along with harsh penalties including prison sentences of up to five years and fines of up to 500 times the minimum salary. The harshest penalties are foreseen in cases of defamation of 'representatives of the authorities', candidates and political parties during elections and representatives of judicial bodies. These rules do not clearly restrict the scope of criminal defamation to false statements of fact.

These provisions fail in important ways to meet the legally recognised standards of the Council of Europe in this field, as well as international best practice. ARTICLE 19 therefore recommends that Armenia follows the trend that is now developing in other European countries and abolishes all criminal provisions on defamation and insult, replacing them with appropriate civil defamation laws. The civil law should incorporate the following standards:

- Actual damages awarded for defamation must be proportionate to the actual harm caused and take into account whether or not alternative remedies, such as the right to reply, have been accessed. Moral damages or any other punitive award should be limited and take into account the likely impact of the fine or moral damages awarded on the wider exercise of the right to freedom of expression.
- Public officials, because of their status as servants of the people, should enjoy less protection than ordinary citizens.
- Convictions for defamation can be obtained only in case of factual allegations that have clearly proven to be false, and never for opinions.
- The burden of proof of the falsity of an allegation in a matter of public concern should be on the plaintiff.

Broadcasting Legislation:

An ARTICLE 19 memorandum of February 2001 outlined several shortcomings of the Broadcasting Law which was adopted in 2000. One of the most problematic features of this Law is that it fails to incorporate adequate guarantees for the independence of broadcasting regulatory bodies and that it has not guaranteed pluralism in the broadcasting sector.

In practice, Armenia's public service broadcaster still fails to fulfil its public service remit. Opposition politicians and government critics still have very limited access to the public broadcaster. The governing board's direct dependence on the President almost certainly undermines the broadcaster's ability to operate independently.

There are also serious problems with the regulatory body for the broadcast sector. In 2002, the National Commission of Television and Radio decided not to renew the broadcasting licence of 'A1+' while another broadcaster, 'Noyan Tapan' has also had difficulty getting on air. These were the only two private broadcasters in Armenia which offered extensive information services and which provided access to the airwaves to government critics. Highly credible allegations link these decisions to the lack of political independence of the Commission.

Recent amendments to the broadcasting law, passed in December 2003, have not addressed the key issue of the independence of the Commission or any of the other serious problems with the law. We call on the authorities to take immediate steps to strengthen the independence of the National Commission of Television and Radio. The entire process for appointing members should be open and democratic, should not be dominated by any particular political party or commercial interest, and should include full public participation and consultation. Membership overall should be required to be reasonably representative of society as a whole. The independence of the Council of the Public Television and Radio Company must be strengthened likewise. We also urge that

the licensing procedures be made more transparent. In particular, the National Commission of Television and Radio should provide full and complete written reasons for the grant or refusal of any broadcasting licence application.

Mass Media Legislation:

In accordance with its commitments to the Council of Europe, Armenia recently passed a new mass media law. As noted above, the law significantly improved the rules relating to the media in Armenia. It is also laudable that the authorities took various civil society recommendations into account when developing the law. For example, the regime of restrictions on freedom of expression was significantly narrowed down.

At the same time, the law fails to address a number of concerns pointed out by ARTICLE 19 in earlier statements, including the following:

- The law contains excessively broad definitions of ‘mass media’ and ‘journalist’ which, given other provisions in the law, could lead to unacceptable restrictions on freedom of expression;
- The accreditation procedures should enable the right of journalists to report on the activities of state institutions, not place restrictions on it or create yet another bureaucratic hurdle for journalists to overcome. They should be fair, transparent and independently administered.
- ARTICLE 19 is still concerned about Article 12 of the law, requiring media outlets to publish an annual financial report, although we note that media outlets are no longer required to specify their sources of funding. ARTICLE 19 considers this to be unnecessary and potentially open to abuse.

Freedom of Information:

As outlined in our open letter of 1 March 2004, ARTICLE 19 is deeply concerned about the proposed Law on Amendments to the Law of the Republic of Armenia on Freedom of Information, put forward by the Ministry of Justice. The proposed amendments would weaken key guarantees in the existing Law on Freedom of Information and undermine the public’s right to know and good governance in Armenia.

For example, a number of very important categories of information that should be published by public institutions even in the absence of a request would simply be removed. These include budgetary information and information about work and services costing policies, among other things. The limited protection provided in the existing law to officials who release information otherwise exempt from publication, if this is in the public interest, would be further restricted in the proposed amendments. The amendments also expand the list of ‘information holders’ covered by the law to include private entrepreneurs and legal entities on the same basis as public institutions, regardless of their distinctive functions in a society. This could lead to considerable confusion and even injustice.

ARTICLE 19 urges the Ministry of Justice to refrain from considering any amendments to the existing Law until it has had a chance to be tested in practice. Should amendments be introduced, they should be designed to further promote, rather than restrict, access to information. We welcome the recent statement made by the Minister of Justice that any further work on amendments to the existing Law this will take place in full consultation with civil society.