

■ Access to Information and New Technologies

7th South Caucasus Media Conference
Tbilisi, Georgia 11-12 November 2010

The views expressed by the contributing authors in this publication are their own and do not necessarily reflect the views of the OSCE Representative on Freedom of the Media.

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Foreword

Dear Readers,
Dear Friends,
Dear Colleagues,

You are holding in your hands the publication of the 7th South Caucasus Media Conference, which was organized by the Office of the OSCE Representative on Freedom of the Media in Tbilisi on 11-12 November 2010. This event brought together dozens participants – journalists, media experts, government officials, parliamentarians and civil society representatives -- from Armenia, Azerbaijan and Georgia.

The first South Caucasus Media Conference took place in 2004 amid widespread scepticism. Since then it has become a well-established tradition, which has met considerable success in the region and beyond. For the first time this year, two media experts from Kazakhstan took part in the work of the conference.

Since its inception, the South Caucasus Media Conference has touched upon the most important topics related to media freedom, from libel and freedom of information to public service broadcasting, the Internet, self-regulation and the digital switchover.

The focus of this year's conference was access to information and new technologies, including international standards on access to information, Internet development and regulation, and access to information and the free flow of information in the South Caucasus.

The conference's first half focused on access to information issues, while its second half was devoted to the general media freedom situation in all three South Caucasus countries.

Renowned experts based in the Russian Federation, Lithuania, the United States and Spain were invited to share with other participants their views and experiences on access to information.

Andrei Richter, the then director of the Moscow-based Media Law and Policy Institute and a professor with the Department of Journalism at Moscow State University, talked about international access to information standards and how they are being implemented in the South Caucasus states. Richter notes that

although the right to seek information is enshrined in the legislation of all three countries, it is not always easy for the citizens of these countries to enjoy it.

Helen Darbishire, executive director of the Madrid-based Access Info Europe nongovernmental organization, focused her presentation on the linkage of the right of access to information to the right to freedom of expression and how access to information eventually came to be recognized as a fundamental human right. Darbishire recalls that the European Court of Human Rights in 2009 ruled that “when a public body holds information which is essential either for the media to play their role as ‘public watchdogs’ or for civil society to play a ‘social watchdog’ function, then to withhold that information is an interference with freedom of expression.”

In his presentation, Sam Patten of the Washington-based Freedom House nongovernmental watchdog focused on the role of the Internet in strengthening freedom of expression and access to information and its potential as a “bridge-builder capable of leapfrogging traditional means of censorship and other barriers to the freedom of expression in the South Caucasus.”

Dainius Radzevičius, the chair of the Lithuanian Union of Journalists, examined the issue of access to information from the viewpoint of journalists.

Nino Danelia of Georgia, Rashid Hajili of Azerbaijan, and Gevorg Hayrapetyan of Armenia talked in their presentations on how access to information legislation is being implemented in their respective countries.

The second day of the conference saw another three regional media experts – Shorena Shaverdashvili of Georgia, Arif Aliyev of Azerbaijan and Ashot Melikian of Armenia – elaborate on recent media developments in each of the three South Caucasus states.

For two days participants had the opportunity to share views and ideas with the speakers and among each other. These exchanges took place in the friendly and lively atmosphere that had become the trademark of our regional conferences.

The conference ended with the adoption of the Tbilisi Declaration (see Annex), which, among others, calls upon governments “to facilitate without discrimination the freer and wider dissemination of information,” including through the use of the Internet and other modern technologies (Article 6). The Declaration also urges governments “to not prosecute or imprison journalists for possessing or publishing classified information when the publication is deemed to be in the

public interest, following best international practices and relevant jurisprudence, including by the European Court of Human Rights” (Article 9).

Our South Caucasus media conferences have been made possible thanks to the financial contribution of individual OSCE participating States. We would like to extend our sincere thanks to the governments of Germany, the Netherlands, Norway, Sweden and the United States, which contributed generously to this year’s edition.

Our thanks also go to the OSCE Office in Baku and the OSCE Office in Yerevan, which greatly contributed to the success of the conference.

7th South Caucasus Media Conference

Access to information and new technologies

Tbilisi, Georgia
11-12 November 2010

DECLARATION

The 7th South Caucasus Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media, with the assistance of the OSCE Offices in Baku and Yerevan, was held on 11-12 November in Tbilisi, Georgia.

Media professionals, civil society representatives, and governmental officials¹ from Armenia, Azerbaijan and Georgia attended the conference to discuss media developments in their respective countries with international experts.

The focus of this year's conference was access to information and new technologies, including international standards on access to information, Internet development and regulation, and access to information and the free flow of information in the South Caucasus.

The Conference:

1. Welcomes the fact that members of the media, civil society and government representatives from Armenia, Azerbaijan and Georgia took part in the conference, acknowledging the importance of regional co-operation in the field of media.
2. Reaffirms the importance of the right of all persons, including media representatives, to request and receive information that is held by government agencies, as stipulated by the access to information laws in force in Armenia, Azerbaijan and Georgia, which comply with international standards.
3. Calls on authorities to respect the right of people's access to government-

¹ This Declaration was discussed in the presence of government officials, some of which pointed out that they were not mandated to endorse the text.

held information in all forms in which it may exist; and to commit to better implementation of their access to information legislation.

4. Draws the attention of the governments of Armenia, Azerbaijan and Georgia to the fact that journalists and media exercise the right of access to information similarly to all other persons. Media, including bloggers and citizen journalists, do so on behalf of their audiences and in the public interest, and should never be discriminated against in the processing of their information requests, which should be responded to rapidly and fully in compliance with the deadlines stipulated in their respective laws.
5. Notes the importance of the right of access to information to ensure public participation in the decision-making process and promote public trust in authorities.
6. Calls on governments to facilitate, without discrimination, the freer and wider dissemination of information, including the use of modern technologies, including the Internet, to ensure wide access by the public to government-held information.
7. Encourages public agencies to make as much information available proactively, for example, on their websites, to pre-empt potential requests and thereby save processing costs. Government bodies should be required by law to publish proactively information about their structures, functions, activities, budget, rules, guidelines, decisions, procurement, staff contact details and duties, and other information of public interest on a regular basis in formats including the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.
8. Reiterates that access to government-held information should be the rule. Notes that limitations on access should be the exception, and should be clearly defined by law and applied only as needed to preserve legitimate, vital state interests such as national security.
9. Urges governments not to prosecute or imprison journalists for possessing or publishing classified information when the publication is deemed to be in the public interest, following best international practices and relevant jurisprudence, including by the European Court of Human Rights.
10. Recognizes that new technologies strengthen democracy by ensuring easy access to information and allowing the public actively to obtain and impart information. Calls upon governments to ensure and promote easy access

to new technologies, by, inter alia, liberalizing telecommunication markets.

11. Emphasizes that the Internet offers unique opportunities to foster the free flow of information, which is a basic OSCE commitment, and encourages governments to use the Internet to facilitate wider access to information and promote government services online. Calls upon law-making institutions and agencies to refrain from adopting measures that restrict the free flow of information on the Internet.
12. Urges the Government of Azerbaijan to decriminalize defamation and ensure the appointment of an independent Information Ombudsperson, who will perform an impartial oversight function over the implementation of the 2005 Law on obtaining information, as stipulated by this law.
13. Encourages judicial bodies and official information holders in Armenia and Georgia to take into consideration opinions of their Ombudspersons more systematically when reviewing cases of appeals against denied access to official information.

Tbilisi, 11-12 November 2010

Opening Statement

Dunja Mijatović¹

Excellencies, Ladies and Gentlemen,

Colleagues and Friends,

It is a great honour and pleasure to welcome you on the beautiful Georgian land, which opened its hospitable doors for the seventh time to host this OSCE media conference for the nations of the South Caucasus.

This unique event has become a good tradition and serves as the only platform for annual professional exchange between government stakeholders, media representatives and experts for assessing media developments, building bridges and reminding the Governments of Armenia, Azerbaijan and Georgia of their obligations to honour OSCE media freedom commitments.

I am glad to address this forum for the first time as the OSCE Representative on Freedom of the Media. I pledge to continue, supporting this conference, which was initiated by my predecessor, Mr. Miklos Haraszti in 2004.

I am grateful to the Government of Georgia for supporting this initiative, providing a great help organizing the conference and being its perfect host for the seventh year in a row. I also thank the Governments of Armenia and Azerbaijan for their co-operation in the preparations and nominating their distinguished delegates who I have the pleasure to welcome here in Tbilisi.

This event would not have been possible without the support that we have received from the OSCE field operations: the OSCE Offices in Baku and Yerevan. And, of course, without the co-operation of our partner experts, among whom there are very familiar, as well as new faces, and without all other delegates, you, the journalists media professionals, who stir debates and help us shape our everyday work agenda by raising issues of concern to you.

The generous financial support from our donor states deserves a special mention and our gratitude. These are the Governments of Germany, the Netherlands, Norway, Sweden and the United States.

¹ The OSCE Representative on Freedom of the Media

The topic of this year's conference is "Access to Information and New Technologies". We suggested this subject to address the opportunities and challenges constantly upgraded media technologies pose, based on rapidly developed Internet platforms. This trend surely does not by pass the states of the South Caucasus, where Internet-based media play an increasingly significant role in societies and are becoming active shapers of economic, political and social development of public agenda.

This trend is also transforming the notion of access to information held by Governments, and citizens' ability to access all kinds of information in general.

We are going to look at how the digital revolution affects Government transparency and how it could promote accessibility of government-held data by journalists, and consequently, by all citizens. Our international and national experts have been invited to share their views on the advantages of accessing and sharing information in the digital age, as well as on obstacles and challenges that new developments bring.

The importance of free access for every person anywhere in the world cannot be raised often enough in the public arena and cannot be discussed often enough among stakeholders: civil society, the media and local and international bodies.

Freedom of speech is more than a choice of which media products to consume. Media freedom and freedom of speech in the digital age also mean giving everyone not just a small number of people who own the dominant modes of mass communication, but ordinary people, too an opportunity to use these new technologies to participate in decision-making processes, to interact with each other and with public institutions and to share information about politics, public issues or popular culture.

We structured our sessions during the first day – which is entirely dedicated to the subject of access to information – the way that international standards, "best practices" and recommendations from our international specialists will intertwine into the realities of Armenia, Azerbaijan and Georgia, thanks to the valuable contribution from our national speakers and voices of all delegates. We invite and encourage you to participate actively.

The second day will traditionally be dedicated to a lively debate on the the media freedom issues which are of utmost significance at the moment in your three countries.

As a result of our two-day deliberations we will aim to adopt a consolidated

declaration, which will serve as a plan of action for all of us, including governments, professional organizations, experts and journalists for the year ahead.

Allow me now to make a few remarks on the subject of the conference. Access to information remains a key achievement of media freedom and hopefully will only increase in the digital age. One cannot and should not effectively prevent information from spreading on the Internet.

Your three countries have achieved a certain progress in legislating for government transparency – each of your three states adopted a comprehensive access to information law: the first was Georgia in 1999, followed by Armenia in 2003 and Azerbaijan in 2006. All laws are modern and set rather advanced standards for Government openness. The implementation of these laws, however, still leaves much to be desired. I am sure that many of you have something to say about this.

Our Office has supported a pioneering project – an Access to Information Toolkit, or a guide on accessing official information, that was implemented by our partners from AccessInfo Europe represented here by our expert speaker Helen Darbishire, and n-ost (a professional network of journalists from Eastern Europe based in Berlin). I would like to draw your attention to this very useful practical guide, which will give you concrete tips on how to use ATI laws for journalistic purposes most effectively and possibilities information seekers have if information is not provided. The guide also addresses the subject of secure and effective use of modern communication technologies while exercising your legal right to obtain information.

We have a condensed version of the toolkit available for you in Russian.

By its very nature, Internet allows for the most pluralistic media access, a genuine platform for a mix of varying and conflicting views in your three countries and in the entire OSCE region. I treat the subject of media freedom and the free flow of information on the Internet as my top priority in fulfilling my Mandate.

Internet has so far been, is, and will remain an open space for debate. Facilitating wider access to the Internet by people should be a top priority of every Government's communication policy. I believe that minimum state interference in online, as well as in off-line media content, is a guarantee for pluralism, development and trust.

Legitimate concerns of governments of the detrimental effects of the so-

called 'harmful', 'extremist' or 'obscene' information should be addressed by awareness raising, educational efforts and voluntarily created professional self-regulatory mechanisms, totally independent from the State.

Self-regulatory mechanisms of professional communities on the internet – as well as in traditional media – represent an effective alternative to government-imposed legal regulation. They involve the widest circles of industry representatives who elaborate their own standards and monitor compliance in a media-friendly manner. Self- and co-regulation is the way forward, which will help ensure the free flow of information in the digital age.

I look forward to our discussions and professional exchange in the next two days. I hope to get a chance to have more personal talks with those of you who I have not met yet. Allow me to wish all of you very productive and interesting deliberations.

Thank you for your attention.

Welcoming Remarks

Akaki Minashvili¹

It's a pleasure for me to join Ms. Dunja Mijatović, the OSCE Representative on freedom of the media, in welcoming all of you to the 7th OSCE South Caucasus Media Conference. I would like to thank the Office of the Representative for organizing this significant event in Tbilisi. I am proud that this has become a good tradition.

Co-operation with the OSCE has always been important for our country. We are glad to see the organization involved in the issues important for further democratic development of Georgia, as well as for other South Caucasus countries.

The key topic of the conference is of great interest to all of us. It links the important component of any democracy – access to government-held information with the development of the Internet and information technologies, a direct impact of globalization.

Modern democratic societies have realized that government transparency and unhindered access to official information by all people are prerequisites for sustainable development, promotion of the rule of law and economic prosperity.

Media play a crucial role as mediators between the Government and their audiences in requesting important information on behalf of people and relaying it to the recipients of their products.

We hope that this forum helps the media and communications professionals to better understand key aspects of the issue and help to fill in the existing gaps in the area of access to information as well as help develop deeper co-operation between the media professionals of Georgia, Armenia and Azerbaijan.

This international event will also help to address present-day challenges to free access to information and work out solutions for improved access to public data, including with the help of Internet technologies.

The Government of Georgia appreciates the fact that Dunja Mijatović is visiting

¹ Chairman of the Foreign Relations Committee, Parliament of Georgia

Georgia at this very important moment when the Georgian Parliament works on the draft law to make broadcast media ownership transparent. Georgia is acknowledged to have a liberal and progressive media legislation that meets international standards. We believe that the new initiative will make our media legislation even more comprehensive. We are ready to co-operate with the Office of the OSCE Representative on Freedom of the Media on this highly important issue.

This conference can be an important step helping identify and overcome challenges that media and communications professionals face nowadays as I believe that professional interaction and collaboration will prove to be valuable to all.

I wish both participants and organizers a successful and productive conference.

Access to Information: International Standards and Practices

Freedom of Information Standards and Their Use in the Southern Caucasus States

Andrei Richter¹

The Right to Information

The right to information is a new human and civil right that has been recognized in the postwar period in the countries of Western Europe, the United States and several other states. The history of freedom of information laws can in fact be traced back to Sweden, which first passed an act on this right as early as 1766. However, during the next two centuries no other state followed suit.

Western philosophers and political scientists have formulated the current concept of the right to information (and its component – the right to access information), giving the following reasons for the need for it. First, the right to freely seek, receive and impart information is a component of the right to freedom of expression, one of the fundamental human rights recognized by the United Nations Universal Declaration of Human Rights and corresponding international agreements adopted afterwards. Freedom of expression would be ineffective without the guarantee of a free flow and exchange of information and ideas without interference by public authorities and regardless of frontiers.

Second, the right to information proceeds from the right to free elections which is sacred in any democratic state. Citizens exercise this fundamental democratic right once every two or three years by voting, after which elected representatives of the people govern state affairs. In order for the right to vote to indeed be exercised freely, consciously and democratically, citizens must form a certain viewpoint before voting that helps them choose the candidate both they and society need. In order to make a conscious choice, a voter needs reliable information about candidates, such as what they achieve in previous positions in state institutions. The right to information and the right to exchange information are the main guarantors of the citizens' right to participate in public governance and of the principle of grass-roots democracy.

Third, it is commonly believed that the classified nature of government agencies and the decision-making process cause people to feel suspicious about state structures and officials at all levels and violate the currently important principle

¹ Director of the Moscow Media Law and Policy Institute and Professor at the Department of Journalism, Lomonosov Moscow State University. Since July 2011, Director of the Office of the OSCE Representative on Freedom of the Media.

of public power. Citizens' mistrust hampers the implementation of government decisions and makes it impossible for the state to count on public conscience. Consequently, it is in the interests of government bodies themselves to be as open as possible to society.

Fourth, most information requiring that the right of access it is exercised is government-related. In other words, this information is gathered and created by various government agencies, beginning with birth, marriage and driver's license registration agencies and ending with national security services. Not only do these bodies produce this information, they also generate it using taxpayers' money. State institutions are not engaged in information or any other business, they merely spend money received from the state budget, which is formed largely from taxpayers' money. Consequently, the information does not belong to the archives of a ministry or a mayor's office, it belongs to everyone, since neither a minister nor a mayor paid for it out of their own pocket. They do not have the right to privatize, appropriate, sell or exchange this information. So it would seem that if citizens have paid for collecting and producing this information, they should have the right to know what their money was spent on. Therefore, the right to information is necessary for the democratic process and for the self-government of society.

The adoption of Resolution No. 59 (I)² by the UN General Assembly in 1946 is universally regarded as the point of departure of today's attitude toward issues pertaining to the right to information. This document states that "freedom of information is a fundamental human right and ... the touchstone of all freedoms to whose protection the UN devotes itself."³ However, in this and subsequent resolutions, the UN's supreme agency did not at all interpret free information as the obligation of state structures to provide citizens with information. Rather, it meant the right to universally and freely disseminate and publish information in the name of peace and peaceful progress, that is, freedom of the media. From the perspective of the abovementioned resolution "the moral obligation to reveal objective facts and to disseminate information without malicious intent" is freedom of information's main principle.

In the postwar years, the public movement in favour of freedom of information won one victory after another: the right to receive information was enforced

2 United Nations. Sixty-Fifth Plenary Meeting, 14 December 1946. See, www.humanrightsinitiative.org/.../annex3_rt_i_&_press_freedom.pps

3 The resolution urged for calling an international conference on the freedom of information. This conference was held in Geneva from 23 March to 21 April 1948. It adopted the drafts of three conventions – on establishing the right of refutation on an international level, on freedom of information, and on the gathering and international broadcasting of news: [http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/59\(I\)&Lang=E&Area=RESOLUTION](http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/59(I)&Lang=E&Area=RESOLUTION)

in the U.S. legislation (in 1966), then in the legislation of Australia and New Zealand (1982), and then of Canada (1983). Within the next two decades national lawmaking on access to information took off at a stunningly rapid pace. According to the Spanish-based Access Info, a nongovernmental organization, if in 1990 only 14 countries worldwide had laws on freedom of access to information, by the year 2000 there were 40 such countries. Ten years later they numbered 82. As of 2004 the constitutions of approximately 40 countries contained regulations on the right to information held by state agencies and provisions on how to gain access to this information.

The right to freedom of information is related to freedom of expression, which has long been recognized as one of the fundamental human rights. Freedom of expression is essential for the proper functioning of democracy and is a fundamental human right, upon which other rights depend, as well as an inviolable component of human dignity. The Universal Declaration of Human Rights (UDHR), the fundamental document on human rights adopted by the UN General Assembly in 1948, protects this right as stated in Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁴

Article 19 of the International Covenant on Civil and Political Rights (ICCPR)⁵ adopted by the General Assembly and binding on all UN participating States guarantees the right to receive information:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Human rights should not remain declarative. Article 2 of the ICCPR makes the states responsible for undertaking “to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This means that government bodies are required not only to refrain from violating these rights, but also to adopt positive measures to ensure everyone respect of human rights, including the right to freedom of expression.

⁴ Resolution 217A (III) of the UN General Assembly, adopted on 10 December 1948. A/64, pp. 39-42. See, full official text in English at: <http://www.un.org/en/documents/udhr/index.shtml#a19>.

⁵ The International Covenant on Civil and Political Rights. Adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976. See, full official text in English at: <http://www2.ohchr.org/english/law/ccpr.htm>.

Government bodies are effectively required to create the conditions that are necessary to meet the people's right to information.

It is important to note that accessing information is not only about seeking or receiving documents and other information, it is also about attending public events and meetings of state bodies, including judicial and legislative bodies.

Freedom of information is also guaranteed by various documents of **the Organization for Security and Co-operation in Europe** (OSCE), which the Central Asian countries have agreed to, such as the Final Act of the European Conference in Helsinki,⁶ the Final Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,⁷ the 1990 Paris Charter,⁸ the Final Document of the CSCE Summit in Budapest in 1994,⁹ and the Declaration of the OSCE Summit in Istanbul.¹⁰ The Istanbul Charter for European Security states in particular:

We [the participating States] reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.¹¹

At the OSCE Ministerial Council in Maastricht (2003) on developing a strategy on threats to security and stability in the 21st century, it was stated that:¹²

Transparency in state affairs is a vitally important prerequisite of state accountability and active participation of civil society in the economic processes.

Worldwide recognition of the importance of freedom of information and freedom of expression is reflected in three regional systems of human rights protection – the American Convention on Human Rights,¹³ the European Convention on the Protection of Human Rights,¹⁴ and the African Charter on Human and Peoples'

6 Final Act of the Conference on Security and Cooperation in Europe, Helsinki, 1 August, 1975. See, full official text in English at: <http://www.wilsoncenter.org/subsites/ccpdc/pubs/addm/oscefr.htm>.

7 Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, June 1990. See in particular, paras 9.1 and 10.1, available at: www.osce.org/odihr/elections/14304.

8 Paris Charter for a New Europe. Summit meeting within the OSCE, November 1990.

9 Towards a Genuine Partnership in a New Era. OSCE summit meeting, Budapest, 1994, paras. 36-38.

10 OSCE summit meeting in Istanbul, 1999, para. 27. Also see para. 26 of the Charter for European Security adopted at this meeting, available at: www.osce.org/mc/39569

11 Comment 13, para. 26.

12 Para. 2.2.4.

13 Adopted on 22 November 1969, entered into force on 18 July 1978.

14 Adopted on 4 November 1950, entered into force on 3 September 1953.

Rights.¹⁵

Restrictions to the right to information

The International Covenant on Civil and Political Rights unambiguously calls for national legislatures to prohibit the abuse of human rights for “any propaganda for war” and “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Of course, this prohibition also applies to cases of abuse of the right to freedom of information.

As for other legal restrictions on the freedom of information, that is, “freedom to seek, receive and impart information and ideas,” paragraph 3 of Article 19 of the ICCPR cited above sets forth a strict framework within which exercise of these rights is permissible. It states:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

These regulations are increasingly interpreted in international law as the establishment of a triple criterion that requires that any restrictions:

1. must be provided by law,
2. must serve a legal aim, and
3. must be necessary in democratic society¹⁶

This means that vague or obscurely formulated restrictions or restrictions that leave the executive branch of power too much freedom for manoeuvre are incompatible with the right to freedom of expression. Interference must serve one of the aims enumerated in Article 19, Paragraph 3. This list being exhaustive, interference that is not related to any of the enumerated aims constitutes a violation of Article 19. Interference should be necessary to achieve one of these aims. The UN Human Rights Committee “observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value

¹⁵ Adopted on 26 June 1981, entered into force on 21 October 1986.

¹⁶ See, for example, decision of the UN Human Rights Committee on the Rafael Marques de Morais v. Angola case, Communication No. 1128/2002, para. 6.8.

which the restriction serves to protect.”¹⁷

According to the European Court of Human Rights, the adjective “necessary” in this context implies the existence of a “pressing social need;”¹⁸ it must determine whether the reasons adduced by the national authorities to justify it are “relevant and sufficient” and whether the interference in issue was “proportionate to the legitimate aims pursued.”

The right to seek, receive and impart information is not absolute: in a few specific cases it can be restricted. OSCE documents also mention that restrictions on freedom of expression and freedom of information are only permissible when provided by law and necessary in a democratic society.¹⁹

The Convention on Access to Official Documents

The Council of Europe’s Convention on Access to Official Documents²⁰ was adopted by the Committee of Ministers of the Council of Europe on 27 November 2008 and opened for signing on 18 June 2009. Georgia is the only country of the [South Caucasus] region that has signed it so far (on the same day, 18 June 2009, but it has not ratified it). As of today, 10 states have signed the Convention and three have ratified it, while 10 ratifications are needed for this act to enter into force.²¹

The Council of Europe’s Convention on Access to Official Documents sets forth the reasons for providing access to official documents in the countries of this region as follows:

- i. provides a source of information for the public;
- ii. helps the public to form an opinion on the state of society and on public authorities;
- iii. fosters the integrity, efficiency, effectiveness and accountability of public authorities, so helping affirm their legitimacy.

As with human rights in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention sets forth the limitations that shall be set down in law, be necessary in a democratic society and be proportionate to the aim of protecting:

17 Rafael Marques de Morais v. Angola case, Communication No. 1128/2002, para. 6.8.

18 See, European Court of Human Rights case on Hrico v. Slovakia, 27 July 2004, Application No. 41498/99, para. 40.

19 Report of the Seminar of OSCE Experts on Democratic Institution to the OSCE Council (1991), para. (II) 26.

20 Council of Europe Convention on Access to Official Documents. CETS No.: 205.

21 See: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=8&DF=30/10/2010&CL=ENG>

- a. national security, defence and international relations;
- b. public safety;
- c. the prevention, investigation and prosecution of criminal activities;
- d. disciplinary investigations;
- e. inspection, control and supervision by public authorities;
- f. privacy and other legitimate private interests;
- g. commercial and other economic interests;
- h. the economic, monetary and currency exchange rate policies of the state;
- i. the equality of parties in court proceedings and the effective administration of justice;
- j. environment; *or*
- k. the deliberations within or between public authorities concerning the examination of a matter.

The Convention envisages that access to information contained in an official document **may** be refused if its disclosure would, or likely would harm any of the abovementioned interests, **unless there is an overriding public interest in disclosure**. The Parties shall consider setting **time limits** beyond which the stated limitations would no longer apply.

The first agreement in the world to address access to information does not make a strong impression. It provides fewer guarantees of this right than the laws of most European states. This agreement applies to a limited number of state bodies; it does not set the maximum time limit for a response to be sent to a request for information; and it does not grant applicants the right to appeal an unsatisfactory response with an independent agency or court.

Article 6 of the Council of Europe Convention on Access to Official Documents says that a public authority refusing access to an official document wholly or in part shall give the **reasons** for the refusal. The applicant has the right to receive upon request a **written justification** for the refusal from this public authority. If a limitation applies to part of the information contained in an official document, the public authority should nevertheless grant access to the **remainder** of this information. Any omissions should be clearly **indicated**. Moreover, if the partial version of the document is misleading or meaningless, or if releasing the remainder of the document represents a manifestly unreasonable burden for the authority, such access may be refused.

Situation in the Southern Caucasus States

To what extent does the legal system in the Southern Caucasus states correspond to the aforementioned international standards? Table 1 shows the components of freedom of information guaranteed by the constitutions of all three states – Azerbaijan (AZ), Armenia (AR), and Georgia (GR). A comparative analysis shows that the citizens of all three states are given extremely wide constitutional guarantees, although Georgia’s Constitution has a very important shortcoming: it does not envisage a guarantee of the right to seek information.

Table 1. Constitutional Guarantees of the Freedom of Information

RIGHT	AZ	AR	GR
To seek information	+	+	-
To receive information	+	+	+
To impart information	+	+	+
Freedom of the media	+	+	+

Access to information laws detailing the rights of citizens to seek and receive information from state bodies and institutions are in use in all three states of the region. They are:

- Republic of Azerbaijan: the Law “On Receiving Information” of 2005; the Law “On Freedom of Information” of 1998 and, related to it, several procedures of the Law “On the Procedure for Considering Citizen Appeals” of 1997.
- Republic of Armenia: the Law “On Freedom of Information” of 2003.
- Republic of Georgia: the General Administrative Code (Chapter III) of 1999.

These laws are not ideal in the sense that they do not give a precise description of the right and procedure of access to information. In Azerbaijan and Armenia access to the meetings of collegial government bodies is not free. Whereas Armenia envisages that a refusal to provide information can be appealed with an authorized state body or court (Art. 11 of the law “On Freedom of Information”), Georgia does not have a special procedure for appealing a refusal with an authorized body. In Azerbaijan, the Law “On Receiving Information” of 2005 says that the Parliament should, within six months, set up an Information Commissioner. However, the government has still not nominated any candidate

for this post, thus making it impossible to monitor how the procedures of this law are put into practice²². In Armenia, the right of access to information applies not only to information kept by state bodies and municipalities, but also by organizations financed from the state budget (as in Georgia). It applies to any private organization that has either a monopoly, or a dominant position in the commodity market, as well as in public health, sports, education, culture, social security, transportation and communications or to any company that provides the public with services in the communal sphere (Art. 3 of the Law “On Freedom of Information”). Similar regulations exist in Azerbaijan’s Law “On Receiving Information.” Unlike its neighbours, Armenia envisages the possibility of disclosing information in specific cases where public interests prevail (Part 3, Article 8 of the Law “On Freedom of Information”). Under Georgia’s system, state bodies and institutions should report yearly to both the President and the Parliament on how they implement the legislation on access to information. The same rule applies to Azerbaijan’s still-to-be-appointed Information Commissioner, who must report to Parliament.

The main pluses and minuses of the laws on the right to information are shown in Table 2.

Table 2. Main Provisions of the Laws on Information

Provisions of the Laws in the Right to Information	AZ	AR	GR
Time limit is established within which information should be supplied (number of days)	7	5-30	10
Limitation is established on seeking information that only applies to the rights and interests of the applicant (yes -)	+	+	+
Obligation of the power bodies to keep a record of documents is established (yes +)	+	-	+
Information is supplied for a nominal fee (yes +)	+	+	+
Openness of executive power body sittings is envisaged (yes +)	-	-	+

It is worth noting that in all three Southern Caucasus states access to information laws were adopted earlier than the existing media laws. Therefore

²² On the appointment of an Information Commissioner, see below R. Hajji’s presentation (editor’s note)

the new media laws do not contain several of the regulations that existed earlier but now match the content of general information laws. Evidently this was done because, from a legal viewpoint, the existence of general access to information laws makes the need to preserve privileges for the press look questionable. But during the transition period, it seems advisable to preserve the special status of the media until all citizens can enjoy practical implementation of the mechanisms of access to information.

Both in Armenia and Georgia special regulations and procedures regulating the special right to access to information enjoyed by journalists and editorial boards have been completely eliminated. In Azerbaijan they have been reduced. Moreover, Georgia’s Law “On Freedom of Speech and Expression,” which replaced the law “On the Media,” not only fails to set forth the procedures, it does not envisage the information rights of journalists per se, thus making it impossible to compare this law with existing media laws in neighbouring states.

Table 3 presents a comparison of the legal guarantees of the information rights of journalists.

Table 3. The Right of Journalists to Access Information

RIGHT	AZ	AR
To ask for information (+ granted)	+	-
Receive a response to a request (time limit) (- not indicated)	24 hrs	-
To seek information (+ granted)	+	+
To receive (gather) information (+ granted)	+	+
To impart information (+ granted)	+	+
Accreditation (+ granted)	+	+

With respect to legislative support of this right, the situation is best in Azerbaijan. Alone among the three Southern Caucasus states, this country guarantees that journalists have the right to ask for information, which is enforced in the

procedure for receiving information upon request. In practice, however, the situation in Azerbaijan is far from ideal.

Speaking of practice, the work made by public organizations to enforce the rights of citizens to access to information – the Media Rights Institute (Azerbaijan),²³ the Freedom of Information Centre of Armenia,²⁴ the Committee to Protect Freedom of Speech (Armenia),²⁵ and the Institute for Development of Freedom of Information (Georgia) – deserves a special mention.²⁶

In Azerbaijan, the Media Rights Institute has contributed to drawing up the provisions of the Law “On Receiving Information.” According its 2009 annual report, the Media Rights Institute that year 202 requests for information were filed and a more or less satisfactory response in 58 cases (including 20 within the 7 day time limit provided by the law) was received. Nine applications were denied and 144 requests remained unanswered. Fifty-one cases were appealed in court. Out of these, 38 were accepted and reviewed in court. Twenty-nine appeals were rejected and in five cases the parties came to an agreement after the requested information was supplied. On in four cases did courts meet demands regarding violations of the right to access to information. Not once did they make use of their right to impose an administrative fine on the violators.²⁷

Armenia’s Freedom of Information Centre, which has been headed by Shushan Doydoyan ever since its creation in 2001, monitors how access to information legislation is being implemented, files action in court when laws are ignored and informs the public of the rights of citizens and how to exercise these rights. Between 2007 and 2009 the Freedom of Information Centre filed 20 judicial appeals, 16 of which were considered. Out of these 16 cases, six were fully satisfied; five - only partially (including because the required information was presented during the court proceedings); four were denied; and one appeal was not even accepted for consideration. Whereas in most cases the main demand of these appeals – regarding denial to provide information – was met in court, the other side of the appeals – to punish those guilty – was usually not sustained. Together with the *Aravot* newspaper, the Freedom of Information Centre recently achieved a decision stating that inquiries filed electronically are recognized as being legitimate as inquiries made through traditional means.²⁸

23 See, <http://www.mediarights.az/index.php?lngs=eng&cats=8>

24 See, <http://foi.am/en/>

25 See, <http://khosq.am/en/>

26 See, <http://www.idfi.ge/?cat=main&lang=en>

27 See, State of Access to Information. Azerbaijan 2009. Annual Report of the Media Rights Institute.

28 See, <http://foi.am/UserFiles/File/eng29.pdf>

The Freedom of Information Centre also analyses information posted on government bodies' official websites and releases corresponding critical statements. It also issues black lists, which identify those who maliciously violate the right to information. When preparing this presentation I checked to see whether the Freedom of Information Centre's critical views on the website of the of the Prosecutor General's Office of Armenia – expressed in the Centre's last English-language bulletin "The Right to Know" (June 2010)²⁹ – had had any effect. I could convince myself that it had had an effect: the site now contains a map, a news section, and some documents in Russian.

In all three Southern Caucasus countries the information posted on the official sites of the owners of public information is monitored.

In line with the requirements of the Georgia's General Administrative Code (Art. 49), every public institution is obliged to publish regular reports on how it implements freedom of information legislation. For example, the report of the Government's Chancellery for the year 2008 shows that it received 112 written requests for information during the period under review. Out of these 112 requests 53 were met; another 58 were transferred to the relevant state bodies; and information was not supplied in one case because of the need to preserve the confidentiality of personal data. The report also shows that there were no cases of violation of the General Administrative Code, that none of the Chancellery's employees was brought to disciplinary account, and that the government did not incur any court expenses.³⁰

Of course the number of applications for information remains low throughout the South Caucasus region. However, it is possible, both in theory and practice, to protect the information rights of citizens. The activity of the regional nongovernmental organizations aims at informing citizens in a better way and more fully about their rights in this area with a view to generating a growing number of requests for information. Clearly this aim does not stem from a willingness to paralyze the work of state institutions. Rather it relates to the need to change the defensive psychology of government officials and to get them accustomed to the idea of open information. The task of journalists in the South Caucasus region is to support these initiatives in every possible way and criticize officials who violate the existing legislation. Journalists and activists fighting for more open information face similar problems. Therefore they should more closely co-operate among themselves and help each other.

²⁹ See, <http://foi.am/UserFiles/File/eng29.pdf>

³⁰ See, http://www.government.gov.ge/index.php?lang_id=ENG&sec_id=177

Freedom of expression and Access to Information

Helen Darbshire¹

1. Introduction

The right of access to information is the right of anyone to ask for information from government and other public bodies and to receive that information, subject to only limited exceptions.

The right also places a positive obligation on governments to disclose information proactively without the need for information requests.

Access to information is a right with two parts to it:

I. Proactive: The positive obligation of public bodies to provide, to publish and to disseminate information about their main activities, budgets and policies so that the public can know what they are doing, can participate in public matters and can control how public authorities are behaving.

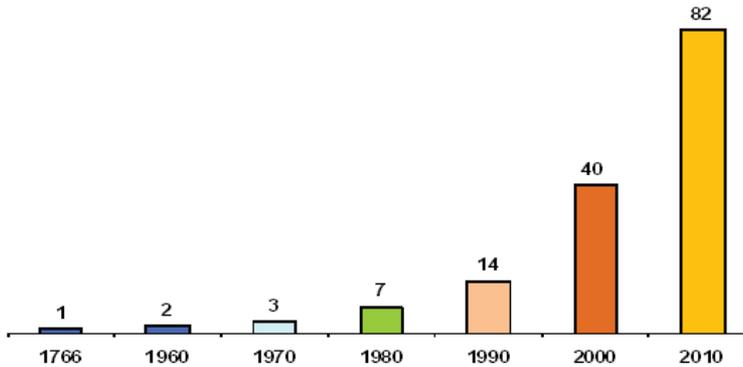
II. Reactive: The right of all persons to ask public officials for information about what they are doing and any documents they hold and the right to receive an answer. The majority of information held by public bodies should be available, but there are some cases where the information won't be available in order to protect privacy, national security or commercial interests.

Many countries around the world have now adopted access to information laws to give effect to the right of access to information. The first law was the Swedish law in 1766, but after that it took a while for the idea to catch on: Finland adopted its access to information law in 1951 and the United States in 1966.

There was a small but steady growth in laws during the 1970s and 1980s but the real expansion was after 1989 when civil society groups in central and eastern Europe started claiming this right as part of the shift of power during the post-Communist transitions. One of the most recent laws to enter into force was that of Russia (January 2010).

¹ Executive Director, Access Info Europe (Madrid)

Image below shows number of countries with access to information:



2. Access to information and Freedom of expression

International law protects the right of access to information as an integral and intrinsic component of freedom of expression.

The right to freedom of expression has long been regarded as one of the most fundamental rights in any democratic society. The French Declaration of the Rights of Man and the Citizen² (1779) asserted that the right to “free communication of ideas and of opinions” is “one of the most precious rights”.

As Article 19 of the UDHR makes clear, the right includes seeking, receiving and sharing information:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

International human rights tribunals have ruled that access to information is implicit in this universal guarantee of the freedom to disseminate information as part of the right to freedom of expression.

The two leading cases which resulted in formal recognition of access to

² The Declaration of the Rights of Man and the Citizen of 1779, Article 11, English translation at: http://www.diplomatie.gouv.fr/en/france_159/institutions-and-politics_6814/the-symbols-of-the-republic-and-bastille-day_2002/the-declaration-of-the-rights-of-man-and-the-citizen_1505.html

information as a human right by international human rights tribunals came from eastern Europe and Latin America. It was in these two regions that the efforts of the democratisation movements of the 1990s and early 2000s had secured a strong legal and constitutional basis for the right to information, thereby creating a context in which the international human rights system was able formally to confirm a fundamental human right of access to government-held information.

The key cases are *Claude Reyes vs. Chile* and *TASZ vs. Hungary*. Both were cases taken to the international human rights tribunals by representatives of civil society organisations who needed to access information in order to participate in public debate on matters of public importance: an environmental protection campaign in the Chilean case, and debate about a new drugs law in Hungary.

In both cases the courts ruled that for the activists to be able to exercise their right to freedom of expression, they should have access to information held by public bodies.

In its ruling of 14 April 2009³, the European Court of Human Rights argued that when a public body holds information which is essential either for the media to play their role as “public watchdogs” or for civil society to play a “social watchdog” function, then to withhold that information is an interference with freedom of expression.

The linkage of the right of access to information to the right to freedom of expression is relatively recent and its full implications for the national legal structure still need to be worked out, particularly in those countries where the constitution does not already make that connection.

Nevertheless, it is clear that the right of access to information entails both the right to access information and to use it without limitations, save for those few exceptions which are actually permitted by international treaties as acceptable limitations on the right to freedom of expression.⁴

This is important news for journalists wishing to obtain access to information held by public bodies: the right of access to this information is part of the rights of the media, part of the right to freedom of expression.

3 *Társaság a Szabadságjogokért v. Hungary* (App no 37374/05), ECHR, 14 April 2009, paragraph 36, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

4 The International Covenant on Civil and Political Rights at Article 19, establishes that the rights to freedom of expression and information may be limited only where the restrictions “are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

3. Top Tips for Investigative Journalists

The Access Info Europe Legal Leaks Toolkit gives guidance and tips for journalists wanting to use the right of access to information.

Here are some of the top tips:

- i. Start out simple: In all countries, it is better to start with a simple request for information and then to add more questions once you get the initial information. That way you don't run the risk of the public institution applying an extension because it is a "complex request".
- ii. Hide your request in a more general one: If you decide to hide your real request in a more general one, then you should make your request broad enough so that it captures the information you want but not so broad as to be unclear or discourage a response. Specific and clear requests tend to get faster and better answers.
- iii. Make a story out of refusals: The refusal to release information following a request is often a story in itself. Be creative and constructive with the fact that the information was refused, get examples from other countries, ask experts what they already know, discuss the public interest in the information and try to use the story to press for greater transparency.
- iv. Involve your colleagues in using access to information: If your colleagues are sceptical about the value of access to information requests, one of the best ways to convince them is to write a story based on information you obtained using an access to information law. Mentioning in the final article or broadcast piece that you used the law is also recommended as a way of enforcing its value and raising public awareness of the right.
- v. Submit international requests: Increasingly requests can be submitted electronically, so it doesn't matter where you live. Alternatively, if you do not live in the country where you want to submit the request, you can sometimes send the request to the embassy and they should transfer it to the competent public body. You will need to check with the relevant embassy first if they are ready to do this – sometimes the embassy staff will not have been trained in the right to information and if this seems to be the case, it's safer to submit the request directly to the relevant public body.

Access to Information and the Internet in the South Caucasus

Sam Patten¹

The Internet today remains one of the least impeded means of accessing information in the South Caucasus; however, access to the Internet across the countries of Armenia, Azerbaijan and Georgia is still a work in progress. Just as uneven as the levels of access, though, are the potential threats that can be seen to those in the region who seek to express themselves freely in a manner consistent with the aims of the Geneva Declaration on Internet Freedom, issued earlier this year by a diverse, global group of human rights defenders, NGOs and industry watchdogs. Freedom House, which I represent in today's forum, was one of the participants in that March meetings, and through our Freedom on the Net survey, monitor the relative state of Internet freedoms in an expanding pool of countries which, this year, include both Azerbaijan and Georgia. I would like to share with you some thoughts on trends in the region, as we see them, and how these might influence broader freedom of expression issues both in the year ahead, and for the near future. The sense of optimism I may convey today can perhaps best be explained by a Caucasian proverb: "If you build a bridge, you will cross it yourself. If you dig a pit for someone else, you will fall into it yourself." Bridges, not pits, will be the region's predominant feature going forward.

Of course no medium exists in the abstract, and in looking at the relative state of Internet freedoms in the three countries of the South Caucasus, it is equally important to look at media freedoms in each country more generally. Freedom House rated two of the three countries – Armenia (66) and Azerbaijan (79) – as "Not Free" in its 2010 Freedom of the Press survey, in contrast to Georgia's (59) "Partly Free" rating. In the region's most extreme case of inhibited freedom of expression in Azerbaijan, relative Internet freedom shines a ray of hope. For the two young bloggers who remain imprisoned as we gather here today, that ray of hope may seem more conceptual than real. Please indulge me a brief digression so I can offer an example of what I mean by this.

In the fall of 2008, I had the chance to meet a strikingly intelligent young man who was visiting Washington to raise awareness about the situation in his native Azerbaijan. His name was Emin Milli and he spoke of a "virtual democracy" in which young, aspiring Azeris like himself could participate without incurring

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the risk of direct state retribution. Virtual candidates would compete in virtual elections, Emin explained, and not be subjected to capricious registration requirements, official harassment or even selective prosecution that opposition political candidates have encountered in Azerbaijan. His excitement was infectious. In the eyes of the Azeri authorities, perhaps too much so, because he was attacked in Baku last year after posting the now infamous “Donkey Video” with Adnan Hacizade and then, astoundingly, sentenced to two and a half years in prison for “hooliganism.” I raise Emin’s case because it demonstrates the juxtaposition of opportunity and threat in the current context of access to information and the Internet in the South Caucasus, specifically Azerbaijan.

Looking at the region as I whole, I will focus on three inter-related areas: the state of media freedoms, the role the Internet has to play in strengthening the freedom of expression, and immediate obstacles to achieving this promise.

The State of Media Freedoms in the South Caucasus

Freedom House reporting and ratings for 2010 look at the entirety of 2009, and it is fairer to use the same twelve month period to look at all three countries under discussion. As in Azerbaijan and Georgia, television is the major medium in Armenia and 2009 saw few tangible improvements. A broadcasting law passed a few months ago did little to improve the independence of the Council on Public Television and Radio, all of the members of which are appointed by Armenia’s president. The independent broadcaster A1+ has been off the air since 2002, and despite favorable rulings by the European Court of Human Rights, the suspension of its license remained in place at the year’s end. New legislation last in August of 2009 further curtailed journalists’ independence with vague and perhaps even self-contradictory references to reports that “do not correspond with reality” or offend the “interest, honor and dignity” of parliament members provide grounds for suspending journalists, and therefore aggravate self-censorship. Meanwhile, physical attacks on journalists continued. Newspapers are politicized and have limited reach beyond the capital. Internet penetration in Armenia in 2009 was less than seven percent, substantially the lowest in the region.

Azerbaijan led the region in terms of the number of journalists in state custody at the end of 2009 – six, not counting suspended sentences and one death of a journalist in prison, Novruzali Mamedov. The case of Enulla Fatullayev raised eyebrows last December when authorities allegedly found heroin in his jacket. Last month, Freedom House joined nine other human rights organizations in signing a letter to Azeri President Ilham Aliiev calling for Fatullayev’s release and his being granted a new trial. We have also written to the chair of the Council

of Europe regarding the Azerbaijani Government's refusal to comply with the European Court of Human Rights judgment in the case². Television stations are for the most part controlled by the government or government-friendly business elites, and the prohibition of foreign broadcasting went into effect in early 2009. Newspapers continue to offer some diversity of views, but are highly politicized. The Internet penetration rate was registered over 40 percent; however, making it the region's highest. In many respects, this figure may reflect the demand for better quality, more objective information among the country's surging young population. The sentencing of Milli and Hacizade in November of last year had, most likely the intended, chilling effect, though. The estimated 22,737 Internet hosts and 35 Internet Service Providers will, under imminent new rules, have to be registered with the Ministry of Communication and Information Technologies.

Our host country of Georgia enjoys the relative distinction of having a "Partly Free" media, but last year's scoring margin only showed it to be seven cumulative points ahead of the "Not Free" Armenia, which indicates how precarious this distinction remained in 2009. Television media remained highly polarized with major national stations widely considered to be pro-government in their content. The offices of relatively-newly launched Maestro satellite TV were attacked by a grenade in May last year which, unlike the one lobbed at former U.S. President George W. Bush in Tbilisi some years prior, actually went off. Pledges made by Georgian President Mikheil Saakashvili to put an end to the "persecution and insulting of journalists" show mixed results one year after he committed to a series of democratic reforms. Content analysis of major Georgian television broadcasting evidenced limited criticism of the government on Rustavi-2, Imedi and the Georgian Public Broadcaster; however, the state broadcasting board is, unlike Armenia's mixed in its composition between government and opposition appointees. Approximately 30 percent of the Georgian population consider themselves Internet users.

On trend worthy of note on the regional media landscape sees countries broadcasting beyond their borders. The Caucasus One station, based here in Georgia, directs programming to Chechnya and features Alla Dudaeva, the widow of former Chechen President Djokar Dudaev. Russia blocks the Caucasus One's satellite signal; however it remains available over the Internet. Georgian efforts to broadcast into the breakaway regions of Abkhazia and South Ossetia reflect a desire to persuade citizens there of the benefits of reintegration, which can be seen as a positive, if fledgling, trend to engage in debate via the media. Armenian broadcasting into Nagorno-Karabakh has similar aims. Some

² Fatullayev was amnestied by presidential decree on 26 May 2011 (Editor's note)

may call these efforts provocative, while others see them as steps towards engagement in a region long known to be home to so many different, and often competing, tongues.

The Role of the Internet in Strengthening the Freedom of Expression

Both Azerbaijan and Georgia enjoy dynamic levels of Internet usage, while Armenia lags behind by a significant margin. For the purposes of comparison these two countries offer a study in contrasts with some similarities, though more strident differences in their Internet usage. Azerbaijan has made ICT development a national priority as it seeks to make itself into an ICT hub for the region, and thus has sought foreign aid to support these sectors.

In 2009, both Azerbaijan and Georgia saw cases of content policing. In Azerbaijan, bloggers Milli and Hacizade were, as I mentioned earlier, attacked, prosecuted and jailed as a direct result of their posting a satirical video depicting a government press spokesman as a donkey (in reference to the high process the Azeri government was spending at that time to important donkeys.) In Georgia, two young students were detained after allegedly insulting the patriarch of the Georgian Orthodox Church. Their computers were confiscated, and the two were briefly held before they took they parody off YouTube and were then released. In both cases bloggers crossed “red lines,” though arguably there are substantially fewer such topics of taboo topics in Georgia than in Azerbaijan. Public parodies of the president’s masseuse, Dr. Dot, for instance, were the subject of internet chatter as well as street posters in Tbilisi in early 2009 whereas similar expression would be unimaginable in Azerbaijan.

In both countries, social media sites provide a magnet for internet users, particularly more youthful ones, though there appears to be an important difference that can be measured mainly in terms of intensity. From the beginning of 2010 to mid-July, Azerbaijan saw a spiked increase of nearly 75 percent in its Facebook users (105,000 to 180,000 according to Facebakers’ Facebook Statistics of Azerbaijan), whereas Georgia has need no such rapid increase, rather a steady use of Facebook, Hi5 and other social-networking sights for predominantly social purposes. Given the relatively higher media controls that exist in Azerbaijan, Internet content in the that country also appears to play a greater role in substituting for state-controlled media than it does in Georgia as evidenced by “flash mobs” and student and youth activism over social media.

Another measure of both the need and potential for Internet might be seen in USAID’s announcement this past July of a \$4 million New Media Project in

Azerbaijan, designed to “address shrinking information space by ... increased citizen digital access to diverse information content ... and support for professionally-produced content development.” Clearly media suppression speaks to the need for such a foreign-funded project in Azerbaijan, but spikes in Internet usage strongly suggest the potential for such a project. Its existence raises the question whether similar projects might promote an acceleration of freedom of expression in other countries in the region, and beyond.

An important function of the freedom of expression in democratic societies is the empowering effect it affords civil society to serve as watchdogs of the public interest in such areas as corruption. Here there are some nascent cases in the South Caucasus that suggest an encouraging trend. Armenia’s Investigative Journalists/Hetq Online received an award in 2004 from the Armenian branch of Transparency International for “its outstanding contributions to the struggle against corruption.” In Azerbaijan, the Caucasus Media Investigations Center uses new online tools to support active citizenship and to attempting to build a more democratic society by seeking government accountability. Blogs such as Flying Carpets and Broken Pipelines in Azerbaijan, OneWorld in Armenia and Sweet in Georgia—among others – are conduits for civic participation where netizens can share information and opinions. Our Freedom on the Net report this year commends the Georgian government for expanding the ability of citizens to register for services online.

Looking a little further afield, there are examples elsewhere in the OSCE region both of greater potential for the Internet enhancing civic participation as well real risks for restricting access to the Internet as a tool for free expression. During this past summer’s wildfires in Russia, bloggers, civil society activists and IT specialists who shared frustration with their government’s slow response joined forces to launch an Ushahidi Fire Platform that linked needs for assistance with volunteers willing to help. The Russian government ultimately linked their state website with the Ushahidi platform, which is one measure of the project’s success. Last month in Ukraine, a well-known journalist and blogger launched Vladometer (power meter) to monitor how politicians keep or do not keep the promises they make to voters at election time. The Russian Institute for Modern Development, closely linked to the country’s president, has launched rosspending.ru to increase transparency about the Russian state budget, but it is difficult to tell how much the public at large uses it as a resource for questions about state spending. In fairness, many of these initiatives are new and only time will tell how effective they are in impacting the policies of governments.

Kazakhstan’s 2009 Internet law subjecting blogs and websites to the same restrictions as traditional media raises potential concern, though it has not

yet been implemented. In order for the Internet to strengthen the freedom of expression in the South Caucasus as well as across the OSCE region, it is vital to eliminate obstacles to access and for states to resist the temptation to pass laws or regulations that encourage self-censorship. Traditional media is unduly encumbered by such pressures throughout the region as it is.

Immediate Obstacles to Achieving the Internet's Promise

The obstacles to progress in realizing the Internet's promise as a bridge-builder capable of leapfrogging traditional means of censorship and other barriers to the freedom of expression in the South Caucasus are three-fold: cost, technological reach, and political interference.

In all three countries, cost for Internet access is a major prohibitive factor, with monthly fees for broadband ranging from the equivalent of \$25 to \$62 in Azerbaijan and the significantly cheaper \$10 to \$25 monthly broadband subscription fees in Georgia, where there are an estimated 150,000 home subscribers out of a population of 4.3 million. Lower costs will come about only as competition increases, and the trend of an open market currently favors Georgia, whose example Azerbaijan will hopefully follow.

Technological constraints cannot be understated, and should be clearly disentangled from political interference. Georgia's access to the Internet depends on other countries through which it travels and during the 2008 Russian invasion, interruptions of service and cyber-attacks were witnessed (as was the temporary blocking of Russian domain names). Azerbaijan's access to the Internet is controlled at a single point of entry, just as is Burma's or Iran's, suggesting the possibility of future filtering or discontinuation of access should authorities there take that course. While the effects of technological development and foreign assistance to this end in Azerbaijan have yet to be seen, it should be noted with interest whether access to high speed Internet does in fact expand in coming years. There is some speculation that it is deliberately kept out of reach of ordinary citizens because of its potential to carry Internet TV with accompanying video and audio. Constricting this aperture of free expression would send a very negative signal.

Given that Armenia lags behind the other South Caucasus states, its government and its foreign friends would be well served to explore ways of expanding access to Armenian citizens both in cities and rural areas. This could help compensate for imposed and self-censorship trends in the traditional media and promote more vigorous social and political discussion.

Currently there is no restrictive regulatory regime over the Internet in the region. As access expands; however, it will be tempting for governments to impose licensing of Internet TV, or even bloggers, and moves in this direction would certainly be a mistake from the standpoint of free expression. Georgia has set a fairly positive example in honoring its constitutional protections of free expression as they pertain to the Internet. Azerbaijan has set a deeply worrying example in its treatment of Mr. Milli and Mr. Hacizade. Restricting the Internet's potential as a social, communications, and informational conduit in any of the countries in the region would not only be an infringement of the rights to free expression, but also of development. Advancing their country's development, and modernity, is surely an aspiration the political elites in each South Caucasus capital share.

Without over-stating the potential of the Internet to bridge divides or understating the nature of the challenges posed by frozen conflicts and stunted freedoms, it is easy to agree that the Internet can be a liberating force in the South Caucasus. It should be an instrument of dialogue and, as such, unrestricted. Freedom House was pleased to be able to expand its coverage of the region this year in its Freedom of the Net survey and looks forward to continued vigilance in this respect. Thank you for this opportunity to address this distinguished group and I hope we might find new and constructive means of cooperation over the course of this conference.

NB: In his presentation, the author called for the immediate release of bloggers Emin Milli and Adnan Hacizade. Following his remarks, he engaged in a debate with two representatives of the Azeri government about the case and its particulars, as well as the broader question of Internet Freedom in Azerbaijan. Later in November 2010, the Government of Azerbaijan did release both bloggers. Freedom House publically commended Azeri authorities for taking this step and urged them to do more to encourage – not dissuade – freedom of expression in Azerbaijan.”

Access to Information in the South Caucasus

Access to Public Information: The Case of Georgia

Nino Danelia¹

Legislation:

Freedom of speech and expression in Georgia is guaranteed and protected by several pieces of legislation, including the Constitution², the Law on Freedom of Speech and Expression³, the Law on Broadcasting⁴ and the General administrative Code⁵.

Article 24 of the Constitution states that:

- Everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by in any other means;
- The mass media shall be free. Censorship shall be impermissible;
- Neither the state, nor any particular individual shall have the right to monopolize the mass media or any other means of dissemination of information.

Georgian and international nongovernmental organizations agree that the Law on Freedom of Speech and Expression that was adopted by the Georgian Parliament months after the Rose Revolution, on 24 June 2004, is in line with international standards. “[This law] is unique in the region and, if properly implemented and applied, it will provide Georgian journalists and others with guarantees that are fully in line with international standards,” reads a report published in 2006 by the Georgian Young Lawyers’ Association (GYLA).⁶

The Law on Freedom of Speech and Expression states that it should be interpreted in compliance not only with the Constitution of Georgia, but also with the principles of the European Convention of Human Rights and the case law of the European Court of Human Rights:

- The interpretation of this Law shall be made in accordance with the Constitution of Georgia, the international commitments undertaken by

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2 http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf (in English)

3 http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=72 (in Georgian)

4 http://www.gncc.ge/files/7050_3380_492233_mauwyebloba-eng.pdf (in English)

5 <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan004030.pdf> (in English)

6 Nino Lomjaria, Tamar Kordzaia, Nino Gobronidze, Natia Kemertelidze, Freedom of Expression in Georgia (GYLA Publications, 2006). Also available at <http://gyla.ge/files/publications/s3q0mz2ntk.pdf>, Article 19 (2005). Georgia: Freedom of expression Law, available at <http://www.article19.org>

Georgia, including the European Convention on Human Rights and Freedoms and case law of the European Court of Human Rights (Article 2)⁷.

The Law on Freedom of Speech and Expression says that freedom of expression may be restricted in certain cases. These restrictions must be transparent and freedom of expression can be interfered with only under certain narrow conditions. Article 8 of the law states:

- Any restriction of the rights recognized and protected by this Law can be established only if it is introduced by a clear and foreseeable, narrowly tailored law, and good protected by the restriction exceeds the damage caused by the restriction.
- Restrictions recognized and protected by this Law shall be: a) directly intended at fulfillment of a legitimate aim; b) Critically necessary in a democratic society; c) Non-discriminative; d) Proportionally restricted.

Thus, the Law on Freedom of Speech and Expression clearly aims at considering international democratic standards of protection of freedom of expression. It also emphasizes that benefits gained from restrictions must exceed the harm done to freedom of expression.

The General Administrative Code of Georgia states that:

- Public information shall be open, unless otherwise prescribed by law and with the exception of information that constitutes state, commercial or personal secret (Article 28);
- All public information kept by a public agency shall be entered into the public registry. Reference to public information shall be entered into the public registry within two days after its acquisition, creation, processing or publicizing, indicating its title and the date of receipt, creation, processing, and publicizing of the information, and the title or name of the natural or artificial person, public servant, or public agency, which provided the information and/or to which it was sent (Article 35)

Georgian journalists argue that the legislation is often interpreted not in favor of freedom of speech and that the definition of what constitutes state or personal secrets is unclear. Two amendments brought to the General Administrative Code in 2008 have made the situation worse with regard to access to information. Under the first of these amendments court fees payable to the state were increased to 100 GEL (€41.5) from 30 GEL (€12.45). The second amendment

⁷ The Law on Freedom of Speech and Expression is available at http://www.liberty.ge/eng/page.php?genre_id=79§ion_id=2&news_id=1&from=cat_news

requires any individual whose request for public information has been turned down by a public agency to file another request with a higher official or body before appealing to a court. As a consequence of these changes, more time and money are needed in order to obtain public information.

Access to Information Timeframe

The procedure for obtaining public information is as follows: Anyone wishing to obtain public information must file a request to that effect with an officially designated civil servant responsible for ensuring access to public information. Under Georgia's General Administrative Code every public administration or institution is obliged to dedicate one employee to give out public information upon request. Requests for public information must be answered without delay unless a certain lapse of time is needed for gathering or processing the said information – in which case the delay must not exceed 10 days. Public information is accessible free of charge with the exception of copying costs (10 tetris, or 4 centimes per page, on average). Should a public institution fail to provide the requested information, the person has the right to file an administrative complaint with a higher public body or official within a month. The latter in turn has one month for processing the complaint and make a decision. If the request remains unfulfilled, the individual can file an appeal in court within a month. Courts of first instance have between two and five months to review the case and reach a decision. Courts of second instance have the same amount of time. Courts of third instance have up to six months to make a decision. It can take an aggrieved party up to two months and 10 days before it can turn to court and another 16 months to exhaust judicial remedies.

Anyone wishing to file a court complaint should also pay a 100 GEL fee payable to the state. In addition, anyone wishing to obtain information from the National Agency of Public Registry (NAPR) should pay 15 GEL (€6.23) per request. Also, some administrations -- for example the Agency of Protected Areas of the Ministry of Environmental Protection and Natural Resources, -- charge for public information.

How are national laws and international standards on Access to Information being implemented in Georgia?

On World Press Freedom Day, 3 May 2010, 16 regional newspapers came out with front pages totally blank, except for the three words “mogvetsiT sajaro inpormatsia!” (“Give us public information!”). This shows how journalists and lawyers remain concerned over the level of access to information in Georgia. Administrative agencies do not publish administrative legal acts. Public

organizations often do not publish the names of officials responsible for releasing public information. Journalists often do not get the information they request, or get it partially. Citing confidentiality, public institutions refuse to release information regarding their employees' wages, audit reports, or administrative agreements.

GYLA says that it has never documented a single occurrence when a complaint filed with a higher institution or official by an individual who was denied the requested information by a public agency was met at the first attempt. Another source of concern is that orders issued by the President of Georgia are no longer made public. Georgia's Ombudsman Giorgi Tughushi has acknowledged experiencing difficulties in obtaining public information. Meeting with civil society representatives on October 27 2010, Tughushi said he believed that should citizens have unhindered and timely access to public information as provided for by the General Administrative Code they would have more trust in public institutions.

The Tbilisi-based Monitori independent television studio has dedicated a special report to access to information⁸. In the film, several journalists describe how they unsuccessfully tried to obtain public information⁹.

Eliso Janashia, chief editor of the Poti-based Tavisupali sitkva (Free Word) newspaper, says, for example, that she could not obtain on contracts sealed by the Defense Ministry with private construction companies.

Another journalist, Paata Lagvilava of the Samegrelos kronika (Samegrelo Chronicle) newspaper, says he was unable to obtain from the Zugdidi city administration information on the cost of a concert performed by Vakhtang "Buba" Kikabidze despite the fact that the event had been sponsored by the municipality. Lagvilava says he received a letter from the city administration stating that Zugdidi residents had had a wonderful opportunity to listen to the famous singer.

Shorena Glonti, a journalist with the Guria news newspaper, says the administration of the western city of Lanchkhuti agreed to release information on tenders organized in 2008-2009, but only after she had appealed to a court.

Maia Kalabegashvili, a co-founder of the Speqtri newspaper, describes how, instead of the detailed budget of the "Golden Autumn" festival she had

8 Public Information; studio Monitori, www.ijp.ge

9 Unlike otherwise indicated all quotes hereafter are taken from the film.

requested from the Gurjaani municipality, she obtained only information on the total cost of the event.

Journalist Gela Mtivlishvili says he could not obtain a copy of an agreement concluded between the Ministry of Environment and Natural Resources and a Dutch company that outlines the responsibility of the Georgian government in cleaning up pesticides in eastern Kakheti Region.

A journalist from southwestern Ajara Region says he was able to obtain a copy of an agreement between the municipality of Batumi and private contractors only after complaining to the city mayor in writing.

The Batumi-based Batumelebi newspaper says it has filed 291 requests for public information and that 60 percent of them remain unanswered to this day. The Tbilisi-based netgazeti online newspaper says that even after it had complained to Education and Sciences Minister Dimitri Shashkin it could not obtain information on a ministerial program to institute “mandaturi” (truant officers) in schools. “We were unable to write about these mandaturi and therefore our readers could not receive information as to what their functions are expected to be. Parents are interested in these matters because they put their children to school and therefore they have the right to know who is with them and what functions and responsibilities these persons have. I would say that they have only restricted access to information in this particular case,” the editor of the newspaper once told me¹⁰.

Another periodical, Rezonansi, could not obtain information on the terms of the contract by which the Georgian government and Russia’s Inter RAO electricity company agreed to jointly manage the Inguri hydro power plant. A Tbilisi court ruled that this information has a commercial value and therefore should not be disclosed. “The public interest regarding access to information about one of Georgia’s largest power plants, which is the main source of electricity for Georgian citizens, exceeds the commercial interests of any company,” commented GYLA’s Tamar Kordzaia, who represented Rezonansi at the court hearings.

Saba Tsitsikashvili, a journalist with the Qartlis khma (The Voice of Kartli) newspaper, is regularly denied the right to access the sessions of the Gori municipal council. Monitori journalist Nana Biganishvili says she has had difficulties to attend the hearings of the Tbilisi City Hall. Journalists with the

10 Interview with Nestan Tsetskhladze, chief editor of Netgazeti, Tbilisi, 11 November 2010

Liberali magazine say they could not obtain information on which television companies were granted tax amnesty. Georgian lawmakers on 2 July 2010 voted to write off the debts of all national and regional television companies. Television channels at the time were said to owe the state some 36 million GEL (€16 million) in debt arrears. Information on how much each broadcaster owes the state remains classified¹¹.

An additional obstacle in getting public information is that even if a court obliges a public institution to give out certain information, there is no mechanism to make this institution meet its obligations with regard to access to information.

Georgian journalists also cite financial difficulties with regard to access to information. The Guria News newspaper once reported collecting evidence that 480 public servants had illegally obtained plots of lands in western Guria Region. The periodical said it had to pay 7,200 GEL (€3,050) to obtain this information (15 GEL per individual). “Can a regional newspaper afford this?” – wonders Ia Mamaladze, the head of Georgia’s Association of Regional Media. Monitori this year paid 784 GEL (€332) in return for 49 pieces of information it needed for four investigative programs. Many journalists argue that when they cannot obtain information from a public agency – although this is guaranteed by law they cannot afford the 100 GEL-fee needed to file a court case .

Since November 2009 several journalists who were denied access to public information by public agencies have turned to the center of legal support to the media of GYLA to assist them in court. Most of these cases involved the Tbilisi Mayor’s office. “None of these cases has been reviewed by a court in the past seven months,” – Tamar Gurchiani, the coordinator of GYLA’s center of legal support to the media, said in a July 2010 interview with journalist Tskrialia Shermadini.

The General Administrative Code of Georgia says that each 10th of December central and regional public administrations must report to the President and the Parliament on how often they are requested to provide information and how they handle these requests. According to GYLA, this process is a mere formality since both the Presidential Administration and the Parliament go through these reports only superficially without analyzing them, thus making it impossible to evaluate the state of access to information in the country.

¹¹ The independent Maestro and Kavkasia television stations at the time said they had cleared their debts. An official then estimated the debt of regional broadcasters at over two million GEL (€889,000), while the Georgian Public Broadcaster admitted owing the state some nine million GEL (€4 million) in debt arrears. The remaining 25 million GEL were reportedly owed by Imedi TV and Rustavi-2.

E-government

In June 2005 the Georgian Parliament voted to adopt the Law on Electronic Communications¹² which, together with Government Decree Number 144 issued in 2010¹³, are considered as Georgia's initial steps toward establishing e-government. A Law on e-signatures and e-documents that was enacted in 2008 ensures the legality of documents submitted or signed electronically. Issues regarding e-government are the main topics of several framework programs drafted with international support.¹⁴

Information already made available by public administrations

By definition e-government means organizing governance that processes, provides and distributes information via electronic means of communication. E-government also minimizes the risk of corruption. A major achievement in this direction is that almost all services offered by the Public Registry are also available online. Citizens can prepare their income tax declaration electronically. Any individual who so wishes can access voters' lists online. Information pertaining to the privatization of state property is available at www.privatization.ge. Information on most online services is available at www.e-government.ge. In the words of Chiora Taktakishvili, the deputy chair of the Georgian Parliament's legal affairs committee, these services are important because, on the one hand, they provide Georgian citizens with an easier, faster, and nondiscriminatory way of obtaining information and, on the other hand, facilitates free access to public information, which is necessary to make the government more accountable before its citizens.

Income tax declarations of public officials can be accessed at www.csb.ge. In order to make the lawmaking process more transparent and facilitate the participation of all interested parties, the Parliament of Georgia has created a special web portal (www.parliamentgo.ge), where laws and draft bills are uploaded as soon as they are initiated. All interested parties can post comments or suggestions regarding any particular draft.

The Justice Ministry has initiated a very positive process with regard to public information. In December 2010 it created a consultancy group known as Media Council with a view to improving and simplifying access to information procedures and making them more transparent. Together with representatives

12 http://www.gncc.ge/files/7050_3555_376651_eleqtr.eng.pdf

13 <http://www.government.gov.ge> 2010-15-7

14 saqarTveloSi sainformacio da sakomunikacio teqnologiebis ganviTarebis CarCo-programa, UNDP Georgia, NCTeam (CIMS consulting), 2004, Tbilisi

of civil society, journalists, media activists and other stakeholders this group is working towards developing a list of public information that will be pro-actively published on the website of a public agency and that everyone will be able to access without filing a request.

However, e-government in Georgia remains at a very early stage of development. Websites of government institutions are either under construction, or lack such information as the electronic addresses of their employees, or calendars of events. Sometimes they do not have interactive forums, FAQ sections, or more simply the information they carry is not regularly updated. Often their interfaces are not user-friendly. An exception to the rule is the website of the National Agency of Public Registry, www.napr.gov.ge.

A clearer political will, greater financial and technical support, more professionalism on the part of employees of public agencies, improved access to the Internet in Georgia's regions and, more generally, better conditions with regard to access to public information are all necessary for the development of e-governance in Georgia.

Access to Public Information in Azerbaijan

Rashid Hajili¹

Legal framework

Article 50(1) of the 1995 Constitution of the Republic of Azerbaijan guarantees that “every person shall have the right to legally seek, obtain, pass, prepare and spread information.” The Law on the Right to Obtain Information (hereafter referred to as the Law) was enacted in December 2005. This was preceded by a 1998 Law on Freedom of Information, which set out general principles relating to information but did not create a right of access to information.

The Law was developed by a working group which was comprised of both government and civil society representatives in what was a comparatively highly consultative process for developing legislation in Azerbaijan. The Office of the OSCE Representative on Freedom of the Media took a very active part in these discussions. The Law is a progressive piece of legislation which improved throughout the drafting process and demonstrated a positive political will. It includes a provision for an independent administrative oversight body (a sort of information commissioner or ombudsman), strong process provisions and extensive proactive publication obligations.

Article 1 defines the purpose of the Law, which is to establish a legal framework for ensuring free, unrestricted and equal access to information as prescribed by the Constitution of Azerbaijan and to create the necessary conditions for citizen oversight of public institutions. The Law provides that anyone seeking to obtain information from a public body is entitled to obtain it freely and without restrictions if the public body holds that information.

Article 9 of the Law defines public bodies as being state authorities, municipalities and legal entities implementing public functions, as well as private legal entities operating in the spheres of “education, healthcare, culture and social sphere based on legal acts or contracts”. The obligations of private legal entities, however, are limited to information produced or acquired as a result of their public duties (see also Article 21.2.2).

Fully or partly state-owned or subsidized bodies, as well as legal entities

¹ Director of the Media Rights Institute (Baku)

holding dominant or exclusive market positions or rights, or operating in natural monopoly areas, are also considered to be public bodies in relation to certain types of information, including “offers and prices of goods as well as the services and changes in such terms and prices”.

Everybody has a right to freedom of information. The term “everybody” refers not only to Azerbaijani citizens, but also to foreign citizens. The term “everybody” also includes all legal and physical persons, media institutions which are not legal entities, public interest groups and others. There are also no age limits for the implementation of the right to information.

Information requests may be submitted orally either directly or over the phone, or in writing via direct delivery, post, fax or email. If a request is deficient the applicant should be informed within five working days. Reasons are not required to be given except in certain cases, such as when official confirmation of provision of the information is needed for purposes of exercising a right or when the information is sought on an urgent basis.

Article 24 of the Law provides that requests must be answered as soon as possible and no later than seven days after the application is filed. Whenever more time is needed to prepare the information, define the request or search through a large number of documents, the delay to respond may be extended by an additional seven working days, in which case the applicant shall be informed within five working days. When the information is needed more urgently, requests shall be processed immediately or, if this is impractical, within 24 hours. When the information is needed to prevent a threat to life, health or freedom, it should be provided within 48 hours.

Duties of information holders

Article 10.2 of the Law places an obligation on public bodies to dedicate an official or set up a dedicated structure to deal with requests for information. Article 10.5 sets out the duties of information officers, which include processing requests for information, liaising with the information commissioner, dealing with complaints and carrying out other obligations in relation to information.

Duty to Publish

The Law says that public bodies have the duty to provide the public with information on the activities they have undertaken to implement their mandate. The Law also deals in detail with pro-active disclosure. Article 29 lists 34

categories of information that must be disclosed pro-actively, including statistical data, budgetary and detailed financial information and forecasts, information on staff (including salaries), information on the environment, legal documents, planning documents, services provided, and, significantly, a list of secret documents. This is a long and progressive list of pro-active disclosure obligations.

Articles 32 places an obligation on public bodies to establish Internet “information resources” (websites or similar) to facilitate the disclosure of information as described in Article 29. Private bodies undertaking public functions are, pursuant to Article 33, also required to take measures to ensure access to information over the Internet, including placing up-to-date and ‘effective’ information online.

Public bodies are required to establish accessible public electronic registries of the key documents they hold. This can be a very useful tool to assist those seeking to identify information.

Exceptions

While respecting international standards in some respects, the regime of exceptions is one of the weakest aspects of the Law. It includes a comprehensive list of types of information that should be kept secret, divided into two main grounds: ‘official use’ and privacy.

Article 4.2.1 provides that the Law does not apply to state secrets issues. The Law also does not apply to documents that which have been archived in accordance with the law governing national archives.

Article 35.4 provides for a public interest override, providing that information may be kept confidential where the harm from disclosing information outweighs the public interest in accessing it.

Article 22.2 provides for partial disclosure of documents whereby, when only part of a document is subject to disclosure, that part shall be severed from the rest, which shall be kept confidential.

Information Commissioner

The Law provides for the appointment of an “authorized agent on information issues” (the Commissioner) to be elected by the Milli Mejlis (Parliament) from among three persons nominated by the President. The Commissioner has the

general power to ensure that public bodies respect their obligations under the Law. The Commissioner may initiate an investigation either upon receiving a complaint or pursuant to his or her own initiative. An investigation may enquire into a wide range of compliance issues including whether a request has been registered properly, whether the applicable procedures have been respected, whether any refusal to disclose information is legitimate, whether time limits on confidentiality of documents are proper, whether a public body has met its obligations of proactive disclosure, or whether appropriate steps have been taken to disseminate information over the Internet. The Commissioner thus has very wide powers to look into any failures by public bodies to implement the Law.

In conducting an investigation, the Commissioner shall have the power to request and receive documents and clarifications from any public body, including confidential documents (Article 48 of the Law). The Commissioner shall communicate any decision arising from an investigation to the public body concerned and the complainant, and shall also make the decision publicly available over the Internet. The public body concerned shall comply with any instructions from the Commissioner to remedy a problem within five days and notify the Commissioner in writing of the steps taken, which notification shall be put on the Internet. A public body may, however, appeal a decision by the Commissioner to a court. Where a public body fails to take the required measures in time, the Commissioner may file a petition with the supreme governing body of the public body, or file the relevant documents with a court. In the former case, the governing body shall review the matter and report to the information commissioner on the measures that were taken (Articles 48 and 54).

Pursuant to Article 10.6, public bodies must report semiannually to the information commissioner on information matters, or more often as required by the Commissioner. The information commissioner is then required to report annually to the parliament on implementation of the Law. The Commissioner's report should include a summary of activities undertaken and information on violations of the Law, complaints, decisions issued and so on. The report shall be disseminated over the Internet and through the mass media (Article 53).

The Commissioner is also given a number of general promotional roles, which include raising public awareness about the Law; providing legal assistance to people seeking to obtain information; making recommendations to public bodies on how to promote a more effective implementation of the Law; undertaking training and awareness raising activities; and preparing a sample information request (Article 47).

Time frame and other procedural guarantees

Requests may be submitted orally, either directly or over the phone, or in writing via direct delivery, post, fax or e-mail (Article 13.1). Applicants are not required to give reasons except in certain cases, such as where official confirmation of provision of the information is needed for purposes of exercising a right, or where the information is sought on an urgent basis (Articles 15, 21.1 and 24.4).

Requests for information must be registered upon receipt, unless they are anonymous or verbal, although provision of a request on letterhead or with even a single contact detail is enough to engage the obligation of registration (Article 18).

Article 24 provides that requests must be answered as soon as possible, in any case within seven working days (see also Article 10.4.1). Where more time is needed to prepare the information, to define the request or to search through a large number of documents, the response time may be extended by an additional seven working days, in which case the applicant shall be informed within five working days (Article 25). Where the information is needed more quickly, requests shall be processed immediately or, where this is impractical, within 24 hours. Where the information is needed to prevent a threat to life, health or freedom, it should be provided within 48 hours (Article 24).

Article 14.1 addresses the question of form of disclosure of information, while Article 10.4.1 provides generally that requests must be answered in the manner most appropriate for the applicant. Applicants may specify various forms of access including inspection of a document, an opportunity to make a copy of a document, being provided with a certified copy, transcription of coded information or provision in electronic form.

Implementation practice of FOI requests

Results of monitoring conducted by the Media Rights Institute (MRI) during the year 2009.

In 2009, a total of 202 inquiries were submitted to public information holders, mainly high-level state bodies such as Parliament, the Cabinet of Ministers, individual ministries, state agencies, state corporations (SOCAR State Oil Company, AZAL national air carrier) and courts.

Requests were non-sensitive and concerned routine information such as budget

lines of public bodies, the number of information requests received during the year, annual financial reports of public institutions, court statistics, the number of frequencies available for radio broadcasting, etc.

Out of these 202 requests, 58 (28.7 %) were answered and 144 (71,3%) remained unanswered. Twenty requests received an answer within seven business days as prescribed by the Law. In 9 out of those 20 requests public bodies refused to provide requested information.

Thirty-eight requests that received an answer after the 7-working-day delay elapsed. Of these, 33 answers did not contain all the information that had been requested.

Consequently, 16 information requests out of the 202 that were submitted were replied to by information holders in line with the provisions of the Law.

Research conducted in the first half of 2010 by MRI yielded different results. All 350 requests covered by this survey were submitted in writing by MRI between September 2009 and April 2010. As in the case of the previous survey, these requests were non-sensitive and touched upon internal regulations, the duties of individual departments and state officers, information about public procurement, information on budget allocated for freedom of information activities, etc.

State bodies responded to 188 (53.7 percent) of these inquiries, which marks a big difference with the previous research. This is the highest indicator pursuant to the analyses conducted by MRI following the adoption of the Law.

Forty answers were conveyed within 7 working days. Of these, only 19 (i.e. five percent of all applications filed) contained all the requested information. .

Seventy-six information requests (21.7 %) were responded to in full. In previous years this indicator stood at no more than 15 percent.

Finally, 162 requests remained unanswered.

Document Registration

Proper registration of document and openness of document registries are still not a reality. Contrary to what the Law provides for, there is still no electronic registry that would make documents accessible to the general public.

Commercial registries property registries, and contract registries of public bodies are not yet public. Lack of proper registration makes it impossible even for freedom of information officials appointed by public bodies to find and provide the requested documents.

Freedom of information units or freedom of information officers?

As mentioned above, public bodies have the obligation to appoint special FOI units or officers to process requests for public information. Research shows that even in Azerbaijan's largest state agencies FOI duties are assigned to officers who are estranged from information issues.

FOI Commissioner

After over four years of procrastinating, the Milli Maclis on 21 December 2010 appointed Human Rights Commissioner Elmira Suleymanov. Once her appointment is finalized, it theoretically will become possible to appeal public bodies' refusals to release public information. Also, with the appointment of an information commissioner, one can expect the government to release annual FOI reports, organize FOI public awareness campaigns and fund FOI trainings for public officials.

Access to information through the internet

Monitoring of the websites of 30 high-level public bodies conducted by MRI in early 2010 showed some progress compared with previous years even if these websites did not fully meet the requirements of the Law. In addition, this survey showed that the Defense Ministry, the Labor and Social Protection Ministry and the State Border Agency were still lacking websites.

Information not available on websites

This monitoring showed that information pertaining to the budget and spending of state bodies was generally kept secret. Most surveyed institutions did not disclose reports on the execution of state and local budgets. Information about services provided by these bodies, their income and spending equally remained unavailable. Information regarding public procurement, competitions, credits, grants, as well as conditions of purchases, sale or change of ownership of state property was rarely made available. Also not accessible on these websites was information on social services and tariffs, registries, assets of public bodies and their use, upcoming events and FOI services.

By contrast, data accessible on websites included the following: history of state bodies; information about their departments and activities; legislation; information pertaining to state bodies' international contacts.

Court cases

The above-mentioned survey shows that out of 38 FOI complaints filed to courts 29 were not satisfied. In five cases involving the administrations of villages located near Baku the disputes were settled through conciliation. During the court hearings these administrations presented information on their respective budgets at the request of the claimants and judges had to remind the chiefs of these administrations that they had an obligation to provide the requested information.

Only in four cases did courts satisfy claims and order defendants (village administrations) to provide the requested information.

Only in a few cases did courts order ministries and other high-level public bodies to meet their access to information obligations. In two separate cases, the Supreme Court of Azerbaijan ordered the Education Ministry and the Labor and Social Protection Ministry to provide information requested by nongovernmental organizations. The Sabail district court in Baku reached a similar ruling against a lower court, which had refused to release information to a local NGO. Yet such decisions are the exceptions rather than the rule.

Recommendations

Civil society organizations last year issued a series of recommendations aimed at improving the implementation of freedom of information laws. With one exception, these recommendations remain unheeded to this day. They include:

1. Take all necessary measures with a view to signing and ratifying the 2009 European Convention on Access to Official Documents;
2. Promote legislation regulating access to information and adopt laws supporting the implementation of the Law;
3. Establish an information commissioner institute as the main condition for guaranteeing access to information. This institute should have been established and an information commissioner appointed no later than the second half of 2005. The Commissioner should be appointed through

- transparent procedures proving his/her independency and competence²;
4. Register all documents pertaining to public information and put them in an electronic date base;
 5. Instruct public institutions on how to implement the Law and organize relevant training for government officials;
 6. Raise public awareness about freedom of information and the general benefit that derives from it;
 7. Take the necessary measures so increase the Internet penetration rate and create the conditions for free access to the Internet in public libraries;
 8. The Supreme Court must review court practice with respect to violations of the Law and deliver decisions in the light of the case law of the European Court of Human Rights and the European Convention on Access to Official Documents;
 9. Provide judges with adequate training in order to improve their knowledge and practical skills with regard to freedom of information.

2 The Milli Maclis on 21 December 2010 voted to give Human Rights Commissioner Elmira Suleymanova the additional prerogatives of an information commissioner (see above). The measure was expected to come into force six months later (editor's note).

Freedom of information in Armenia

Gevorg Hayrapetyan¹

Foreword

Freedom of information is today considered to be one of the most important guarantees of human rights in a democratic society. Freedom of information is the best and most effective method for creating an informed and active civil society, monitoring government performance and fighting corruption.

The right to freedom of information is a fundamental human, civil and political right. Legal protection of this right grants freedom to seek and receive information and, consequently, once people are informed about their rights, they are in a much better position to exercise and protect their other civil rights. Exercising the right to seek and receive information guarantees that other human rights are observed and, conversely, violation of this right entails violation of other rights. In this sense, observance of the right to freedom of information is a precondition for exercising all other rights. The right to freely receive information ensures that the work of state authorities and local government bodies is both transparent and in the public eye. This means that without this right the rights to elect, to associate, to participate in the management of state affairs, as well as economic, social and cultural rights can not be exercised.

Freedom of information in Armenia: legal regulation and practice

Freedom of information in Armenia is regulated by international legal acts ratified by the Republic of Armenia, the Constitution of the Republic of Armenia, the Law of the Republic of Armenia “On Freedom of Information” and other legal acts.

As a member of several international organizations, Armenia has ratified key international human rights documents, thus undertaking to respect all human rights, including the right to freedom of expression and to access to information. The right to seek and receive information is proclaimed in Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights.

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Under constitutional amendments adopted in 2005, the right to access information is proclaimed as a constitutional right. Freedom to receive information is also a fundamental right under the Constitution of the Republic of Armenia. The Constitution's chapter on "Fundamental human and civil rights and freedoms" proclaims that everyone has the right to freedom of information along with the rights to dignity, life, equality before the law and legal protection.

Article 27 of the Constitution says that everyone, whether or not he/she is a citizen of Armenia and irrespective of his/her sex, age and profession, has the right to demand information from all possible sources and to distribute information by all means, both within and outside Armenia.

Part one of Article 27 says that everyone has the right to request information from the authorities and receive a reply from them. This article also says that the time to reply should not be too long or unnecessarily protracted and that the reply should be comprehensive.

Basic legal relations within the freedom of information field are regulated by the Law of the Republic of Armenia "On Freedom of Information," which was adopted by the National Assembly on 23 September 2003 and came into force on 15 November of that year. The Freedom of Information Centre and several public organizations took an active part in drafting this law. This being an exception in Armenian practice, it is not surprising that the Law of the Republic of Armenia "On Freedom of Information" is considered to be one of the best in Europe.

The law "On Freedom of Information" regulates the basic legal relations in the sphere of freedom of information, including by determining the procedure for ensuring that information is both accessible and in the public domain, the procedure and deadline for providing information, the list of bodies whose information is covered by the law, the conditions for restricting freedom of information and so on.

The right to seek and receive information is secured in Article 6 of the Law "On Freedom of Information", which says that everyone has the right to access the information he/she is seeking and (or) to request such information from its holder with a view to obtaining it and to obtain it as defined by the legislation.

The Law "On Freedom of Information" has been effective for seven years now, yet it is not duly enforced in practice. The Law determines a number of basic and diverse tasks. Detailed below are the most important of them, which demand to be urgently solved in order to fully ensure the right to freedom of information.

Even though the idea of freedom of information is now firmly rooted in Armenia's state management system and new processes and programmes have been and are being introduced to ensure transparency and openness, the state government system still includes many serious impediments to transparency and effective "government – society" communications.

The main problem is that many government officials are still unaccustomed to working openly. A majority of government officials do not see releasing information as one of their main duties and often approach requests for information with discrimination.

Part 3 of Article 3 of the Law "On Freedom of Information" specifies the persons and bodies to which the law applies:

- state authorities;
- local government bodies;
- state institutions;
- organizations financed out of the state budget;
- organizations of social significance;
- officials of the above-mentioned bodies.

According to the Armenian legislation, private organizations providing public services are also included in this list. This is very important since it reinforces the effectiveness of the Law "On Freedom of Information." The right to freedom of information is traditionally associated with the obtaining of information from the first four sources mentioned in the above-mentioned list since freedom of information is called on to ensure transparency of state power. Yet the state is gradually delegating management of a number of socially important areas (energy, transport, communications, water supply, etc.) to the private sector. Even so, information on these remains important and necessary for the public. Let me note that the laws of only a few countries have extended the list of information holders to such a degree.

Information holders now include virtually all legislative, executive and judicial authorities and their officials, as well as organizations of social significance and all privately owned organizations receiving financing from the Armenian state budget.

The next problem is inaccessibility of official information. On the one hand, state authorities are not doing enough to put the information at their disposal into the public domain; on the other hand, government bodies are not duly implementing the procedure for providing information in reply to requests from

the public. Sometimes, people are unable to participate in sittings of community Councils of Elders because they do not receive proper information about their time and venue in advance. In some communities, decisions are made by Councils of Elders and community heads in secret. Requests from individuals or organizations for copies of these decisions are rejected unreasonably or remain unanswered. Decisions are taken behind closed doors and remain under lock and key in the officials' offices. This problem could be solved by information holders abiding by the letter of article 7 of the Law "On Freedom of Information".

Article 7 of the Law determines relations connected with ensuring that information is both accessible and publicly available. The first part of this article requires information holders to develop and make public an information disclosure procedure. Article 7(2) says that an information holder must instantly publish or otherwise advise the public of information at its disposal if making this information public may prevent a threat to state or public security, public law and order, public health and morality, the rights and freedoms of others or the environment and people's property. In this case, the authors of the law and legislators are taking public interests into consideration by requiring the information holder to provide for disclosure of information as soon as it becomes necessary.

Article 7 also regulates publication of information on the holder's own initiative and lists the information that should be made public. According to this article, information holders should, at least once a year, publish information about works and services performed for society, about the budget, the written enquiry forms and how to complete them, the hiring procedure and vacancies, etc. The list includes 13 types of information that must be published.

Moreover, changes to the above list of information must also be published within 10 days of being made.

The Law also establishes that this information should be placed in the public domain and, if the information holder has a website, it should be posted there, too (Article 7(5)).

It should be noted that, in general, the requirements of article 7 of the Law are fulfilled in part. Analysis by the Freedom of Information Centre has shown that, with the exception of certain information holders, all the others do not comply with the law which requires publishing the information at their disposal at least once a year, including by posting it in a publicly accessible place. The information that should be made public, such as annual reports and reports on the current activities of state authorities are not displayed, posted on websites

or otherwise made publicly available as required by the Law of the Republic of Armenia “On Freedom of Information”. Even those departments that do publish reports fail to do so regularly and systematically. This problem is particularly acute in local government bodies: the fact is that many rural communities even lack Internet access, so it is ridiculous to talk about the possibility of publishing and making such information accessible.

In order to solve this problem, the Freedom of Information Centre proposed and has already launched a programme for setting up information boards in urban and rural communities in various parts of Armenia where the necessary information can be published. Matters are better when it comes to state government bodies. Since October 2009, for instance, so-called Datalex information kiosks have been set up in court buildings. Here, people can access the necessary regulatory acts and court cases, as well as the background to and status of specific cases and the chronology and court rulings on these. Another clear example of providing accessibility and openness is shown by the Prosecutor General’s Office of Armenia: the Freedom of Information Centre analyzed materials from the Prosecutor General’s Office website and disclosed a number of omissions relating to publication of the above-mentioned information. The Prosecutor General’s Office personnel reacted quickly, revised the website and, in just two days after publication of the article, all the missing information had been added. Freedom of information has thus become an integral part of the activities of the Prosecutor General’s Office of Armenia.

One serious barrier to free information access consists in violation of the deadlines stipulated by the law. All requests for information should be answered within the time set by the legislation and, if there is a delay, the requester should be notified, within five days, of the anticipated reply time and the reasons for the delay. In practice, the deadline set by the law for providing information has proved realistic. Even so, if state bodies or their heads lack the political will or required knowledge, provision of information is protracted without reason, replies are only partial or the request may simply be ignored, since those responsible do not recognize this as their duty but as overtime work. The Law “On Freedom of Information” sets the deadlines within which the information holder is to make a reply to a request. According to article 9 of the Law, a reply to a verbal request is to be made verbally immediately or as soon as possible. A reply is to be given to a written request within five days or, if more time is needed for providing the information requested, a maximum of 30 days, the requester being notified of this and of the anticipated reply date within five days of the request being submitted. If the information indicated in the written request has been published, details of the media, place and date of the publication are to be provided to the requester within five days of the request being received.

It is important that any delay should be justified, since this precludes a reply being delayed arbitrarily.

In 2007, the Freedom of Information Centre conducted a survey among journalists in order to find out whether information holders comply with the deadlines set by law. Only 27 percent of the journalists surveyed stated that they had received a reply to a written request within five days. This is a quite low percentage, demonstrating that the law is observed in only 27 percent of cases. Moreover, 16 percent of the respondents stated that they received a reply to their written request one to three months later, while 10 percent of the journalists declared that they had never had any reply.

The next example demonstrates even more clearly the situation with respect to compliance with the deadlines. In June 2010, the Freedom of Information Centre sent written enquiries to all 12 administrative districts of Yerevan requesting information about paid parking lots. Of these 12, only four replied to the Freedom of Information Centre's request within the set five-day period. All the other districts replied within seven to nine days, apart from the Kentron district, from which the Freedom of Information Centre received a reply three weeks later.

In some cases, freedom of information may be restricted but any restriction must be envisaged by law. The aim of such restrictions must be to protect the lawful rights of individuals and they must be necessary for this purpose, that is, be justified. Finally, a restriction must be necessary for a democratic society. Absolute restrictions are unacceptable.

One of the main freedom of information principles is that the list of such restrictions be exhaustive and specified by law. Article 8 of the Law specifies all the restrictions on freedom of information. The following is not to be made public: information containing state, official, banking, commercial secrets; information violating the privacy of personal and family life, including secrecy of correspondence, telephone conversations, postal, telegraph and other communications; information containing preliminary investigation materials not subject to publication, revealing data connected with professional activities and requiring restricted access (medical, notarial, advocates' secrets) or violating copyright and (or) neighbouring rights.

Article 8 of the Law "On Freedom of Information" also notes that, if part of the requested information contains data not subject to disclosure by virtue of law, the other information requested must be supplied.

It remains one of the government's main tasks to ensure provision of full replies to people's inquiries. Considering the large number of "mute" replies (unanswered inquiries) encountered in practice, it is the government's job to make sure that all information requests are answered in compliance with the law. If the information holder refuses to supply information, it must give the specific grounds for its decision in a written reply. This would help reduce the number of unfounded refusals.

An unlawful refusal is often a result of there being no unified procedure for provision of information by the Government of Armenia, this being frequently referred to by officials who are reluctant to supply the information requested. In some cases, a court has refused provision of information by referring to the absence of a procedure for information provision in a specific body. This vacuum leads, in practice, to lack of any systemic approach to information provision with state authorities not gathering, processing, arranging and storing information within a unified system.

It should be noted that, on the Freedom of Information Centre's initiative, a package of amendments has been drafted to the Law "On Freedom of Information" and that their adoption will resolve a number of major issues. The draft amendments provide for releasing the Government of Armenia from the obligation to pass subordinate acts enforcing the right to freedom of information. Instead, the law itself will regulate matters to be regulated by subordinate acts. This will put an end to the disagreements and other poor practices involved in refusing to provide information on the basis of lack of applicable subordinate acts.

A serious barrier to ensuring public access to information consists in the public and officials not being fully aware of the right to freedom of information. There have been cases when the Freedom of Information Centre has had to give explanations concerning the deadlines to reply to a request for information or the statutory grounds and proper rationale for refusing to provide information, and to advise on the existence of the above, requiring information holders to give due replies to requests or reasoned refusals within the set deadlines.

In order to fulfill these tasks, the Freedom of Information Centre holds periodic training sessions for individuals and representatives of public institutions, thus raising substantially their knowledge about the right to receive information freely.

It is noteworthy that, in recent years, the status of freedom of information in Armenia has been getting better. A habit of working openly is gradually taking shape. Publicity and openness are perceived as vital criteria for improving

governance. There are several reasons for this. First, some officials have begun to recognize that timely and proper provision of information, as well as the principle of working openly, benefits them, too. It raises the rating of the organization.

Second, the public is becoming increasingly aware of their rights. After the law was passed, a number of local and international organizations held training sessions for officials, journalists and the public on the principles of freedom of information. From 2008 through 2010 alone, in all regions of Armenia and in Yerevan, the Freedom of Information Centre organized 72 training sessions for 2,500 officials and civil society activists. As a result of their greater knowledge, people have become more insistent and, no longer satisfied by just verbal requests, are obtaining the requisite information by submitting a proper written request. In the past, people confused an information request with a claim or complaint. Now many of those contacting the Freedom of Information Centre are fully aware of what a request is and know exactly what questions they want answered. Before contacting the Freedom of Information Centre, some people had already requested information from state and local government bodies but, having received no reply, they approached the Freedom of Information Centre.

Third, civil society is trying, with the help of a variety of public control mechanisms, to bring governing bodies to account. One excellent public control mechanism consists in publication by the Freedom of Information Centre of an annual Black List of officials who are reluctant to answer inquiries and prefer to act behind the scenes and conceal their activities from the public. Another mechanism is the annual “Golden Key – Rusty Lock” ceremony, during which department heads who have worked openly during the year are awarded a golden key, while those who have worked secretly get a rusty lock.

Fourth, a major role has also been played in promoting freedom of information by judicial precedent. Since 2005, on the initiative of the Freedom of Information Centre, 27 court cases have been heard in Armenia on violation of the right to freedom of information, 75 percent of these having had a positive outcome (meaning that the respondent information holder subsequently provided all the requested information that it originally refused to supply).

Freedom of information and new technologies

It is no secret that new technologies, the Internet in particular, play an important part in virtually everyone’s life today. Because it is so widespread, the Internet can also be of use in the sphere of freedom of information. It provides tremendous opportunities for ensuring access to information. First, the Internet

allows electronic requests to be submitted to information holders and replies to be received by the same method. Second, the Internet gives information holders an opportunity to publish information on official websites actively and on their own initiative, thus not only providing public access to information but also fulfilling the requirements of the law most economically in terms of resources and time spent.

Today, one acute problem is that of consideration of requests received electronically. These requests are also subject to mandatory registration. The electronic management systems of some state bodies allow registration of requests received by the Internet in the same way as written ones. Lack of such a system cannot serve as a ground for refusing to register requests. In this sense, the municipality of Yerevan has gained good and exemplary experience. Here effective electronic management systems are being introduced to improve the dialogue between state bodies and the public, the exchange of information and the quality of services provided to the public.

The Internet helps make the performance of state management bodies more efficient in general and raise the level of openness of a specific institution in particular. A clear example of how the operation of state bodies has become more open and transparent through use of advanced technologies is provided by the Mulberry System, the benefits of which are described below.

Benefits of the Mulberry System:

1. Exchange of documents and their delivery to the public has been hastened.
2. The functions of state bodies, project completion dates and contractors, lists of all incoming and outgoing documents are reflected in full. For instance, a head of department or sector can, via the Mulberry System, see the current status of documentation. This raises officials' sense of responsibility toward the public.
3. Work with documents has been simplified.
4. Information about registration of people's requests has become available, meaning that requesters receive notifications about their requests, together with a code, allowing them to find out, at any time, the stage of their request.
5. It is quick and easy to receive documents and save time. Document quality has improved.
6. The system is accessible to the public; no matter where they are, people can monitor the progress of their requests.

Legal regulation of exercise of the right to freedom of information via the Internet is still in need of improvement, however: the Law envisages the possibility of

making an electronic request but does not regulate the procedure for submitting it or that for replying to an electronic request. First, the law envisages the availability of electronic information (Article 3). Second, in accordance with Article 10, “no fee shall be charged for providing information by e-mail (Internet)”, thus providing for replying via the Internet. Yet, in practice, enforcement of the Law shows that officials have a different attitude toward electronic requests: A clear example is provided by the court case “The Freedom of Information Centre and the newspaper Aravot v. the Lori Region of the Republic of Armenia”. The head of Lori Region did not reply to an electronic request submitted by an Aravot journalist. Subsequently, the newspaper and the Freedom of Information Centre filed a joint lawsuit, though they lost the case. The claim by Aravot and the Freedom of Information Centre was rejected because the court decided that an electronic request was not an official one. Thus, since the procedure for submitting an electronic request, the reply procedure and deadline are not regulated by law, in a number of cases the right to freedom of information is violated. As already mentioned, on the initiative of the Freedom of Information Centre, a package of amendments to the Law “On Freedom of Information” has been drafted. When these amendments are passed, the issue of electronic requests will also be resolved, since they envisage a procedure for submitting such a request and the relevant reply procedure and deadline.

Appeals against violations of the right to freedom of information

In conclusion, let me say a few words about how an appeal can be lodged against a violation of the right to freedom of information. Article 11 of the Law states that refusal to provide information may be appealed to the competent state authority (higher instance) or a court of law.

Appealing to a higher instance can have positive results. Exercise of proper control by a higher instance can reduce substantially the number of offences and unjust decisions. Courts are no exception either. In a number of cases, a ruling of the Administrative Court has been appealed to the higher instance – the President of the Administrative Court. In one case, the outcome was positive but in the second it was negative.

Court appeals. The court system provides for supervision over the other two branches of power – executive and legislative bodies. It is called on to eliminate arbitrary use of power and violation of human rights by establishing an offence and punishing the offenders. Proper judicial protection of the right to freedom of information can, therefore, play a vital role in this right being ensured and exercised.

The judicial process of protecting and restoring the right to freedom of information began back in 2001, before the Law of the Republic of Armenia “On Freedom of Information” was even passed. From 2001 through 2003, six court cases were registered concerning freedom of information. The court partially satisfied two of the claims but rejected the others.

After the Law “On Freedom of Information” was passed, from 2003 through 2006, on the initiative of different public organizations, 11 court cases on freedom of information were heard, 10 of these having a positive outcome and one of them being satisfied in part. In general, the case law on freedom of information from 2001 to 2006 is as follows: 17 court cases were initiated and completed; of these, 10 had a positive outcome, five had a negative outcome and three suits were satisfied in part.

The overall statistics for 2007 through 2010 are: out of 18 cases initiated and completed, eight suits were satisfied in full, five in part and four rejected, one case having been terminated without being considered on the merits.

Any court case on freedom of information is of tremendous significance in itself. Irrespective of the outcome, court cases are covered extensively in the media, so they gain the attention of the public and officials, thereby increasing awareness of the right to freedom of information. In addition, court cases help prevent violations of the right to freedom of information. They are a sort of warning to officials that, if they obstruct exercise of the right to freedom of information, they will have to answer for this in court.

Court cases with a positive outcome also create precedents. Out of respect for their colleagues and bearing their rulings in mind, judges are guided by precedents in similar cases.

The case law associated with freedom of information, the existence of such cases and their positive results have created progress. Even though ordinary people might not go directly to court or a company providing legal services to protect their right to access information, two court cases have already been heard in which the daily newspaper Aravot and the Freedom of Information Centre have been co-plaintiffs. For the media, court cases on freedom of information are becoming a means for protecting their right to receive information. The case law of recent years includes two important precedents regarding access to official information.

In 2009 the Freedom of Information Centre filed a claim in the Administrative Court of Armenia against the Elpin rural community and its head because the

latter refused to release information on the community's budget. During the hearing of the case, the Administrative Court decided, for the first time ever, to hold an official administratively liable. As a result, the head of the Elpin rural community was required to pay a fine of 50,000 drams (€100 – the maximum fine) for refusing to furnish information. Second, in a number of court cases on freedom of information, the judges refused to hold officials administratively liable in the absence of a relevant protocol on an administrative offence. The existence of such a protocol is required by Articles 151 and 152 of the Administrative Code of the Republic of Armenia. The problem is, however, that the legislation does not specify the competent body authorized to draw up such a protocol. The right to freedom of information secured in the Constitution is infringed upon as a result.

In order to resolve this problem, in 2009 the Freedom of Information Centre applied to the Constitutional Court for Articles 151 and 152 of the Administrative Code of the Republic of Armenia to be declared in contravention of the Constitution. The Constitutional Court decided that the above articles did not contravene the Constitution but that there was a legislative gap and drew the attention of the National Assembly to this problem. As a result, the National Assembly's Standing Commission for State and Law drafted a set of amendments to the Administrative Code and the Code of Administrative Offences. These amendments would eliminate the requirement to present a protocol on an administrative offence. In September 2010, these amendments were passed in a first reading by the National Assembly.

Recent Media Freedom Developments in the South Caucasus

Overview of Georgia’s media-freedom situation

Shorena Shaverdashvili¹

In its 2010 media-freedom index the Paris-based Reporters without Borders (RSF) international watchdog downgraded Georgia to the 99th position, down for the 71st position the previous year. Before going into detailed explanations as to why Georgia’s media-freedom index so dramatically deteriorated in the course of 12 months, let me start with some good news.

Media ownership and media transparency

Transparency and ownership have been identified as Georgia’s most burning issues with regard to the media. After over two years of campaigning by civil society and media advocacy groups both at the domestic and international levels, Parliament Speaker Davit Bakradze on 26 October 2010 announced that Georgian legislators would within the next two weeks draft a new bill, which he promised would make media ownership fully transparent. Under the draft, Bakradze said, offshore companies would be either barred from owning Georgian-based media companies, or forbidden to withhold information about their owners and founders. President Mikheil Saakashvili welcomed the initiative, which he described as part of the “new wave of democratic reforms” he had announced in 2008.

Parliament on 7 December 2010 voted in a first reading on the draft. A second reading was expected to take place in early March 2011. However, the hearings were delayed amid continuing disagreements among pro-government and opposition lawmakers. A group made of several independent media and legal experts had started working on a similar draft long before Bakradze’s announcement. The proposals put forward by this group are more comprehensive and touch not only on media ownership transparency, but also on other issues such as facilitating access to public information – something that has been a source of increasing concern among Georgian journalists lately.

The main idea behind this comprehensive approach is that legislators should embrace the whole spectrum of laws that deal with transparency of ownership and finances, as well as with free access to public information, lest isolated amendments should fail to pave the ground for real change. This is why civil

¹ Editor-in-chief of the Liberali news magazine; member of the Georgian Public Broadcaster’s board of trustees (Tbilisi).

society groups have been pushing for the adoption of a comprehensive package that would also propose measures aiming at accelerating court deliberations into cases of denial of access to public information by state officials or agencies and waiving court fees for such cases. The package also addresses the issues of licensing and conflicts of interests in the broadcast media, and seeks to establish clear-cut regulations for media advertising.

To sum up, the Georgian government's initiative certainly deserves praise, but there remain widespread concerns among media activists that this measure will not be sufficient enough to ensure full media ownership transparency and that additional steps will be required to improve Georgia's media environment and fill existing legal loopholes.

Tax amnesty for television stations

The year 2010 witnessed another media-related government initiative. Lawmakers on 2 July voted to write off the debts television stations had accumulated as of 1 March 2010. President Saakashvili at first presented this initiative as being designed to ease the tax burden of regional broadcasters. Yet, within a week the proposal was turned into a broader package encompassing both regional and national television stations, including Rustavi-2, Imedi and the Georgian Public Broadcaster. In all, the bill envisages writing off 36 million GEL (€ 16 million) in debts. Despite demands from civil society groups the government did not release information on how much each broadcaster owed the state.

There are about 35 television stations in Georgia, including eight in Tbilisi. It is believed that the debt arrears of regional television stations total about two million GEL (€ 889,000), or 5.5 percent of the sum that was written off. The Georgian Public Broadcaster at the time reported owing the state nine million GEL (€ 4 million) in debts. Who owns the remaining 25 million GEL remains unclear to this day. However one can reasonably infer that it is Rustavi-2 and Imedi, two television stations that are under strong government influence.

While writing off the debts of regional broadcasters was in principle a good idea, it is regrettable that this measure served as a cover to help private national broadcasters that are unofficial government mouthpieces. As a result, this initiative further deepened the television market's existing asymmetries with, on the one hand, small, independent broadcasters struggling for survival, which pay their taxes and, on the other hand, big national stations, which do not pay their taxes but were yet bailed out simply because they had been serving the government well.

Indexes and remaining problems

Access to public information has been deteriorating over the past couple of years and this parameter is reflected in Georgia's falling media-freedom index. If before it was mainly difficult to obtain information from the Interior and Defense ministries, nowadays only two out of ten requests for public information filed with the Tbilisi Mayor's Office or the Finance Ministry are timely processed and directly answered to. For the remaining eight, the requested information is generally obtained after a lengthy court process that can last up to two years.

The Georgian National Communications Commission

The Georgian National Communications Commission (GNCC), which acts according to the needs and wishes of the government, is in itself a problem. The GNCC is chaired by Irakli Chikovani, who formerly owned a 30 percent stake in Rustavi-2. The GNCC's main functions are to regulate licensing-related issues and monitor how broadcasters abide by the Georgian Broadcasting Code of Conduct and journalistic standards. It also has to enforce the implementation of the Law on Broadcasting and other media-related legislation, as well as advertising regulations. According to various investigative reports, the GNCC has not been performing any of these tasks independently².

One dozen applications for television frequencies have been filed over the past six years. Yet, with one noticeable exception³, the GNCC has not met a single application on the ground that it is awaiting the results of a national survey that is supposed to help determine what kind of radio or television programs the Georgian public wants most⁴. This excuse has been given to all license seekers ever since the last audience research was conducted in 2004⁵.

The GNCC says in its latest annual report⁶ that it has granted 14 licenses in 2009. Most of these licenses went to telecommunications companies such as Akhali Qselebi, Global One, or Railway Telecom. Another two licenses went to the Maestro and Real TV television broadcasters. Being a cable television station, Maestro did not require an operating license in the first place. Yet, it needed one to reflect changes brought into its programming. Unlike what it did for other television channels, the GNCC did not invoke the lack of recent

2 See, for example, reports made by the independent Monitori television studio and the Liberali magazine.

3 That of Real TV (see below).

4 On 5 April 2011, the GNCC held a board meeting during which it released the findings of a long-awaited opinion survey (editor's note).

5 Under the Law on Broadcasting, audience surveys must be conducted every two years.

6 Available in English at: http://www.gncc.ge/files/3100_3389_682251_Annual_Report_2009-eng.pdf

audience surveys and did not reject Real TV's request for a broadcast license. This and the fact that Real TV is widely believed to operate under the aegis of the Interior Ministry would suggest that we are facing a very selective approach on the part of the GNCC.

Although there have also been numerous violations of the Law on Broadcasting by national broadcasters, both with regard to ethics standards and advertising regulations (broadcasters often go beyond advertising time limits, or engage in unlawful sponsorship agreements with government authorities), the GNCC has not reacted to these irregularities.

Unless a significant attempt is made to depoliticize the GNCC and let it function as an independent regulatory body it will be impossible to establish fair play rules on Georgia's television market.

Must-carry policy

Another issue that has been resurfacing lately and that will become more and more actual in the coming months is the implementation of a viable must-carry policy. What does this policy entail? Most cable systems divide their channel lineups into three or four basic channel packages. Must-carry rules state that locally-licensed television stations must be carried on a cable provider's system unless local television stations opt to invoke retransmission consent and demand compensation, in which case the cable provider can decline to carry the channel. Also, cable television systems are required to offer a subscription package that provides these broadcast channels at a lower rate than the standard subscription rate. Must-carry is a privilege granted to television stations, not to cable companies. A cable company cannot refer to must-carry rules to demand the right to carry a station against its wishes.

Implementing this policy will guarantee that regional broadcasters receive transmission and are not subject to direct or indirect sanctioning by local authorities.

Another important point is that licenses must be allocated according to technical parameters, not according to content. In other words, broadcasters should go through the process of licensing only if they are using the frequency, which constitutes a limited resource. If cable channels or independent television studios want to create their own content and distribute it through various carriers, they should be granted adequate "authorization," or "automatic licensing" by the regulator.

Monopoly market

Television stations in Georgia are traditionally funded either by oligarchs, or political interest groups. As a consequence, they have been serving as tools in the hands of politicians or businessmen with political ambitions. Since e-media do not function as a media business, which would depend on market forces rather than on political forces, they have imposed odd standards on the media advertising market. National television stations, which have been engaged in fixing advertising prices and market shares, control the overall media market. This means that print, radio and online media have to operate not in a free market environment, where fair competition would normally prevail, but rather in a monopoly market, where big players (i.e. television stations) control the flow of advertising revenues. This creates an unfavorable environment for other media outlets, which depend heavily on advertising revenues.

Big advertising agencies are controlled by business groups close to the government and there is a symbiotic relationship between the government and these agencies: the government purchases services mostly from these agencies, which in return get the largest share in advertising revenues. The government not only controls the media business, it is also a dominant player on the advertising market.

New media

New media represent of course a big hope. The Internet remains largely unregulated and free and Georgian media outlets are striving to develop their websites, generate authentic online content and increase their audiences. One should also note the emergence of new web-based editions and the expansion of the Georgian blogosphere. However, Georgia's average Internet penetration remains as low as 25 percent and the Internet advertising market is still negligible. For new media to gain in force and influence, they must appeal to advertisers. This means that the first thing to achieve is a growth in Internet coverage.

Media freedom in Armenia: Legislative changes and Practice

Ashot Melikyan¹

Since 2002, as we know, international human rights organizations, Freedom House in particular, has ranked the Armenian media as being “not free.” This categorization takes into account the legal, political and economic conditions affecting the work of the media. Depending on any positive headway or appearance of any regressive trends, and often also in consideration of the correlation between these, the rating of the Armenian media might slightly go up or down. On 20 October 2010, for instance, the international media watchdog Reporters Without Borders (RSF) released the findings of its latest survey, according to which Armenia ranked 101st in terms of media freedom, up 10 points from the nongovernmental organization’s previous annual survey. Yet, generally speaking, one has to admit that the Armenian media are not free.

The results of the research the Committee to Protect Freedom of Expression carried out in 2010 allow us to assert that the country’s political environment exerts a strongly negative impact on media activities since the latter are being largely determined by the interests of the authorities and individual political forces. Media legislation in general needs improvement, and the Law of the Republic of Armenia “On Television and Radio” should undergo radical changes. As for the financial and economic conditions in which the media operate, here, as in the business sphere in general, there are still no genuine market relations and the conditions for bona fide and fair competition are still not met. Revenues from advertising and various types of sponsorship depend to a great extent on the media’s loyalty and closeness to the ruling elite.

The media are trying to adjust to the reality which sees business merging with the authorities. By serving the interests of the ruling circles or the opposition forces, the media in essence become a component of the country’s political system. The broadcast media, for instance, are virtually under the total control of the authorities. Print media, with their extremely small print runs (averaging 3,000 to 4,000 copies) and their accordingly insignificant impact, are split among various political and oligarchic factions. Compared to the traditional media, Internet publications are freer and they develop intensively. But while doing so they show a tendency to split along the same dividing lines.

¹ Chairman of the Committee to Protect Freedom of Expression (Yerevan)

Even so, as I already noted, Armenia went up 10 points in RSF's annual media freedom rating. On the day these findings were released, Radio Liberty and a number of Armenian media outlets asked me to comment on the reasons for this upgrade and whether I thought the media freedom situation had really improved. Of course it is up to the authors of this survey to comment on its results. But, in my answers, I suggested that the final rating had been most likely affected by the following factors: 1) Armenia this year (editor's note: 2010) at last decriminalized insult and libel, transferring liability for this offence from the Criminal Code to the civil domain; 2) preparations are under way to switch from analogue to digital broadcasting and prerequisite steps to this effect have already been completed: a Digitalization Concept has been developed; the Law "On Television and Radio" has been amended; and tenders for broadcasting licences have been announced; 3) the government has attempted to regulate the transmission of TV broadcasts and films of an erotic nature, as well of those containing scenes of horror and violence; 4) there has recently been a noticeable drop in the number of violations of the rights of journalists and the media.

Merely stating (or interpreting) these facts, however, gives too rosy a picture and, in general, does not correspond to reality. The ultimate truth is that, despite the 10-point hike in the RSF rating, in terms of media freedom Armenia still ranks 101st out of 178 countries, which is well below the average. It is worth noting that the publication of the RSF report coincided with the Forum for the Future of Democracy, which took place in Yerevan at the initiative of the Council of Europe. CoE Secretary-General Thorbjørn Jagland, who took part in the forum, then told journalists, "In this country (Armenia – A. M.), there are problems with freedom of expression". With regard to the circumstances that I already mentioned and which arch-optimists present in an excessively positive light, here, too, there are serious problems that require solutions. Let us take a closer look at these issues in the same order.

First, the decriminalization of insult and libel. On 18 May 2010, the National Assembly adopted a package of draft laws scrapping Articles 135 ("Libel") and 136 ("Insult") of the Criminal Code of the Republic of Armenia and establishing procedures and conditions for the payment of damages for these offences within the framework of the Civil Code. This package, which had been put into practice back in 2009, was sharply criticized by a number of journalists' associations. For instance, while supporting the decriminalization of insult and libel, experts noted that the draft law "On the Introduction of Amendments and Addenda to the Civil Code of the Republic of Armenia" did not give a precise definition of insult and libel. Nor did it include the mechanisms that would preclude moral damages from being calculated arbitrarily. Moreover, the fines envisaged here were truly

draconian and, if applied to the media, especially print media, would have driven them to bankruptcy. Given that the judiciary is not yet independent, these fines could have become an effective weapon in the hands of politicians and officials, who take any criticism as insult or libel, to settle scores with dissenting journalists and media outlets. The voting on this draft law in a first reading was followed by parliamentary hearings, during which it was decided to set up a task force to improve the document. One of our experts took part in this task force. In the course of the ensuing work, many of the provisions that had caused concern among journalists were either removed or adapted and reworked. Therefore, we quite positively assess the draft package that was eventually approved by Parliament.

Even so, concerns remain over the implementation of the legislation. As already noted, existing imperfections in Armenia's judicial system mean that enforced refutations and fines can be used as truncheons against freedom of speech and free media. In addition, many regional experts believe that as long as Article 333 ("False denunciation") remains in the Criminal Code in its current form – the wording of which hardly differs from that in the deleted article on libel – the threat of the media being held criminally liable will remain. Journalists' organizations warned about this in the course of the discussions that followed the adoption of the package in a first reading, but no one listened to them.

Meanwhile, the Committee to Protect Freedom of Expression's 2010 quarterly reports describe a case involving news photographer Gagik Shamshian, who was attacked by an investigator while carrying out his professional duties in the vicinity of the Prosecutor-General's Office in Yerevan. In the course of the ensuing investigation, Shamshian strangely became accused of false denunciation. Even though the security cameras of the Prosecutor-General's Office had recorded the incident and despite the existence of eyewitness accounts, the investigation tried to convince everyone that no one had hit the journalist on the head and that he had falsely denounced the investigator, thus discrediting him. A criminal case was launched against the journalist, though it was subsequently terminated "owing to a change of circumstances". Even so, this story clearly demonstrates how the article on "False denunciation" of the Criminal Code of the Republic of Armenia can replace the deleted article on libel.

We will come back to violations of the rights of journalists and the media but, first, I would like to present perhaps the most pressing problem in the country's media sphere – the transition from analogue to digital broadcasting. This process is already under way in Armenia. Exactly one year ago, the Armenian government approved the "Concept for Transition to a Digital System of Television and Radio Broadcasting", which had been developed by an inter-departmental commission

set up for the occasion. On 12 May 2010 a draft law “On Introduction of Amendments and Addenda to the Law of the Republic of Armenia ‘On Television and Radio’” entered into effect. According to its authors, it is intended to regulate relations in the broadcasting field under the use of digital technology. Both documents were sharply criticized by Armenian journalists, human rights groups and other public associations. Both the concept and the draft bill on broadcasting were also slammed by foreign experts and representatives of international organizations. First, it was quite obvious that the draft bill that had been presented did not resolve old but outstanding problems, in particular how to guarantee the independence of the National Commission for Television and Radio as well as that of the Council of the Public Television and Radio Broadcasting Company; how to hold transparent and fair tenders; how to restrict advertising on public television and more. Second, it appeared that both the digitalization concept and the draft bill generate new threats and challenges – further commercialization of television companies to the detriment of the humanitarian aspects of their activities; an intensified concentration and monopolization in the broadcasting sphere; reduced media pluralism and restrictions on freedom of speech, among others.

All this was the subject of numerous debates organized by public associations, government agencies and international organizations. On 18 May 2010 the OSCE Office in Yerevan held a seminar to present an analysis of the concept for Armenia’s transfer to digital broadcasting, which had been prepared upon the initiative of the OSCE Representative on Freedom of the Media by international media experts Katrin Nyman-Metcalf and Andrei Richter. Shortly afterward parliamentary hearings were held to discuss the draft law “On Introduction of Amendments and Addenda to the Law of the Republic of Armenia ‘On Television and Radio’”.

It was expected that after the discussions the authors of this document would take the opinions expressed by local and foreign experts and international organizations into consideration and substantially amend the draft law. However, only cosmetic changes were brought and no compromise was reached on the main issues, including on articles unrelated to digitalization.

In contrast to its predecessor, the new law “On Television and Radio”, which was passed on 10 June 2010, no longer restricts advertising on the public television channel (i.e. it no longer requires that programmes should not be interrupted by advertising). Also, the proportion of air time devoted to advertising was increased to seven percent from five percent. Moreover, changes brought to Part 1 of Article 35 resulted in the Public Television and Radio Broadcasting Company no longer being under the control of the regulatory body – the National Commission for Television and Radio – which contravenes the Constitution of

Armenia.

In spite of the criticism levelled by independent experts, the law retains provisions that make satellite broadcasting conditional to holding a terrestrial broadcast licence. By stating that “licensing is the only legal basis allowing transmission of television and radio programmes on the territory of the Republic of Armenia” (Article 46), the authors of the law essentially create a basis for prohibiting satellite and Internet broadcasting. At the same time, the results of the audit of radio frequencies were never published and it is totally incomprehensible, for example, why the number of television channels broadcasting to Yerevan will fall to 18 from a current 22 in 2011. It seems that digitalization implies an expansion of technical capabilities. Only under pressure from international organizations did legislators include a provision requiring that the choice of tender winners be justified. Yet no reasons are actually provided to the losers.

Be that as it may, the law went into effect and the National Commission for Television and Radio (NCTR), on 20 and 27 July 2010, launched tenders for television licences through the digital broadcasting network.

Another curious thing, however, is that, less than two months after the tenders were announced, President Serzh Sargsyan proposed that the human rights commissioner of Armenia set up a working group with a view to improving the Law “On Television and Radio”. The fact that Sargsyan gave as a reason the need to take into account the active discussions surrounding this law and the opinions expressed by political figures and public associations is very interesting. It is almost a Soviet-like formulation. There was no shortage of debates or opinions when the draft law was discussed. Simply, no one then wished to take them into account.

The working group was eventually set up and it is quite representative. Yet, it is difficult to say today whether its activities will be effective or whether it will turn into yet another imitation of co-operation between government agencies and civil society institutions, as it was the case during the original discussions of the said draft law and on many other occasions. In any case, the Committee to Protect Freedom of Expression has decided to refrain from participating in this working group because it had already set up one of its own, which has already held a number of discussions and conducted preliminary studies, and which is currently preparing its recommendations with regard to digitalization. These recommendations will be submitted to the public and to government agencies, including the human rights commissioner of Armenia.

Generally speaking, one has to admit that in 2010 the Armenian authorities were very actively involved not only in issues pertaining to the digital switchover, but also in “bringing order” to television and radio content. This means direct interference into broadcast media activities. True, one has also to admit that loyal -- therefore, scot-free -- television companies had overstepped all moral boundaries, especially in their serials and shows. The authorities decided to bring them to hand. On 15 February 2010 the NCTR drew up and approved a document called “Criteria for television and radio broadcasts of an erotic nature, films containing scenes of horror and overt violence, as well as broadcasts capable of affecting the health, mental and physical development and upbringing of minors”. Journalists’ associations were critical of this document, arguing that it provided broad opportunities for arbitrariness and subjective decision-making since the criteria were vaguely worded and unquantifiable. Moreover, this document contained provisions that could obviously be considered an unjustified restrictions on freedom of speech. For instance, programmes that “*distort historical events included in the general educational programmes, discredit and demean national figures and the cultural legacy; demean and discredit the national church and the values preached thereby; deny moral standards, ... belittle the role of education and upbringing...*” are deemed negative and, accordingly, may not be aired before midnight.

This process went even further. In April 2010 the Public Council, which had been founded the previous year by a presidential decree, drafted a document entitled “Charter of ethical principles for television and radio broadcasting,” which was presented to television companies in the guise of self-regulation. On 21 April, 11 broadcasters subscribed to it. We believe this document represents a serious blow to the genuine process of media self-regulation that was initiated in 2007 by the Yerevan Press Club and supported by a number of journalists’ organizations, including the Committee to Protect Freedom of Expression, and adhered to by more than 40 media outlets already².

Both in spirit and letter the Charter is strongly reminiscent of the NCTR Criteria. Added to it are provisions aiming at protecting politicians and officials of various levels against criticism. One provision, for instance, stipulates that broadcasters should “avoid disclosing details pertaining to the private lives of well-known public and political figures without their consent, if these details are not connected with their professional, official or public activities”. No matter how hard we tried in the course of the various discussions we had with Public Council representatives to convince them that the boundaries for criticizing well-

² Arguing that such an initiative should have come not from a state body, but from the media community itself, five broadcasters -- Armenia, TV5, Armnews, ALM, and the Second Channel - refused to sign the charter (Editor’s Note).

known politicians and public figures are much broader than they are for ordinary people and that self-regulation is generally speaking the business of the journalist community itself, the authors of the Charter did not want to acknowledge any of our arguments. By doing so, the authorities in essence demonstrated once again that they are in full control of the broadcasting field and do not intend to permit any relaxation, while those broadcasters who subscribed to the Charter confirmed that they were ready to listen and obey.

Finally, as promised, let us review the problem of violations of the rights of journalists and the media. Since its inception, the Committee to Protect Freedom of Expression has been monitoring the situation and issuing annual reports. From this year on, it will draw up and publish quarterly reports as well. As our research shows, crackdowns on journalists and the media intensify when the domestic political situation exacerbates. In this sense 2008 was unprecedented with the presidential election being accompanied with an increasingly fierce conflict between the authorities and the opposition. That year the Committee to Protect Freedom of Expression registered 18 actual physical attacks on journalists, to say nothing of other offences against the media and media representatives.

The third quarter of 2010 was equally unprecedented, this time because not a single physical attack on a journalist was documented. At least, this was the first three-month period over the last few years when no such unhappy event occurred. Data on violations of the rights of journalists and the media during the first three quarters of 2010 look as follows:

TYPE OF VIOLATION	2010, 1st quarter	2010, 2nd quarter	2010, 3rd quarter
Physical attacks on journalists	5	3	0
Pressure on the media and their personnel	4	5	5
Violations of the right to receive and impart information	6	5	3

Data for 2008 and 2009 can be found in the following table:

TYPE OF VIOLATION / YEAR	2008	2009
Physical attacks on journalists	18	11
Pressure on the media and their personnel	16	14
Violations of the right to receive and impart information	14	13

Alas, the current period of relative calm is very deceptive. New parliamentary elections are scheduled in 18 months' time and as a rule election campaigns in countries like ours begin long before they officially kick off. Accordingly, pessimistic forecasts that attacks on journalists and the media will soon be step up would seem quite appropriate. Let's hope I am wrong!

Media freedom in Azerbaijan

Arif Aliyev¹

Although 2010 is not yet over, yet there is no reason to hope that any significant changes will occur in the remaining couple of months in the media or freedom of information and expression situation. So the results already can be summed up.

This year was not marked by any qualitative change or shift for the better with regard to media freedom, although it was quite rich in events, four of which should be underlined:

- On 22 April 2010 the European Court of Human Rights (ECtHR) demanded the immediate release of Einulla Fatullayev, editor of the newspapers Realnyi Azerbaidzhan and Gündelik Azarbaycan. The government of Azerbaijan considered this to be an unprecedented decision since, in its opinion, the ECtHR should assess the facts presented and issue its verdict on these, and not indicate to the country the specific form in which the error should be remedied and how urgently. The authorities refused to satisfy this demand and filed a counterclaim with the relevant chamber of the European Court²;
- On 22 July 2010 the 135th anniversary of Azerbaijani journalism was celebrated. For the first time, this date was celebrated more extravagantly by the government than the journalists' organizations themselves, which already felt like outsiders at this celebration. President Ilham Aliyev issued several decrees, allocated one million manats (over €895,000) from his own fund for distribution to newspapers and information agencies, gave money to build housing for journalists, and awarded honours and medals to about 100 media professionals;
- On 7-9 September 2010 the first-ever public forum in support of freedom of speech and expression was held in Baku. Over a dozen major international organizations gathered at the forum and it was attended online by internationally renowned politicians and public figures: from UN Special Rapporteur on Freedom of Expression and Information Frank La Rue to former Czech president and eminent democrat Vaclav Havel. Not a single member of the Azerbaijan government even bothered to turn up.

¹ Chairman of the Yeni Nasil independent union of journalists (Baku).

² The appeal was rejected by the Grand Chamber of the ECtHR on 4 October 2010. Fatullayev was granted presidential pardon and released from custody on 26 May 2011 (editor's note).

- And finally, on 7 November 2010 parliamentary elections were held in Azerbaijan. The media prepared for this in a quite original way: there turned out to be more journalists who put their names up for election and resolved to swap their editorial pass for a deputy's badge than there were those who wanted to fulfil their professional duty and participate in covering the country's biggest political campaign.

While the details of these events are of no special significance, the conclusions deriving from them are highly important.

First, after many years of resistance and struggle, the journalism community surrendered to the mercy of the victor – the authorities. The Azerbaijani media have not managed to become an independent social institution. The journalism community is unable to pull together or to protect their own and, if necessary, public interests. The priority for the overwhelming majority of the media is not to consciously provide the public with information and increase their awareness but to serve the political ends of the specific forces on which they depend financially. In journalism quarters, apathy and self-censorship reign supreme and there are no real incentives to raise the level of professionalism. The main incentive for the majority of journalists is to obtain access to the material wealth concentrated in the hands of the government. Suffice it merely to recall the struggle that broke out between them in June and July 2010 to get on to the list of those receiving the “Progress” medal and the titles of “Merited Journalist” and “Merited Cultural Professional”. Dozens of editorial boards, including those of the opposition, voluntarily submitted to the President's staff long lists of names of personnel they considered worthy of government awards. At the same time, media showed considerably less interest in the work of the Public Forum in support of freedom of speech and expression, although it concerned them directly and might potentially constitute an effective mechanism for protecting the rights of journalists and independence of the media.

Second, with the help of laws, courts and money, the Azerbaijani authorities are creating their own type of journalism, which meets not international standards, but their own ideas. They are no longer trying to conceal their efforts in this direction, as they did in the first years after Azerbaijan joined the Council of Europe (Editor's note: in January 2001), but are doing so quite openly and even provocatively. The rejection of unconditional compliance with of the ECtHR ruling and parallel imposition of another prison sentence on Fatullayev for possession of drugs – just in case the European Court ruling has to be accepted – was

precisely such a challenge³. The same applies to the protracted refusal to release from prison two bloggers, Adnan Hajzade and Emin Milli. They were attacked and beaten in front of diners in a restaurant and then, right before the eyes of the amazed local and international community, were sentenced for disorderly conduct⁴. Supposedly in consideration of multiple applications from international organizations, the authorities finally announced that they were ready to pass a new law decriminalizing defamation. In fact, they had already made preparations for life under the conditions of decriminalized defamation, without even resorting to the articles on disorderly conduct and drug possession. Amendments have already been introduced into the media legislation of Azerbaijan that are more restrictive by far than the defamation rules. A journalist may now be tried not only for distributing certain information, but even for gathering it without the prior consent of the persons involved. For this reason, the following cartoon has already appeared in one Azerbaijan newspaper: a journalist, catching an official red-handed committing a crime (taking a bribe, of course), respectfully asks him, before taking a photo: “You don’t mind, do you, if I take a photo now?”

During the first half of 2010, government officials in a majority of cases filed 26 suits against staffers of opposition periodicals. As a result 14 journalists received criminal sentences. On the basis of claims submitted by political and public figures of the country, the courts have heard or are still hearing 36 civil suits, with 30 rulings already going against the journalists. On none of these cases have the local judges referred in their rulings to the case law established by the European Court of Human Rights.

The government of Azerbaijan has put its finger precisely on one characteristic of the conduct of international organizations. While constantly proclaiming the idea of media independence and freedom, they still prefer to work with and support those journalists’ organizations with which the government is prepared to co-operate. Then the authorities stopped co-operating with independent media and began to set up their own media, their own funds, their own journalists’ organizations. They no longer turn up at events organized by “other”, nongovernment organizations and media entities and have stopped considering their communications, proposals, claims and requests. Co-operation at this level has virtually come to a halt.

In the media, the economic crisis is deepening, against a background of constantly rising government revenues. Television, which is looked after particularly by the government, is doing quite well, especially the government-

3 The judgment was pronounced on 6 July 2010. See Note 2.

4 Hajzade and Milli were granted early release from prison on 18 and 19 November 2010, respectively (editor’s note).

owned AzTV company and the ITV public broadcaster. In 2010, these two television broadcasters received over 53 million manats (over €47 million) from the country's budget – this compared to the total advertising market for print media last year just topping two million manats (€1.8 million) and an anticipated drop of at least 15 to 20 percent this year.

One could, of course, give other figures that, as some people believe, testify to a free space for development of the media in Azerbaijan: There are more than 4,000 media registered in the country today; a special fund has been set up for supporting the media with a budget in 2010 of two million manats (€1.8 million) and so on. Yet all these figures lose their significance compared to the latest news concerning the media in Azerbaijan: The editor-in-chief of the newspaper Ayna (Mirror) recently announced that it might have to close down owing to its difficult financial position⁵.

The country's journalists' organizations, seeing how ineffective the current strategy is, are now, in conjunction with a number of international organizations, developing new plans for restoring destroyed resources and saving those that remain.

But these are still just plans.

⁵ As of mid-2011 the newspaper was still operating (editor's note).

Annexes

LegalLeaks



**SHORT VERSION OF
GUIDE FOR JOURNALISTS
ON HOW TO ACCESS
GOVERNMENT INFORMATION**



The **Legal Leaks Toolkit** was prepared by Access Info Europe and the Network for Reporting on Eastern Europe n-ost.

The project was supported by the Representative on Freedom of the Media of the Organisation for Security and Co-operation in Europe.



[Access Info Europe](#) is an international human rights organisation, based in Madrid, which works to promote a strong and functioning right of access to information in Europe and globally.

Access Info's goal is for the right of access to information to serve as a tool for defending civil liberties and human rights, for facilitating public participation in decision-making, and for holding governments accountable.



The **Network for Reporting on Eastern Europe n-ost** (www.n-ost.de) links 250 journalists and media initiatives from more than twenty European countries and is based in Berlin. Members of n-ost are against any restrictions that limit journalistic endeavour. The focus of n-ost is on detailed reports from and about Eastern Europe and on organizing Europe-wide journalistic projects on the promotion of media freedom and a European public sphere.



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THE LEGAL LEAKS TOOLKIT – SHORT VERSION

This toolkit is designed for **journalists** working in any media – newspapers, radio, and television – as well as bloggers and other information professionals who need to get access to information held by public bodies for their stories.

The toolkit is for journalists making requests in their **own country** or considering submitting a request in **another country**. It is based on a comparative analysis of the access to information laws in the region covered by the [Organization for Security and Co-operation in Europe](#), which has 56 participating states in Europe, Central Asia and North America; of these 45 have legal provisions on the right of access to information held by public bodies which are reviewed in this analysis.

Isn't this only for investigative journalists? No, all journalists can make use of the tool of access to information. Investigative journalists can make regular use of access to information laws and this toolkit will help anyone working on in-depth stories. At the same time, everyday stories such as a story about modernization of a local hospital or plans for the village school can be written with information obtained under access to information laws. Often these stories are as interesting to your readers, listeners, and viewers as a story about high level political intrigue or the fight against transnational organised crime.

Can I submit requests in another country? Yes, most countries allow anyone to submit an access to information request, and it can be a useful way of getting comparative data on levels of transparency to press your government to answer.

I want to submit a request in another country but don't speak the language. In this case you should turn to the Legal Leaks network (you can find details at www.LegalLeaks.info) which will help you find a journalist in the relevant country who can translate your request or even submit it for you.

I am concerned about the security of my data: If you are collecting data from many sources, including public institutions and other research, the combination of the information can become highly sensitive. Requests to public bodies that are involved in corruption can trigger aggressive and illegal behaviour from officials. Journalists may have their phones tapped, computers hacked, may be followed, or subject to other forms of harassment. Part of this is the risk of being an investigative journalist and the risks should be considered carefully in each country and in each case. Good data security techniques help reduce risks. More information can be found in the complementary data security toolkit from the Tactical Technology Collective: <http://security.ngoinabox.org/>.

TWENTY TOP TIPS

A Quick Guide to the Legal Leaks Toolkit for Busy Journalists

- 1. Plan ahead to save time:** Think about submitting a formal access request whenever you set out to look for information. It's better not to wait until you have exhausted all other possibilities. You will save time by submitting a request at the beginning of your research and carrying out other investigations in parallel.
- 2. Start out simple:** In all countries, it is better to start with a simple request for information and then to add more questions once you get the initial information. That way you don't run the risk of the public institution applying an extension because it is a "complex request".
- 3. Submit multiple requests:** If you are unsure where to submit your request, there is nothing to stop you submitting the request with two, three or more bodies at the same time. In some cases, the various bodies will give you different answers, but this can actually be helpful in giving you a fuller picture of the information available on the subject you are investigating.
- 4. Mention your right to information:** Usually the law does not require that you mention the access to information law or freedom of information act, but this is recommended because it shows you know your legal rights and is likely to encourage correct processing of the requests according to the law. We note that for requests to the EU it's important to mention that it's an access to documents request and it's best to make a specific mention of Regulation 1049/2001. It is also recommended that you use language and etiquette appropriate to any other professional communication in your country.
Remember: There is also no need to say why you want the information, nor to answer questions about the reason for asking or what you will do with the information.
- 5. Tell them you are a journalist ...** If the law says only individuals can request information but you want to let the public institution know that you are a journalist, you could always write your request on your media organisation's letterhead. BUT before you do this you should be sure that this is acceptable with the organisation. Another option is to mention in the letter or e-mail that you are a journalist and/or who you work for.

6. **... or don't tell them that you are a journalist!** If you send an e-mail from your work address, it will often be obvious that you are a journalist, e.g.: jsmith@dailytimes.com. If you don't want to give the game away, it might be worth using a different address, such as a gmail/hotmail/yahoo account.
7. **Hide your request in a more general one:** If you decide to hide your real request in a more general one, then you should make your request broad enough so that it captures the information you want but not so broad as to be unclear or discourage a response. Specific and clear requests tend to get faster and better answers.
8. **Anticipate the exceptions:** If you think that exceptions might be applied to your request, then, when preparing your questions, separate the question about the potentially sensitive information from the other information that common sense would say should not fall under an exception. Then split your question in two and submit the two requests separately.
9. **Check the rules about fees:** Before you start submitting a request, check the rules about fees for either submitting requests or receiving information. That way, if a public official suddenly asks you for money, you will know what your rights are.
10. **Ask for electronic documents to avoid copying costs:** To avoid costs for copying and posting information, mention in your request that you would prefer the information in electronic format. That way you will avoid paying a fee, unless of course the information is not available electronically, although these days it's usually possible to scan documents which are not already digitalised and then to send them as an attachment by e-mail.
11. **Ask for access to the files:** If you live near where the information is held (for example you live in the capital where the documents are kept), you can also ask to inspect original documents. This can be helpful when researching information that might be held in a large number of documents that you'd like to have a look through. Such inspection should be free of charge and should be arranged at a time that is reasonable and convenient for you.
12. **Keep a record!** We advise you to make your request in writing and to save a copy or a record of it so that in the future you are able to demonstrate that your request was sent, in case you need to make an appeal against failure to answer, for example. This also gives you some evidence of

submitting the request if you are planning to do a story on it.

- 13. Speed up answers by making it public that you submitted a request:** If you write or broadcast a story that the request has been submitted, it can put pressure on the public institution to process and respond to the request. You can update the information as and when you get a response to the request – or if the deadline passes and there is no response you can make this into a news story as well. Doing this has the additional benefit of educating members of the public about the right of access to information and how it works in practice.
- 14. Prepare to appeal against refusals and silence:** Find out about appeals in advance, including the time-frame for presenting an appeal. If you are not sure what to do for the first stage of appeal, contact the office of your Information Commission/Commissioner or Ombudsman and they will be able to help you. If you don't have such a body, try phoning the institution which issued the refusal and asking them. If you still are having problems, then let Access Info know about it and we will try to help you, for example, by giving you the contact of an NGO or lawyer in the country.
- 15. Make a story out of refusals:** The refusal to release information following a request is often a story in itself. Be creative and constructive with the fact that the information was refused, get examples from other countries, ask experts what they already know, discuss the public interest in the information and try to use the story to press for greater transparency.
- 16. Appeal based on the public interest:** If you have been refused information that you wanted for a story you are working on, it might help to state in your internal administrative appeal that the information is needed for a media story and to state that there is a public interest in knowing that information. It's also important at this point to refer to your rights under the access to information law and/or constitution. (Of course, if you don't want the public authority to know you are working on a story, then don't mention it).
- 17. Make a standard template for appeals:** Once you have drafted the first internal administrative appeal with references to the law and your rights, just keep the letter in your computer and you'll find that you have a template for future appeals. That will save you time as it should only need a little bit of changing depending on the content of the other requests.
- 18. Get help to address problems with spokespersons:** If you are finding

that official spokespersons are angry at you for using the access to information law, then talk to the Legal Leaks team and/or your local access to information organisation or journalists' union. These NGOs might be able to raise your concerns and perhaps organise a training session for spokespersons to explain journalist's rights under the law. They should also be able to support you in your discussions with government about giving proper treatment to formal access to information requests submitted by journalists.

19. **Involve your colleagues in using access to information:** If your colleagues are sceptical about the value of access to information requests, one of the best ways to convince them is to write a story based on information you obtained using an access to information law. Mentioning in the final article or broadcast piece that you used the law is also recommended as a way of enforcing its value and raising public awareness of the right.
20. **Submit international requests:** Increasingly requests can be submitted electronically, so it doesn't matter where you live. Alternatively, if you do not live in the country where you want to submit the request, you can sometimes send the request to the embassy and they should transfer it to the competent public body. You will need to check with the relevant embassy first if they are ready to do this – sometimes the embassy staff will not have been trained in the right to information and if this seems to be the case, it's safer to submit the request directly to the relevant public body.

I. RIGHT TO INFORMATION & JOURNALISTIC RESEARCH

In this section we guide you through submitting a request step by step, taking into consideration some strategic and tactical approaches relevant to journalists who want to integrate use of access to information laws into their information-gathering work.

1. When is the right time to submit a request?

For many journalists, the first time they submit an information request it is only as a last resort once other methods have failed. There are however occasions when you might not want to waste time with the other ways of getting information and you will go straight to submitting an information request:

- you are asking for information which is a bit sensitive and you want to be able to prove that you got it via legal channels using the law, in case the government later claims that the information was leaked or that it is incorrect or incomplete;
- you suspect that you won't get the information unless you use the formal legal mechanism of the access to information law;
- you suspect that you will be refused the information and you want to make sure that refusal is formal and in writing;
- you are submitting a request in a foreign country and you want to make sure that you are not discriminated against as a foreigner, so you show that you know your rights by submitting a formal request;
- you think access to information is a really good thing and you want to defend the right by using your access to information law as much as possible!

TIP! Plan ahead to save time: Think about submitting a formal access request whenever you set out to look for information. It's better not to wait until you have exhausted all other possibilities. You will save time by submitting a request at the beginning of your research and then carrying out other investigations in parallel.

2. Information Requests and Spokespersons

If you are planning to submit an access to information request to a particular public institution for the first time, you might want to consider your relationship with the spokesperson of that organisation. The job of the spokesperson is to put a spin on information and to maintain good relationships with journalists; they may see the submission of an access to information request as an aggressive move which undermines their authority. So, depending on your relationship with

the spokesperson, you might want to let them know that you plan to submit a formal request, explaining that it's your legal right under the law, and that it's a different process from getting a comment and opinion via the spokesperson. Another problem that can arise is that if it is obvious that the request comes from a journalist, it is passed to the spokesperson rather than being processed as an access to information request. This should not happen and if it does you should complain to the public institution and make clear that you would like your request to be treated on an equal basis with other requests.

3. Where should I submit my request?

Once you know what you want to ask for you need to identify the relevant public institution. In most cases this will be obvious, but in some cases you might have a slight doubt, in which case it's worth checking on the websites of the relevant bodies to see which seems to be responsible for that area of activity. A quick phone call to each institution might clarify further.

Remember: when you phone you don't have to mention that you are a journalist nor why you want the information, especially if you think that this might set some alarm bells ringing inside the institution.

TIP! Submit multiple requests: If you are unsure where to submit your request, there is nothing to stop you submitting the request with two, three or more bodies at the same time. In some cases, the various bodies will give you different answers, but this can actually be helpful in giving you a fuller picture of the information available on the subject you are researching about what you are looking for.

TIP! For international requests, use the embassy: If you do not live in the country where you want to submit the request, you can sometimes send the request to the embassy and they should transfer it to the competent public body. You will need to check with the relevant embassy first if they are ready to do this – sometimes the embassy staff will not have been trained in the right to information and it's safer to submit the request directly to the relevant public body.

4. Shall I let them know that I am a journalist?

There are pros and cons to letting the authorities know that you are submitting the request as a journalist.

PROS	CONS
More info: In some countries, journalists tend to get faster answers and more information than individuals – this is not how it should be, but it's a reality in practice and you could try to take advantage of this positive discrimination.	Refusals: Signalling that you are a journalist might increase resistance to providing an answer out of fear that the information will be used in a critical story.
Cheaper: In some countries journalists are entitled to information free of charge. This is the case in the USA, where search fees will be waived, and in Serbia, where journalists don't have to pay photocopying fees.	Data Destruction: Signalling that you are a journalist might encourage public officials to hide or even destroy information in order to cover up corruption or other wrongdoing.
Faster: In some countries journalists have a right to preferential treatment and to be provided with information in a shorter timeframe than other requestors.	Losing the story: If the records of requests submitted are public in your country (in some countries they are posted on line), then asking requests as journalist might tip off other journalists that you are on to a story.

5. What should I say in my request?

We recommend a written request which is clear and specific about the information or documents you are looking for. In most cases it is not required by law to identify a specific document by any formal reference (Italy is an exception to this rule). Try to have in mind the job of the public official who has to answer your request: the clarity of your request will help him or her identify the information you need. A well-formulated request also gives public authorities fewer reasons to reject your request for not being clear (although in most laws public officials have a duty to clarify the request).

In the first requests you send, it's a good idea to keep the requests relatively simple and not ask for huge volumes of information nor include multiple requests in the same letter. That way you have a better chance of getting a quick answer and you can always make follow-up requests if necessary. If you have a lot of requests, you might want to submit a series of requests broken down by subject: this also helps the public institution forward the requests internally to the relevant departments so that they can prepare the response.

TIP! Mention your right to information: Usually the law does not require that you mention the access to information law or freedom of information act, but this is recommended because it shows you know your legal rights and is likely to encourage correct processing of the requests according to the law. We note that for requests to the EU it's important to mention that it's an access to documents request and it's best to make a specific mention of [Regulation 1049/2001](#).

It is also recommended that you use language and etiquette appropriate to any

other professional communication in your country.

Here is an example of a typical **access to documents** request:

Dear Sir/Madam

I am writing to request the following information under the Law on Access to Administrative Documents (1996):

- Copies of the minutes of the meeting at which the decision was taken to grant planning permission for the construction of a new hotel on the site of the old park.

I would prefer to have this information electronically sent to my e-mail address which is given below.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

Yours faithfully,

Jane Smith
15 Old Town Street, Capital City
e-mail: jane@janesmith.com

Here is an example of an **access to information** request:

Dear Sir/Madam

I am writing to request the following information under the Law on Access to Information (2004):

- The total spent by the Ministry on the purchase of new colour printers in the financial years 2007 and 2008.

I would prefer to have this information electronically sent to my e-mail address which is given below.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

Yours faithfully,
Jane Smith
15 Old Town Street, Capital City
e-mail: jane@janesmith.com

Remember: There is also no need to say why you want the information, nor to answer questions about the reason for asking or what you will do with the information.

6. Anticipate possible exceptions

Ask yourself if any of the information you are looking for might fall under one of those exceptions permitted by the access to information law. Sometimes exceptions will be invoked because the information you are asking for is politically sensitive. Ask yourself: Could the public body try to restrict access to that information by applying one of the exceptions?

TIP! Anticipate the exceptions: If you think that exceptions might be applied to your request, then when preparing your questions, separate the question about the potentially sensitive information from the other information that common sense would say should not fall under an exception. Then split your question in two and submit the two requests separately.

For example: you want to ask about spending on new equipment for helicopters. You can split this into one question on how much was spent, and a separate request about what it was spent on (e.g.: which types of missiles were purchased).

TIP! Make it public that you have submitted the request: Another strategy which journalists can use to avoid refusals is to write or broadcast a story that the request has been submitted. This can put pressure on the public institution to process and respond to the request. For example: if your radio station is following a controversial story about a shortage of medicines in a local hospital, when you submit the request for information about the spending on medicines, you might want to announce this on air and also post news about the request on your website. You can update the information as and when you get a response to the request – or if the deadline passes and there is no response you can make this into a news story as well. Doing this has the additional benefit of educating members of the public about the right of access to information and how it works in practice.

7. Fees for receipt of information

You should not have to pay a fee to file the request in most countries, but it is quite usual that national access to information laws allow public institutions to charge requestors for charges for the photocopying and postage costs related

to answering requests. In many cases, if the answer is just a few pages, there will be no charge. In Estonia the law provides that the first 20 pages shall be free of charge. Electronic delivery of information is normally free of charge.

In some cases you will be asked to pay for receiving information in another format (like copies, DVDs, etc.) and in these cases the authority should only charge you the official cost of copying or of reproduction of the information into any given format, as well as the cost of the material (DVD, CD).

Note: The fee charged for photocopying, postage or for materials such as a CD or DVD should be in accordance with already published official rates. If you suspect you are being charged too much, raise a concern with the public body and/or with the Ombudsman or Information Commissioner.

8. When will I receive the information?

Around Europe there is a huge range of timeframes for answering requests and for providing information, and for notifications of extensions or for the issuing of refusals. The average is about 15 working days, or about 3 weeks.

The European Union Regulation 1049/2001 establishes 15 working days for responding to requests; an extension of up to 15 additional working days may be applied in “exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents.”

Extensions in case of complex requests: Most countries permit public bodies to extend the timeframes for a few days or even up to a month if the request is particularly complex. In all cases the requestor should be notified of the delay and the reasons should be given.

TIP! Start out simple. In all countries, it is better to start with a simple request for information and then to add more questions once you get the initial information. That way you don’t run the risk of the public institution applying an extension because it is a “complex request”.

15. What happens if I don’t get the information I asked for?

There are a number of ways in which you can be disappointed with an information request:

- You only get part of the information you asked for (but no formal refusal) - this is called an “incomplete answer”;

- You are told that the information “is not held” by that government department;
- You are granted partial access but some information is withheld on the basis of exceptions;
- You are refused access to all the information or documents that you asked for;
- You don’t get any reply at all (“administrative silence” or a “mute refusal”).

In all these cases you have a right to appeal. Before appealing an incomplete answer check that your question was in fact clear enough or whether it was possibly open to misinterpretation. If you think that it was not clear, then you might want to go back to the public body informally and try to clarify.

In the case of information not held you need to check if you think the answer is credible. If you think that the public body does hold the information but maybe does not want to answer your request (or maybe just that the public official was badly informed themselves) then you could decide between an informal or formal appeal. It might be worth trying an informal clarification about what you wanted before launching a formal appeal. If, however, you think that there was deliberate obstruction going on, a formal appeal is recommended.

In the case of partial access, full refusal or administrative silence, the best option is often to appeal. The first stage is to appeal to the body which refused to give you the information or which failed to answer you. You should check what your national access to information law says, but normally the appeal letter can be sent to the head of the institution. In countries which have good access to information laws, there will be a simple and clear system for submitting appeals. The second stage of appeal is either to the courts or – if your country has one – the Information Commission or Commissioner, or the Ombudsman.

TIP! Find out about appeals in advance. If you are not sure what to do for the first stage of appeal, contact the office of your Information Commission/ Commissioner or Ombudsman and they will be able to help you. If you don’t have such a body, try phoning the institution which issued the refusal and asking them. If you still are having problems, then let Access Info know about it and we will try to help you, for example, by giving you the contact of an NGO or lawyer in the country.

Making a story out of refusals. The refusal to release information following a request is often a story in itself. In the UK, the government’s refusal to release legal advice relating to the Iraq War was a story that ran and ran. The reluctance of the UK Parliament to release MPs expenses in spite of court rulings to do so

was also an ongoing story – and when the information was eventually leaked it was a major scandal which caused quite a few members of parliament to resign, resulted in an order to MPs to pay back a total of as much as €1.5 m ... and sold a lot of newspapers in the meantime!

Check list before writing a story about incomplete answers and refusals:

Look carefully at the request to see whether it was clearly worded and whether the public authority might have misunderstood what you were asking for: you don't want to criticise a public body for failing to answer a request that was badly written or confusing. If you are not sure, ask a couple of your colleagues.

Check carefully which information you were given (if any) as well as what you were refused. That way you can make a clearer story focusing on what the government is actually refusing to provide.

Be very clear if you are planning to appeal or not: it's not clever to state in an article or on the air that you are planning to appeal against a decision and then to do nothing – public authorities will get used to the empty threats and may be even less inclined to grant information in future if they think that they can get away with it. You may need to discuss with your media organisation's lawyers before you take a decision on whether or not to appeal, or talk to a specialist access to information organisation.

TIP! Appeal based on the public interest: If you have been refused information that you wanted for a story you are working on, it might help to state in your internal administrative appeal that the information is needed for a media story and to state that there is a public interest in knowing that information. It's also important at this point to refer to your rights under the access to information law and/or constitution. (Of course, if you don't want the public authority to know you are working on a story, then don't mention it).

TIP! Make a standard template for appeals: Once you have drafted the first internal administrative appeal with references to the law and your rights, just keep the letter in your computer and you'll find that you have a template for future appeals. That will save you time as it should only need a little bit of changing depending on the content of the other requests.

Legal Leaks Help Desk: If you have submitted a request for information and it has been ignored or denied, we'd like to hear about it. We will try to find a way to help you, for example by giving you advice on how to appeal or finding an access to information expert or lawyer in your country.

[Click here to write to the Legal Leaks Help Desk.](#)

10. Appeals against silence and refusals

If your request is not answered (“administrative silence”), or if the public institution refuses to provide you with the information, or if the answer doesn’t really answer your question, you may want to appeal.

The rules for appealing vary from country to country. It is advisable to check the rules and timeframes for appealing in your country before you submit a request or as soon as you have submitted it. That way you will know when to expect a response and you will be ready to present the relevant appeal.

There are four main appeals mechanisms:

- **Internal or Administrative Appeal:** this is an appeal to the same body which issued the denial or to the immediately superior administrative body. It may seem strange to appeal to the same body, but it signals to them that you are serious about defending your right and can often result in a change of mind. In any case, in most countries the request for internal review is required before submitting an appeal to the Information Commissioner, Ombudsman, or Courts. Sometimes however, an appeal may be made directly to the Information Commissioner or Ombudsman. Box D lists these options.
- **Administrative Court Appeal:** in many countries, particularly those without an Information Commission or Ombudsman responsible for overseeing the access to information law, the next step is an appeal to the courts. Normally access to information appeals are regulated by administrative law, and so appeals should be made to the regional or national administrative court, with a further appeal to a higher court usually possible. In 11 Council of Europe countries court appeals are the only option.
- **Information Commission/er:** these are specialised bodies whose role is to defend the public’s right to know. Often the body is combined with that of a data protection oversight body. 13 Council of Europe countries have a specialised oversight body. Some can issue binding decisions, others can only make recommendations. In some countries, the decisions of the Information Commissioners can be appealed to the courts.
- **Ombudsman:** In many countries the Ombudsman plays the role of protecting the rights of citizens and residents in their interactions with public bodies. In 13 of these countries, the Ombudsman also has the role of receiving complaints related to the access to information requests. Often the Ombudsman’s Office can only issue recommendations although their power to criticise means that in many countries the public authorities will

comply with these recommendations. At the EU level as well, the European Ombudsman will process complaints related to access to documents requests.

A good place to find out more about the law on access to information and your legal rights is a national access to information organisation. The Freedom of Information Advocates Network, has 160 members worldwide. See www.foiadvocates.net



LegalLeaks



Annexes **Caucasus**

ANNEX A: ADOPTION OF ACCESS TO INFORMATION LAWS 1766-2010

Year	Countries*	Number of Countries Adopting Access to Info law this period	Cumulative Total
1766-1950	Sweden	1	1
1751-1960	Finland	1	2
1961-1970	United States	1	3
1971-1980	Denmark, Norway, France, Netherlands	4	7
1981-1990	Australia, Canada, New Zealand, Colombia, Greece, Austria, Italy	7	14
1991-2000	Hungary, Ukraine, Portugal, Belgium, Belize, Iceland, Lithuania, South Korea, Ireland, Thailand, Israel, Latvia, Albania, Portugal, Czech Republic, Georgia, Greece, Japan, Liechtenstein, Trinidad & Tobago, Bulgaria, Estonia, Moldova, Slovakia, South Africa, United Kingdom	26	40
2001-2010	Bosnia & Herzegovina, Poland, Romania, Serbia, Jamaica, Angola, Mexico, Pakistan, Panama, Peru, Uzbekistan, Tajikistan, Zimbabwe, Armenia, Croatia, Kosovo*, Slovenia, Turkey, St. Vincent & Grenadines, Dominican Republic, Ecuador, Switzerland, Antigua & Barbuda, Azerbaijan, Germany, India, Montenegro, Taiwan, Uganda, Honduras, Macedonia, Jordan, Kyrgyzstan, Nepal, Nicaragua, China, Chile, Cook Islands, Uruguay, Indonesia, Bangladesh, Russia	42	82

*Kosovo is the only non-UN, non-OSCE member country in this list; it is recognised by 65 UN Members, including 22 of 27 EU Countries and the United States.

ANNEX B: Access to Information Laws

Country	Name of the Act Date of adoption (other)	Year
Armenia	Law on Freedom of Information (unofficial translation) Law in Armenian	2003
Azerbaijan	Law Of The Republic Of Azerbaijan On Right To Obtain Information	2005
Georgia	Law of Georgia "On Freedom of Information" – The General Administrative Code of Georgia (See Chapter 3)	1999

ANNEX C: The Scope of the Right of Access to Information

Country	Government and National Administration all levels	Legislative & Judicial – admin.info	Legislative Bodies, other info	Judicial Bodies, other info	Private bodies performing public functions
Armenia	Yes	Yes	Yes	Yes	Yes
Azerbaijan	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	partial	Yes

ANNEX D: Appeals Options and Oversight Bodies

Country	Appeal Options	Oversight Body
Armenia	Administrative appeal followed by appeal to the Courts (recommended) OR Ombudsperson	Human Rights Defender of the Republic of Armenia (Ombudsperson) – decisions are not binding
Azerbaijan	Appeal to authorized agency on information matters. OR Appeal to Courts	Authorized Agency on Information Matters
Georgia	<ul style="list-style-type: none"> FIRST, internal administrative appeal THEN, Administrative Court THEN, Supreme Court 	No oversight body

ANNEX E: Access to Information Timeframes

Country	Working Days	Calendar Days	Extension
Armenia	5		25
Azerbaijan	7		7
Georgia	10		

7th South Caucasus Media Conference

Access to information and new technologies

*Tbilisi, Georgia
11-12 November 2010*

AGENDA

Thursday, 11 November 2010

10:00 – 10:30 **Registration**

10:30 – 11:00 **Opening Session**

Moderator: **Ana Karlsreiter**
Senior Adviser, Office of the OSCE Representative on
Freedom of the Media

Opening statement

Akaki Minashvili
Chairman, Foreign Relations Committee, Parliament of Georgia

Giorgi Bokeria
First Deputy Minister of Foreign Affairs of Georgia

Keynote speaker
Dunja Mijatovic
OSCE Representative on Freedom of the Media

11:00 – 13:30 **First Session: ACCESS TO INFORMATION:
INTERNATIONAL STANDARDS AND PRACTICES**

Moderator: **Ilia Dohel**
Research Officer, Office of the OSCE Representative on
Freedom of the Media

11:00-12:00 (First Session: Part One):

Keynote speakers

Andrei Richter

Director, Media Law and Policy Institute, Moscow
 Professor, Moscow State University

International standards of freedom of information and their practical implementation in the South Caucasus

Helen Darbshire

Executive Director, Access Info Europe

How Technology is Changing Transparency

12:00 – 12:30 **Coffee break**

12:30 – 13:30 (First Session: Part Two)

Keynote speakers

Dainius Radzevičius

Chairman, Lithuanian Union of Journalists

Every coin has two sides – cross-perspectives of a government press officer and a journalist on access to information

Sam Patten

Senior Program Manager for Eurasia, Freedom House, Washington

Access to information and the Internet in the South Caucasus

13:30 – 13:45 **Group Photo**

13:45 – 14:45 **Lunch**

15:00 – 17:00 **Second Session: ACCESS TO INFORMATION IN THE SOUTH CAUCASUS**

Moderator:

Jean-Christophe Peuch

Adviser, Office of the OSCE Representative on Freedom of the Media

Keynote speakers**Nino Danelia**

Media researcher, Tbilisi

Lecturer, Caucasus School of Journalism and Media Management/Georgian Institute of Public Affairs (GIPA)

Member of the board of trustees, Georgian Public Broadcaster

Rashid Hajili

Director, Media Rights Institute, Baku

Gevorg Hayrapetyan

Expert, Freedom of Information Centre of Armenia, Yerevan

17:00 – 18:00 **Coffee**

19:00 **Reception**

Friday, 12 November 2010

10:00 – 10:30 **Coffee**

10:30 – 13:00 **Third Session: RECENT MEDIA FREEDOM DEVELOPMENTS IN THE SOUTH CAUCASUS**

Moderator:

Ana Karlsreiter

Senior adviser, Office of the OSCE Representative on Freedom of the media

Keynote speakers**Shorena Shaverdashvili**

Editor-in-chief, Liberali news magazine, Tbilisi

Member of the board of trustees, Georgian Public Broadcaster

Ashot Melikian

Chairman, Committee to Protect Freedom of Expression, Yerevan

Arif Aliyev

Chairman, Yeni Nasil Journalists' Union, Baku

13:00 – 14:00 Lunch

14:30 – 16:00 Fourth and Closing Session: DISCUSSION AND ADOPTION OF THE CONFERENCE'S DECLARATION

Moderator:

Roland Bless

Director, Office of the OSCE Representative on
Freedom of the Media

Closing remarks

Dunja Mijatović

OSCE Representative on Freedom of the Media

7th South Caucasus Media Conference

Access to Information and New Technologies

Tbilisi, Georgia

11-12 November 2010

PARTICIPANTS LIST

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Shahin Abbasov	Head, IREX Media Development Division
Vusala Abishova	Director, APA news agency
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Kenan Aliyev	Director, Radio Azadliq (Radio Free Europe/Radio Liberty's Azeri language service) (Prague)
Hafiz Babali	Correspondent, Turan news agency
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Kamran Hasanov	Senior Adviser, Socio-Political Department, Administration of the President of Azerbaijan
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Emin Huseynzade	Project Coordinator, Transitions Online
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<u>GEORGIA</u>	
Dimitri Avaliani	Journalist, Imedi television station
Beka Bajelidze	Caucasus Operations Director, Institute for War and

	Peace Reporting (IWPR)
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Tamar Chergoleishvili	Editor-in-chief, Tabula magazine
Tamar Chikovani	Anchor, Maestro television station
Nino Danelia	Media researcher; Lecturer, Caucasus School of Journalism and Media Management/Georgian Institute of Public Affairs (GIPA); Member of the Board of Trustees, Georgian Public Broadcaster
Zaza Gachechiladze	Editor-in-chief, The Messenger newspaper
Andro Gigauri	Head of Administration, International Projects Coordinator, Ministry of Justice of Georgia
Maka Gigauri	Head of Public Relations and Information Department, Parliament of Georgia
Elena Imedashvili	Director, Novosti-Gruziya project
Khatuna Iosava	Head of Public Relations Unit, Ministry of Justice of Georgia
Maia Kalabegashvili	Editor-in-chief, Spektri newspaper
Natia Kaladze	Dean, School of Social Sciences/The University of Georgia
Geronti Kalichava	Samegrelo Region correspondent, Radio Tavisupleba (Radio Free Europe/Radio Liberty's Georgian language service)

Vaso Kapanadze	Journalist, Rezonansi newspaper
Tata Khuntsaria	Deputy Ombudsman of Georgia
David Kikalishvili	Anchor, Rustavi-2 television channel
Tamar Kordzaia	Lawyer, Georgian Young Lawyers' Association (GYLA)
Zviad Koridze	Journalist; Media expert; Lecturer, Caucasus School of Journalism and Media Management/Georgian Institute of Public Affairs (GIPA)
Ekaterina Kristesashvili	UN OHCHR National Programme Officer/Office of the UN RC in Georgia
Nana Lobzhanidze	Communications Officer, Transparency International-Georgia
Natalia Machaladze	Ambassador-at-large on human rights issues, Ministry of Foreign Affairs of Georgia
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Gabriel Namtalashvili	Journalist, Svobodnaya Gruzija newspaper
David Nibladze	Project director, Georgian Regional Radios Network
Gigi Paichadze	Blogger
Levan Ramishvili	Director, Liberty Institute
Ramaz Samkharadze	Director, Radio Hereti broadcasting company; Chairman, Georgian Regional Radios Network
Giorgi Sepashvili	Editor-in-chief, Civil Georgia online news agency
Shorena Shaverdashvili	Editor-in-chief, Liberali magazine; Member of the Board of Trustees, Georgian Public Broadcaster
Chiora Taktakishvili	Deputy Chairperson, Legal Affairs Committee, Parliament of Georgia
Sophie Tchitchinadze	Communications analyst, UNDP-Georgia
Nestan Tsetskhladze	Editor-in-chief, netgazeti.ge online newspaper; Journalist, Batumelebi newspaper
Lasha Tughushi	Editor-in-Chief, Rezonansi Newspaper
Genadi Uchumbegashvili	Director, Internews-Georgia
Marina Vashakmadze	Tbilisi bureau chief, Radio Tavisupleba (Radio Free Europe/Radio Liberty's Georgian language service)
Paata Veshapidze	Editor-in-chief, 24 saati newspaper
Nino Zuriashvili	Journalist, Studio Monitor
<u>KAZAKHSTAN</u>	
Tamara Kaleyeva	Chair, Adil Soz international foundation for the protection of freedom of speech

Igor Brattsev Chair, Medianet international center for journalism

INTERNATIONAL EXPERTS

Helen Darbshire Executive Director, Access Info Europe, Madrid, Spain

Sam Patten Senior Program Manager for Eurasia, Freedom House Washington D.C., United States

Dainius Radzevičius Chairman, Association of Journalists of Lithuania

Andrei Richter Director, Moscow Media Law and Policy Institute, Professor, Journalism Department, Moscow State University

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Tsovinar Arevyan National Programme Officer

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OSCE OFFICE IN BAKU

Jacqueline Carpenter Head of Democratization Unit

Vusal Behbudov National Democratization Officer

OSCE CENTER IN ASTANA

Aidar Botagarov National Political and Media Officer

OFFICE OF THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA

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Jean-Christophe Peuch	Adviser
Ilia Dohel	Assistant Research Officer
Joanna Jinks	Executive Assistant
Anja Schwabedal	Senior Project Assistant
Ilona Kazaryan	Conference Coordinator

PRESS RELEASE

OSCE media freedom representative calls on South Caucasus states to fully implement access to information laws

TBILISI, 12 November 2010 - The OSCE Representative on Freedom of the Media, Dunja Mijatović, today called on the authorities of Armenia, Azerbaijan and Georgia to respect the right of people's access to government-held information by implementing their countries' laws in this field.

"We need to change the culture of secrecy and confidentiality for a culture of transparency," Mijatović told the 7th OSCE South Caucasus Media Conference, which ended today in Tbilisi.

"Media freedom and freedom of speech in the digital age mean giving everyone - not just a small number of people who own the dominant modes of mass communication, but everyone - an opportunity to use new technologies to participate in decision-making processes, to interact with each other and with public institutions and to share information about politics, public issues and popular culture."

She said the Internet was an open space for debate to which governments should facilitate wider access.

"Minimum state interference in online, as well as in off-line media content, is a guarantee for pluralism, development and trust," she said.

Akaki Minashvili, the chair of the Georgian Parliament's Foreign Affairs Committee said the OSCE South Caucasus Media Conference, hosted by Georgia for the seventh consecutive year, functioned as a very important forum for discussion between governments and civil societies in the region.

The two-day event was organized by the Office of the OSCE Representative on Freedom of the Media. It brought together more than 80 government officials, parliamentarians, journalists, media experts and civil society representatives from Armenia, Azerbaijan, and Georgia. Two media experts from Kazakhstan also attended.

Participants adopted a declaration on access to information and new technologies in the South Caucasus, which is available in English and Russian at

www.osce.org/fom.

Germany, the Netherlands, Norway, Sweden, and the United States funded the conference.

While in Georgia, Mijatovic also held talks with Minashvili and First Deputy Foreign Minister Giorgi Bokeria. During a separate meeting with Parliament Speaker Davit Bakradze, Mijatović welcomed plans by Georgian legislators to draft a bill on media ownership transparency and offered her Office's support for this and other media related legislative reforms.

the 1990s, the number of people with a mental health problem has increased in the UK, and the number of people with a mental health problem who are in contact with mental health services has also increased (Mental Health Act 1983, 1990, 1994, 1997, 2003).

There is a growing awareness of the need to improve the lives of people with a mental health problem, and to reduce the stigma and discrimination that they experience. This has led to a number of initiatives, including the development of mental health services that are more user-centred and that are more focused on the needs of people with a mental health problem (Mental Health Act 1983, 1990, 1994, 1997, 2003).

One of the key areas of focus is the need to improve the lives of people with a mental health problem who are in contact with mental health services. This includes people who are in contact with mental health services through the criminal justice system, and people who are in contact with mental health services through the health care system. This paper focuses on the needs of people with a mental health problem who are in contact with mental health services through the criminal justice system.

The paper is structured as follows. First, we discuss the need to improve the lives of people with a mental health problem who are in contact with mental health services through the criminal justice system. Second, we discuss the need to improve the lives of people with a mental health problem who are in contact with mental health services through the health care system. Third, we discuss the need to improve the lives of people with a mental health problem who are in contact with mental health services through the criminal justice system and the health care system.

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