



## UNDER LOCK AND KEY

Freedom of  
Information and the  
Media in Armenia,  
Azerbaijan and Georgia



APRIL 2005

# **UNDER LOCK AND KEY**

**FREEDOM OF INFORMATION AND  
THE MEDIA IN ARMENIA,  
AZERBAIJAN AND GEORGIA**

**ARTICLE 19**

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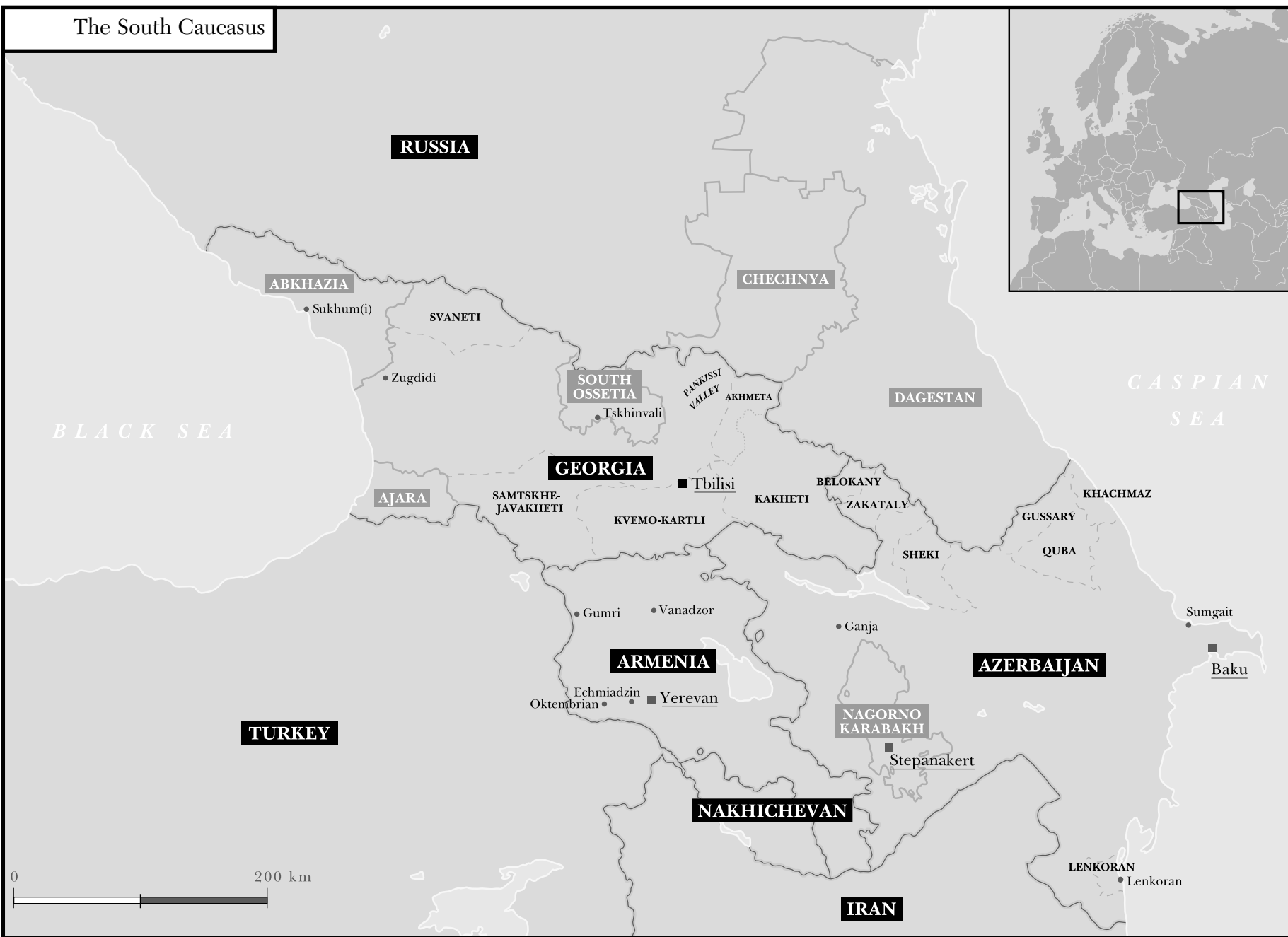
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# The South Caucasus



## **ABBREVIATIONS**

ABA	Azerbaijani Broadcasting Agency
ACP	Armenian Copper Programme
AMD	Armenian Dram
ANM	Armenian National Movement
APNM	Armenian Pan National Movement
ARF	Armenian Revolutionary Federation Party
BP	British Petroleum
CASCEN	Central Asia and Southern Caucasus Freedom of Expression Network
CEC	Central Election Commission
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CJSC	closed joint stock company
CoE	Council of Europe
CPJ	The Committee to Protect Journalists
CSCE	Conference on Security and Co-operation in Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EctHR	European Court of Human Rights
EIM	European Institute for the Media
EU	European Union
FBI	Federal Bureau of Investigation
FOIA	Freedom of information act
FOI	freedom of information
GEL	Georgian Lari
GLAVLIT	Central Literature and Editorial Agency (in the Soviet Union)
GYLA	Georgian Young Lawyers' Association
HCA	Helsinki Citizens' Assembly
ICCPR	International Covenant on Civil and Political Rights
ID	identity document
IFJ	International Federation of Journalists
IREX	International Research and Exchanges Board
IRIS	The Center for Institutional Reform and Informal Sector



KGB	Committee for the State Security (in the Soviet Union)
Ltd	limited liability company
MIA	Ministry of Internal Affairs
MP	Member of Parliament
MRI	The Media Rights Institute
NGO	non-governmental organisation
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PR	public relations
RA	Republic of Armenia
RFE/RL	Radio Free Europe/Radio Liberty
RUH	Committee for the Protection of the Rights of Journalists (based in Baku, Azerbaijan)
TV	television
UK	United Kingdom
UN	United Nations
UNA Georgia	The United National Association of Georgia
UDHR	Universal Declaration of Human Rights
UNECE	United Nations Economic Commission for Europe
UNESCO	United National Educational, Scientific and Cultural Organization
US	United States
USD	American Dollar
YPC	Yerevan Press Club

# TABLE OF STATUTORY INSTRUMENTS

**1948**

Universal Declaration of Human Rights

**1950**

The European Convention for the Protection of Human Rights and Fundamental Freedoms

**1966**

The International Covenant on Civil and Political Rights

**1975**

Helsinki Final Act

**1978**

The American Convention on Human Rights

**1981**

Recommendation No. R (81) 19 on Access to Information Held by Public Authorities

**1986**

African Charter on Human and People's Rights

**1990**

Copenhagen Document of the Conference on the Human Dimension

**1998**

UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)

**1999**

Istanbul Charter for European Security

**2002**

Recommendation R (2002) 2 on Access to Official Documents

**2003**

The UN Convention against Corruption

## TABLE OF CASES

*Castells v. Spain*, 23 April 1992, Application No. 11798/85 (European Court of Human Rights)

*Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72 (European Court of Human Rights)

*Informationsverein Lentia and others v. Austria*, 28 October 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90 (European Court of Human Rights)

*Jersild v. Denmark*, 25 September 1994, Application No. 15890/89 (European Court of Human Rights)

*Lingens v. Austria*, 8 July 1986, Application No. 9815/82 (European Court of Human Rights)

*Prager and Oberschlick v. Austria*, 26 April 1995, Application No. 15974/90 (European Court of Human Rights)

*Sunday Times v. The United Kingdom*, 26 April 1979, Application No. 6538/74 (European Court of Human Rights)

## *Executive Summary*

On 26 October 2004, at the First OSCE South Caucasus Media Conference (Tbilisi, Georgia), journalists adopted a declaration calling the Government of Azerbaijan to "adopt a comprehensive law on Free Access to Information based on international standards", and the governments of Armenia, Azerbaijan and Georgia to develop in all three States "a comprehensive strategy for the implementation of the [freedom of information] laws, jointly with the media and NGOs."<sup>1</sup>

An advanced freedom of information regime, with a comprehensive freedom of information law in its core, provides a number of benefits to society and government by:

- underpinning all other human rights;
- supporting people-centred policy-making and its effective implementation;
- building public trust in government;
- challenging corruption;
- making electoral democracy meaningful;
- boosting media capacity;
- creating a transparent and competitive economic environment; and
- increasing accountability of private actors.

Information is the lifeblood of the media and effective access to information laws are crucial to their ability to perform their role as the 'defenders of public interest' in a democratic society. The media should therefore play a full role in the adoption and implementation process of the law, and, once implemented, they should be among the primary users of the law.

In a 'closed' environment, with persisting State control over the media, journalists often rely on personal luck and leaks of information or depend on press releases and voluntary disclosures by the very people they are seeking to investigate. The lack of access to information also leaves journalists open to government allegations that their stories are inaccurate and reliant on unverified information instead of facts.

This briefing summarises the main findings of an ARTICLE 19 report on the extent of the implementation of freedom of information legislation in Armenia, Azerbaijan and Georgia and its impact on the media of these three countries. It also gives an overview of the evolving media landscape in each of the three countries.

The full report examines media's difficulties in obtaining information from public bodies and how this affects their ability to disseminate information in the interest of the general public, and therefore to fulfil their vital role as a 'watchdog' in a democratic system of government. It includes a survey of 135 media professionals and 105 public officials in Armenia, Azerbaijan

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<sup>1</sup> For a full text, see [http://www.osce.org/press\\_rel/2004/pdf\\_documents/10-4478.rfm1.pdf](http://www.osce.org/press_rel/2004/pdf_documents/10-4478.rfm1.pdf)

and Georgia, carried out with the assistance of ARTICLE 19 partner organisations.<sup>2</sup> The report focuses on situations where access to information procedures should have facilitated the media's performance. Instead, as the key findings and recommendations of the report reveal, the media has faced a large number of problems in seeking to access information, and positive stories on access to official information appear to be rare in the South Caucasus region.

## **Main Findings**

There has been a steady growth of freedom of information legislation in the region. Georgia was in the forefront in standard-setting as it was the first country in the South Caucasus to adopt a comprehensive Freedom of Information (FOI) Law in 1999. Armenia is the only country in the region with a detailed strategy for the implementation of its FOI Law, developed by three Armenian civil society groups. Despite positive developments in Armenia and Georgia, both countries there have had problems with the implementation of the existing laws, further complicated by broad state secrets acts. Azerbaijan, which has not passed an advanced law yet, is further behind the other two States.

Many of the issues and problems identified throughout the research are common to all three South Caucasus States. In Armenia, Azerbaijan and Georgia various categories of information are barely accessible by the media (including information on the state of the environment, on health care, budget, education, contact information of public bodies, and on national security-related issues).

Access to information for the media often turns into a hurdle-race. The major obstacles to accessing official information by the media in Armenia, Azerbaijan and Georgia include:

- the lack of procedures and mechanisms for access to information, or the lack of appropriate legislation (as in Azerbaijan) that create the environment for arbitrary refusals, manipulation of information, and, in extreme cases, even release of false information by officials;
- the lack of awareness among the journalists of their legal rights;
- Soviet-style attitudes and traditions of secrecy amongst officials;
- the lack of professionalism and solidarity among the media;
- even where there is an awareness of their rights and the provisions in local FOI legislation guaranteeing those rights, there is no tradition among the media of going to court to defend their rights, mainly due to scepticism about the fair administration of justice, and lengthy court proceedings;

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<sup>2</sup> Yerevan Press Club (<http://www.ypc.am>) and Freedom of Information Centre (<http://www.hetq.am>) in Yerevan (Armenia), Yeni Nesil Union of Journalists in Baku (Azerbaijan), Liberty Institute (<http://www.liberty.ge>) in Tbilisi (Georgia). Other regional partners of ARTICLE 19 are: Stepanakert Press Club in Stepanakert (Nagorny-Karabakh), Media Club in Sukhum/i (Abkhazia), Journalists for Human Rights in Tskhinval/i (South Ossetia).

- when refused access to the requested information, media professionals often use alternative sources of information .

65 per cent of journalists-respondents in Armenia mentioned the absence of the appropriate mechanisms and procedures as an obstacle for accessing official information; 67.5 per cent of media professionals in Azerbaijan and 61.8 per cent in Georgia mentioned the absence of the appropriate mechanisms.

As far as the public bodies are concerned, the survey shows great mistrust and misunderstanding. Public officials employ different ways of restricting access to information. Some of them include:

- refusals (either with or without citing reasons) to provide the requested information because officials do not believe that such information should be made public;
- releasing information at the discretion of public officials, that is only to the ‘loyal’ media;
- delays in responding to requests, thus diminishing the value of the requested information;
- releasing only partial information which may adversely affect writing a complete and accurate investigative story or preparing a full coverage of a particular event;
- denial of accreditation, and unlawful closures of official meetings and court sessions to the public and the media;
- refusals due to procedural problems, such as the lack of the appropriate mechanisms and regulations in place, and little or no communication among public bodies;
- Defence and security institutions, alongside Public Prosecutor’s Offices, prove to be the least accessible to the media, while local authorities are generally the easiest to access;
- E-governance is hardly developed in all three countries; official websites are either absent or if they exist are not regularly updated, and/or contain insufficient basic information.

On the positive side, however, 75 per cent of those interviewed in Azerbaijan declared that the adoption of a new law on Freedom of Information would improve the situation in accessing official information in the country. This possibly suggests that officials would appreciate clearer guidelines as to what information could be released, and would result in them acting in a less secretive manner.

The report’s key conclusion is that joint efforts of the media and their professional associations, civil society groups, international actors, and, above all, government institutions themselves are needed to advance the important right of access to information and to enable the media to play their key role as an intermediary between the people and the government.

## INTRODUCTION

ARTICLE 19, the Global Campaign for Free Expression, has been working in the South Caucasus, in collaboration with local partner organisations, since April 2003.<sup>3</sup> ARTICLE 19's Law Programme prepared legal analyses of media laws in Armenia, Azerbaijan and Georgia and assisted local working groups with drafting new specialised legislation. The Europe Programme took a leading role in carrying out advocacy work to foster positive developments and initiatives on freedom of expression and freedom of information as well as supporting educational and freedom of information monitoring activities in the South Caucasus region. ARTICLE 19 has also been working to promote the adoption of freedom of information acts (FOIA) which meet international standards, and facilitate the implementation of existing legislation. For instance, our advocacy work contributed to the adoption of a progressive Law "On Freedom of Information" in Armenia in September 2003 and the drafting of a comprehensive Law "On Freedom of Information" in Azerbaijan in Autumn 2003.<sup>4</sup>

This report was commissioned by the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE).<sup>5</sup>

As set out in the terms of reference, ARTICLE 19 looked at the situation in Armenia, Azerbaijan and Georgia, excluding the three 'separatist' regions of Abkhazia, Nagorny-Karabakh and South Ossetia. Although they have not been included in the report, it is worth mentioning that restrictions on access to information pose a major obstacle for quality journalism in these regions, and have serious repercussions for the wider democratic development in the South Caucasus.

The report is intended to stimulate regional debate and cooperation on the topics of access to information and freedom of expression among key stakeholders in Armenia, Azerbaijan and Georgia: government officials, the media, NGOs and the general public.

Chapters One and Two elaborate on why freedom of information is a fundamental human right and of great importance to the media.

Chapter Three provides an overview of international obligations and the existing legislation relating to freedom of information in each of the three States covered by this report.

Chapter Four contains an overview of the media landscape in Armenia, Azerbaijan and Georgia. It particularly looks at how the mass media have evolved over the period since these States gained independence after the collapse of the Soviet Union in 1991.

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<sup>3</sup> See note 2 above.

<sup>4</sup> The Armenian Law "On Freedom of Information" was signed by the President of the Republic of Armenia in November 2003. The official draft Azerbaijani Law "On Freedom of Information" has been passed in the first reading in Milli Mejlis (the Azerbaijani Parliament) in 2004.

<sup>5</sup> The report's first draft was presented at the First OSCE South Caucasus Media Conference in Tbilisi (Georgia) on 25-26 October 2004.

Chapters Five and Six - the principal focus of this report - present information on practical access to information - court cases, stories from journalists and the results of a survey conducted by ARTICLE 19 and its partner organisations among both media professionals and officials in the South Caucasus.

Chapter Seven provides detailed recommendations, some addressed to all three countries, and some which are country-specific. The recommendations are largely directed toward the governments and the media, but the role of other actors in the region such as civil society, the judiciary, or international organisations, in securing the fundamental right of good freedom of information practice is vital. It is hoped that these recommendations will help to establish effective freedom of information regimes in the South Caucasus region.

## 1. “THE OXYGEN OF DEMOCRACY”<sup>6</sup>

*Public access to information is essential  
part of modern government.*

David Banisar, Deputy Director  
of Privacy International<sup>7</sup>

Freedom of expression comprising “the freedom to hold opinions [...] and to seek, receive and impart information and ideas through any media and regardless of frontiers” is one of the essential foundations of a democratic society.<sup>8</sup> It has been widely recognised as crucial for the enjoyment of other human rights. “Without a broad guarantee of the right to freedom of expression protected by independent and impartial courts, there is no free country, there is no democracy. This general proposition is undeniable.”<sup>9</sup>

Freedom of information is an integral part of freedom of expression. It is often referred to as the public’s right to know and a right to access government-held (or official)<sup>10</sup> information, and has been widely recognised by a number of international bodies with a mandate to promote and protect human rights.<sup>11</sup>

ARTICLE 19 believes that the public’s right to access government-held information is a fundamental human right and considers information to be “the oxygen of democracy”. The right

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<sup>6</sup> ARTICLE 19, *The Public’s Right To Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, International Standards Series, June 1999), 1.

<sup>7</sup> D Banisar, “Transparent Government: Developing Public Access to Government Information”, 7. The report will shortly be available at <http://www.ndi.org>.

<sup>8</sup> UN General Assembly Resolution 217 A (III), 10 December 1948.

<sup>9</sup> J Frowein, “Freedom of Expression under the European Convention on Human Rights,” 3 *Monitor/Inf* (1997), Council of Europe.

<sup>10</sup> Government in a broader sense, implying public institutions at all levels.

<sup>11</sup> For details, see Chapter Three of this report.



to access information is the key to democracy and development; it lays the foundation upon which to build good governance, transparency, accountability and participation, and to eliminate corruption. A good freedom of information regime builds a relationship of trust between the public and government, in which the public has the right to access and freely discuss official information, and government creates a favourable environment for an informed political debate and for involving the general public in shaping State policies and agendas that affect their lives.

While ARTICLE 19 always emphasises that the right to access government-held information applies to everyone, the present report examines how access to information (or the lack thereof) affects the media's ability to fulfil their vital role as a 'watchdog' in a democratic system and to gather and disseminate information in the public interest. The aim has been to examine situations where functioning access to information procedures have facilitated the media's performance, to pinpoint problem areas that still need to be addressed, and to provide recommendations. Most of the information we received, however, highlights shortcomings and problems. Positive stories on access to official information appeared to be rare in the region.

## 2. FREEDOM OF INFORMATION AND THE MEDIA

*A popular Government without  
popular information or the means of acquiring it,  
is but a prologue to a farce or tragedy, or perhaps both.*

James Madison, 4th President of United States  
4 August 1822<sup>12</sup>

*The media have a central role in democracy  
to inform the public and to scrutinise  
the conduct of public affairs without fear  
of being prosecuted, sued or suppressed.*

Kevin Boyle<sup>13</sup>

### 2.1 Underlying Principles

The right to seek, receive and impart information is unique among all freedoms. It is an integral part of freedom of expression – one of the key human rights, which is the foundation “of [a democratic] society, one of the basic conditions for its progress and for the development of every

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<sup>12</sup> E Kats, “Transparency in Government” (1999), quoted at <http://usinfo.state.gov/products/pubs/transgov/>.

<sup>13</sup> “Restrictions on the Freedom of Expression” (2000), in the Report “Freedom of Expression and Freedom of the Media”, 11, quoted at <http://www.etc-graz.at/human-security/manual/modules/212-Freedom%20of%20Expression.pdf>.

man [...]. It is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness that without them there is no ‘democratic society’.”<sup>14</sup>

An advanced freedom of information regime (with a comprehensive freedom of information law in its core) provides a number of benefits to society and government:

(1) *Making electoral democracy significant.*

Access to information is vital for moving from formal to consultative and responsive democracy.

In the absence of a continuous flow of information that accurately reveals how officials fulfil their functions, the experience, qualifications and campaign agendas of new candidates, or what elected members have achieved during their term in office, elections may end up promoting only narrow interests, as voters depend on family clan or social class affiliations as the basis of their choice. In the absence of a right to examine the financial details of political party funding, society is unable to ensure that special interest groups, including criminal gangs, do not nominate their representatives for private benefit.

(2) *Building public trust in government.*

Without the support and trust of the people, governments will be more likely to face resistance to their policies, and implementation of their agendas will be more difficult.

Openness and information-sharing establish a system that enables the general public to be involved in decision-making processes and reduces wide-spread feelings - of powerlessness, exclusion and unfair advantage of one group over another.

(3) *Supporting people-centred policy-making and its effective implementation.*

Member states of the United Nations (UN) worldwide pledged their commitment to the Millennium Development Goals, that is “to work to eliminate poverty, to promote people-centred and sustainable development, and thus progressively to remove the wide disparities in living standards among us.”<sup>15</sup>

Nevertheless, much of the failure of poverty reduction and development strategies to date can be attributed to the fact that often they have been designed behind ‘closed doors’ by governments who consulted with ‘professional experts’ but excluded marginalized groups (women, poor, disabled, refugees and the others, and civil society groups representing their interests) - the very people who were supposed to benefit from decision-making processes.

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<sup>14</sup> *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72 (European Court of Human Rights), para.49.

<sup>15</sup> For more details, see <http://www.undp.org>.

With assured information, these groups will be given powerful tool to examine and engage in developing policies designed for them.

*(4) Creating a transparent and competitive economic environment.*

A guaranteed right to information lays the foundation for market-friendly principles of transparency and accountability, which in turn encourage strong economic growth.

Free markets, like governments, do not function well in a ‘closed’ environment. Foreign and domestic investors need to be able to rely on the everyday availability of timely and accurate information about State policies, the criteria used to award tenders, provide licences and give credit, and the operation of regulatory authorities and financial institutions. This information plays a key role for businesses in all sectors of activity, in particular when defining business strategies, marketing decisions, export or investment plans.

Availability of information helps government make savings and not repeat research that has been done before.

Access to information promotes fair play, when workers, farmers and wealthy business owners get equal opportunities in accessing economic information: for example, workers can access information about their entitlements and labour regulations, business owners can find out about licensing requirements and trade rules, and farmers can get hold of land records and market trend analysis.

*(5) Challenging corruption.*

Corruption is destroying the rule of law and in worst instances leads to criminalization of politics.

Countries seen as having the most corrupt governments also have the lowest levels of development; in contrast, countries with operational access to information laws are perceived to be the least corrupt.

*(6) Laying grounds for other human rights.*

The right to information underpins all other human rights and enables society to assess when their rights are at risk and determine who is responsible for any violations. For example, the realization of the right to personal safety requires that people have sufficient information to protect themselves; the rights to food, to health and to environment often rely on the right to information.

*(7) Increasing accountability of private actors.<sup>16</sup>*

In the XXI century, as more and more public functions, like provision of health care, supply of water, power and transport, management of schools and industrial enterprises, are

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<sup>16</sup> For example, public or private corporations, NGOs and international institutions.

privatized, people need to be able to get information from the bodies performing these services. Even where private bodies are not providing public services, their activities need to be open to public scrutiny if they affect people's life. For example, the public should be able to access information on a factory's environmental management policies to ensure the factory is managing toxic waste appropriately and, therefore, not diminishing their right to health.

Therefore, some countries (e.g. South Africa, Armenia) have extended the coverage of their freedom of information laws to some private bodies.

(8) *Boosting media capability.*

In robust democracies, the media is the primary means of distributing information.

This power to reach the masses has often been perceived as a threat by authoritarian governments which attempt to curb the media's ability to investigate, gather news, and inform. In 'closed' environment journalists often rely on personal luck and leaks of information or depend on press releases and voluntary disclosures by the very people they are seeking to investigate. The lack of access to information also leaves journalists open to government allegations that their stories are inaccurate and reliant on unverified information instead of facts.

An effective freedom of information regime provides a framework within which the media can seek, receive and impart essential information accurately and is as much in the interests of government as it is of the people.

The right to freedom of information is a multi-layered right. It imposes an obligation on public bodies to disclose information; it also implies that public bodies should publish and disseminate widely documents in the public interest, such as decisions or policies which affect society.<sup>17</sup> Officials do not create information for their own benefit, but for the benefit of the public they serve. Moreover, information is generated with public money by public servants who are paid out of public funds. Therefore, it cannot be unreasonably kept from the general public. The right to information grants as well to every member of the public a corresponding right to receive information. In exercising these rights and duties, the media assumes the vital role of a channel to facilitate the free flow of information.

For the purposes of this report, we have used definitions developed by ARTICLE 19 and publicised in our series of publications on the international standards on freedom of expression and access to information.<sup>18</sup>

The term '*information*' is used to denote "all records held by a public body, regardless of the form in which that information is stored (document, tape, electronic recording and so on), its

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<sup>17</sup> *The Public's Right To Know*, note 6 above, "Principle 2 – Obligation To Publish", 3–4.

<sup>18</sup> *The Public's Right To Know*, note 6 above; *A Model Freedom of Information Law* (London: ARTICLE 19, July 2001); *The Johannesburg Principles. National Security, Freedom of Expression and Access to Information* (London: ARTICLE 19, November 1996).

source (whether it was produced by the public body or some other body) and the date of production.”<sup>19</sup>

The term ‘*public body*’ refers to “all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organisations), judicial bodies, and private bodies which carry out public functions [...]”<sup>20</sup>

This report is based on a presumption that “all information held by public bodies should be subject to disclosure and that this presumption may be waived only in very limited circumstances.”<sup>21</sup> This is a core element in a set of principles developed by ARTICLE 19 in June 1999 and entitled *The Public’s Right To Know: Principles on Freedom of Information Legislation*. These principles provide guidance for developing maximum openness of public bodies in line with international standards. In order to have a positive impact, they have to be observed at all levels and by all key stakeholders, including the media, freedom of information advocates, public bodies and the general public.

## 2.2 International and Regional Standards

The right to seek, receive and impart information and ideas has been widely recognised by a number of international bodies, including the UN, the Council of Europe (CoE), the Organization of American States (OAS) and the African Union.<sup>22</sup> It is regarded as an essential requirement for developing and maintaining a civil and democratic society.

Freedom of information is included in Article 19 of the Universal Declaration of Human Rights (UDHR), as it is integrally linked to freedom of opinion and expression: “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.” The same principle was repeated in the International Covenant on Civil and Political Rights (Article 19).

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<sup>19</sup> *The Public’s Right To Know*, note 6 above, 3.

<sup>20</sup> *Ibid* at 3.

<sup>21</sup> “Principle 1 – Maximum Disclosure”, *Ibid.* at 2.

<sup>22</sup> Universal Declaration of Human Rights, UN General Assembly Resolution 217A(III), adopted 10 December 1948; International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976; American Convention on Human Rights, Adopted 22 November 1969, in force 18 July 1978; European Convention on Human Rights, Adopted 4 November 1950, in force 3 September 1953; African Charter on Human and Peoples’ Rights, Adopted 26 June 1981, in force 21 October 1986.

In 1998, in his annual report, the UN Special Rapporteur on Freedom of Expression noted that “the right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by government.”<sup>23</sup>

Within the OSCE,<sup>24</sup> the *Helsinki Final Act of 1975* acknowledges the importance of inter-State dissemination of information and emphasises the role of the media in this process.<sup>25</sup> Furthermore, as provided in section 9.1 of the *1990 Copenhagen Document of the Conference on the Human Dimension*, “[...] everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as prescribed by law and are consistent with international standards.” Paragraph 26 of the *1999 Istanbul Charter for European Security* reaffirms “the importance of independent media and free flow of information as well as the public’s access to information [...as an] essential component of any democratic, free and open society.”<sup>26</sup>

On 26 November 1999, a joint declaration was adopted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. The declaration emphasised that “implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.”<sup>27</sup> The latest joint declaration of 6 December 2004 emphasises that “the right to access information held by public authorities is a fundamental human rights which should be given effect at the national level through comprehensive legislation (for example, Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”

The Council of Europe took an important step in recognising the right to freedom of information in a series of documents adopted by its political bodies. In 1981 the Committee of Ministers adopted *Recommendation No. R (81) 19 on Access to Information Held by Public Authorities*.<sup>28</sup> In 1994 the 4th European Ministerial Conference on Mass Media Policy adopted a Declaration recommending that the Committee of Ministers consider “preparing a binding legal

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<sup>23</sup> Report of the Special Rapporteur, Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. E/CN.4/1998/40, 28 January 1998, para.14.

<sup>24</sup> Prior to 1 January 1995 – Conference on Security and Co-operation in Europe (CSCE).

<sup>25</sup> See OSCE, *Freedom of Expression, Free Flow of Information, Freedom of the Media (CSCE/OSCE Main Provisions 1975-2001)*.

<sup>26</sup> <http://www.osce.org/docs/english/1990-1999/summits/istachart99e.pdf>.

<sup>27</sup> Quoted in T Mendel, *Freedom of Information: A Comparative Legal Survey* (UNESCO, 2003), 3.

<sup>28</sup> Adopted on 25 November 1981.

instrument or other measures embodying basic principles on the right of access of the public to information held by public authorities.”<sup>29</sup> In 2002 the Committee of Ministers of the Council of Europe adopted a *Recommendation on Access to Official Documents* according to which “member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.”<sup>30</sup> Although it foresees limitations on the right of access to official documents, it makes clear that they should be “set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting the public interest.”<sup>31</sup>

This corresponds to court precedents established in international law that set out a three-part test for assessing the restrictions on the right to freedom of information. Restrictions must be narrowly drawn and be based on the principle of maximum disclosure. Authorities holding information should examine whether:

- (1) “the information relates to a *legitimate aim* listed in the law;
- (2) disclosure threatens to cause a *substantial harm to that aim*; and
- (3) such harm to the aim is greater than the *public interest* in having the information.”<sup>32</sup>

Other international instruments recognising the importance of freedom of information include but are not limited to the *UNECE<sup>33</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)*,<sup>34</sup> and the *UN Convention against Corruption*.<sup>35</sup>

The existing regional and international standards lay down the framework for States to adopt freedom of information acts (FOI). More than fifty countries worldwide have declared their commitment to international standards on freedom of information by adopting comprehensive laws to facilitate access to information.<sup>36</sup>

<sup>29</sup> Declaration on Media in a Democratic Society, DH-MM (95) 4, 7-8 December 1994, para.16.

<sup>30</sup> Recommendation 2002 (2) of the Committee of Ministers to Member States on Access to Official Documents.

<sup>31</sup> *Ibid.* *Prescribed by law* means that any restricting norm should be formulated in a clear way and be accessible for review by the local public.

<sup>32</sup> *The Public’s Right To Know*, note 6 above, 6. The third element is crucial because it has an element of public scrutiny. *Legitimate aim* includes legitimate grounds intended to protect State and public interests, as well other rights of individuals. Some of these legitimate grounds include the protection of national security, territorial integrity and public safety, and the prevention of disorder or crime.

<sup>33</sup> United Nations Economic Commission for Europe.

<sup>34</sup> UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the “Environment for Europe” process, 25 June 1998, entry into force - 30 October 2001.

<sup>35</sup> Adopted by the UN General Assembly by Resolution 58/4 of 31 October 2003.

<sup>36</sup> The oldest is the Swedish Freedom of the Press Act of 1766. For more details, see David Banisar, “Global Survey, Freedom of Information and Access to Government Record Laws Around the World” (28 September 2003), at <http://www.freedominfo.org>.

As was stated earlier, freedom of information laws are important – (1) for public accountability and the equal treatment of all people under the rule of law; (2) as an anti-corruption tool; (3) to advance commerce and science; (4) to strengthen the legitimacy of democratically elected governments; (5) to foster democratic participation; and (6) to promote efficient information exchange between government and society, including businesses. They reflect the basic premise that government is meant to serve the people. It is important that public bodies do not just perceive these laws as a bureaucratic hassle, but as a benefit for them as well as for the general public. Freedom of information acts assist in improving public trust in administration, by creating a more open atmosphere, and this in turn should benefit public sector employees as it improves their external image. They also contribute to breaking down communication barriers within the State sector, helping public bodies to learn from each other to improve their own performance.

However, a comprehensive law on access to information is essential but not enough. Legislation is only the first step in operationalising the right to access information. Effective implementation requires a genuine commitment to being transparent and opening up to scrutiny from all levels of government, adequate resourcing, improved records and information management systems and infrastructure and education for the public and State bodies on their rights and obligations under the law. A comprehensive and functional FOI law serves the society and the long-term interests of a country.

Adopting such laws is particularly important for societies in transition that emerged after the collapse of Communism (in the Soviet Union) and for the States that experienced the collapse of other authoritarian forms of government (in 2003 in Georgia and in 2004 in Ukraine). They have to overcome a profound culture of secrecy and weakened democratic institutions despite their proclaimed commitment to the rule of law and fostering democratic reforms.

## 2.3 The Role of the Media

In 1765 Blackstone wrote: “The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints on publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity.”<sup>37</sup>

Thomas Carlyle, the nineteenth century historian and philosopher,<sup>38</sup> described the press as a ‘fourth estate’ in a democratic system of checks and balances.<sup>39</sup>

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<sup>37</sup>W Blackstone, *Commentaries on the Laws of England*, Book IV, 151-2 (1765), quoted in A Nicol, G Millar, A Sharland (eds.), *Media Law and Human Rights* (Blackstone Press Limited, 2001), 7.

<sup>38</sup> Thomas Carlyle (1795-1881).



At present media freedom is protected by many constitutions and by the European Court of Human Rights (ECtHR). Freedom of the media is an integral part of freedom of expression. The ECtHR has observed that the principles applicable to freedom of expression are of particular importance to the media.<sup>40</sup> The media receives particularly strong protection because it has a duty to impart, in a manner consistent with its obligations and responsibilities, information and ideas on all matters of public interest.<sup>41</sup> “The press plays a pre-eminent role in a state governed by the rule of law.”<sup>42</sup>

As U.S. Justice Potter Stewart has summarised in his writing “Or of the Press”, “it is a mistake to suppose that the only purpose of the constitutional guarantee of a free press is to ensure that a newspaper will serve as a neutral forum for debate, a ‘market-place for ideas’, a kind of Hyde Park corner for the community. A related theory sees the press as a neutral conduit of information between the public and their elected leaders. These theories [...] give insufficient weight to the institutional autonomy of the press that it was the purpose of the constitution to guarantee. The primary purpose of the constitutional guarantee of a free press was [...] to create a fourth institution outside the government as an additional check on the three official branches. Consider the opening words of the Massachusetts Constitution, drafted by John Adams: ‘The liberty of the press is essential to the security of the State’.”<sup>43</sup>

Freedom to impart information and ideas is of the greatest importance for a democratic political process. Meaningful free elections are not possible in the absence of this freedom. Moreover, a full exercise of this freedom allows for criticism of the government, which is the main indicator of democratic governance. The freedom to criticise the officials is incumbent on the press: “to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them.”<sup>44</sup>

In order for the media to perform all the functions outlined above, governments not only have an obligation to abstain from interference, but also to promote pluralism of the media, through the creation of a favourable economic and legal climate.<sup>45</sup>

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<sup>39</sup> “Burke said there were Three Estates in Parliament; but, in the Reporter’s gallery yonder, there sat a fourth.” (T Carlyle, “Heroes and Hero-Worship, lecture V, 1841”, <http://www.worldofquotes.com/topic/journalism/1/>).

<sup>40</sup> In *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74 (European Court of Human Rights): “It is incumbent on the media to impart information and ideas concerning matters of public interest. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them.” Para. 65.

<sup>41</sup> *Jersild v. Denmark*, 25 September 1994, Application No. 15890/89 (European Court of Human Rights), para. 31.

<sup>42</sup> *Castells v. Spain*, 23 April 1992, Application No. 11798/85 (European Court of Human Rights), para.43; *Prager and Oberschlick v. Austria*, 26 April 1995, Application No. 15974/90 (European Court of Human Rights), para.34.

<sup>43</sup> P Stewart, “Or of the Press”, (1975) 26 *Hastings Law Journal* (1975), 631–4.

<sup>44</sup> *Lingens v. Austria*, 8 July 1986, Application No.9815/82 (European Court of Human Rights), para. 41.

<sup>45</sup> As stated by the ECtHR, “[imparting] information and ideas of general interest [...] cannot be successfully accomplished unless it is grounded in the principle of pluralism.” *Informationsverein Lentia and Others v. Austria*,

## 2.4 Freedom of Information and the Media

In reality most people rely on the media to keep themselves informed about important developments and events, especially because the media closely follow parliamentary sessions and have access to court trials. An interference with the right of journalists to seek, receive and impart information is, therefore, an interference with the public's right to know.

However, the media do not have a special right to information; rather it is a right pertaining to all people.<sup>46</sup> Nevertheless, the media are key players in exercising this right. It is “a powerful tool for journalists who are developing stories and require government information.”<sup>47</sup> The media are a vital force in the democratic system of checks and balances because they take a leading role in shaping public opinion. They help expose corruption and malpractice. Only with unobstructed access to government-held information can the media stimulate political debate and function as a communication channel between the authorities and the public. Where freedom of information laws cover not only government in the narrow sense but also other actors performing public functions, the media will also help to ensure accountability of such other actors as private businesses and civil society institutions.

It is a principle that everyone should have information made available to them in a speedy manner. This is particularly important to the media as it enables them to provide timely coverage of issues in the public interest, and thus perform their role of a public ‘watchdog’ in a democratic society, scrutinize government activities and expose wrongdoing and corruption.

## 3. LEGAL REGIMES

The constitutions and laws adopted in the Soviet Union contained declarative guarantees of the freedom of speech and of the press. For example, Article 50 of the 1977 Constitution of the Soviet Union reads: “In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press [...]” Ironically, it was the State machine, mainly the Politburo (the central leadership of the Communist Party), who defined what was ‘in the interests of the people’ and treated the media as a mouthpiece of the State. Such practice resulted in media legislation that imposed many limitations to the right to free expression.

Armenia, Georgia and Azerbaijan have all made significant progress in ensuring freedom of expression and freedom of information since they became independent after the collapse of

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28 October 1993, application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90 (European Court of Human Rights), para.38.

<sup>46</sup> See ARTICLE 19, *Virtual Freedom of Expression Handbook*, Chapter 4, available at <http://www.article19.org>.

<sup>47</sup> D Banisar, “Transparent Government: Developing Public Access to Government Information”, note 7 above, 12.

the Soviet Union in 1991 by including guarantees in their constitutions and developing a number of specialised laws that are discussed further in this Chapter.

The Constitutions of Armenia, Azerbaijan and Georgia adopted at the time contain guarantees of freedom of expression (Article 24 of Armenia's Constitution, Article 47 of the Azerbaijani Constitution and Article 19 of Georgia's Constitution).

While provisions on freedom of information appear in the same Article 24 in Armenia's Constitution, the Constitutions of Azerbaijan and Georgia provide for the right to seek and receive information in separate articles (Article 50 in case of Azerbaijan and Article 41.1 in case of Georgia).

The Constitutions of Azerbaijan and Georgia include guarantees of the freedom of the media (Articles 50.II and 24.2 respectively). The Constitutions of Azerbaijan and Georgia ban censorship (in articles 50.II and 24.2 respectively). The Georgian Constitution goes further in that it prohibits monopolising of the media in Article 24.3.

All three States, Armenia, Azerbaijan and Georgia, have Human Rights Commissioners (Ombudsman institutions).<sup>48</sup> Due to the lack of funding in Armenia and because much of the political engagement of the Azerbaijani Ombudsman is with the present authorities, neither of them is fully involved in securing and promoting freedom of expression and access to information. Despite the lack of funding, the situation is somewhat different in Georgia. Appointed in September 2004, Sozar Subari,<sup>49</sup> Georgia's Public Defender, in his public statements declared that freedom of expression is a priority issue, and has taken an active stand on freedom of expression and access to information cases. According to him, "the main spheres that need to improve [in Georgia] are the penitentiary system, detention, civil police, freedom of speech and freedom of religion."<sup>50</sup> However, Sozar Subari mentioned during his meeting with the author of this report that despite his efforts to inform the media about his work, the mass media in Georgia show little or no interest, and do not always publicise this information.

### 3.1 International Obligations

As signatories to a number of significant international human rights treaties, such as the *International Covenant on Civil and Political Rights* (ICCPR) and the *European Convention on*

<sup>48</sup> Armenian Human Rights Defender Larisa Alaverdyan was appointed to this position in February 2004.

Azerbaijani Commissioner on Human Rights Elmira Suleymanova was appointed to this post in July 2002.

<sup>49</sup> A former journalist and a member of the Liberty Institute.

<sup>50</sup> See "New Ombudsman Makes Waves", 24 September 2004, No. 182 (0706), at [http://www.messenger.co.ge/issues/0706\\_september\\_24\\_2004/news\\_0706\\_1.htm](http://www.messenger.co.ge/issues/0706_september_24_2004/news_0706_1.htm). The Public Defender's office plans to have five departments in the future. These departments will be responsible for the judiciary and legal issues, freedom and equality, social and criminal matters, administrative issues (working mainly on freedom of information, local self-government and citizens' rights), and the army department overseeing the issues related to military servicemen. At present, the Public Defender's Office has a complaints form and a procedure for filing and reviewing the complaints.

*Human Rights* (ECHR), Armenia, Azerbaijan and Georgia have binding obligations under international law to respect freedom of expression and freedom of information.

Upon acceding to the *Aarhus Convention*, they undertook to guarantee the general public “the right of access to information, public participation in decision-making, and access to justice in environmental matters”.<sup>51</sup>

Having signed the *UN Convention against Corruption*, these South Caucasus States committed themselves to “enhancing the transparency of and promoting the contribution of the public to decision-making processes” and “ensuring that the public has effective access to information”.<sup>52</sup>

Upon accession to the Council of Europe, they assumed a responsibility to “accept the principles of the rule of law and of the enjoyment by all people within [their] jurisdiction of human rights and fundamental freedoms.”<sup>53</sup>

The Constitutions of Armenia, Azerbaijan and Georgia foresee the supremacy of international legal norms over national legislation (Articles 6, 151 and 6.2 respectively). Although national laws make reference to international treaties, in practice, international legal norms are not widely used where mass media are concerned.

### **3.1.1 Armenia**

As a member State of a number of international organisations, Armenia is a signatory to the key international and regional human rights treaties, and, therefore, is legally bound by these commitments, including the guarantee of freedom of expression.

Armenia is a member of the United Nations, and is a party to the *International Covenant on Civil and Political Rights* (ratified on 23 June 1993), which sets out in Article 19 “freedom to hold opinions” and to “seek, receive and impart information and ideas through any medium and regardless of frontiers.”

As a member of the Organization for Security and Co-operation in Europe (since 30 January 1992), Armenia undertook to respect the standards set out in the Helsinki Final Document and further declarations of the OSCE.<sup>54</sup>

As a member State of the Council of Europe, Armenia signed (on 25 January 2001) and ratified (on 26 April 2002) *the European Convention on Human Rights* (ECHR), Article 10 of which protects freedom of opinion and expression.

Armenia also signed (1998) and ratified (in 2001) *the Aarhus Convention*.

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<sup>51</sup> Article 1 of the *UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)*, UN Doc. ECE/CEP/43, note 34 above.

<sup>52</sup> Article 13.1 (a) and (b) of the *UN Convention against Corruption*, note 35 above.

<sup>53</sup> Statute of the Council of Europe, London, 5.V.1949, Article 3.

<sup>54</sup> Although commitments made to the OSCE are not legally binding, they carry certain political and moral weight.

### **3.1.2 Azerbaijan**

Azerbaijan is a party to *the ICCPR* (ratified on 13 August 1992).

As a member State of the Council of Europe, it signed (on 25 January 2001) and ratified (on 15 April 2001) *the ECHR*.

As with Armenia, Azerbaijan is a participating State in the OSCE (since 30 January 1992).

In March 2000 Azerbaijan acceded to *the Aarhus Convention*.

### **3.1.3 Georgia**

Like the other two States, Georgia has ratified *the ICCPR* (on 3 May 1994).

As a member State of the Council of Europe, Georgia signed (on 27 April 1999) and ratified *the ECHR* (on 20 May 1999).

Since 24 March 1992, Georgia is a member of the OSCE.

Georgia signed *the Aarhus Convention* in June 1998 and ratified it in April 2000.

## **3.2 Freedom of Information-Related Legislation Affecting the Media**

This Chapter's objective is to provide a brief overview of the national legislation in each of the countries on the right to freedom of information. We will analyse relevant provisions of the various legal instruments including national constitutions, information laws, laws on State secrets, laws on mass media and laws on access to environmental information.

### **3.2.1 Overall Analysis**

Since the breakup of the Soviet Union, nearly all countries in Central and Eastern Europe and a few further East have adopted laws on access to information held by government bodies.<sup>55</sup>

In this period, the right of access to information has also improved in the South Caucasus but it still is not as robust as in most other nearby countries. Within the region, there are significant differences. Of the three countries, Georgia has the longest standing and most developed legislation, Armenia has recently made great strides forward with the adoption of a new law, while Azerbaijan remains significantly behind in providing legal rights of access.

In all the countries, there are problems with the implementation of the existing laws, and broad State secrets acts and criminal code provisions which impede access.

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<sup>55</sup> Albania (1999), Bosnia (2000), Bulgaria (2000), Croatia (2003), Czech Republic (1999), Estonia (2000), Hungary (1992), Latvia (1998), Lithuania (1996), Moldova (2000), Poland (2001), Romania (2001), Serbia (2004), Slovenia (2003), Slovakia (2000), Tajikistan (2002), Ukraine (1992), Uzbekistan (2002).

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The Constitutions in all three countries include express provisions guaranteeing freedom of expression. However, all of the constitutions also include limitations for areas such as State security, public order and public safety, and protecting personal privacy. None of the constitutions provide for a broad right to access government-held information as is found in many constitutions in Central and Eastern Europe.<sup>56</sup> Georgia's Constitution provides for the greatest access by giving individuals the right to obtain information on their working and living conditions, and also on personal information held by government bodies.

Georgia and Armenia have adopted comprehensive laws on access to information held by government bodies. The laws provide a right of access generally consistent with international standards, but are hampered by broad exemptions, resistance from officials, poor implementation and a lack of external oversight bodies. Both countries have recently created Ombudsman positions who may in the future provide this function. In Azerbaijan, a 1998 act promotes freedom of information but does not include substantive procedural rights. Milli Mejlis is currently reviewing a bill that would replace the 1998 law with one that is more based on international standards.

The media laws in the three countries provide some rights and protections for the media. The 2004 Georgian law is the most progressive, adopting many international media standards. Only the Azerbaijani Law provides for specific rights of access to information by the media. However, the laws also provide for limitation on publishing certain categories of information such as state secrets and information relating to an individual's personal life.

The state secrets laws in all three countries are quite similar and strongly resemble in both structure and content the 1993 Russian State Secrets Law.<sup>57</sup> All three laws give the authorities nearly unlimited discretion to classify information relating to the military, economy, scientific endeavours, foreign relations, intelligence and law and order. They create three categories of secrets: Of Special Importance (Extraordinary Importance in Georgia), Top Secret and Secret. The laws of Armenia and Azerbaijan allow classification of information for thirty years initially, while Georgia limits it to twenty. Similarly, the criminal codes also provide for heavy penalties for disclosing State and other types of secrets. There are also penalties found in the civil codes.

All three countries have adopted laws on environmental protection that provide for some access to environmental information. They have all ratified *the Aarhus Convention*. However, only Azerbaijan has passed specific legislation on access to environmental information.

All three countries also have implemented a variety of other laws including business secrets, civil code provisions and other laws that limit disclosure of certain types of information.

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<sup>56</sup> See the Constitutions of Albania, Bulgaria, Hungary, Estonia, Moldova, Poland, Romania, the Russian Federation, Slovakia.

<sup>57</sup> Law of the Russian Federation "On State Secrets"(No 5485-1 of 21 July 1993), and Amendments (No 131-FZ of 6 October 1997).

### **3.2.2 Armenia**

#### **a. Legal Rights of Access to Information**

##### **Constitution (1995)<sup>58</sup>**

The 1995 Armenian Constitution incorporates the general right of freedom of expression in the UDHR.<sup>59</sup> Article 24 states:

Everyone is entitled to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of State borders.

Article 43 also recognises that there are more rights than are set out in the Constitution: “The rights and freedoms set forth in the Constitution are not exhaustive and shall not be construed to exclude other universally accepted human and civil rights and freedoms.”

##### **Law “On Freedom of Information” (2003)**

The Law “On Freedom of Information” was approved by Parliament in September 2003.<sup>60</sup> It came into force in November 2003. The government has not yet issued the regulations required by the law but the law itself is already being used.

The general principles of the law are: to define unified procedures to record, classify, and maintain information; to ensure freedom to seek and receive information; to allow free access to information; and to publicise information.

The law allows any person to demand information from State and local bodies, State offices, organisations financed by the State budget, private organisations of public importance and State officials, by a written request. Oral requests can be made in cases when it is necessary to prevent harm to State or public security, public order, public health or morals, other’s rights and freedoms, the environment and a person’s property.

Bodies must normally provide the information in five days, which can be extended by an additional thirty days if more work is necessary. Oral requests require an immediate response.

Appeals against denial of information can be made to the Ombudsman or a court.

Under Article 7, public bodies are obliged to ensure information access, record and maintain information, provide truthful and complete answers, define procedures and appoint an official responsible for access. They must also publish, at least yearly, information relating to

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<sup>58</sup> <http://www.president.am/library/eng/?task=41>.

<sup>59</sup> *Universal Declaration of Human Rights*, see note 22 above.

<sup>60</sup> <http://www.forum.am/groups/A2I/mat/2.pdf>.

their activities and services, budget, forms, lists of personnel (including education and salary), recruitment procedures, lists of other types of official information in their possession, programme of public events, and information on the use of the Act. If the body has an official website, then they must publish the information on the site.

Information that would prevent dangers relating to State and public security, public order, public health and morals, others' rights and freedoms, environment and person's property must be published "urgently".

The government proposed amendments to the Act in February 2004 that would have expanded the exemptions and also broadened the coverage of the law to include all legal entities. The amendment was strongly opposed by civil society groups and was not acted upon.<sup>61</sup>

### **Law "On the Procedure of Consideration of Citizen's Appeals, Suggestions and Complaints" (1999)**

This law regulates officials' duties to respond to appeals, suggestions and complaints by citizens. Government bodies are required to reply to applications by citizens in fifteen days if there is no additional work required by the body, or thirty days if additional work is needed. Appeals can be made to the body or to a court.

### **Law "On Mass Communication" (2003)**

The Mass Communication Law<sup>62</sup> provides for a general right of journalists who work for mass media organisations to operate without unreasonable restrictions. It reaffirms the constitutional right to seek, receive and disseminate information. It prohibits censorship, interfering with "the legitimate professional activities of a journalist", disclosure of sources without a court order for revealing serious crimes, and it requires that government bodies do not favour some journalists over others.

### **Criminal Code (2003)**

Under Article 164 of the Criminal Code,<sup>63</sup> it is an offence to interfere with the legal professional activities of a journalist, including forcing them to publish or not publish information. Officials can be imprisoned for up to three years for violating the Article.

It is also a criminal offence under Article 282 to withhold information about environmental pollution. An official can be imprisoned or prevented from holding certain posts for three years.

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<sup>61</sup> <http://ija.hetq.am/en/f-com-statement.html>.

<sup>62</sup> Unofficial translation, <http://www.internews.am/legislation/english/dissemination-mass-information.zip>.

<sup>63</sup> <http://www.internews.am/legislation/english/Criminal-Code.zip>.



## **Environmental Legislation**

Armenia signed *the Aarhus Convention* in 1998 and ratified it in 2001. The Convention provides for a right of individuals to be able to access environmental information. As an international treaty, its obligations should be directly applicable to the government of Armenia. Thus far, there is no legislation implementing the Convention.

The Law “On Environmental Impact Assessment” requires that bodies inform the mass media of environmental impact assessments and that they hold public hearings.<sup>64</sup> The Law “On Protection of the Population in Emergencies” requires that authorities notify the public of major emergencies.<sup>65</sup>

## **Law “On Personal Data” (2002)**

Article 11 of the Law “On Personal Data”<sup>66</sup> provides for the right of citizens to obtain personal information about themselves without payment. Article 12 allows for them to correct, block or destroy personal information.

## **Other Laws**

There are a number of other laws that may provide for limited access to information in certain spheres such as the Law “On Citizen’s Access to Statistical Data”, the Law “On State Budget”, the Law “On Budgetary Structures”, the Law “On Local Self Government”, the Law “On Urban Development” and the Law “On the National Archive Fund”.<sup>67</sup>

## **b. Limits on Access to Information**

### **Constitution (1995)**

The Constitution also includes restrictions on access and publication of information. Article 44 states, “The fundamental human and civil rights and freedoms established under Articles 23–27 of The Constitution may only be restricted by law, if necessary for the protection of State and public security, public order, public health and morals, and the rights, freedoms, honour and reputation of others.”

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<sup>64</sup> <http://www.cenn.org/Law/Armenia/English/Legislation/3.html>.

<sup>65</sup> <http://www.cenn.org/Law/Armenia/English/Legislation/15.html>.

<sup>66</sup> <http://www.padco.am/materials/2.pdf>.

<sup>67</sup> See A Gnuni, “The Legislation of the Republic of Armenia in the Context of Freedom of Information” at [http://home.media.am/CSDU/legislation\\_%20ra.htm](http://home.media.am/CSDU/legislation_%20ra.htm).

Article 39 provides that, “The presence of the news media and representatives of the public at a judicial hearing may be prohibited by law wholly or in part, for the purpose of safeguarding public morality, social order, national security, the safety of the parties, and the interests of justice.”

Article 20 states that everyone is entitled to defend his or her private and family life from unlawful interference and defend his or her honour and reputation from attack. The gathering, maintenance, use and dissemination of illegally obtained information about a person’s private and family life are prohibited. Everyone has the right to confidentiality in his or her correspondence, telephone conversations, mail, telegraph and other communications, which may only be restricted by court order.

### **Law “On Freedom of Information” (2003)**

Article 8 of the Law “On Freedom of Information” contains five categories of information that can be exempted from release. These apply in cases where the information:

1. contains state, official, bank or trade secrets;
2. infringes the privacy of a person and his family, including the privacy of correspondence, telephone conversations, post, telegraph and other transmissions;
3. contains pre-investigation data not subject to publicity;
4. discloses data that requires limits on accessibility limitation conditioned by professional activity (medical, notary, attorney secrets).
5. infringes copyright and associated rights.

These are mandatory exemptions and are not subject to a requirement that a harm to the interest must be shown or that the public interest must be satisfied before the information is withheld.

Article 8(3) requires the mandatory release of the information on request if it involves urgent cases threatening public health and safety or natural disasters; the overall economic situation and real situation on the environment, health, culture, education, agriculture and trade; or if declining the request would have a negative influence on implementation of State programmes relating to socio-economic, scientific, spiritual or cultural development.

### **Law “On State and Official Secrets” (1996)**

The Law “On State and Official Secrets” sets up a comprehensive system on the classifying and protection of secret information.

Information can be protected if it relates to military affairs, including strategies and operations plans, mobilisation of troops, the programmes of the military industrial complex, the organisational structure and location of the armed forces; external affairs and foreign economic activity; economics, science and technology relating to defence programmes and arms

production, precious metals and stones, reserves, government finances and budget policy; and intelligence including counterintelligence, informants, encryption and protection of State and official secrets. Two resolutions set up the lists of information in greater detail.

Information is divided into three categories: Of Special Importance, Top Secret and Secret. The first two categories are for state secrets and can be classified for thirty years. Documents in the “secret” category are considered “official secrets” and can be classified for ten years, but must be reviewed every five years. A decision to classify information can be appealed. Declassified information must be sent to the Public Archive within three months.

There are limits similar to the restrictions in Article 8 of the Law “On Freedom of Information” about information that cannot be withheld. Information cannot be classified as a state or official secret if it relates to accidents which threaten the health and safety of citizens; general economic consideration or the real situation on the environment, health, culture, education, agriculture and trade; violations of law or rights; or limiting government programmes relating to socio-economic, scientific, spiritual or cultural development.

### **Law “On Mass Communication” (2003)**

Article 7 of the Law “On Mass Communication” provides for limits on the publishing of certain types of information including that which is legally defined as secret, or advocates criminal acts, violates the right to privacy of one’s personal or family life; and information obtained by video and audio recording conducted without notifying the person of the fact or recording, except “if it is necessary for the protection of public interest.”

### **Criminal Code (2003)**

There are numerous provisions in the Criminal Code imposing restrictions on disclosing specific types of information, including that relating to personal or family life (Article 144), medical secrets (145), secrecy of communications (146), espionage (302), divulging state secrets (306), breach of rules for handling state secrets (307), and divulging the data of an inquiry or investigation (342).

### **Law “On Personal Data” (2002)**

The Law “On Personal Data” provides for limits on the collection and use of personal information based roughly on European Union (EU) and Council of Europe standards on data protection. Its definition of personal information is broad and it does not explicitly exempt information about government employees or officials acting in their official capacity which could result in government documents being withheld as personal information. It does

specifically provide for access to databases that contain anonymous personal data relating to State activities and access to library and archive documents.

### **Other laws**

There are also numerous other laws that provide for protection of information. These include the Law “On Banking Secrets” and Article 141 of the Civil Code.

### **3.2.3 Azerbaijan**

#### **a. Legal Rights of Access to Information**

##### **Constitution (1995)**

Article 50 of The Constitution<sup>68</sup> provides for protection of free speech and media rights:

- I. Everyone is free to look for, acquire, transfer, prepare and distribute information.
- II. Freedom of the mass media is guaranteed. State censorship of the mass media, including press is prohibited.

Article 57(1) gives citizens the right to petition State bodies: Individuals have “the right to appeal personally and also to submit individual and collective written applications to State bodies. Each application should be responded to in an established order and term.”

##### **Law “On Information, Informatisation and Protection of Information” (1998)**

The law<sup>69</sup> creates a legal framework for information resources (defined as a document and files of documents, including those in archives, databanks, and libraries) including procedures for documenting information, ownership, creating categories of information and protections. It provides that users (those with a right to use information) have a right to access State information and that citizens and legal entities have a right to obtain information about themselves and a right to correct it and to know who uses it and for what reasons.

The law creates two types of information: open and limited access. Information defined as limited access can either be a state secret (as defined by the Law “On State Secrets”) or confidential to protect the legal interests of citizens, institutions, enterprises and organisations.

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<sup>68</sup> <http://www.constitutional-court-az.org/const-contents.htm>.

<sup>69</sup> ‘Informatisation’ is a use of information technology. Law No 460-1g (1998), [http://www.ijnet.org/FE\\_Article/MediaLaw.asp?UILang=1&CID=25178](http://www.ijnet.org/FE_Article/MediaLaw.asp?UILang=1&CID=25178).

Restrictions on open information can be appealed and officials who groundlessly withhold information can be sanctioned.

### **Law “On Freedom of Information” (1998)**

The Law “On Freedom of Information”<sup>70</sup> is a declarative proclamation on freedom of information rather than an operational freedom of information law. It states that every person has the right to search, obtain, transfer, produce and extend any information.

Article 5 sets out basic principles on the guarantee of freedom of information: the openness of information and the freedom to exchange it; objectivity, completeness, and authenticity of information; the lawfulness on the search, acquisition, use, propagation and protection of information; the protection of individual privacy; and the protection of personality, society, and the State.

The law states that the legal right to information is set by other legislation. Information is divided into categories of open information and limited access information. Open information is to be disclosed in periodic official publications, publication through the media and by release of information directly to individuals and members of the legal profession.

The law also sets rules on the collection and use of personal information. Article 13 provides that individuals have a right to access information about themselves.

Refusals to release information can be appealed to a court.<sup>71</sup> Sanctions can be imposed on those who violate the law.

The government made a commitment to the Council of Europe to adopt a full freedom of information act as part of the democratic reforms necessary to join the Council of Europe.<sup>72</sup> Milli Mejlis has held a first reading on a bill entitled, “The Law of the Republic of Azerbaijan on Freedom of Information” which was developed by a coalition including NGOs, media and members of Milli Mejlis. The Media Rights Institute (MRI)<sup>73</sup> has also proposed a bill called the Law “On Access to Public Information”. Both proposals would substantially improve rights of access and create an independent oversight body.<sup>74</sup>

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<sup>70</sup> <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016969.pdf>.

<sup>71</sup> <http://www.cis-legal-reform.org/document.asp?id=1914> (Rus).

<sup>72</sup> Council of Europe Parliamentary Assembly, “Functioning of Democratic Institutions in Azerbaijan”, Doc. 10030, 12 January 2004.

<sup>73</sup> For details, see <http://www.internews.az>.

<sup>74</sup> See ARTICLE 19, “Statement on Certain Laws of the Republic of Azerbaijan Relating to Freedom of Expression”, 10 June 2004; ARTICLE 19, “Statement and Recommendations on the Azerbaijani draft Law on Obtaining Information”, 12 April 2005; Council of Europe and OSCE, “Written Analysis of Two Alternative Azerbaijani draft Laws on Freedom of Information”, ATCM (2004) 025, 6 September 2004.

### **Law “On Mass Media” (1999)**

In the absence of a comprehensive FOI law, the Law “On Mass Media”<sup>75</sup> is the primary legislation for the media to use to demand information from public bodies. The law states that “mass information” is free from restrictions and reaffirms the right of citizens to seek, prepare and disseminate information.

Article 8 provides that the mass media has the “right to gain the quick and authentic items of information about economic, political, public and social situations in society, activity of State organs, municipalities, enterprises, plants and organisations, public associations, political parties and officials.”

Requests can be made orally or in writing. Urgent requests must be responded to in 24 hours.

The law also provides that sources should be protected.

Civil, administrative, and criminal penalties can be applied to those who interfere with a journalist’s right of access or who censor the mass media.

### **Law “On Access to Environmental Information” (2002)**

Azerbaijan acceded to *the Aarhus Convention* in March 2000.

The Law “On Access to Environmental Information”<sup>76</sup> allows for any person to demand information from State and local bodies on the state of the environment including the earth, water, atmosphere, and living organisms. A personal interest is not necessary.

The request must be in writing. The response must be given within ten days but it can be delayed for another month if the request is complex. Urgent requests should be responded to in 24 hours. Denials can be appealed in court.

Government bodies must provide regular information in the media, publish annual reports on the state of the environment and maintain publicly available electronic databanks.

## **b. Limits on Access to Information**

### **Constitution (1995)**

Article 71(3) of The Constitution allows for limits on all rights:

Rights and liberties of a human being and citizen may be partially and temporarily restricted on announcement of war, martial law and state of emergency, and also

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<sup>75</sup> <http://www.juhiaz.org/medialaw.html>.

<sup>76</sup> <http://www.gtz.de/lexinfosys/document.asp?id=5200> (Rus).

mobilisation, taking into consideration international obligations of the Azerbaijan Republic. The population of the Republic shall be notified in advance about restrictions regarding their rights and liberties.

Furthermore, Article 32(3) provides for additional protections for personal information. It states that, “gaining, storing, use and spreading information about a person’s private life without his/her consent is not permitted.”

#### **Law “On Information, Informatisation and Protection of Information” (1998)**

Article 10 of the law prohibits the gathering, processing, use and dissemination of confidential information unless it is allowed by other legislation. Article 17 of the law requires that information be protected from improper use.

#### **Law “On Freedom of Information” (1998)**

Article 2 of the Law “On Freedom of Information” states that FOI must not lead to violations of the legal rights of individuals or legal persons but limits on FOI are only those found in The Constitution.

Article 10 of the law sets limits on access to information relating to state, professional, and commercial secrets, personal and family life, investigations, terrorist actions and judicial information.

The law also provides for limits on the collection and use of personal information. Information must be collected lawfully and there are limits on the collecting of sensitive information. It prohibits the interception of communications without lawful authorisation.

#### **Law “On Mass Media” (1999)**

Article 10 of the Mass Media law prohibits the publication of a number of categories of information including state secrets and confidential information protected by the legislation, printing under cover of a title of an authoritative source of hearings incorrect information which would impinge on the honour or dignity of citizens, pornographic materials, and slander.

#### **The Law “On State Secrets” (2004)**

The Law “On State Secrets” was approved by the Parliament in September 2004 and was signed by the President in November 2004. It is largely the same as the previous 1996 Law “On State Secrets”.

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The law defines state secrets as information relating to the military, foreign policy, economic, scientific intelligence, counterintelligence and investigatory activities which, if divulged, could damage the security of the Republic.

The law creates three levels of secrets: Of Special Importance, Top Secret and Secret. Information can be classified for thirty years at which point classification can be extended. The list of information must be reviewed every five years. Information held by private bodies can be classified as secret.

The law prohibits the following information from being classified as a state secret: information about natural disasters and other emergencies and their consequences; the state of ecology, public health, sanitation, demography, education, and crime; the privileges and compensation given to citizens, officials, enterprises, offices and organisations; violations of human rights and freedoms of citizens; the health of the top officials; and violations of laws by State bodies and their functionaries.

**Law “On Access to Environmental Information” (2002)**

Article 7 of the law provides for exemptions to releasing information which relates to national security; international relations and defence; judicial proceedings; commercial secrets; something that would cause a threat to the environment; or confidential information.

**Law “On Combating Terrorism” (1999)**

Article 11 of the Law “On Combating Terrorism” states that the release of public information during terrorism actions shall be determined by the chief of the operations staff. There are prohibitions on disseminating the following information: information relating to tactics and technical measures; information that would threaten the lives and health of people in the zone of operation; information justifying terrorism or propaganda; and information about persons participating in the operations or supporting it.

**Criminal Code**

Article 68 of the Criminal Code prohibits the disclosing of state secrets.



### **3.2.4 Georgia**

#### **a. Legal Rights of Access to Information**

##### **Constitution (1995)**

Article 24 of the Constitution of Georgia<sup>77</sup> provides that, “every individual has the right to freely receive and disseminate information, to express and disseminate his/her opinion orally, in writing or in any other form.”

The Constitution also includes several provisions specifying a right of access to specific information.

Article 37(5). Individuals have the right to complete, objective and timely information on their working and living conditions.

Article 41(1). Every citizen has the right according to the law to access information about himself which is held in State institutions as long as they do not contain State, professional or commercial secrets, as well as with official records existing there.

##### **The General Administrative Code (Chapter III - Law on Freedom of Information, 1999)**

The Law on Freedom of Information was adopted as Chapter III of the General Administrative Code of Georgia in 1999 and amended in 2001.<sup>78</sup>

The law creates a general presumption that information kept, received or held by an administrative agency should be open. Agencies are required to enter information into a public register within two days and must appoint an official to be in charge of allowing access to this information.

The law gives anyone the right to submit a written request for public information regardless of the form that information takes and without having to state the reasons for the request.

The agency must respond immediately and can only delay for ten days if the information is in another locality, is of a significant volume, or is held at another agency.

Individuals also have the unreserved right to access their own personal information.

Information relating to the environment and hazards to health, structures and objectives of agencies, election results, results of audits and inspections, registers of information and any other information that is not state, commercial, or personal secrets cannot be classified.

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<sup>77</sup> [http://www.parliament.ge/LEGAL\\_ACTS/CONSTITUTION/consen.html](http://www.parliament.ge/LEGAL_ACTS/CONSTITUTION/consen.html).

<sup>78</sup> [http://www.iris.ge/docs/translations/code\\_admin\\_general.doc](http://www.iris.ge/docs/translations/code_admin_general.doc).

All public information created before 1990 is open. Agencies are also required to issue reports each year on the requests and their responses under the Act.

Those whose requests have been denied can appeal internally or can ask a court to nullify an agency decision. The court can review classified information to see if it has been classified properly. The Supreme Court ruled in June 2003 that legal fees can be obtained as damages when a requester wins a case.

The law also sets rules on the openness of meetings. Sessions of public agencies are required to be open and public. Details of meetings are required to be published a week in advance and the legitimacy of meetings that fail to follow procedures can be challenged in court and decisions made can be invalidated.

### **Law “On Freedom of Speech and Expression” (2004)**

The Law “On Freedom of Speech and Expression” is one of the most progressive media laws in the world, incorporating some of the best practices from around the world. The law protects freedom of speech and expression, including the right to search, receive, create, store, process and distribute information and ideas in any form; prohibits censorship; gives journalists the right to protect sources; and protects whistleblowers. It does not give any additional rights to journalists to demand information from government bodies.

### **Environmental Information**

Georgia signed *the Aarhus Convention* in June 1998 and ratified it in April 2000. The Law “On Environmental Protection” provides for a right to information about the environment and other related laws provide for public registers.<sup>79</sup>

### **Criminal Code (1999)**

The Criminal Code<sup>80</sup> has several positive provisions on freedom of information: it prohibits violations of freedom of speech and information (Article 156); interference with journalistic activities (Article 157); illegal denial of the right of a person to receive information (Article 170); concealment or corruption of the information on an accident or mishap involving nuclear or radiation objects (Article 254); and concealing information on the circumstances which may endanger human life or health (Article 260).

### **Other Laws**

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<sup>79</sup> See UNECE, Environmental Performance Reviews – Georgia 2003  
<http://www.unece.org/env/epr/studies/georgia/>.

<sup>80</sup> [http://www.ifes.ge/files/laws/criminal\\_code.html](http://www.ifes.ge/files/laws/criminal_code.html).

The Law “On Conflict of Interests and Corruption in Public Service” requires that public officials declare certain financial information which is then made public. The Law “On State Procurement” requires that details about open tenders (above the value of US\$17,000 or US\$56,000 in construction works) including the desired goods, amount, and terms be published in the mass media. The Electoral Code requires that lists of voters be made public.

## **b. Limits on Access to Information**

### **Constitution (1995)**

The Constitution also provides for restrictions on access to information. Article 24(4) sets general limits on all rights:

The exercise of the rights enumerated in the first and second paragraphs of the present Article may be restricted by law on such conditions which are deemed necessary in a democratic society in the interests of ensuring State security, territorial integrity or public safety, for prevention of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of the judiciary.

Article 41(2) places limits on access to personal information held by public bodies:

Information existing in official papers connected with health, finances or other private matters of an individual is not available to others without the prior consent of the affected individual, except in cases determined by law, when it is necessary for the State and public security, defence of health, rights and freedoms of others.

### **The General Administrative Code (Chapter III - Law on Freedom of Information, 1999)**

Article 27 of the Freedom of Information Law has exemptions for information considered a State, commercial, professional or personal secret. Commercial and professional secrets can be classified for an unlimited period. Personal secrets are classified for the lifetime of the individual.

Names of some public servants participating in a decision by an official can be withheld under executive privilege but the papers can be released. The names of political officials cannot be withheld.

### **Other limits in the General Administrative Code**

Article 11 of the General Administrative Code prohibits public servants who are involved in an administrative proceeding from disclosing or using secret information without authorisation and

holds them liable for use or disclosure of such information. Article 23 prohibits experts from disclosing secret information.

### **Law “On State Secrets” (1996)**

The Law “On State Secrets”<sup>81</sup> sets rules on the classification of information where “disclosure or loss of which may inflict harm on the sovereignty, constitutional framework or political and economic interests of Georgia.”

There are three categories with fixed terms for the length of classification: Of Extraordinary Importance – 20 years, Top Secret – 10 years, and Secret – 5 years. State secrets are defined as information relating to defence, economic, external affairs, intelligence service, State security and protection of law and order.

The law also defines a number of areas where information cannot be classified as a State secret. This includes information that would prejudice or restrict basic human rights and freedoms or may cause harm to the health and safety of the population; most normative acts; maps (except special military maps); information on natural disasters and catastrophes; environmental conditions; corruption, unlawful actions of officials and crime statistics; privileges, compensations and benefits provided by the State to citizens, officials and others; information on the State monetary fund and national gold reserve; and information on the health status of top officials.

The State Inspection for Protection of State Secrets oversees the protection of secrets and can order declassification. A 1997 Decree sets out the procedures on classification.<sup>82</sup> Information shall be declassified no later than the end of the fixed term (unless it is extended by the President) or when it is no longer necessary to be classified.

### **Law “On Freedom of Speech and Expression” (2004)**

The law allows for restrictions on freedom of speech and expression if, “the restriction is transparent and predictable, narrowly assigned by law, and the public good protected by the restriction is greater than the damage caused.” It allows for the regulation of speech relating to state, commercial, private or professional secrets. Professional information which is confidential shall not be disclosed without the permission of the owner or by a court. The source of a secret is given an absolute privilege.

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<sup>81</sup> Law No. 455. 29 October 1996, [http://www.iris.ge/docs/translations/law\\_state\\_secrets.doc](http://www.iris.ge/docs/translations/law_state_secrets.doc).

<sup>82</sup> “The Procedure for Defining the Information as a State Secret and its Protection”, Decree No. 42 of the President of Georgia of 1997, 21 January 1997.

### **Criminal Code (1999)**

The Criminal Code has numerous provisions prohibiting disclosure of information: Violation of a Personal Secret (Article 160); Violation of the Secrecy of a Private Conversation (Article 161); Violation of the Secrecy of Personal Mail, Telephone Conversation or any other Type of Communication (Article 162); Illegal Access or Dissemination of Information containing Commercial or Bank Secrets (Article 206); Disclosure of State Secrets and rules on protection (Articles 332, 339, 340); Disclosure of information concerning measures for the protection of officials of law enforcement or controlling bodies (Article 353); Disclosure of the Information on Security Measures applied with respect to members, judges and other participants of legal and criminal proceedings of the Constitutional court (Article 364); and Disclosure of Data of Inquiry or Preliminary Investigation (Article 371).

## **4. MEDIA LANDSCAPE**

In the South Caucasus region none of the conditions underpinning the existence of a free media in a democratic society – “financial independence, well-being of the media environment and a liberal approach from the State”<sup>83</sup> – is entirely fulfilled. According to the latest Freedom House press freedom rankings of the 27 States representing Central and Eastern Europe and the former Soviet Union, Georgia was considered to be ‘Partly Free’ while Armenia and Azerbaijan were rated ‘Not Free.’<sup>84</sup> While Georgia maintained its position from last year’s ranking, “Armenia’s rating declined from ‘Partly Free’ to ‘Not Free’ as a result of the government’s repeated use of security or criminal libel laws to stifle criticism, as well as the forced closing of the country’s leading independent television station [A1+],” and Azerbaijan’s rating dropped from ‘Partly Free’ in 2002 to ‘Not Free’ in 2003.<sup>85</sup>

The lack of sustenance for an independent media in the South Caucasus is further exacerbated by tensions in the three countries related to the ‘frozen’ conflicts – those between Abkhazia and South Ossetia and ‘Georgia proper’; and over the disputed territory of Nagorny-Karabakh, which involves Armenia's and Azerbaijan's interests.

It has become a widespread pattern in the South Caucasus that the State-owned media mainly propagate the political views of the ruling elite thus ignoring the opposition. In Georgia, it has been noted that after the "Rose Revolution" of 2003 some of the more respected media, such as Rustavi-2 TV company previously known for its criticism of the authorities and unbiased coverage during the Shevardnadze period, had become less critical of the present administration.

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<sup>83</sup> IFJ, “Promoting independent and ethical journalism in the Southern Caucasus” (2002), 5, at <http://www.ifj.org/default.asp?index=771&Language=EN>.

<sup>84</sup> “Freedom of the Press 2004” at <http://www.freedomhouse.org>.

<sup>85</sup> *Ibid.*

State control over the media persists in new forms, by both direct and indirect means. Direct mechanisms include over-restrictive laws allowing governments to have inappropriate control over the media, and the lack of independence of oversight bodies. Indirect mechanisms include a 'repressive' political climate causing widespread self-censorship among the media, or the abusive use of economic pressures such as high taxes, limited advertising markets, State-controlled printing houses and high cost of paper.

Financial problems remain a serious concern for the media. There is still a big gap in financial sustainability between the State-controlled media and the media outlets financed through other sources. The sources of funding for the latter often come from 'oligarchs' who own them (and are often closely linked to politics), from political parties, from businesses, or international donors in the case of the regional media. Privately owned media often do not enjoy more editorial independence than State owned media, and more or less reflect the political opinions of their owners. These owners are prepared to sack journalists who do not 'toe the line'. Journalists in turn fear losing their jobs which are relatively highly paid. Such financial insecurity inhibits the media from engaging in high-quality journalism and explains widespread self-censorship among the media professionals in the region.

Another issue of serious concern is the authorities' lack of tolerance to criticism. For example, according to Baku Press Club in Azerbaijan, public officials filed 126 lawsuits mainly concerned with honour, dignity and business reputation against media management and staff during 2001-2003. Authorities in all three countries 'punish' the media for voicing dissenting opinions with defamation suits, through tax inspections, removal of licences as in the case of Noyan Tapan and A1+ TV companies in Armenia, and various other direct and indirect means.

The rights of journalists are fragile and in a vulnerable position in all three States. This is highlighted by cases of journalists being killed, being subjected to violent attacks, and being arrested based on false evidence. This behavior is especially prevalent during an election period.

Public service broadcasting remains *terra nova* yet to be explored. Where a public broadcaster exists, as in Armenia, it is largely controlled by the President and does not fulfil its role of presenting diverse opinions and views, including those of the opposition. It has very little editorial and operational independence.<sup>86</sup>

Media self-regulation mechanisms are immature in Azerbaijan and Georgia, while in Armenia they do not exist *per se*. The Azerbaijani Press Council, established in February 2003, spends a large amount of time as a 'defence mechanism' to tackle violence against journalists.<sup>87</sup> Professional standards for the media in Georgia were also adopted in 2003, resulting from coordinated activities by the Liberty Institute, when major print and electronic media as well as free-lance journalists signed a Code of Ethics. The implementation of the media self-regulatory mechanism remains problematic due to disagreements between media associations and media

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<sup>86</sup> Georgia and Azerbaijan have very recently begun the establishment of public service broadcasters but it is too early yet to judge the quality of their performance.

<sup>87</sup> For details, see <http://www.presscouncil.az>.

outlets. Low demand for professional standards among the editors and the publishers weakens the implementation of professional standards in Georgia.<sup>88</sup> A Media Council is due to be formed in 2005. In Armenia an initiative group has been formed under the guidance of the Yerevan Press Club; they are exploring the grounds for establishing a self-regulation model in the country.

Overall, the region's media lack professionalism, and the standard of media reporting has declined. Mass media are also distrusted by the public. This can partly be explained by the low quality and outdated teaching methods in journalism schools and universities, with little or no focus on practical training. In addition, many practicing journalists have no special training at all, and come from other educational backgrounds, such as economics, the arts, teaching, and literature. As a result, investigative journalism is poorly developed in the South Caucasus, except for some rare examples such as the Association of Investigative Journalists in Armenia or the "60 Minutes" investigative journalism programme on Rustavi-2 in Georgia. Grounds for the practice of investigative reporting in the South Caucasus are limited.

A crisis of values within the media community is a common pattern in the South Caucasus, expressed by the lack of understanding of the role of journalism, the lack of ethical and responsible journalism, and the lack of professional solidarity among the media.

Finally, there are many technical issues that make it difficult to engage in high quality journalism. They include the lack of equipment (predominantly due to the lack of funds), the limited number of non-State printing houses and restricted Internet access in the regions.

## 4.1 Development Stages

Both the existing and the newly founded mass media inherited a difficult legacy from the Soviet past. The media environment in the South Caucasus has also been influenced by the profound political changes that occurred in the region shortly before and after the collapse of the Soviet Union, including the armed conflicts in the region.<sup>89</sup>

The mass media in the Soviet Union prior to Mikhail Gorbachev's *perestroika*<sup>90</sup> have been stigmatised as a propaganda tool for educating the masses on the Communist party ideology and, more so, on its interpretation by the changing party leadership in Moscow. Instead of codes of ethics, media had a 'moral code', largely free from any professional responsibility for personal judgement. The 'moral code' meant that national newspapers were not allowed to criticise the Communist Party central leadership. Likewise, newspapers in the republics were not allowed to be critical of the republic's leadership, and so on through all levels of Soviet power. Subscription was mandatory, and subscriber numbers could be predicted early in the year, which meant that

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<sup>88</sup> However, professional standards are higher among TV channels than among the print media.

<sup>89</sup> The conflict over Nagorny-Karabakh (1988-94); the conflict over South Ossetia (1991-92), and the conflict over Abkhazia (1992-93).

<sup>90</sup> Mikhail Gorbachev's programme of economic, political and social restructuring in the Soviet Union (a series of reforms initiated during Mikhail Gorbachev's first two years in the office, 1985-1987).

the media did not have to compete for their readership. GLAVLIT<sup>91</sup> was the main censorship agency in the Soviet Union. Censors were assigned to each media outlet to screen materials before publication.

*Perestroika* brought tremendous changes, among them the increased distribution of uncensored press (*samizdat*)<sup>92</sup> and the revival of *glasnost*.<sup>93</sup> “A number of popular periodicals, such as *Ogonek*, *Literaturnaya Gazeta* and *Komsomolskaya Pravda*, subscribed to this concept in their editorial line. However, [...] attacks on the press by sections of the administration in 1989 and 1990, in addition to coverage provided by the Soviet media of events like Chernobyl, civil war in Georgia, and civil unrest and rebellion in the Baltic States, provide ample proof that the Soviet application of *glasnost* was selective [...] and that the] authorities were happy to see the past and their predecessors open to criticism and scandal [...].”<sup>94</sup>

Although researchers from Armenia, Azerbaijan and Georgia identify from three to five different periods of mass media development in their countries, these can be narrowed down to three main stages common in the region:<sup>95</sup>

1. A ‘golden age’ of journalism (late 1980s-1992);
2. The decline in ‘free-voice’ media, increased media engagement with different political alliances, and growing censorship (1993-2002); and
3. Increased self-censorship and control by ‘oligarchs’ (2003- until present).

The first period saw early democratic transformations, the emergence of civil society, and establishment of certain guarantees for freedom of expression in the legislation of the three countries. During this time, a large number of non-State media sprang up in the South Caucasus, often founded by politicians, political parties, NGOs, businesses and influential individuals, during 1989 to the early 1990s.

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<sup>91</sup> Central Literature and Editorial Agency. Later – Central State Secrets and Press Agency.

<sup>92</sup> Literally means “self-publish”. Numerous periodicals were published “underground” and disseminated illegally. They were used as a means of “telling the truth” outside the censor’s supervision.

<sup>93</sup> A policy of openness in public discussions about current and historical issues. This term was used by Lenin in describing openness as a necessary feature of the communist press and Nikita Krushchev in his criticism of Stalin’s regime. Gorbachev’s *glasnost* focused on making the country’s leadership transparent and open to debate.

<sup>94</sup> Y Lange, *Media in the CIS. A Study of the Political, Legislative and Socio-Economic Framework* (Brussels: EIM, May 1997), 10, at [http://www.internews.ru/books/media\\_1999/pdf/media1999.pdf](http://www.internews.ru/books/media_1999/pdf/media1999.pdf).

<sup>95</sup> *Ibid.* See also Yeni Nesil, *Harmonization of Media Legislation of South Caucasus Countries With European Standards* (Baku: Yeni Nesil, 2004); *South Caucasus Media in the post-Soviet Period* (Yerevan: 2002); G Bokeria, G Targamadze and L Ramishvili, “Georgian Media in the 90s: A Step to Liberty” (Tbilisi: 1997); M Grigorian “Armenian Media Yesterday and Today”, at [http://eurasia.org.ru/archive/98/book2\\_.html](http://eurasia.org.ru/archive/98/book2_.html); K Andreasyan, “The Armenian Media Landscape”, at <http://www.ejc.nl/jr/emland/armenia.html>; Yeni Nesil Union of Journalists, “Mass Media in Azerbaijan: Problems and Solutions to the Crisis” (available from Yeni Nesil); M Grigorian, “Media and Democracy in Armenia”, in E Herzig and M Kurkchian (ed.), *The Armenians. Past and Present in the Making of National Identity* (London: Routledge Curzon, 2005).



Large stocks of paper remained after the Soviet Union was dissolved. This factor allowed the newspapers to have relatively high print-runs compared to the size of the population in each country and kept the cost of printing low, resulting in newspapers that were cheap and affordable for the majority of the population. Many experienced and talented journalists left State-owned periodicals to join new private ones, thus making the latter quite professional and competitive. At the same time, many who were not journalists by education joined mass media, which later resulted in a lowering of professional standards and increased politicisation of the media. With non-State electronic media appearing only later, the print media were the main source of information in the countries in the early 1990s. However, by the end of 1992 problems developed for the media, due to a sharp economic decline and energy crisis, which led to a shortage of paper and an increase of the cost of printing and print products.

The second period in all three countries was marked by censorship, either direct or indirect, and increasing political engagement of the media, which sided either with the authorities or with the opposition. At this point the commercial media appeared, mainly in the form of tabloid papers, providing entertainment but very little news or political affairs content. Governments resorted to different types of pressure on the opposition media, using economic, administrative and legal means. Where censorship was officially abolished, authorities came up with a new tool to ‘gag’ the opposition media and individual journalists: an increased number of lawsuits, mainly on the grounds of the protection of reputation, honour and dignity. The lack of independent judiciary, both then and now, remains a ‘trump card’ in the hands of public officials being used in numerous lawsuits against the mass media.

The third period, which we’re witnessing at present, saw new trends emerging after the recent round of elections in the region (Presidential Elections in February/March 2003 in Armenia; Presidential Elections in October 2003 in Azerbaijan; Parliamentary and subsequently Presidential Elections in November/December 2003 in Georgia).

In Armenia and Azerbaijan, the elections were fraudulent,<sup>96</sup> but the proclaimed winners stifled all media and public protests. Since then, there has been an increase in violence against

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<sup>96</sup> Numerous international observers testified to serious irregularities. For instance, see ODIHR, *Final Report on the Presidential Election in the Republic of Azerbaijan, 15 October 2003* (12 November 2003). (<http://www.osce.org/odihr/index.php?page=elections&div=reports&country=az>); ODIHR, *Final Report on Parliamentary Elections in Armenia, 25 May 2003* (31 July 2003). (<http://www.osce.org/odihr/index.php?page=elections&div=reports&country=am>); Joint Press Release by the Council of Europe and OSCE Missions on the Presidential Elections in Armenia (<http://www.armeniaforeignministry.com/PR/PR204.html>); “Statement of Preliminary Findings and Conclusions Concerning Presidential Elections in Azerbaijan by the International Election Observation Mission” ([http://www.osce.org/documents/odihr/2003/10/806\\_en.pdf](http://www.osce.org/documents/odihr/2003/10/806_en.pdf)); International Press Institute, *World Press Freedom Reviews* (<http://www.freemedia.at/wpfr/Europe/>); United States Department of State, *Country Reports on Human Rights Practices*, (<http://www.state.gov/g/drl/rls/hrrpt/2003/27823.htm>); special reports by the Human Rights Watch (<http://www.hrw.org>).

the media and against individual journalists, growing self-censorship within the media community, and tough editorial control by the owners – be it the State or politically influential private individuals. The widespread abuse of defamation legislation to prosecute critical media (particularly in Azerbaijan) inhibits journalistic investigations and has a powerful chilling effect on the rest of the media, thus further increasing media self-censorship and/or poor quality, and biased reporting. Meanwhile commercialisation of the media continues, with the result being that fewer articles on social and political issues of public importance are being printed.

In Georgia, the official results of the Parliamentary Elections in October 2003 were also falsified by the ruling government under Eduard Shevardnadze. But a powerful popular protest movement forced the resignation of Shevardnadze and new elections. The second round of elections, and the subsequent early Presidential Elections, were won by a young generation of new politicians under the leadership of President Mikheil Saakashvili, operating on an anti-corruption and pro-democracy platform. Liberal reforms were quickly launched in many areas. However, one year after the so-called "Rose Revolution", there are still serious cases of harassment against the media, mainly in Georgia's provinces. Concerns also were raised over the question of whether the new leadership abused their power, and – in their eagerness to reform Georgia – took short cuts thus by-passing the rule of law. In the media field, the overlap of interests of the owners of powerful private broadcasters and the current administration is another reason of concern.

## 4.2 Armenia

Armenia has made commendable progress in developing legal guarantees for freedom of expression and media diversity. Some of the important examples include:

- the expressed commitment to create a public service broadcaster in the Broadcasting Law of 2000;
- the adoption of an advanced Freedom of Information Law in September 2003; and
- the passing of a Law "On Mass Communication" in December 2003 containing guarantees for the protection of confidential sources and abolishing the registration system for the media.

### 4.2.1 *Evolution of the Media*<sup>97</sup>

Armenia's media landscape started evolving in the late 1980s, when public interest in the media increased as a result of the escalation of the conflict in Nagorny-Karabakh and the *perestroika*

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<sup>97</sup> Boris Navasardyan and Anna Simonyan of Yerevan Press Club provided comprehensive background materials on the development of media in Armenia, and gave substantial comments on this Chapter.

period in the Soviet Union. In 1989 the first opposition newspaper, *Hayk*, standing on an anti-communist platform, was founded by the Armenian Pan National Movement (APNM), then a leading political force in Armenia. This was the first officially registered newspaper. *Yerekoyan Yerevan*, *Avangard*, and *Grakan Tert* newspapers, *Garun* magazine, and several TV and radio programmes began reporting on previously taboo topics, and evaded censorship even before the collapse of the Soviet Union in 1991.

In the early 1990s the mass media found themselves in a different environment. Emerging political parties and movements, often backed by Armenians living abroad, together with businesses and individuals, founded media outlets which aimed to take their niche in the then arising news environment. The media were often seen as a means for achieving political goals. The democratic elite who came to power were tolerant of the media. As a result, by mid-1990s, there were about 500 print media registered in Armenia. A single day's circulation of each of the leading newspapers – *Hayastani Hanrapetutyun*, *Yerkir*, *Azg* and *Munetik* – exceeded the current daily print-run of all the Armenian newspapers. Instances of pressure on the media, such as the seizure of an issue of the *Avangard* newspaper, were the exception rather than the rule. The quality of the media changed as well: computer equipment supplied them with new opportunities. New news agencies - SNARK<sup>98</sup> and Noyan Tapan<sup>99</sup> - who emerged in the early 1990s, produced materials of much higher quality than those of the State-owned agency Armenpress.

However, by the end of 1992 problems developed for the media, primarily print media, due to the overall economic recession. This was in part due to the economic blockade imposed on Armenia by its neighbours Turkey and Azerbaijan as a result of the escalating Nagorny-Karabakh conflict. Armenpress stopped delivery of newspapers and journals to subscribers due to the shortage of petrol and for other economic reasons. Subscriptions were suspended in 1993. Many newspapers disappeared after the purchasing power of the population decreased tremendously due to the economic downturn in the country. The energy crisis caused the shutdown of nearly all the production units of the printing house Parberakan, which at the time had a monopoly in the printing sector. With a clearly decreased interest in the development of an independent media, the ruling elite, whose main concern was now winning the Karabakh war, ignored the take-over of the newspapers by the press distribution agency Haymamul who also enjoyed a monopoly. This agency delayed payments to newspapers for several months at a time when the ruble was rapidly falling in value, thus cutting newspapers' profits by up to 90 per cent. This was seen by many as an attempt to get rid of self-funded periodicals that did not have political sponsors. State radio and television remained under the total control of the ruling elite, carrying out their political orders. Haylur, the only news programme on State TV which expressed alternative political views, was shut down in 1992.

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<sup>98</sup> In 2001, a news agency Arminfo was established based on SNARK.

<sup>99</sup> Noyan Tapan later established a TV company under the same name, and a newspaper *Noyan Tapan Highlights* that is published in English.

Between 1993 and 1994, two major types of periodicals evolved on the Armenian media landscape. The first one was politically biased and depended on funding from the State and either the government or opposition political parties. The second one was an explicitly commercial, mainly tabloid press, publishing entertainment stories with little focus on the news.

From 1994 onward, the government started exerting pressure on the opposition media. On 28 December 1994, the then-President of Armenia Levon Ter-Petrosian issued a decree suspending the activities of the most influential opposition party Dashnaktsutyun (or Armenian Revolutionary Federation (ARF) party). This resulted in a ban on all media owned by Dashnaktsutyun, and 13 periodicals allegedly connected to this party. Other examples include delayed registration of the *Ayzhm* newspaper in 1995 and frequent instances of violence against journalists in 1995 and 1996.

During the tenure of the current President, Robert Kocharian,<sup>100</sup> who came to power after Ter-Petrosian's forced resignation on 3 February 1998, the Armenian media, especially the broadcast media, has become heavily politicised, and self-censorship has grown. According to Yerevan Press Club, after an attack in the Armenian Parliament in 1999, resulting in the deaths of high-profile politicians,<sup>101</sup> an "information war" began in 2000 between the media. "One group, with support from opposition political groups formed after the October events, believed the arrests made by investigators were justifiable and hinted that the terrorists activities might be linked to associates of President Robert Kocharian, if not to the President himself. Other journalists, representing the opposing media group, accused the investigators of political involvement and bias, and deemed President Kocharian the only guarantor of stability and justice."<sup>102</sup> As a result, news broadcasters began siding with one camp or the other. Reports by the Yerevan Press Club and the Committee to Protect Freedom of Expression say the number of recorded cases of physical assault against journalists have increased since 2001.<sup>103</sup> In 2002, "journalists continued to face criminal prosecution, attacks, and censorship."<sup>104</sup>

Many international organisations reporting on human rights and press freedom<sup>105</sup> mention a number of negative trends in the media market in Armenia, including economic, political, legal and other instruments: the application of defamation charges in order to suppress media criticism; denial of broadcast licences; and instances of physical abuse and other forms of intimidation against journalists when exercising their duty to receive and impart information. The Committee to Protect Journalists (CPJ), a New York-based organisation, described

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<sup>100</sup> Robert Kocharian was born in Nagorny-Karabakh, and in 1994 became the first President in this region. In 1997 he became Prime Minister of Armenia.

<sup>101</sup> Including the Prime Minister Vazgen Sarkisian and the Speaker of Parliament Karen Demirchian.

<sup>102</sup> See "Armenian Press Overview 2001", [http://www.ijnet.org/FE\\_Article/AssetShow.asp?ID=385](http://www.ijnet.org/FE_Article/AssetShow.asp?ID=385).

<sup>103</sup> For details, see newsletter by the Yerevan Press Club at <http://www.ypc.am>.

<sup>104</sup> See CPJ, "Attacks on the Press in 2002" ([http://66.102.9.104/search?q=cache:\\_tDOOuDLDEUJ: http://www.cpj.org/attacks02/europe02/armenia.html+Kocharian+and+censorship&hl=en](http://66.102.9.104/search?q=cache:_tDOOuDLDEUJ: http://www.cpj.org/attacks02/europe02/armenia.html+Kocharian+and+censorship&hl=en)).

<sup>105</sup> For example, Freedom House reports at <http://www.freedomhouse.org>; or the *Country Reports on Human Rights Practices* by the United States Department of State, at <http://www.state.gov/g/drl/rls/hrrpt>.

Armenia's media as being heavily controlled by political parties and business tycoons, and emphasised that this affects media's objectivity. According to the CPJ, "the print press is also plagued by low professional standards, [and] journalists in Armenia often take bribes for writing articles."<sup>106</sup>

### **Economic Pressure**

On 16 May 2001, without a written authorisation from the Minister of State Revenues as required by laws, tax authorities began an inspection of the independent distribution agency Ogostos, who also owned the newspaper *Chorrord Ishhanutyun*. The inspectors confiscated a considerable part of the agency's paperwork and forced the executive director to write a declaration under duress. It took more than eight months to rectify this injustice.

On 31 October 2002, the daily issue of the *Aravot* newspaper mysteriously disappeared, and neither subscribers nor newspaper kiosks received their copies. Arshaluys Manukyan, Deputy Director of Haymamul, the State distribution agency, made a statement in which he claimed that all the copies were sold but failed to specify who bought them. Members of *Aravot* suggested that the issue had been seized because they had published a critical article with the title "*Abuses [of power] by the Prime Minister's Confidants*". Despite a promise by the Armenian Prime Minister Andranik Margaryan to investigate the reason for the incident and punish the guilty, the management of Haymamul was only nominally penalised: the head of the delivery department was dismissed and Deputy Director Manukyan was reprimanded. Later, however, he was appointed Director of Haymamul.

### **Violence Against Media Professionals**

On 22 October 2002, the deputy director of the Caucasus Media Institute, Mark Grigorian, was wounded by a hand-grenade in a street in central Yerevan. Despite the incident being extensively covered by the Armenian media and attracting the attention of international organisations,<sup>107</sup> this case was never properly investigated. On 28 December 2002, the Chairman of the Council of the Public Television and Radio Company, Tigran Naghdalyan, was murdered.<sup>108</sup>

<sup>106</sup> <http://www/cpj.org/attacks03/europe03/armenia.html>.

<sup>107</sup> For more details, see Helsinki Association, *Annual Report on Human Rights in Armenia for 2002*, <http://www.hahr.am/english/2002.doc>; United States Department of State, *Country Report on Human Rights Practices for 2002*, <http://www.state.gov/g/drl/rls/hrrpt/2002/18351.htm>; Human Rights Watch, *A Report on Human Rights Developments*, <http://hrw.org/wr2k3/europe2.html>.

<sup>108</sup> He had been scheduled to testify in a high-profile murder case: the trial of six men accused of shooting down eight top politicians in Armenia's Parliament in 1999. There were speculations that Naghdalyan was murdered because he had information about President Kocharian's involvement in the case. See <http://www.cpj.org/attacks03/europe03/armenia.html>

On 8 January 2003, the Council of Europe Secretary General Walter Schwimmer made a statement condemning the murder of “one of Armenia’s most competent journalists” and qualified it not only “as an offence against the person, but also as an infringement of freedom of the media.”<sup>109</sup>

On 23 September 2004, Arman Galoyan, a correspondent of the *Haikakan Zhamanak*, was assaulted at one of the markets in Yerevan while he was interviewing trade stall owners on a municipal decree ordering the demolishing of the trade stalls around the market.

On 13 October 2004, Samvel Aleksanian, editor of the *Syuniats Yerkir* weekly newspaper, was attacked in Syunik by three members of the Republican Party led by the Prime Minister Andranik Markarian. "Aleksanian said the attackers then warned him that his office and car would be firebombed unless he quit writing further articles criticising government policies. In September, the newspaper questioned the rationale for closing two local secondary schools as part of a nationwide programme to reduce the number of teaching staff."<sup>110</sup>

### Withdrawal of TV Licences

- In 2001 Noyan Tapan television channel was taken off the air.<sup>111</sup>
- In 2002, the broadcast licence of TV company A1+ was not renewed in a tender procedure. Many perceived this decision as politically motivated in order to take the only country-wide independent broadcaster off the air prior to the Presidential and Parliamentary Elections. Human Rights Watch wrote: “As the 2003 elections approached, two television channels that did not cover politics from a pro-government standpoint lost their broadcasting licenses.”<sup>112</sup> After many attempts to regain a licence, including by taking legal action in court, the management of A1+ appealed their case to the European Court of Human Rights. The lawsuit of Meltex (owner of A1+ channel) against the Republic of Armenia, was admitted by the European Court of Human Rights in 2004.

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<sup>109</sup> This is the only case in Armenia when perpetrators of a crime against a journalist were found and punished.

<sup>110</sup> International Press Institute, "2004 World Press Freedom Review", <http://www.freemedia.at/wpfr/Europe.armenia.htm>

<sup>111</sup> For further development of this case see *Noyan Tapan Ltd v. Armenia*, 21.10.2004, ECHR, Application no 37784/02.

<sup>112</sup> Human Rights Watch, *World Report 2003: Armenia*, <http://www.hrw.org/wr2k3/pdf/armenia.pdf>.

## Harassment of the Media after the Elections

As mentioned before, the Presidential and Parliamentary Elections of 2003 adversely affected the media situation in Armenia. Protest rallies by the opposition in the spring provoked a harsh reaction by the authorities, which included violence against journalists, and other measures to prevent the press from adequately covering the events in a timely fashion. In its annual report on global press freedom released in March 2004, the CPJ condemned President Robert Kocharian for "muzzling dissenting voices in the press and calling for more compliant media coverage of government policies."<sup>113</sup>

A series of infringements of journalists' rights were recorded during the mass protest rallies of the Armenian political opposition in April 2004.<sup>114</sup>

- Russian First TV Channel cameraman Levon Grigoryan was brutally beaten, and his equipment was damaged.
- News crews from private channels Kentron, Hay-TV, and Armenian Public Television also had their cameras broken.
- Police obstructed Hayk Gevorkyan, *Haikakan Zhamanak's* correspondent, while on duty. He was detained in the town of Ashtarak when he was photographing policemen blocking
- highways to prevent residents of the regions from coming to Yerevan to take part in the opposition rallies.
- Violence was used against a UK citizen Onnik Krikorian, the news photographer of *Hetq*, the Internet publication of the Armenian Association of Investigative Journalists, and against the correspondent of *Aravot* newspaper, Anna Israelyan.

Unlike many other cases, the offenders in the above-mentioned incidents were identifiable. There is plenty of evidence against them, including video records. In numerous statements, Armenian NGOs and international organisations have stressed that if offenders are not punished and journalists are not compensated for damage, it means the Armenian authorities are not interested in safeguarding such fundamental elements of democracy as freedom of speech, freedom of the media, freedom of movement, freedom of assembly, and the right of society to freely express opinions and receive objective information.<sup>115</sup>

On 5 April 2004, "the Russian television channel NTV had its broadcasting suspended throughout the country, after broadcasting footage of the opposition protests. By the end of

<sup>113</sup> Freedom House, *Nations in Transition 2004, Armenia*, available at <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPA016569.pdf>.

<sup>114</sup> For details, see <http://www.cpj.org/news/2004/Armenia13apr04na.html>.

<sup>115</sup> Recently there has been a positive precedent in Armenia when an individual was imprisoned for assaulting journalists. For details, see Chapter Five of this report, Case 6.

September 2004 the government had given the frequency to another Russian channel that does not broadcast news.”<sup>116</sup>

### **Positive Developments: Advocacy Tools**

In Armenia both local and international NGOs have been active in shaping media policies and promoting reforms. A media legislation working group initiated by the OSCE Office in Yerevan played a crucial role in lobbying for the adoption of the FOI Law. This group includes international and local organisations, working both in Armenia and on programmes designed for Armenia. Journalists’ associations and other non-governmental organisations (among them the Yerevan Press Club, Internews, Union of Journalists, Centre for Freedom of Information, Committee for the Protection of Free Speech, the Journalists’ Club Asparez, and others) have been exceptionally active in shaping the country’s media legislation. It is mainly thanks to their efforts as well as to effective co-operation between international organisations – the OSCE, Council of Europe, ARTICLE 19, and some government bodies that the laws “On Freedom of Information” and “On Mass Communication” comply to a considerable extent with international standards on freedom of expression.

#### **4.2.2 Overview of the Types of Media<sup>117</sup>**

As of January 2001, 1,083 media outlets were registered in Armenia according to Ministry of Justice records.<sup>118</sup> This figure increased in 2002, and, according to the Armenian Ministry of Justice, constituted 1,341 media outlets (out of which 842 were newspapers, 193 were magazines and 32 were news agencies). While most of the print media are privately owned, they are small and heavily dependent on economic and political sponsors for survival.

At present, the exact numbers of mass media in Armenia are unavailable because the Law "On Mass Communication", in line with best international practice, abolished the registration requirement for establishing a print media outlet.

#### **a. Print Media**

The major Armenian nation-wide newspapers include: *Aravot* daily,<sup>119</sup> *Azg* daily,<sup>120</sup> *Golos Armenii*, a Russian-language newspaper,<sup>121</sup> *Haikakan Zhamanak* daily,<sup>122</sup> *Hayastani*

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<sup>116</sup> [http://hrw.org/english/docs/2005/01/13/armeni9889\\_txt.htm](http://hrw.org/english/docs/2005/01/13/armeni9889_txt.htm).

<sup>117</sup> Information was kindly provided by Anna Simonyan of the Yerevan Press Club. See <http://www.ejc.nl/jr/en/and/> for an overview of the Armenian media landscape by K Andriasyan; <http://www.internews.am>.

<sup>118</sup> See *2002 Freedom House Report* at <http://www.freedomhouse.org>.

<sup>119</sup> Published five times a week. Founded in 1994 by *Aravot* daily Ltd. Registered circulation 5,000 copies. Political stance - opposition newspaper with liberal orientation.



*Hanrapetutyun* daily,<sup>123</sup> *Hayots Ashkhar* daily,<sup>124</sup> *Iravunk/Iravunk+Question and Answer*, newspaper,<sup>125</sup> Russian-language newspapers *Novoye Vremya*<sup>126</sup> and *Respublika Armenia*,<sup>127</sup> and *Yerkir* weekly.<sup>128</sup>

There are eight news agencies in Armenia: Armenpress (the only State-owned news agency), Arminfo, Noyan Tapan, De Facto (mostly political news), Mediamax (mainly political news), Arka (predominantly economic news), Patker (photo news agency), and PhotoLure (photo news agency).

## **b. Broadcast Media**

Between 1994 and 1999, private broadcasters began emerging on the Armenian media market, which had previously been dominated by State-funded and cable companies.<sup>129</sup> Until 1996 non-State broadcasting was based in the regions. By the end of the 1990s, the most developed TV broadcasting companies, A1+, Ar, Kultura/Prometevs, Armenia, Shant and Tsayg<sup>130</sup> gained in popularity over the print media. Radio channels proved to be less successful, mainly broadcasting music programmes.

<sup>120</sup> Published five times a week. Founded in 1991 by Azg daily Ltd. Registered circulation 3,000-5,000 copies. Political stance - moving from pro-government to moderate opposition.

<sup>121</sup> Published three times a week. Founded in 1991 by “Golos” Ltd. Registered circulation 3,500 copies. Political stance - pro-Presidential, nationalistic.

<sup>122</sup> Published five times a week. Founded in 1997 by “Dareskizb” Ltd. Registered circulation 3,500-4,500 copies. Political stance - radical opposition.

<sup>123</sup> Published five times a week. Founded in 1990 by “Hanrapetutyun” closed joint-stock company. Registered circulation 6,000-19,000 copies. Political stance- pro-government.

<sup>124</sup> Published five times a week. Founded in 1997 by “Hayots Ashkhar Daily' Editorial Office” Ltd. Registered circulation 3,500 copies. Political stance - pro-Presidential, pro-Dashnaksutyun Party, radical-nationalistic.

<sup>125</sup> Published twice a week. Founded in 1989 by the “Constitutional Right” Union. Registered circulation 17,000 copies. Standard volume of “Iravunk”/“Iravunk+Question and Answer” has a registered circulation of 8,000 copies. Political stance - opposition, supporting the founding party.

<sup>126</sup> Published three times a week. Founded in 1992 by “Novoye Vremya Newspaper Editorial Board” Ltd. Registered circulation 5,000 copies. Political stance - pro-Presidential, nationalistic.

<sup>127</sup> Published twice a week. Registered circulation 2,200-3,000 copies. Founded in 1990 by “Hayastani Hanrapetutyun-Respublika Armenia” closed joint-stock company. Political stance-pro-Presidential.

<sup>128</sup> Founded in 1991 by a governing body of “Dashnaksutyun” of Armenia. Registered circulation 2,500 copies. Political stance-pro-Presidential, pro-Dashnaksutyun Party, nationalistic.

<sup>129</sup> Cable companies at the time were small stations broadcasting pirate videos.

<sup>130</sup> Both Shant and Tsayg originated in Gyumri. They were among the first broadcasters in Armenia. Tsayg is an example of how small companies at the time survived and gained popularity at a local level. The company's broadcasting was affected by the energy crisis in Armenia. Its programmes stopped when electricity supply was shut down. Despite these difficulties, Tsayg proved to be very popular as it reported on local issues, informed a relatively isolated community about international events and was at the same time the only entertaining television for this community.

According to the statistical data of the Ministry of Justice (2003), there are 221 TV and 63 radio companies in Armenia. However, according to Internews Armenia these figures are unrealistic, and by December 2001 there were 63 electronic media outlets in Armenia, of which 48 were private TV companies and 13 were private radio companies.<sup>131</sup> There are also 3 Public TV and 2 Public Radio companies.

The main broadcasters are:

- ALM: private TV company; covers about 60 per cent of Armenia; political stance - pluralistic within bounds permitted by the government;
- Armenia: private TV company; covers about 70 per cent of Armenia; political stance – loyal to the President and ruling coalition;
- Kentron: private TV company; covers Yerevan only; political stance – pluralistic within bounds permitted by the government;
- Second Armenian TV channel: private TV company; covers about 85 per cent of Armenia and Nagorny-Karabakh; political stance – pro-Presidential;
- Public Radio of Armenia: public service broadcaster;<sup>132</sup> covers about 95 per cent of Armenia; political stance – loyal to authorities;
- Public Television of Armenia: public service broadcaster; covers about 95 per cent of Armenia, Nagorny-Karabakh; has also a satellite version for North America, Europe and Middle East; political stance – pro-Presidential;
- Shant: private TV company; broadcasts in Yerevan and Gyumri, with different programming for each city; political stance - pluralistic within bounds permitted by the government;
- Tsayg: private TV company; covers Gyumri; political stance - pluralistic;
- Shoghakat: private TV company; covers Yerevan; political stance - loyal to the authorities, religious focus;
- Ar: private TV company; covers Yerevan; political stance - pro-Presidential; close to Dashnaktsutyun Party;
- Armenakob: private TV company; covers Yerevan; political stance – loyal to authorities;
- Yerkir-Media: private TV company; covers Yerevan; political stance - pro-Presidential, pro-Dashnaktsutyun Party;
- Yerevan: private TV company; covers Yerevan; political stance – loyal to the authorities.

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<sup>131</sup> N Sarkissyan, “The Market of the Electronic Media” (2002), at <http://www.internews.am>.

<sup>132</sup> Public service broadcasting in Armenia has never been fully introduced. Such changes occurred mainly due to a pressure from the Council of Europe and other international organisations. State channels had their tags changed, with control remaining in the hands of the President of the country. Five Board members are appointed by the President of Armenia.

Private radio stations do not have a major role in forming public opinion as they are predominantly entertainment channels and broadcast mainly music.

### 4.3 Azerbaijan

Significant developments in the Azerbaijani media environment include:

- Amendments were made in 2001 to the Law “On Mass Media”, including some key guarantees such as the prohibition of censorship and some other forms of interference with freedom of expression (Article 7); responsibility was imposed on those who interfere with media freedom (Article 59).
- There seems to be an increased political will by Azerbaijani authorities to foster a more open and inclusive process with respect to the development of legislation. For example, a freedom of information draft law and a set of principles for a defamation law were developed through a process of consultation with civil society organisations.
- The media developed a Code of Ethics, and established a Press Council as part of their efforts to ensure that the media promote and respect professional ethical standards.

#### 4.3.1 Evolution of the Media<sup>133</sup>

As in Armenia, Azerbaijani newspapers of the late and post-*perestroika* period had big print-runs. For example, the newspaper *Azadlig*, established by a well-known journalist Nadzhaph Nadzhaphov in the late 1980s, started with a print-run of 200,000. This was one of the features of the first period of free media development in Azerbaijan which coincided with the emergence of a national independence movement in the country. Prior to August 1990, there existed only one news agency which was controlled by the State, Azerinform.<sup>134</sup> Turan news agency, which appeared later, was the first non-State agency.

The second period started when Azerbaijan’s Popular Front Party came to power in 1992, when Abulfaz Elchibey, who had been imprisoned for dissident activities in the 1970s, won the elections. He replaced the former communist leader Ayaz Mutalibov. During Elchibey’s term in power, the first Law “On Mass Media” was adopted on 21 July 1992, registration procedure for the print media was made simpler, censorship was abolished, access to official information was easier, Presidential Press Service held regular weekly meetings for the media, and periodicals aimed at ethnic minorities received funding from the State.<sup>135</sup> However, his pro-Turkish and pro-

<sup>133</sup> Information for Section 4.3.1 was kindly provided by Arif Aliyev, Yeni Nesil Union of Journalists.

<sup>134</sup> It has been renamed AzerTADZH.

<sup>135</sup> “General Review of the Azerbaijani Press” (in Russian), ([http://www.internews.ru/smi/Yeni\\_Nesil/rus/bank/press.html](http://www.internews.ru/smi/Yeni_Nesil/rus/bank/press.html)).

Western foreign policy resulted in “chaos rather than democratisation [and] the perceived incompetence of the Azerbaijan Popular Front leadership led to a precipitous decline in its popularity.”<sup>136</sup>

When Heydar Aliyev<sup>137</sup> came to power in October 1993, censorship was reintroduced in December after a state of emergency was announced in response to the take-over of Kelbadzhar by the Armenian army during the Karabakh war. This period was marked by increased political rivalry among the media, and increased State control over the media. The State’s monopoly over print and dissemination business grew stronger, and the largest printing house Azerbaijan fell under control of the President’s administration.

The mid-1990s were marked by the relative political stability, the growing development of local media, the fast development of the advertising market, the existence of a strong core of professional organisations of journalists that resisted State pressure over the media, and a political consolidation of power of the ruling leadership after they succeeded in preventing two coup attempts in 1994 and 1995.

The relative political stability of the late 1990s was favourable to increased investment into Azerbaijan’s oil industry, and the rapidly growing oil business resulted in a new flow of money into advertising markets, thus opening up new opportunities for private media to assert their financial independence from the State. However, State pressure persisted. When the Azerbaijan Popular Front, now the opposition party, launched a weekly newspaper *Jumhurriyet* in 1997, its dissenting opinion was quickly suppressed. The State-controlled printing house refused to print the newspaper without giving any reasons. The opposition newspaper *Forum* was withdrawn from sale on 14 September 1997, two days after the publication of its first edition.

On 6 August 1998, there was a moment of victory for the media, when President Heydar Aliyev abolished censorship following a series of demands by professional journalist organisations. Despite this, “in a rundown office in the center of Baku [former GLAVLIT office, now the Main Administration for the Protection of State Secrets in the Press of the Council of Ministers, subordinated to the President’s administration] a staff of censors combed the country’s press for perceived leaks of government, military and political secrecy.”<sup>138</sup> According to Isa Gambar, chairman of the opposition party Musavat, “freedom of speech in Azerbaijan is only halfway to its goal amid the ongoing struggle between authoritarianism and democracy [and] another form of censorship exists for the electronic media – control of the airwaves.”<sup>139</sup>

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<sup>136</sup> Y Lange, note 94 above, 69.

<sup>137</sup> Heydar Aliyev had served as head of KGB in Azerbaijan and as the Azerbaijan’s First Secretary of the Communist Party in the 1960s. In 1982, he was appointed a First Deputy Chairman of the Council of Ministers of the Soviet Union, and in 1990 returned to Azerbaijan, after he was dismissed by Mikhail Gorbachev.

<sup>138</sup> *RFE/RL*, “Azerbaijan: Censorship Illegal But Still Restricting the Press”, at <http://www.rferl.org/features/1998/03/F.RU.980312153307.asp>.

<sup>139</sup> *Ibid.*

Since 1998, a new tool effectively used to muzzle opposition media are lawsuits against newspapers and individual journalists, mainly on the grounds of the protection of personal honour, reputation and dignity. “From November 1998 through mid-1999, prosecutors pursued dozens of criminal-libel suits against journalists, primarily those working for opposition news media. Officials also filed dozens of civil-defamation suits aimed at bankrupting opposition newspapers. The regime’s most effective tool against media critics is Article 188-6 of the Criminal Code, which calls for up to six years imprisonment as a penalty for insulting the honour and dignity of the President.”<sup>140</sup> As a result of court actions by officials, in 2003 *Yeni Musavat* newspaper had to pay damages amounting to 12,000,000 manat (approx. US\$2,450). These convictions were mainly related to the coverage the opposition periodical gave to the worsening health condition of then-President Heydar Aliyev. Damages amounted to 18,500,000 manat (approx. US\$3,700) for *Milli Yol* newspaper, and 2,520,000 manat (approx. US\$510) for *Milliyet* newspaper.

On 7 August 2001, *Milletin Sesi* weekly was forced to cease publication after the Narimanov District Court in Baku found it guilty of defaming Nadir Nasibov, former chairman of the State Property Committee, and his deputy, Barat Nuriyev. The charge resulted from an article accusing Nasibov and Nuriyev of “financial misconduct in a privatization deal.”<sup>141</sup>

On 28 August 2002, President Heydar Aliyev issued a decree “On Preventing the Dissemination of State Secrets in the Media”, which made editors and journalists responsible for preserving State secrets. This decree was seen as a new form of media censorship in the country.

There are also a host of indirect mechanisms that are used to deter criticism in the media. The State has pressured businesses not to place advertisements in opposition periodicals. This has had negative economic implications for opposition or independent media. By mid-2002 the overall monthly print-run of all periodicals dropped by 40 per cent compared to 1998. Tax inspections and convictions for violation of administrative laws are other instruments of control.

The economic crisis within the media community has been further exacerbated by a steady increase in the cost of paper and printing services.

Most media in Azerbaijan were and still are under either direct or indirect political control by the government, with a smaller percentage controlled by opposition political forces. There are hardly any truly independent media.

The situation with media freedom in Azerbaijan further deteriorated in 2003 during the October Presidential Elections in which Ilham Aliyev, the son of late President Heidar Aliyev, who died only weeks before the elections, ran for office. Ilham Aliyev had been appointed Prime Minister by his father on 4 August 2003 and as such, in line with The Constitution of Azerbaijan, was already acting as President after his father’s death. According to official results, Ilham

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<sup>140</sup> <http://www.cpj.org/attacks99/europe99/Azerbaijan.html>.

<sup>141</sup> [http://www.cpj.org/Briefings/2001/Azer\\_sept01/Azer\\_sept01.html](http://www.cpj.org/Briefings/2001/Azer_sept01/Azer_sept01.html).

Aliyev won the Presidency by over 76 per cent of the popular vote. However, there is little doubt that the election results had been considerably falsified, leading to a mass protest.

### **Economic Pressure**

In May 2000 tax inspectors sealed the offices of the *Monitor* weekly, known for its sharp criticism of the ruling government, as well as the premises of Baku Printing Press, where issues of the *Monitor* magazine were being printed. On both occasions the tax authorities failed to produce documents justifying their actions.

On 7 January 2004, the electricity was temporarily cut off for the private printing house Chap Evi, which prints the majority of the opposition newspapers. As a result, *Yeni Musavat*, *Hurriyet*, *Baki Khaber* and *Yeni Zaman* newspapers were not printed for three days.

### **Closure of the Broadcasters**

- On 9 October 1999, Sara Radio-TV's licence was suspended on the grounds of its foreign ownership status,<sup>142</sup> which presumably contradicts the Azerbaijani law. Officials from the Ministry of Justice claimed that the TV company had violated its broadcast agreement because it broadcast political instead of entertainment programmes. According to CPJ, this closure happened the morning after Sara TV broadcast an interview with Nizami Suleymanov, an opposition leader and chairman of the Independent Azerbaijan Party, who called for an anti-government protest action during the interview.<sup>143</sup> After its closure, Sara TV was fined 250,000,000 manat (approx. US\$60,000) by the Baku City Court for "violating the honour and dignity of Husein Huseynov, head of the Azerbaijani Motor Transport Agency. Sara company had implicated Huseynov in a corruption scandal during a broadcast in early September."<sup>144</sup>
- According to the International Federation of Journalists, in October 2000, the independent Azerbaijan Broadcasting Agency (ABA), that broadcasted an Azeri language version of CNN, was closed by order of the Ministry of Communication who justified its decision by citing ABA's unpaid debts.

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<sup>142</sup> It is owned by the Turkish firm ICBC.

<sup>143</sup> "Azerbaijani Authorities Close, then Fine, Independent TV Station"

(<http://www.cpj.org/protests/99ltrs/Azerbaijan/>); Also, see ARTICLE 19, *Azerbaijan: Press Freedom or Personal Fiefdom?* (London: ARTICLE 19, January 2001), 71-72.

<sup>144</sup> *Ibid.*

## Violence Against Media Professionals

Azerbaijan's Committee to Protect Journalists (RUH), who monitored 218 cases of violence against journalists in 2001, recorded 130 cases in 2002 and 350 cases in 2003. Journalists from *Yeni Musavat*, *Hurriyet* and *Azadlig* newspapers were subject to violence most often.

On 13 January 2003, during a protest by the inhabitants of Bayil village near the local executive authority building in Baku, police forcibly confiscated a camera from a member of *Uch Nogta* newspaper, Shahla Abusattar, and tore his film. His colleague, Rasim Madad demanded that the film and camera be handed back, and was insulted and subjected to physical violence. The police returned the camera after the film was destroyed. The reason for the protest was the decision of Baku's Mayor to demolish several private houses in the district.

According to Freedom House reports, Azerbaijan saw numerous attacks on the independent media and the October elections were marred by violence.<sup>145</sup> Over seventy journalists were reported injured during protest demonstrations on 15–16 October 2003. There were numerous arrests and much physical violence, documented in detail by the Azerbaijan Journalists Confederation and the Azerbaijan Committee to Protect Journalists (RUH), as well as by international organisations such as Human Rights Watch, the Committee to Protect Journalists and ARTICLE 19.

"Over 600 opposition supporters were arrested after opposition demonstrations and clashes with the police[...]. The authorities in Ganja, a large city West of Baku, have warned journalists not to cover mass arrests of the opposition on 17 October [...] and the sale of opposition newspapers in the town was banned."<sup>146</sup>

"Journalists and editors face the threat of physical assault by unknown attackers bent on intimidation [...]. On July 17 [2004], four masked men kidnapped Aydin Quliyev, the editor-in-chief of the *Baki Khaber* newspaper and demanded that he cease his journalism work, beating him for two hours before releasing him."<sup>147</sup>

"Jalal Aliyev, the uncle of current President Ilham Aliyev, filed a complaint against *Baki Khaber* in August [2004]. The case stems from a 1 July article titled, 'A tunnel is built into the sea from Jalal Aliyev's apartment', which was reprinted verbatim from the 30 July issue of the newspaper *Alternativ*, and talks about Jalal Aliyev's property in Bilgah, on the outskirts of Baku. Aliyev filed a suit against *Baki Khaber*, but not *Alternativ*."<sup>148</sup>

<sup>145</sup> See numerous country reports at <http://www.hrw.org>, <http://www.freedomhouse.org>.

<sup>146</sup> International Press Institute, "2003 World Press Freedom Review", note 110 above.

<sup>147</sup> [http://hrw.org/english/docs/2005/0113/azerba9891\\_txt.htm](http://hrw.org/english/docs/2005/0113/azerba9891_txt.htm).

<sup>148</sup> International Press Institute, note 110 above.

On 28 April 2004, Mahammed Rza, correspondent of the *Azadlig* newspaper in Nakhichevan, was abducted and tortured by policemen, and his life was threatened. "On the same day he was met by Intiqam Aliyev, the chief of the Criminal Department of the City Police, who also urged him to stop criticising the government. Aliyev threatened to kill him if he refused to listen."<sup>149</sup>

On 2 February 2005, Akper Hasanov, journalist of the *Monitor* magazine, was held for almost five hours at the Baku Military headquarters. He was forced to write a refutation of an article published in the *Monitor* on 29 January, that detailed the horrifying conditions endured by a military in the Geranboy region.

On 25 February 2005, Ganimat Zahidov and Azer Ahmedov, chief editor and technical director of *Azadlig* daily, were abducted in Baku as they left the newspaper's office, threatened, assaulted and humiliated in a restaurant, then forced to sign confessions at a local police station. Ganimat Zahidov later revealed that while they were beaten, their abductors told them to stop publishing critical articles about President Ilham Aliyev, and reporting on riots in the country's prisons.<sup>150</sup>

On 2 March 2005, Elmar Huseinov, chief editor of the *Monitor* magazine, was shot dead in Baku. Both Elmar Huseinov and his magazine had been known for their harsh criticism of the corrupt Azerbaijani authorities. A number of international organisations called upon the Azerbaijani government to conduct a thorough investigation, publish its findings and bring to justice those responsible for committing the murder.<sup>151</sup>

### **Political Prosecution**

Rauf Arifoglu, editor-in-chief of the *Yeni Musavat* opposition daily and deputy director of the Musavat opposition party, was arrested after being invited to the General Prosecutor's Office on 27 October 2003, and interrogated about street clashes between protesters and police during elections. Despite vigorous protests by international organisations, in October 2004 Rauf Arifoglu was sentenced to five years in prison "for allegedly organising anti-government riots that followed marred election of 15 October 2003."<sup>152</sup> On 20 March 2005, President of Azerbaijan pardoned dozens of political prisoners, including Rauf Arifoglu and six opposition activists arrested after the protests after the Presidential Elections of October 2003. On 31 March

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<sup>149</sup> *Ibid.*

<sup>150</sup> For details, see <http://www.ifex.org>.

<sup>151</sup> See, for example, <http://www.article19.org>; <http://www.ifex.org>; <http://www.coe.int>; <http://www.osce.org>.

<sup>152</sup> <http://www.cpj.org/news/2004/Azer25oct04na.html>.



2005, the Supreme Court has upheld the conviction of Rauf Arifoglu. This will prevent him from running to Milli Mejlis in November 2005.

### **Other Types of Political and Economic Pressure**

Other types of intimidation against the mass media in Azerbaijan include instances of obstructing the supply of media products or confiscating them.

“In 2004 *Hurriyet*, an opposition newspaper affiliated with the Azerbaijan Democratic Party, had to suspend publishing due to financial burdens and government harassment which led to difficulties distributing and selling the newspaper outside Baku.”<sup>153</sup>

Distribution of the opposition media is often banned by the authorities of Baku underground.

Since December 2004, the head of the Baku City Underground Administration, Taghi Ahmedov, banned sale of the opposition newspapers *Azadlig*, *Baki Khaber* and *Futbol+* (a supplement to *Hurriyet* newspaper, owned by the opposition Democratic party) in the Baku underground. According to a *2003 Press Freedom Review*, he earlier said that such situations resulted from the “newspapers’ disrespect for the President and the publication of false information,”<sup>154</sup> implying that opinion critical of the authorities is not tolerated.

Many regional newspapers have had part of their circulation confiscated by order of regional or city authorities who do not tolerate criticism. According to monitoring conducted by RUH, there were 20 incidents in 2001, 18 in 2002, and 60 in 2003, when authorities imposed a ban on dissemination of a part of the circulation of some newspapers in some territories. None of these actions were consistent with the requirements of Article 27 of the Law “On Mass Media”, which allows bans on publications only in very specific circumstances.<sup>155</sup>

On 4 October 2004, the Nakhichevan Supreme Court fined a correspondent of Azadlig radio (Radio Free Europe/Radio Liberty) and Turan News Agency, Malakhat Nasibova, 40,000,000 manat (approx. US\$8,150), for reporting on the fast growing drug abuse problem in the province.<sup>156</sup>

<sup>153</sup> [http://hrw.org/english/docs/2005/01/13/azerba9891\\_txt.htm](http://hrw.org/english/docs/2005/01/13/azerba9891_txt.htm).

<sup>154</sup> *2003 World Press Freedom Review*, at <http://www.freemedia.at/wpfr/Europe/azerbaj.htm>.

<sup>155</sup> According to Article 27 of the Law “On Mass Media”, the circulation of existing and distributed products can be withdrawn only in accordance with a court decision. To do so, the court has to be convinced that dissemination harms integrity and security of the state, or contains elements of pornography.

<sup>156</sup> <http://azfreespeech.org/cgi-bin/e-cms/vis/vis.p/>.

Authorities often refuse to grant a permission to hold demonstrations by the media professionals. One of the most recent examples is when the Mayor of Baku denied a request from the local journalists asking for permission to hold a demonstration "Journalists Against Terror", dedicated to the murdered journalist Elmar Huseinov, on 9 April 2005. Despite this denial, the peaceful demonstration took place.

Defamation charges have been frequently brought by public officials against journalists, often leading to exorbitant fines and sometimes to prison sentences. They generate a climate of fear, and seriously inhibit journalistic activity.<sup>157</sup>

"In February 2003, a libel suit against *Yeni Musavat*, a newspaper associated with the popular opposition party Musavat, resulted in fines of 100,000 Euros."<sup>158</sup>

On 6 October 2004, the Sabail court ruled against the newspaper *Azadlig* and its staff member, Ruslan Bashirli, and against the newspaper *Millet* and its staff member, Ali Orusov, in a case initiated by the chief executive of the Lachin district, Muradkhan Dzhabbarov. The latter considered an article "Taking over a position" in *Azadlig* to be defamatory. The court imposed a fine of 2,000,000 manat (approx. US\$400) on Ruslan Bashirli, and a 15,000,000 manat (approx. US\$3,050) fine on Ali Orusov. The newspaper had to publish a refutation and apologise.

On 11 October 2004, the Yasamal district Court in Baku ruled on the case against Einulla Fatullayev and fined him 10,000,000 manat (approx. US\$2,040) to be paid to the Ministry of Defence in monthly installments over thirty years. The decision was based on Article 313 of the Code on Administrative Assaults. In 2002 the *Monitor* journal published an article by Fatullayev, "Reporting to the Defence Minister", on serious violations by the army against the rights of conscripts. The Defence Ministry classified this as defamatory and filed a suit in court. Fatullayev plans to lodge an appeal.

However, there has been a positive development, when the Mayor of Baku dropped all criminal charges against journalist Irada Huseynova on 23 June 2004. "The charges stemmed from an article Huseynova wrote in June 2001 for the independent weekly *Bakinskiy Bulvar*, which criticised Abutalibov [the Mayor of Baku] for closing important tram lines [...], building water fountains during a water shortage and demolishing commercial kiosks."<sup>159</sup>

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<sup>157</sup> According to the Azerbaijan Committee to Protect Journalists (RUH), 40 lawsuits were brought against 18 journalists or media outlets during 2003, resulting in fines of approximately 1.6 billion manat (approx. US\$325,000). Similarly, in 2002, journalists and media outlets were fined about 750,000,000 manat (approx. US\$150,000). Given the country's weak economy, such high fines frequently lead to the bankruptcy of media outlets.

<sup>158</sup> <http://www.cpj.org/attacks03/europe03/azer.html>.

<sup>159</sup> See note 110 above.

## Artistic Expression

Since 2003, the Azerbaijani singer Flora Kerimova who is also a member of the opposition party Musavat, has been banned from performing on State and private TV channels in Azerbaijan.

In 2003, in his comment to a proposal by a German conductor to create a Transcaucasus chamber music orchestra involving musicians from Georgia, Armenia and Azerbaijan, the Azerbaijani Minister of Culture said that Azerbaijan had no moral authority to participate in any joint cultural and artistic projects engaging Armenian representatives.

Despite some progress in forming joint government/NGO working groups to draft the freedom of information act and principles on defamation, the Azerbaijani government has been generally reluctant to carry out the fundamental reforms to the legal framework which are necessary for a robust, pluralistic media to develop.

But the blame lies not only with the authorities. In a growing climate of hostility and political tension in Azerbaijan, many media professionals do not follow rules of ethics, and often report facts without verifying them. Some give negative coverage to public figures for payment, a phenomenon called ‘racket journalism’.

According to a report by IREX,<sup>160</sup> 20,000 people in Azerbaijan possess press cards, although 5,000 work as journalists. Press cards were introduced by the Press Council as one of the means of protecting journalists against violent treatment. Officials accept them as a proof of a journalist’s ID. However, these cards are often faked and used for blackmailing and accessing restricted information.

Azerbaijan’s mass media find themselves in a highly precarious situation in which it is extremely difficult for them to perform their role in a democratic society.

### 4.3.2. Overview of the Types of Media<sup>161</sup>

#### a. Print Media

The International Federation of Journalists (IFJ) noted that the Presidential entourage owns 80 per cent of the print media through the family/clan network.<sup>162</sup>

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<sup>160</sup> See *2003 Media Sustainability Index*, 111, at <http://www.irex.org/msi/2003/MSI03-cover.pdf>.

<sup>161</sup> For details, see *Azerbaijan: Press Freedom or Personal Fiefdom?*, note 143 above, 58-80.

<sup>162</sup> International Federation of Journalists, *Promoting Independent and Ethical Journalism in Southern Caucasus*, at <http://www.ifj.org>.

According to official statistics, there are approximately 400 newspapers and magazines registered in Azerbaijan, of which less than 50 are published regularly.<sup>163</sup> About ten daily newspapers have a print-run of over 5,000. Two of these are State-funded, *Khalg gazet* (registered print-run 7,100) and *Azerbaijan* (registered print-run 6,800). Other pro-government newspapers include *Respublika* (registered print-run 3,500), *Yeni Azerbaijan* (registered print-run 3,800) and the Russian language newspaper, *Bakinski Rabochiy* (registered print-run 3,500).

The country's largest opposition newspapers are *Yeni Musavat* (registered print-run 19,600 as of 2001) funded by the opposition Musavat Political Party, and *Azadlig* (registered print-run 8,500), closely linked to the Popular Front Party.

Two other popular newspapers are *Ekho* (print-run approx. 10,000) and *Zerkalo* (print-run 8,000), that are published in the Russian language. The *525* newspaper's circulation has dropped from 12,000 to 15,000 in mid-1999 to 5,000 (Saturday issue) and 3,000 (issues released on other days).

Since February 2005, a new non-State Azeri-language newspaper, *Gun*, has been published in Azerbaijan (print-run 3,500). It differs significantly from the Azerbaijani print media, and has already showed signs of a professional independent edition. The newspaper has its own Code of Ethics, a lawyer, an ombudsman and a reader's page.

The regional media is insignificant. In the majority of regions newspapers are being published less than once a month, with print runs not exceeding 500. Many of these are official newspapers of the local administrations and, therefore, publish mainly statistical information and official reports. They are controlled by the local authorities who do not allow critical publications.

31 news agencies are officially registered. The most active and frequently quoted are Turan, Olaylar, Trend and Sharg.

## **b. Broadcast Media**

The broadcast media remain the main source of information in Azerbaijan.

According to official statistics by the National Broadcasting Council,<sup>164</sup> in October 2004 there were 10 regional TV stations and 2 State TV Companies – AzTV (two channels, AzTV1 and AzTV2) and Nakhichevan TV.<sup>165</sup> The National Broadcasting Council hasn't issued a single licence since it was created in 2001, and is controlled by the President.

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<sup>163</sup> See *Azerbaijan: Press Freedom or Personal Fiefdom?*, note 143 above; also see <http://www.media.aznet.org/russian/analytics.html>.

<sup>164</sup> Information was provided by Yeni Nesil Union of Journalists.

<sup>165</sup> Nakhichevan province is an exclave, separated from the rest of Azerbaijan by the state of Armenia, and bordering Turkey. President Aliyev's family comes from this region.

There are 8 private radio stations. State radio has three channels – ARAZ and BAKI (they are part of the Azerbaijan State TV and radio system and are pro-government), and Nakhichevan radio.

Public Service Broadcaster will be established in 2005. However, the Law "On Public Service Broadcasting" has been passed in 2004 mainly due to a pressure from the Council of Europe and other international organisations. The President and his administration will have control over the public service broadcaster. For example, as in Armenia, the President of Azerbaijan approved the members of the Broadcasting Council (a nine-member body). Despite international pressure, the Presidential Decree on the implementation of the Law "On Public Service Broadcasting" (dated 5 November 2004) suggested that Azerbaijan's Public Service Television would be based only on one of the two State channels, leaving the other, with larger area of coverage, to the State. If enacted, this would have serious implications for the independence of public service broadcasting in the country.

#### **4.4 Georgia<sup>166</sup>**

Georgia is undergoing a series of democratic reforms, including those in the field of freedom of expression, initiated by the administration of President Mikheil Saakashvili who was swept to power in the "Rose Revolution" in November 2003.<sup>167</sup> Major positive developments in Georgia include:

- The adoption of the Law "On Broadcasting" in 2004, and commencing reforms in the field of public broadcasting;
- The adoption of an advanced press law, the Law "On Freedom of Speech and Expression" in 2004;
- The abolishment of defamation as a criminal offence in 2004;<sup>168</sup>
- The adoption of a comprehensive FOI Law in 1999 (as Chapter III of the General Administrative Code);
- The liberalisation of the tax regime to include tax benefits for the print media;<sup>169</sup> and
- The adoption of professional standards for the media, signed by numerous major print and electronic media in 2003.

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<sup>166</sup> Information was kindly provided by Khatuna Kveselava, Liberty Institute. For more details, visit Liberty Institute's web site at <http://www.liberty.ge>.

<sup>167</sup> Former President Eduard Shevardnadze stepped down in response to massive protests in the country, and Mikheil Saakashvili was elected Georgia's new President in December 2004. His party, the National Movement, won the Parliamentary Elections on 28 March 2004.

<sup>168</sup> Georgia was the first State to decriminalise defamation in the South Caucasus.

<sup>169</sup> It made newspapers exempt of all taxes, except for a 4% social tax.

#### **4.4.1 Media Evolution<sup>170</sup>**

In Georgia, non-State media started emerging in the early 1990s. At that time, the newspapers were seen as a symbol of free expression, and not merely voicing the opinions of their owners as happened later. Non-State print media started with the publication of partisan periodicals: *Mamuli* by the Rustaveli Society, and *Sakartvelo* by the Popular Front.

The founding in 1990 of *7 Dghe* – the first non-partisan newspaper – was a “watershed in Georgia’s development of an independent media and democratic processes in general. Published under the aegis of the Journalists’ Association, the newspaper is regarded as the forerunner of today’s non-State media.”<sup>171</sup> The print-run of the newspapers was high and at times reached 25,000. However, in the early 1990s, State bodies were able to keep control over the media because they controlled the distribution networks and the only print house at the time, Samshoblo. This enabled them to refuse to publish 'disloyal' periodicals or confiscate them.

The winter of 1991 saw a wave of repressions by Gamsakhurdia’s authoritarian administration against partisan periodicals. The result was increased support from the public to the opposition newspaper, Popular Front’s *Sakartvelo*, and its growing print run of 70,000.

Due to political instability after Zviad Gamsakhurdia's regime was overthrown in the winter of 1992 and because a state of emergency was declared in the country, a decree was issued which prohibited Samshoblo from printing newspapers.<sup>172</sup> The decree was later dropped, which sparked a boom in non-State media. For example, *Rezonansi*, a former bulletin of the National Concordance Association, was issued as a non State-controlled periodical.

Although the number of new periodicals mushroomed in the mid-1990s, many of them were ‘stillborn’ and disappeared after the first issue, while others were published irregularly, sometimes with intervals of seven months between issues. Only a few proved to be periodicals with steady print-runs. The economic and political situation was volatile and offered a difficult environment for media to survive.

In 1995 the adoption of The Constitution brought a certain stability. Unlike their early days, the media became more businesslike. In 1997 a number of private newspapers emerged, with more stable print-runs, such as *Akhali Taoba*, *Alia*, *Rezonansi*, *Kviris Palitra*, *Asaval-Dasavali* and *Dilis Gazeti*. Competition in the market increased.

The late 1990s was a period of rapid development for the non-State media in Georgia, which had a strong impact on public opinion. Investigative journalism emerged in the same

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<sup>170</sup> For more information see “Georgian Media in the 90s: a Step to Liberty”, note 95 above .

<sup>171</sup> Since May 1991, it has been published under the name of *Droni*. During a coup to overthrow Gamsakhurdia in 1992, *7 Dghe* returned, and *Droni* was published as a separate newspaper. Its popularity was growing fast due to the limited number of non-state newspapers. However, *Droni* was not an independent periodical, as it was a base for an opposition forum during Gamsakhurdia’s administration.

<sup>172</sup> While it was in force, the only 'permitted' newspaper was *Droni*, which was controlled by the then-Chairman of the Georgian TV and Radio Corporation, Archil Gogelia.

period and became a powerful tool in the hands of the media fulfilling its function of a government watchdog. As a result of broadly covered journalistic investigations conducted by the Liberty Institute during 1997-2000, two ministers were dismissed from their positions, and a number of parliamentary hearings were held. Scandalous findings shedding light on the Ministry of Interior and Ministry of Security's involvement in smuggling tobacco, petroleum and alcohol, and on illegal business activities by Shevardnadze's family, received wide publicity.

As television and radio stations entered the market (including Rustavi-2 TV company which became popular for its unbiased news reporting), competition in the media market became much stronger.<sup>173</sup> The same period marked the establishment of non-State news agencies and printing houses, as well as specialised dissemination agencies.<sup>174</sup>

During the Shevardnadze regime, despite increased activity on the part of non-State press, the government continued to restrict certain freedoms, mainly through financial means and benefits. Self-censorship was widely practiced among the media, partially caused by a fear of offending government officials. This was further complicated by financial restraints (low wages exposed journalists to the temptation of accepting bribes to write favourable or negative articles), and the low level of professionalism among the media. Occasionally, political, financial and other groups with clear political interests directly financed media outlets. Attacks against reporters continued as law enforcement institutions tried to intimidate the media using fear tactics, such as applying pressure through the tax police.

The Rustavi-2 case best illustrates the kind of pressure the media experienced at that time. It grew from a local TV company broadcasting in the town of Rustavi to a station with more viewers than the State broadcaster, and later became one of the leading national broadcasters. In 1996, the Ministry of Communications withdrew the company's broadcasting licence following demands from then Security Minister Shota Kviraia to the Minister of Communications, Pridon Injia, to demonstrate greater prudence in issuing licences and to investigate those who backed Rustavi-2. After a strong protest by civil society groups the company's licence was renewed. After an eight-month battle, the Supreme Court overturned the decisions by the lower courts, and declared the decision by the Ministry of Communications void. When it re-emerged in 1997 after the suspension of its licence, Rustavi-2 broke the government's monopoly on broadcast news reports in Georgia. It survived a number of government attempts to shut it down in 1997, 1999 and 2001. In October 2001 the Security Ministry attempted to close it down. Security officers entered the premises and demanded to inspect financial documents. Rustavi-2 broadcast live what happened, which resulted in mass demonstrations in the streets of Tbilisi. This culminated in the resignation of then-Minister of Internal Affairs Kakha Targamadze, also Minister of

<sup>173</sup> The investigative journalism programme "60 Minutes" on Rustavi-2 was in big demand as it readily exposed corruption and abuse by the then ruling administration.

<sup>174</sup> The first non-state dissemination agency was established by four newspapers - *Rezonansi*, *Alia*, *Akhali Taoba* and *7 Dghe*.

Security and a General Prosecutor. During the "Rose Revolution"<sup>175</sup> in Georgia, Rustavi-2 became a symbolic voice of the anti-government protesters.

In 1998 a number of politically destabilising events rocked Georgia, including assassination attempts on President Shevardnadze, the abduction of four UN observers in Abkhazia, renewed hostilities in the Gali region in a zone of the Georgia-Abkhazia conflict, and an attempt to oust Shevardnadze by supporters of Georgia's late President Zviad Gamsakhurdia. It was during this period that the official harassment of journalists increased.

### **Physical Violence Against Media Professionals**

Lashda Nadareishvili and David Okropidze, editor-in-chief and a reporter for the independent weekly *Asaval-Dasavali*, became victims of violent attacks when they were beaten by armed assailants in September 1998.

On 1 March 2000, Zaza Maisuradze, a cameraman for Rustavi-2, was assaulted and his tapes seized as he was filming a fire at two houses in Tbilisi that were owned by the then-Minister of Interior, Djemal Gakhokidze. Maisuradze recognised his attackers as the ex-Minister's bodyguards. Rustavi-2 filed a complaint about the assault.

Vasil Silagadze, a reporter for the *Eco Digest* daily, was attacked in July 2000 by local police officers after he published an article on police corruption.

On 26 July 2001, Giorgi Sanaya, a well-known newsreader on Georgia's Night Courier Programme at Rustavi-2, was found shot dead. He had carried out an investigation into allegations of drug trafficking between mainland Georgia and the Pankisi Gorge.<sup>176</sup> This case has triggered speculations that he was assassinated in retaliation for his pursuit of corruption among Georgia's high-ranking officials.

### **Other Forms of Pressure**

As the number of attacks on journalists increased, local authorities made several attempts to close regional TV stations in 1998, including Trialeti TV station in the Kareli region and TV 25 in Batumi.

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<sup>175</sup> Rustavi-2 played a leading role in exposing the attempted falsification of the 3 November 2003 parliamentary election, which sparked the popular protests that forced President Shevardnadze to resign, and led to a repetition of the parliamentary elections.

<sup>176</sup> Pankisi Gorge bordering Chechnya.



In 2000, when the government was strongly criticised and felt threatened by the popular media, it resorted to various measures, including financial pressure and defamation laws, to restrain the media. The authorities attempted to limit freedom of expression by adopting in the first reading a draft law that entailed a more stringent liability for libel. Against strong opposition from the media and NGOs and criticism by international organisations, authorities withdrew the draft.

As noted in the 2001 *World Press Freedom Review*,<sup>177</sup> Georgian media used to enjoy a relatively high level of freedom compared to many former Soviet republics. There had been a degree of reporting on sensitive issues such as corruption and criticism of officials. The media enjoyed a high level of public trust (approximately 76 per cent) compared to other democratic institutions. Investigative programmes revealed corruption among the members of Shevardnadze's government and prime-time talk shows mirrored opposing opinions. However, the situation deteriorated rapidly when the authorities stepped up pressure on the media.

In July 2003, Tbilisi Regional Court imposed a 1,000,000 GEL (approx. US\$480,000) fine on Rustavi-2 in a case related to the protection of "honour, dignity and business reputation" of one of the leaders and sponsors of the pro-government bloc, Akaki Chkhaidze (then-Director General of the Georgian Railway Company). The station appealed the decision to the Supreme Court; this resulted in a reduction of the fine to 104,166 GEL (approx. US\$50,000).

Over the last five years of the Shevardnadze administration, the independent media in Georgia have actively supported building democracy in the State. Despite numerous attempts by the Shevardnadze government to suppress or control it, the media managed to sustain freedom of speech. Some Tbilisi-based non-State media became known as being a reputable source of information for the local population. Television plays an important role in the country's civil and political life.

### **Situation in Ajara Region**

The situation in the Ajara Autonomous Republic in the South-West of Georgia is a special case. Under the rule of local leader Aslan Abashidze, who governed the province through a repressive regime with virtually no links to the central government in Tbilisi for 13 years,<sup>178</sup> private media barely survived in the region, and the opposition media ceased to exist. The Ajara TV channel

<sup>177</sup> <http://www.freemedia.at/wpfr/Europe/georgia.htm>.

<sup>178</sup> Aslan Abashidze ruled in Ajara from 1991 until his resignation in May 2004. Moscow backed Abashidze during this time. He introduced curfew in Ajara shortly after his term in office began, and blocked borders with Georgia. Abashidze was also known for his support of criminal gangs involved in smuggling of goods in the region.

was owned by the State.<sup>179</sup> Overall, the mass media represented unanimously the opinions of their regional leadership who tolerated no diversity of opinion.

In 2004, the "Rose Revolution" in Tbilisi spilled over into Ajara and the public protested against the local government. Media freedom was manifestly suppressed then; almost all TV channels were taken off the air for a while; journalists were assaulted and their video, audio and photo materials were seized. Many were put under surveillance, and were subject to life-threatening attacks. The confrontation eventually ended when Abashidze resigned under pressure from within Georgia, but also from Russia and the international community, and left the country.

On 13 January 2004, the crew of Imedi TV was beaten near the State Security Building of Ajara while filming the five cross flag (flag of the National Movement of Georgia) on the facade of one of the buildings in Batumi. Imedi TV issued a protest statement addressing local authorities, international and human rights organisations, denouncing the violent actions of the Adjara law enforcement institutions. Special forces of the Ministry of Internal Affairs destroyed cameras and video footage made by the TV companies Rustavi 2 and Imedi TV on 19 January 2004. Journalists were filming residents of the village as they attempted to place the five cross flag on one of the buildings in Gonio during a protest rally.

Members of the Special Forces Unit attacked Vakhtang Komakhidze, a correspondent of the TV Company Rustavi-2, and cameraman Soso Tsiklauri in the Khelvachauri district of Ajara on 5 March 2004. Komakhidze was attacked after being stopped near the police post while traveling by car from Batumi to Tbilisi. He was hospitalised in Batumi after having suffered serious injuries. One of the policemen later mentioned that the violent incident against the journalist was ordered by the local authorities.

Journalists from several media outlets were denied entrance to the Ajara Autonomous Republic. They were stopped by armed persons near the village of Tsikhisdziri while covering the visit of Georgian President Mikheil Saakashvili to Ajara on 18 March 2004. The President's escort was allowed to pass, but the journalists' car that followed the Presidential escort was stopped. On 17 March 2004, Nanuka Zhorzholiani was forced out of Ajara when filming a rally of Abashidze's supporters.

On 14 April 2004, journalists from the TV Company Rustavi-2, Maka Pankvelashvili and cameraman Soso Tsiklauri, were beaten by supporters of Aslan Abashidze's ruling regime near Choloki check point. The journalists were reporting that the Head of the Georgian Central Election Commission was trying to enter the territory of Ajara at the Choloki check-point. The journalists' cameras and videotapes were destroyed. Another crew member was attacked on the

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<sup>179</sup> This is the only TV channel in Georgia with an international satellite transmission.

same day not far from Choloki, in Kobuleti, while reporting on a protest rally in Ajara. Nearby police witnessing the incident did not get involved. Authorities denied any involvement.

### **Media in Georgia after the "Rose Revolution"**

After the "Rose Revolution", the independent media in Georgia were less critical of the present authorities than of the former ones. For instance, in early February 2003, three private TV companies, Mze, Imedi and Rustavi-2, and the First State Channel, suspended evening talk shows with live debates between politicians.

The most sensational change occurred recently when Erosi Kitsmarishvili, one of the owners of Rustavi-2, sold his TV shares to businessman Kibar Khalvashi, who is closely connected to the ruling elite. Another large share-holder is Irakli Okruashvili, the present Minister of Defence. Subsequently, the channel's former head of the information service and former deputy Minister of Foreign Affairs (under the Saakashvili government), Nika Tabatadze, assumed the position of the General Director of Rustavi-2.

Currently three major private TV companies (TV Imedi, TV Mze<sup>180</sup> and Rustavi-2) compete in the market for audiences and advertising. Two of the established TV channels have changed owners and it is difficult to say whether there was any political pressure or not. One of the new owners of TV Mze is an MP and brother of the Secretary of the Security Council of Georgia. The owner of Imedi TV is an oligarch, Badri Patarkatsishvili, who also tends to keep close contacts with those in power.<sup>181</sup> In addition to owning the above-mentioned TV channel, he has other business and political interests.

At present, one of the main issues of concern on freedom of expression in Georgia is how the overlap of media ownership and political interests might affect media independence and diversity, and whether recent developments signify a desire of the new leadership that key media be favourable to them.

The authors of the *2003 Sustainability Index by IREX* noted that a major problem faced by the Georgian media is to regain public trust lost during the Revolution.

According to Levan Ramishvili, Director of the Liberty Institute, "if the Georgian press restores its connection with the society and focuses more on the public interest, it will be able to respond to new challenges properly [...] Today's realities do not allow such optimism, [because] the owners of the largest electronic media outlets are also the richest people of Georgia with their own political agenda, [and] the golden cages created by media owners for some journalists are very hard to give up and too comfortable for them to start the struggle for ideas[...] The press

<sup>180</sup> Mze was launched in 2003 during parliamentary elections.

<sup>181</sup> He is a former business partner of Russian oligarch and media tycoon Boris Berezovskiy, who was persecuted in Russia and has been granted political asylum in the U.K.

has yet to emerge as a sustainable business.”<sup>182</sup> Levan Ramishvili mentioned several reasons for this, including the poor shape of the country’s economy, a limited advertising market and an expanding ‘shadow’ economy.

In the press, current print-runs are low and newspapers struggle to survive, especially in the regions. There are approximately ten major print media outlets in Georgia. Some tabloids and digest newspapers have considerably high circulation. The online media are in the process of development and the percentage of the population having access to the Internet is small, but growing.

The economic situation is one of the main impediments to the sustainability, professionalism and independence of the Georgian media.

Another issue that currently is of great interest in Georgia is the beginning of the transformation of the State Television, First Channel, into a public service broadcaster. While the draft law on public service broadcasting was debated in Parliament in the autumn of 2004,<sup>183</sup> some of the private television companies opposed the law, as they were concerned that public broadcasting as defined under the law would create unequal conditions in the market. They also said that it would harm the interests of private television companies. The leading civil liberties NGO Liberty Institute backed the introduction of public service broadcasting as a vital necessity in order to promote the development of democracy and media in the service of society and as a counterbalance to private or governmental interests.

After the Revolution, a number of concerns emerged as some newspapers and small opposition television channels claimed to have been subjected to pressure through financial instruments.

*The Georgian Times* newspaper was raided by the financial police on 14 July 2004. Seven policemen conducted a search of the head office without a warrant, claiming the situation was an emergency, and confiscated all the financial documents of the newspaper. According to the newspaper journalists and the publisher, this inspection was ordered by the Tbilisi Prosecutor General Valeri Grigalashvili, who was extremely irritated by the journalistic investigations conducted by the newspaper. During the months before the raid, articles sharply criticising Valeri Grigalashvili and his brother, MP Nodar Grigalashvili, were published by the newspaper.

Shortly after the "Rose Revolution" in 2004, Revaz Okruashvili, editor-in-chief of the regional newspaper *Khalkhis Gazeti*, was arrested. He had conducted several investigations in the region, and was charged with the use and dissemination of drugs and detained by local police. The court ordered three months of pre-trial detention. The Liberty Institute and other NGOs asserted that

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<sup>182</sup> L. Ramishvili, “Freedom of the Press in Georgia”, at [http://www.liberty.ge/eng/page.php?genre\\_id=90&section\\_id=3&news\\_id=103&from=categories](http://www.liberty.ge/eng/page.php?genre_id=90&section_id=3&news_id=103&from=categories).

<sup>183</sup> It was adopted in December 2004.

police planted drugs and firearms in his car and house. As a result of an active civil campaign and pressure by the NGOs and the media, the journalist was released.

### **Situation in the Regions**

The previous two examples are also indicative of another observation. Despite fundamental changes at the central government level, not much has changed in the regions since the "Rose Revolution" in terms of freedom of the press and media relations with public officials. Appalling cases of assaults against journalists and arbitrary harassment by public officials still take place in different parts of Georgia. Local authorities often threaten journalists and restrict access to public meetings. Some of the most common methods of suppression of freedom of information used by authorities in the regions of Georgia are denial of access to public buildings and assaults.

In 2003, before the Revolution, Raul Samsonadze, Head of the Akhaltsikhe regional government, openly criticised the local mass media and NGOs at the meeting of the regional government held on 14 April 2003. He accused journalists of distorted coverage of the local news and NGOs of negative evaluation of the regional government's work. Television companies Lomsia and Iberia were informed that meetings would be closed to them unless they were accredited. In order to get accredited, television companies sending journalists to report on the activities of the regional government were to ensure that they were well versed in the laws on "Local Government and Self-Government", "Press and Mass Media" as well as the General Administrative Code and the Ethics Code. Following a joint protest statement by the media and NGOs, the head of the regional government toned down his position and stated that his declarations were merely suggestions.

The editor-in-chief of the Kakheti regional newspaper *Obiektivi*, Zurab Kachlishvili, who had been investigating a story of misuse of State funds in the region, was severely beaten by a group of unknown individuals on 8 May 2004. Zurab Kachlishvili says the attack was instigated by the local administrative authorities. According to the victim who was hospitalised, the attackers threatened to kill him if he continued publishing articles critical of the local authorities. On 18 July, Zurab Kachlishvili was attacked again, robbed and slightly injured by three men. The next day he recognised one of the attackers, Archil Tarashvili, a member of the National Movement and close friend of the head of local administration, Gocha Mamatsashvili.

A correspondent of the Kakheti regional newspaper *Speqtri*, Mariam Chikobaidze, and her colleague, Tea Alaverdashvili, were assaulted and threatened by a member of the National Movement of Georgia, Koba Shildelashvili, and his companions on 28 June 2004 at the building of the regional administration. The journalists were conducting an environmental investigation based on information that trees were improperly selected to be cut down, which resulted in the

destruction of the well-known “Sugar Alley” in the Kvareli district. They also had information that only 863 GEL (approx. US\$470) of the 5,000 GEL (approx. US\$2,400) proceeds from the sale of the wood were transferred into the budget. The journalists contacted Koba Shildelashvili, who used to manage the project at the district administration, asking for his comments.

Mr Shildelashvili became extremely irritated and invited the journalists to an empty room where two other men followed them. They assaulted the journalists, shouting and threatening them with detention, ordered them to open bags, and took away a tape recorder. The journalists say that in the two months since their stories were first published, they have been threatened several times by the local authorities. According to the editor-in-chief of the newspaper in Kakheti, local authorities suppress the free press by denying access to information through direct pressure and seizure of newspaper issues.

#### **4.4.2 Overview of the Types of Media** <sup>184</sup>

##### **a. Print Media**

In Georgia there are currently close to 300 registered newspapers. Among them only 114 are published regularly.<sup>185</sup> There are approximately 10 more or less visible privately owned newspapers, including dailies, weeklies and socio-political digests.

There are no State-owned or State-funded newspapers officially registered in Georgia. Until recently, although they were formally proclaimed to be non-State newspapers, *Sakartvelos Respublika* and *Svobodnaya Gruzija* had their editorial expenditures reimbursed by the State. The Georgian Writers Union’s *Literaturuli Sakartvelo* also received State subsidies. The total amount of subsidies to the press was 900,000 GEL (approx. US\$700,000). These newspapers survived from the Soviet era.

At present, according to the 2005 State budget, only two minority newspapers, *Vrastan* (Armenian) and *Gurjistan* (Azeri) receive subsidies through State grants.

There are a number of popular non-State newspapers with national coverage. Most of them feature social and political stories or belong to the tabloid press. The issue of circulation remains sensitive in Georgia, and there is no exact data about sales or official circulation figures. Newspapers avoid revealing circulation figures because until recently they were linked to taxes and revenues.

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<sup>184</sup> See “Georgian Media in the 90s”, note 95 above; reports by Freedom House at <http://www.freedomhouse.org>. Also see Caucasus Institute for Peace, Democracy and Development, *Media Map of Georgia*, available at <http://www.cipdd.org/uploaded/Media%20Map%20English.pdf>.

<sup>185</sup> Information was provided to the Liberty Institute by the National Association of Publishers “Free Press”.

Among the popular newspapers with high circulation are:<sup>186</sup> *Kviris Palitra*, weekly digest (50,000-70,000 copies), *Chronika* weekly (15,000-20,000 copies), *Alia* (published three times a week, 5,000-10,000 copies), *Rezonansi* (published daily, 3,000 copies), *7 Dghe* (published daily, 1,200-1,500 copies), *24 Saati* (daily 3,000), *The Georgian Times* (weekly, 4,000 copies), *Akhali Versia* (published three times a week, 10,000 copies), *Akhali Taoba* (daily, 4,000-5,000 copies), and *Asaval-Dasavali* (weekly, 20,000 copies). They are all based in Tbilisi.

Outside the capital, small newspapers struggle to maintain both financial viability and independence. “There are up to a dozen newspapers in Poti, but in some towns there may be only one newspaper that prints irregularly. In most cases, the circulation of a newspaper is 500-1000 copies [...]. Newspapers, as a rule, print on A3 paper and the number of pages ranges from 4 to 20.”<sup>187</sup>

*Panorama*, a monthly newspaper produced by three co-editors based in Tbilisi, Sukhum/i (Abkhazia) and London (Institute for War and Peace Reporting<sup>188</sup>), is a new type of periodical for the South Caucasus region aiming to provide quality reporting across conflict divides. While covering events across the Caucasus region, most stories come from Georgia/Abkhazia.

There are about a dozen news agencies in Georgia. The most popular are the Black Sea Press, Iprinda,<sup>189</sup> Prime News, Inter-Press, Media-News and Caucasus-Press. They specialise in international and local news. For example, Black Sea Press and Caucasus-Press focus primarily on English language materials, and supply information to international organisations.

## **b. Broadcast Media**

Television continues to be the main source of information. There are two State TV companies: First Channel and Ajara TV (Satellite State TV of the Autonomous Republic of Ajara). Both national channels have so far been State controlled, reflecting government perspectives.

In January 2000, a ten-member United Television Network was created to pool advertising revenues for small regional stations.

Over the past years, in the face of growing competition from private TV companies, State TV has been forced to make its programmes more balanced. There are private TV stations in most of the regional capitals in Georgia. According to Internews, by 31 December 2001, there were 35 non-State TV stations in 25 cities in nine regions. Of these, 27 TV companies in 8 regions had regular news programmes.

Changes are planned in the electronic media with the upcoming transformation of the State Television into a Public Broadcaster. Legislation includes guarantees of political,

<sup>186</sup> Information provided to the Liberty Institute by the Publishing House and Polygraph Services “Independent Media Group”. Circulation figures are approximate, and vary from month to month.

<sup>187</sup> *Media Map of Georgia*, note 184 above, 138.

<sup>188</sup> For more on their activities, see <http://www.iwpr.net>.

<sup>189</sup> One of the first non-State news agencies; it appeared in the 1990s.

institutional and financial independence: a nine-member Board of Trustees will be set up. Candidates will be selected through open competition, with the best candidates being nominated by the President to the Parliament who will appoint the trustees. After the Board is formed, it will hire an executive director through a competition. According to the new law, the State budget will allocate 0.15 per cent of GDP (15,000,000 GEL or US\$7,350,000) each year for the public broadcaster.<sup>190</sup>

At present Rustavi-2,<sup>191</sup> Mze and Imedi TV are the most visible and highly rated private TV stations. As noted earlier, Rustavi-2 has a long history and reputation in Georgia. Imedi TV and Mze TV also gained popularity after their launch prior to the 2003 elections.

Two other private TV stations that cover social and political issues compete for the TV market in Tbilisi. TV 202, launched in 2003, currently runs a live talk show which is gaining in popularity after other channels stopped broadcasting live debates. Kavkasia TV, a radical opposition TV channel with low ratings, claims to be subject to financial pressure from authorities.

Stations outside Tbilisi struggle to maintain their independence as they experience continuous financial difficulties alongside pressure from local authorities or different interest groups. A number of Tbilisi-based TV channels broadcast mainly music and entertainment, and are popular among teenagers in Georgia.

The first private radio, Pirveli Radio, started broadcasting with a licence on 15 September 1994. It was later joined by Radio 105, Fortuna Plus and other stations. A number of non-State radio stations broadcast on AM and FM frequencies, but most of their programming consists of music. State radio continues to dominate the regions outside Tbilisi.<sup>192</sup>

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<sup>190</sup> L Ramishvili, "Freedom of the Press in Georgia",

[http://www.liberty.ge/eng/page.php?genre\\_id=90&section\\_id=3&news\\_id=103&from=categories](http://www.liberty.ge/eng/page.php?genre_id=90&section_id=3&news_id=103&from=categories).

<sup>191</sup> Rustavi-2, the first influential private TV station, survived government attempts to close it down in 1997, 1999 and 2000.

<sup>192</sup> See reports by Freedom House at <http://www.freedomhouse.org>.



## 5. PRACTICAL ACCESS: COURT CASES AND STORIES FROM THE JOURNALISTS' PRACTICE<sup>193</sup>

*The notion of freedom of information means that we have the right to get to know information of public interest [...] and a right to inspect official documents. The State, sustained on our own taxes, cannot hide its operation from the society.*

Dr Laszlo Majtenyi, former Data Protection and Freedom of Information Commissioner (Hungary)<sup>194</sup>

*Certainly, the best publicity for an access law is its use and the yield from it [...].*

William Ferroggiaro, Head of the Freedom of Information Program in the National Security Archive<sup>195</sup>

### 5.1 Introduction

Both, Georgia and Armenia have made significant steps toward establishing a freedom of information regime in their countries.

Georgia was ahead in standard-setting in the region as it was the first country to adopt a comprehensive Freedom of Information Law in the South Caucasus; however, up to now it has not been fully implemented by the Georgian Government.<sup>196</sup> All public officials who participated in the survey are aware of their duty to release public information.<sup>197</sup> To a large extent, this is due to a public awareness campaign carried out by the NGOs in Georgia. If journalists and professional NGOs remain persistent, officials often release requested information.<sup>198</sup>

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<sup>193</sup> The details of both stories and court cases were provided by the Freedom of Information Centre (Armenia), Liberty Institute (Georgia), and Yeni Nesil Union of Journalists (Azerbaijan).

<sup>194</sup> L Majtenyi, "Freedom of Information in a Post-Communist Country". This paper was prepared for a round table on freedom of information that took place in Yerevan (Armenia) on 15 October 2003.

<sup>195</sup> *Access to Public Information in Bulgaria 2003* (Sofia: 2004), 5.

<sup>196</sup> For more information, see Chapter Three of this report.

<sup>197</sup> See Chapter Six for details.

<sup>198</sup> In 2003, the Liberty Institute monitored court cases related to freedom of expression. The Supreme Court and Gldani Nadzaladevi regional court released the case materials with the names of the parties involved in the disputes being covered with white correction fluid. Court chancellery argued that this was done to protect privacy of the

Armenia today is the only country in the region where a detailed strategy exists for the implementation of their FOI Law; unfortunately, this to a great extent remains an excellent plan of activities ‘on paper’, as it is mainly being implemented by the NGOs while the Government fails to develop and put in place the necessary mechanisms and procedures to fulfil its part.<sup>199</sup>

With the lack of legal guarantees for the right of access to information as exemplified by the court cases and situations below, Azerbaijan is further behind the other two States.

### **5.1.1 Armenia**

Positive transformations with respect to freedom of information in Armenia to a great extent originated from work carried out by the Freedom of Information Initiative,<sup>200</sup> a coalition of three NGOs<sup>201</sup>: the Freedom of Information Centre, the Media Law Institute and the Civil Society Institute, which developed a comprehensive strategic plan for the implementation of freedom of information legislation<sup>202</sup> and joined forces with other active groups to support the achievement of their goals. For example, in 2004, both the Freedom of Information Initiative (on 19 February) and the Partnership for Open Society, a coalition of more than 30 NGOs working in the field of human rights and specifically freedom of expression (on 5 March), successfully campaigned against the threatening amendments to the Law “On Freedom of Information”.<sup>203</sup>

The Freedom of Information Centre was established on 1 July 2001 by the Association of Investigative Journalists of Armenia.<sup>204</sup> From then on the Centre received 480 complaints from the general public about denied or restricted access to official information. As one of their

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parties in the cases. Only after Liberty Institute threatened to initiate a lawsuit to challenge the unlawful court’s behaviour was the complete information on the cases released to them.

<sup>199</sup> The full text of the plan can be requested from the Freedom of Information Centre. Some of the key concepts include public awareness campaigns, training of key stakeholders, amending related legislation and drafting the relevant by-laws, strategic litigation, e-governance reform, establishing an FOI Ombudsman, developing appropriate mechanisms within the public bodies, and ongoing monitoring.

<sup>200</sup> Freedom of Information Initiative (FOI Civic Initiative) is a civil society-driven coalition the main purpose of which is to monitor and support the implementation of the Freedom of Information Law in Armenia. The Initiative is also a member of the International Network of FOI advocates, [http://www.foiadvocates.net/index\\_eng.html](http://www.foiadvocates.net/index_eng.html). The FOI Civic Initiative is currently carrying out its four-year implementation strategy for the FOI Law (runs until 2007). The initiative set up a network of 11 coordination councils designed to oversee the observance of FOI law in all marzes (regions) in Armenia and in the capital Yerevan. It involves local communities, journalists, NGOs and local government authorities.

<sup>201</sup> The Freedom of Information Initiative Coalition was established on 15 November 2003.

<sup>202</sup> The adoption of the FOI Law in Armenia on 23 September 2003 (the Law entered into force on 15 November 2003) was a result of a successful collaboration between Parliament and civil society. The Law’s first draft was developed by the Yerevan Press Club in 2000. For details, see YPC Weekly Newsletter, 19-25 September 2003, at <http://www.ypc.am>.

<sup>203</sup> For details, see YPC Weekly Newsletter of 20-26 February 2004, at <http://www.ypc.am>. The amendments were put forward by the Ministry of Justice.

<sup>204</sup> For details, see <http://www.hetq.am>.

numerous responses, the Centre composed and publicised (in the media through its website<sup>205</sup> and in the bulletin "You Have a Right To Know") a 'black list' of those public officials who infringed the right of the media, NGOs and the general public to access official information.<sup>206</sup>

The "Anti-Corruption Strategy of the Government of Armenia"<sup>207</sup> places access to information at the centre of Armenia's domestic policy. It declares that "access to information will significantly enhance the publicity and transparency of the civil service and promote the expansion of public involvement in a decision-making process."<sup>208</sup>

Despite such positive developments, the implementation of the FOI Law is a great challenge for Armenian society. As yet, the Government of the Republic of Armenia has not developed the corresponding regulations and procedures for ensuring access to official information. Many public bodies have not appointed officials in charge of responding to information queries.

### **5.1.2 Azerbaijan**

Although Article 8 of the Azerbaijani Law "On Mass Media" guarantees the right to receive information, many officials intentionally fail to cooperate with journalists. They refuse to answer information requests, restrict access to events, bring defamation suits with high charges when the media publish unfavourable information, and on some occasions use force to remove media representatives from official buildings and other venues where public events are taking place, or harass the opposition media when covering elections (as happened during the last Presidential elections in October 2003).<sup>209</sup>

<sup>205</sup> It shares a website with the Association of Investigative Journalists, <http://www.hetq.am>.

<sup>206</sup> In 2001, Armen Avetisyan, chief of the State Customs Committee, headed this list (his name appeared twice); in 2002 he was replaced by Mr Vardan Ayvazyan, Minister of Environment (who appeared six times on the list); in 2003 the top three officials on the list were Mr Hayk Harutiunyan, head of the National Police Service, Mr Hrayr Karapetyan, former governor of the Aragatsotn region, and Mr Yerem Yesoyan, chief of staff of the Erebuni-Nubarashen Community Court; during January–June 2004, the list was led by Mr Aghvan Vardanyan, Minister of Labour and Social Affairs, Ms Gayane Karakhanyan, judge of the First Instance Court of the Kentron and Nork-Marash Communities in Yerevan and Mr Yervand Zakharyan, Yerevan's Mayor. A complete list can be found at <http://www.hetq.am>. In December 2003 FOI Civic Initiative held an annual awards ceremony. The Ministry of Social Security received a 'Golden Key' for being the most open and transparent public institution. The Parliament of the Republic of Armenia was awarded with the 'Golden Key' for the best website. No one was awarded a 'Black Lock', a symbol of bad practices, in 2003. The 2004 ceremony took place on 10 December.

<sup>207</sup> Adopted on 6 November 2003.

<sup>208</sup> Presentation by S Doydoyan of FOI Centre, "*Implementation of the FOI Law in Armenia*", delivered on 24-26 October 2004 at the OSCE Conference in Tbilisi.

<sup>209</sup> National level officials tend to have tight control over what type of information is released by the regional level authorities. For example, a recent Decree on establishing a public relations centre within the Public Prosecutor's Office bans regional Prosecutors from giving interviews unless agreed with the Prosecutor General.

Most of the denials of access to official information in Azerbaijan are politically motivated. On the other hand, journalists themselves often side with political parties, which results in a limited and biased coverage of events. From work experience in Azerbaijan, the author of this report knows that the media employ a 'waiting' practice; they choose not to 'hunt' the news but rather wait for the news to chase them, and they do not provide coverage of events of importance to the general public.

The general culture of secrecy has been deeply rooted in government institutions since the Soviet times.<sup>210</sup> A 'closed door policy' is common practice among all public bodies, with some being worse than the others.

The situation is further complicated by the lack of an advanced freedom of information act and reluctance among the national authorities to adopt it.

### **5.1.3 Georgia**

Georgia was the first South Caucasus country to adopt a thorough FOI Law in 1999.<sup>211</sup> It was included as a separate chapter in the General Administrative Code.<sup>212</sup> Its adoption helped the development of investigative journalism in Georgia, which in turn played an effective oversight role over a Government which was riddled with corruption.

Although the media were not active in defending their access rights, a number of NGOs in Georgia carried out a multi-stage campaign for the promotion and implementation of the FOI Law. This campaign had been carried out through the long-term activities by the UNA Georgia,<sup>213</sup> Liberty Institute and the Georgian Young Lawyers Association (GYLA).<sup>214</sup> It has been reinforced after IRIS Georgia<sup>215</sup> set the promotion of the FOI Law among its key priorities. While UNA Georgia focused its work on the public institutions, Liberty Institute and GYLA carried out long-term monitoring and delivered legal assistance to those whose access right was breached. The campaign was accompanied by numerous publications aimed at better public awareness. Since 2001, the UNA Georgia had been carrying out a project entitled "Promotion of the Implementation of the FOI Law in the Public Institutions". Some of the activities that

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<sup>210</sup> Notwithstanding, Para. 5 of Article 2 of the State Programme "On Fighting Against Corruption" states that freedom of information is one of the indicators of government transparency. This Programme recommends defining clearly the responsibilities of public bodies with regards to providing the information, and improving procedures for requesting and releasing information.

<sup>211</sup> Despite strong resistance from the authoritarian Shevardnadze regime, the Law set high FOI standards in the region. It was drafted by the experts of the Liberty Institute, a leading civil liberties group in Georgia. Its adoption was made possible due to strong pressure from Georgia's civil society.

<sup>212</sup> For more details, see Chapter Three.

<sup>213</sup> The United Nations Association of Georgia, <http://una.org.ge>.

<sup>214</sup> <http://www.gyla.ge>.

<sup>215</sup> The Center for Institutional Reform and the Informal Sector, a research and advisory center in the Department of Economics at the University of Maryland, U.S., <http://www.iris.ge>.

involved over 200 targeted public bodies, both from Tbilisi and the regions, were: advising on the implementation procedure and the key FOI principles in the General Administrative Code; training for public officials; drafting a model FOI request/reply and other related forms; and ongoing monitoring and evaluation. Liberty Institute and GYLA had been involved in legal counselling and advocacy activities as well as having developed numerous guides on FOI, both for officials and the general public. GYLA put a database containing contact information for the legal advisors on FOI cases on their website. Both NGOs successfully acted as human rights defenders in court cases on FOI. Liberty Institute was the first organisation that won a group court case involving the implementation of *the Aarhus Convention* in Georgia during 2002-2004.<sup>216</sup> Since 2001, both Liberty Institute and GYLA have been monitoring the FOI implementation by public bodies at different levels of authority. Liberty Institute drafted and lobbied for a number of amendments to the FOI legislation thus bringing it in line with international standards.

Over the last few years, due to active and persistent work by these NGOs, the Georgian public bodies practicing a ‘closed-door policy’ have been challenged in more than 40 FOI-related court cases, 16 of which were initiated by the civic society groups.

Despite the fact that Georgia’s General Administrative Code contains progressive freedom of information provisions, many public bodies to date have failed to establish procedures and practices that would facilitate its full implementation. The same is true for many officials in public institutions who, notwithstanding the change of regime during the "Rose Revolution" in Georgia, retained old-fashioned style and attitudes and thereby continue to follow the ‘secrecy rules’ of the past administration.<sup>217</sup>

Nevertheless, there are certain positive changes that can be attributed to a steady evolution in the attitudes of public officials. The survey findings<sup>218</sup> and an example below provide some evidence of this.

ARTICLE 19 received a letter dated 19 April 2004 from the General Prosecutor’s Office of Georgia in response to our letter of 19 July 2002 addressed to the then-President Eduard Shevardnadze and copied to then- Minister of Interior, Prosecutor General, Deputy Secretary of the National Security Council on Human Rights Issues and the Ombudsperson. In our letter we called upon Georgia’s authorities “to initiate an investigation into the attack on the Liberty Institute [on 10 July 2002]<sup>219</sup> and bring the perpetrators to justice; and to [...] take positive

<sup>216</sup> The first case involving *the Aarhus Convention* was initiated by the Centre for Strategic Research and Development. In 2002, the Mtatsminda-Krtsanisi District Court ruled in favour of the Centre and requested their participation in the execution of the Court’s decision.

<sup>217</sup> This will be further elaborated through examples in sections 5.3 and 5.4 of this report.

<sup>218</sup> See Chapter Six for details.

<sup>219</sup> Liberty Institute alongside other NGOs criticised national and law-enforcement authorities for failing to protect religious minorities against incidents of increased violence in Georgia.

measures to create the necessary conditions for the enjoyment of freedom of expression and for the adequate protection of human rights organisations in Georgia.” Although this was not an information request, its significance is that our letter has been registered (which suggests a certain system in place for handling such letters and, possibly, information requests) and that under the changed political circumstances the General Prosecutors’ Office did not keep this information secret and informed ARTICLE 19 of the details of a criminal case initiated as a result of the incident.

## 5.2 Types of Refusals

In all three States the media have little access to various types of information (including information on the state of environment, healthcare, budget, education, contact information of public bodies, and national security-related issues). Public bodies also employ different ways of restricting access to official information.

Types of refusals include:

- refusals (either backed with reasons or not) to provide the requested information, because officials do not believe that such information should be made public;
- tacit denials (when no answer is given);
- refusals when public bodies arbitrarily declare information that should be open to be a state secret;
- delays in responding to requests, thus diminishing the value of requested information;
- releasing only partial information (which may adversely affect writing a complete and accurate investigative story or doing a full coverage of a particular event);
- refusals due to procedural problems, such as 'restructuring' of institutions in Georgia after the 2003 Revolution, or failure to appoint responsible officials;
- denials of access by the media to places where public events are held, including unexplained denials of accreditation to the journalists and unlawful closures of government meetings and court sessions to the public and the media; and
- releasing information to 'favoured' media only.

Some of the motives for such behaviour include:

- an unwillingness to deal with the media often explained by a lack of interest or opposing political alliances/views;
- an exclusive focus on the State or 'favoured' media;
- a lack of knowledge of the rights and duties of the media;
- a common belief that information belongs to government bodies;
- setting up a "hierarchy" of media and individual journalists where those with a perceived higher level of professionalism can obtain access to information; or
- trying to prevent access to information that might show a particular government agency in a negative light.

Often the media find themselves in a vicious circle when officials who must be open and transparent do not disclose accurate information on a particular issue, and the media later get harassed and punished for disseminating unverified information.

Access to information often turns into a hurdle race in which public bodies directly put up multiple obstacles.

The stories and court cases outlined in this report were grouped by types of refusals and motivations, and by themes of information requests. It should be noted that in some instances of denied access, it is not only unfriendly and over-bureaucratic attitudes of public officials, but also journalists' low level of professionalism which is to be blamed.

## **5.3 Refusals by Theme**

### **5.3.1 Access to Court Hearings/Court Decisions**

The principle of open trials is respected in many European States. According to the European Commission, holding court hearings in public has a twofold purpose: (I) "the public nature of the proceedings helps to ensure a fair trial by protecting the litigant against arbitrary decisions"; and (II) "combined with public pronouncement of the judgment, the public nature of the hearings serves to ensure that the public is duly informed, notably by the press, and that the legal process is publicly observable."<sup>220</sup>

Article 127 Section V of the Azerbaijani Constitution declares the hearing of cases in court open while section VI of the same Article gives courts a right to decide whether a hearing should be open.<sup>221</sup>

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<sup>220</sup> See section 4.4.2 of the ARTICLE 19 *Virtual Handbook*, note 46 above, <http://www.article19.org>.

<sup>221</sup> Disclosure of state, commercial or professional secrets is listed among the reasons for declaring a hearing closed. Azerbaijani journalists reportedly mention that they have to pay bribes to obtain court decisions.

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Article 85.1 of The Constitution of the Republic of Georgia establishes the principle of open trials. It states that “a court judgment shall be delivered publicly.”

Although Article 39 of The Constitution of the Republic of Armenia supports the principle of transparency, it states that laws may impose limitations and lists the reasons, including safeguarding national security, public morality and interests of justice. Article 27.5 of the Armenian Law “On Mass Communication” guarantees the media a right of access to court hearings.

Despite these guarantees, examples of denied access are common, and the first three stories – from Armenia and Azerbaijan – are typical across the South Caucasus region.

In July 2004, Konul Shamilqizi, a reporter of the Azerbaijani opposition daily newspaper *Yeni Musavat* was denied entry to the Grave Crimes Court to cover a trial the seven opposition leaders who were arrested in connection with October 2003 riots in Baku shortly after the Presidential elections. Presiding judge Mansur Ibayev claimed that Shamilqizi had insulted him by incorrectly reporting that the judge had been summoned to the Presidential Office.<sup>222</sup> After a number of protests, the judge agreed to allow another reporter from *Yeni Musavat* to cover the trial.

On 2 March 2004, a reporter of the Armenian daily *Azg* was forced to leave a court building in Arabkir district of Yerevan during a court trial. At the beginning of the trial the reporter failed to ask permission from the judge to record the proceeding. This angered Judge Kobalyan who blamed the reporter for breaching the rules of the court proceedings and demanded that he leave the court building immediately. The judge banned any further access to the court for this reporter. Despite several written complaints by *Azg* daily addressed to the Ministry of Justice, no concrete measures have yet been taken.

When working on a story about a criminal case “Vazgen Vardanyan and the Others”,<sup>223</sup> Zhanna Alexanyan, a journalist of the Association of Investigative Journalists of Armenia, made a number of unsuccessful attempts, by telephone and in person, to obtain a copy of a verdict (dated 3 September 2001) from Hrachya Sarkissyan, chairman of the Armavir region first instance court. The court chairman said that he could show the document from a distance so that the journalists could see how many pages there were, but refused to provide a copy stressing that the document belonged to him. Later the Association sent a request to the Minister of Justice Davit Harutyunyan, requesting a copy of the verdict. The minister's first reaction was that the Association could influence the independence of the judiciary if this information was released to them. As of now, no official response has yet been received.

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<sup>222</sup> For details, see <http://www.bakutoday.net/see.php?d=9853> (28 July 2004).

<sup>223</sup> A case about a soldier killed during his service in the army.



### 5.3.2 Access to Public Events

In 2001, Yeni Nesil Union of Journalists from Azerbaijan recorded four cases when journalists were expelled from venues where public events took place:

- On 10 August 2001, staff of the ANS TV Company, Ganira Pashayeva and Emil Babakhanly, when preparing a report on living conditions of refugees in Imishli district, were forcibly removed from the area by an order from the local executive authorities.
- On 25 June 2001, during a business trip to Tovuz district initiated by the Association of Journalists “Azad Sez”, a group of journalists received an order by the local authorities to leave the district.
- On 20 February 2001, police did not allow cameraman Akshin Rzayev of the Space TV channel to film a hunger strike by members of the Society of Disabled of Nagorny-Karabakh.
- On 7 January 2001, during the Parliamentary elections in Azerbaijan, staff of the Space TV channel - Tural Museiboglu, Zaur Hasanov and Rashad Kerimov - were expelled from polling stations No. 28 and 29 of Yasamal district.

On some occasions, only journalists who support the views of and are loyal to organisers of the events – officials, political parties and pro-government NGOs – are allowed to attend. Such practice results in a serious breach of the right of the media to receive information, and society in its turn receives limited information on the events. Many such cases were reported in 2003, the year of the Presidential elections in Azerbaijan.<sup>224</sup>

- On 17 October and on 4 November 2003, Boyukaga Agayev of the *Azadlig* newspaper was denied access to a parliamentary session, although he had an accreditation. The parliamentary press service said they received an order ‘from above’ to take measures.<sup>225</sup>
- On the day of the Presidential elections, 15 October 2003, several journalists were denied access to the polling stations. For instance, Firuddin Guliyev of the *Garbin*

<sup>224</sup> Stories were recorded by the Press Council of Azerbaijan.

<sup>225</sup> This phrase is often addressed to journalists. Staff of many state institutions are prohibited from providing information requested by the journalists without special permission ‘from above’. Such institutions range from law enforcement agencies to healthcare and culture departments. Due to the extended length of time to get approval from state institutions, information loses value and does not reach consumers in a timely manner. As a result, there is a large proportion of inaccurate or distorted information in the media. Because access to information is difficult, journalists rely on unverified facts and use ‘reliable sources’ who prove to be incompetent or untrustworthy.

- *Sesi* newspaper was denied access to a polling station in Shemakhi district, Aslan Abdullayev of the *Molla Nesreddin* newspaper was denied access to polling station No.14 of the 91<sup>st</sup> constituency electoral commission; Matanet Aliyeva of the *Impuls* newspaper was denied access to the polling station No. 22 in Nasimi district of the 22<sup>nd</sup> constituency electoral commission, Einulla Garayev, of the *Fedai* newspaper was denied access to a polling station in Ujar district; and Rashad Suleymanov of the *Khafta Ichi* newspaper was denied access to polling station No. 29 of the 125<sup>th</sup> constituency electoral commission in Sumgait city.
- On 30 May 2003, a correspondent from the 525 newspaper Ilhama Gasimly was denied access to a press conference by the chief of the Frontier Troops of Azerbaijan, Lieutenant-General Elchin Guliyev. When he noticed the correspondent, he said “We did not invite you!” The journalist explained that based on the Law “On Mass Media” she, as a representative of a newspaper, had a right to receive the information. Nevertheless, Ilhama Gasimly was forced to leave the press conference hall.
- On 27 March 2003, a member of Yeni Azerbaijan [pro-Presidential] political party, businessman Farkhad Huseinov, conducted a press conference in Baku Press Club on the difficulties in carrying out business. He ordered that staff of *Yeni Musavat*, an opposition newspaper, not be permitted entrance to the press conference area.

### **5.3.3 Access to Legislative Proceedings**

Parliamentary sessions are generally public in all European States. In some countries, there is also a presumption of access to sessions of parliamentary committees. For example, in Germany, access to public investigative committees is given special importance; in Austria the media may attend even when the general public is excluded.<sup>226</sup> Article 69 of Armenia’s Constitution contains a principle of openness of parliamentary sessions.

In the South Caucasus, State institutions sometimes remove accreditation from journalists because the latter are critical of officials.

In 2001, the Parliamentary disciplinary commission of Milli Mejlis removed accreditation from journalist Rey Karimoglu of the *Alillar* newspaper. The journalist allegedly interfered when Parliament was debating issues of those who became disabled as a result of the Nagorny-Karabakh war.

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<sup>226</sup> See note 46 above.

While it is not permissible to disturb parliamentary sessions, the withdrawal of accreditation is not a legal or proportionate measure; instead the journalist in the situation described above could have been warned or expelled from the session, but no more. By doing this, the Azerbaijani Parliament, Milli Mejlis, ignored Article 50 of the Law “On Mass Media”, according to which accreditation can be removed only if there is an appropriate court decision on the grounds of reporting distorted information or publishing information that humiliates personal dignity or reputation.

In Georgia, some of the most flagrant situations of restricted access to information took place during the Parliamentary Elections in 2003, before the "Rose Revolution". The authorities tried to control the media during that period in order to influence the outcome of elections and thus retain power.

In 2003, Rustavi-2 broadcast video footage by “Kmara” (“Enough”), an opposition youth movement in Georgia. The video called on the members of the Central Elections Commission (CEC) to remain objective and unbiased when counting the ballots. In November 2003 the CEC banned Rustavi-2 journalists from broadcasting on and reporting from the premises of the CEC. Members of the CEC accused Rustavi-2 of putting pressure on the Elections Commission. CEC Chairperson Nana Devdariani<sup>227</sup> and 12 members of the Commission supported this ban.

### **5.3.4 E-governance<sup>228</sup>**

Transparency of government activities and information accessibility are among the most important prerequisites for fighting corruption, especially for societies in transition where democratic institutions are fragile. Therefore, the role of public bodies in Armenia, Azerbaijan and Georgia to ensure accessibility of full and comprehensive access to information on their activities is of utmost importance.

In all three countries public bodies do not make enough use of the opportunities the Internet offers to make their activities transparent to the public.<sup>229</sup> Official websites contain

<sup>227</sup> Former Ombudsman of the Republic of Georgia.

<sup>228</sup> E-governance is the use of information and communication technology to make official information more accessible. It includes: providing greater access to government information; promoting civic participation; making government more accountable through greater transparency of its operations, and delivering services online, saving time and financial resources.

<sup>229</sup> For example, none of the Ombudsman’s offices in the South Caucasus countries has their own website. Websites of the National Legislatures are good in comparison to some other official websites (<http://www.parliament.ge>; <http://www.parliament.am>; <http://www.meclis.gov.az>). Websites of the Armenian Ministries can be found on <http://www.gov.am>. According to the Civil Society Development Union, officials in Armenia have agreed not to publish information because everything is available through a private database Irtek, <http://www.IRTEK.am> (for an overview of the official Armenian websites, see <http://www.hetq.am>). Websites of the Georgian Ministries are available through the Parliament’s website, <http://www.parliament.ge/gov/ministries/ministries.html>. However, most

incomplete information, and often their main focus is photographs and personal biographies of high ranking officials. According to the Global E-Government Survey, in 2002 Armenia was at 78<sup>th</sup> position, Azerbaijan at 91<sup>st</sup> position and Georgia at 122<sup>nd</sup> position out of 198 countries in the world.<sup>230</sup> In summer 2004, Armenia and Georgia showed slight improvements (66<sup>th</sup> position for Armenia and 98<sup>th</sup> position for Georgia) while Azerbaijan's position dropped to 184 out of 198 countries.<sup>231</sup>

From personal experience, the author of this report knows that even basic contact information is not always available on official websites.

When ARTICLE 19 prepared a protest letter on cases of violence against journalists after the Presidential Elections in Azerbaijan in October 2003, we could not find contact information for the Presidential Administration or the General Prosecutor's Office on the official web sites. Instead, we had to use our contacts in the region.

### **5.3.5 National Security and Conflict-Related Issues**

In situations of conflict and tension, it is more important than ever for governments to be transparent in their decision-making processes, to be held accountable, and to circulate accurate information. The general public has a right to be informed and a right to debate and discuss the decisions and actions of the political leaders. For this reason any restrictions on the right of access to information and on the work and movement of journalists should be kept to a minimum. As outlined in the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*,<sup>232</sup> “any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.”

A series of stories from Georgia reveal the opposite practice.

In September 2004 *The Georgian Times* newspaper sent a request to Irakli Kodua, head of the Anti-Terrorist Department at the Ministry for Security of Georgia, asking whether Georgia was facing a threat of terrorist attacks (especially after the tragic events in Beslan),<sup>233</sup> what the

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of them do not function; some websites contain information, including contact details, only in English, like the site of the Ministry of Foreign Affairs and the Ministry of Environmental and Natural Resources Protection. Links to some of the Azerbaijani Ministries are available on the website of the Ministry of Ecology and Natural Resources, <http://eco.gov.az>.

<sup>230</sup> Annual ranking of the official websites in 198 countries, prepared by the Center for Public Policy at Brown University, U.S. The full global e-government study is available at <http://www.insidepolitics.org>.

<sup>231</sup> Also see country gateway portals. For example, see <http://www.gateway.az/eng/edev/government.shtml> for an overview of e-government in Azerbaijan.

<sup>232</sup> *The Johannesburg Principles*, note 18 above.

<sup>233</sup> The hostage-taking in a school in Beslan (North Ossetia, Russian Federation) in September 2004.

potential sources for any such threat might be, and how such a threat could be avoided. The Ministry did not reply to this written request. During a phone conversation, Kodua said that he fired the person responsible for releasing information because that official delayed answering the newspaper's request. To date, the request remains ignored.

Inga Alavidze, a correspondent of the *24 Saati* newspaper, conducted an investigation into the murder of Fred Russell Woodruff, the Head of the Political Department of the US Embassy in Georgia in the early 1990s.

Being closely connected to the CIA,<sup>234</sup> Woodruff was at the time involved in a couple of significant projects in Georgia. He contributed a lot to the formation of the Georgian Special Forces unit "Omega" and had been working on deciphering drug transit route schemes and disclosure of drug trafficking in the Caucasus region. While working in Georgia, he successfully completed the investigation and submitted a report to the US head office. In 1993 Russell Woodruff was killed near Natakhtari post in Georgia.

The Georgian Prosecutor's Office investigated the murder, and a parallel investigation was conducted by the FBI.<sup>235</sup> Georgian journalists managed to acquire secret information from the FBI in cooperation with an American journalist. The conclusions drawn by the Georgian investigation were quite contrary to those made by the FBI. A person was arrested in Georgia, tried, found guilty and imprisoned, but there was widespread doubt as to that individual's guilt. In summer 2004, the Woodruff family demanded that the case be reopened in view of new evidence. The FBI investigation found new witnesses whose statements were essentially different from those provided by the Georgian prosecution.

The case is of tremendous political importance because some of the people involved are still public figures in Georgia.

Journalist working on a story needed information on whether Georgia's Public Prosecutor's Office had reopened the case in response to a demand from the family lawyer. Inga Alavidze made a phone call to the Public Prosecutor's office on 15 June 2004. She reports that the Head of the Investigative Department responded ironically: "Who is Woodruff?" She reminded him of the details of the case, after which he remarked that it sounded like a story or a screenplay of some action movie and inquired whether the journalist had suffered a nightmare. Inga Alavidze says she wasted a lot of time trying to find out whether a new case had been initiated. She failed to get any official response from the Prosecutor's office to her requests. Later, through her personal contacts, Inga Alavidze found out that the Public Prosecutor's Office had not initiated a new investigation of the case. In summer 2004, she managed to publish part of

<sup>234</sup> Central Intelligence Agency, United States.

<sup>235</sup> Federal Bureau of Investigation, United States.

Woodruff's original report in the *24 Saati* newspaper. The report was acquired through the journalist's personal contacts.<sup>236</sup>

*The Georgian Times* newspaper requested official information from the Ministry of Internal affairs on how many Georgian soldiers were killed or wounded during the escalation of the conflict in South Ossetia in August 2004. They were informed by phone that the requested information was secret.

In August 2004 Magda Memanishvili, a journalist with "60 Minutes" programme on Rustavi-2, was working on a story about flak jackets (used during a special operation in South Ossetia in summer 2004). She had information that not all the soldiers involved in the operation wore flak jackets. The journalist discovered that soldiers trained by the US military within the training and equipment programme did not wear the jackets, while Ministry of Interior forces were provided with flak jackets during the operation. In order to check the information, Magda contacted Guram Donadze, head of the press service at the Ministry of Internal Affairs.

Despite the journalist's insistence that this type of information should not be secret and that she was not asking him to share the strategic or tactical plan of operation, he refused to provide the information, arguing that the requested information was classified as secret.

The journalist published a story in the newspaper *Akhali Versia*. Not being able to acquire any official information from the Ministry, she used information from the regional correspondent of the *Akhali Versia* newspaper who witnessed the situation and had private conversations with the soldiers.

The next story from Georgia reveals one of the common gaps in media professionalism: a journalist chose to rely on the Press Centre of the Ministry of Defence to access information in possession of a manufacturing company, instead of contacting the company directly.

In October 2004, *Akhali Versia* journalist Temur Iobashvili was working on an article about flak jackets for soldiers (a situation similar to the previous story). According to his information, the company that won the tender from the Ministry of Defence was awarded a license to produce the jackets. Later the jackets were found to be sub-standard and of no use. The journalist asked the head of the Press Centre of the Ministry of Defence to arrange a meeting with the owner or manager of the company that produced the jackets in order to get his comments. The head of the Press Centre told the journalist that he managed to find the person in charge but the latter refused

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<sup>236</sup> When working on the story, the journalist discovered that all the names of officials had been taken out of Woodruff's original report on drug trafficking, although it was a classified document. The original full text of the report is still kept secret and has not been published officially.

to make any comments. The journalist could not obtain his phone number either. “He will contact you, if he wants,” a Press Centre representative said.

Journalists from Georgia often complain of the lack of an agreed upon information exchange procedure within public bodies. Public officials often do not know who is responsible for providing what information, and journalists do not know to whom to address queries. As a result, Ministries are often unable to provide coordinated information. While working on a story, journalists receive a completely distorted picture of the real situation when information given by the Press Centres in certain public bodies differs from that provided by other State agencies. In most cases information that is released is either unprofessional or incomplete. Busy journalists choose not to waste time in filing formal requests and prefer finding information through alternative sources.

In August 2004 journalists of TV Mze received a phone call from the Russian TV company NTV asking how many soldiers had been involved in the operation in South Ossetia, as the information provided by the Ministry of Defence and data given during the joint Georgia-South Ossetia Conflict Resolution Commission’s session were quite different. Journalists had no confirmed statistics and they were unable to find out the real numbers of soldiers involved, nor confirm unofficial information. The Press Centre's representative said that the requested information was secret even though the Minister of Defence in Georgia, Gia Baramidze, had been talking about this during his meeting with the press.

### **5.3.6 Information on the State of the Environment**

Many of the government decisions that cause damage to the environment are made behind closed doors, and business interests often prevail over the public interest in having a healthy environment. Given the vital importance of a healthy environment as a public good, decision-making processes affecting the environment should be subject to particular transparency and scrutiny. This principle is also reflected in the *Aarhus Convention*, an international treaty that grants to the public the right of access to information related to the state of environment.<sup>237</sup>

In September 2004 in Vaziani, a region of Georgia near the capital Tbilisi, trespassers snooped on ground where radioactive waste was presumed to be buried and opened up the sarcophagus. This could have posed a threat of radioactive pollution to the environment.

Rustavi-2 journalist Nana Intskirveli was working on the story about this incident. When asked what kinds of materials were buried there, officials responded that during the turmoil in the country in the early 1990s, the documents were lost and nobody could provide the exact

<sup>237</sup> Article 1 of the *Aarhus Convention*, note 51 above.

information. Nana managed to find an old man, with 20 years of experience working in the field in Georgia, who used to work there and knew about the contents of sarcophagus when it was constructed. He remembered that cobalt waste from Kutaisi was once buried there and that it was not dangerous. The journalist decided to publicise this information. The story was aired on television. Even after that, the journalist could not get official information from the Ministry of Environmental and Natural Resources. The journalist was told that such information was either lost or did not exist.

Nana Intskirveli did not send a written request to confirm the old man's story. According to her, official requests take too much time. "I work for a news programme. When I learn of something happening, I need information immediately," she said.

### **5.3.7 Reports of Malpractice and Corruption**

"Corruption and weak public administration have a corrosive impact on socio-economic development, building of market economy and promotion of investment, and are detrimental to political and public institutions in a democratic state."<sup>238</sup> Corruption flourishes when it is surrounded by secrecy. Individuals and public bodies become corrupt when there is no public scrutiny of their actions and decisions.

In its latest global corruption survey, the Transparency International ranked the three South Caucasus States among countries perceived as the most corrupt. While Armenia ranked 78<sup>th</sup>, Georgia and Azerbaijan ended up at 124<sup>th</sup> place among 133 countries.<sup>239</sup>

In late August 2003 *Haikakan Zhamanak* newspaper's reporter Lusine Barseghyan applied to the Armenian Ministry of Education with a request to provide her with a complete list of all students admitted to the State universities through a unified State exams system.<sup>240</sup> The name lists of students had been posted on the walls of universities, but later removed. The aim of the reporter was to check whether any of the students were children of high-ranking officials or political leaders, and whether such students were admitted to the fee-free or fee-based category. The Ministry denied her request verbally.

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<sup>238</sup> *Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine*, Review of Legal and Institutional Framework for Fighting Corruption, Azerbaijan, Summary Assessment and Recommendations, endorsed on 18 June 2004, 2, <http://www.anticorruptionnet.org>.

<sup>239</sup> For details, see <http://www.transparency.org>

<sup>240</sup> In Armenia an examination commission within each university decides who should be admitted to the institution; its members also decide about fee-free and fee-based categories of students.



On 25 August 2004, three Czech journalists, who were writing a story on the impact of construction of the Baku-Tbilisi-Ceyhan oil pipeline, were detained for one hour in Azerbaijan's Akhstafa district by security guards for BP, which is coordinating construction work. One of the three journalists, who were released later on instructions from BP's Baku office, said that "he came to the conclusion that the project has engendered numerous problems: the most serious of which is corruption."<sup>241</sup>

Many public officials in Georgia provide access to information only in cases where they regard it as having some positive public relations effect, and rarely provide information which is of interest to the media and the general public.

In September 2004 Giorgi Archemashvili, a correspondent of *The Georgian Times* newspaper, sent a request to the City Hall<sup>242</sup> of Tbilisi asking about the models of cars used by key officials in Tbilisi, including Premier<sup>243</sup> Bidzina Bregadze. This request was part of a journalistic investigation.

The newspaper possessed unverified information that they wanted to check, to see if Bidzina Bregadze was using an Audi given as a gift which had not been declared on the Premier's property declaration. Journalists made a phone call to the Mayor's office as ordinary citizens, but nobody was able to give them exact information.

Later officials provided information on cars used by the Mayor's office, not on the Premier's car. The journalist's request was partially satisfied except for the information actually needed for the investigation. An article was published based on information obtained through the journalist's personal contacts.

Revaz Okruashvili<sup>244</sup> of the *Khalkhis Gazeti*, a regional newspaper, requested information from the Shida Kartli Regional Administration in Georgia on personnel shifts and on money transfers to the Governor's Foundation in the period of 1 March–15 April 2004. He filed a formal written

<sup>241</sup>International Press Institute, see note 110 above.

<sup>242</sup>In the Georgian system of local self-government, approximately nine cities have a post of Mayor. In Tbilisi and Poti the Mayor is appointed by the President, while in other cities this official is elected through direct elections. The self-government system in Tbilisi is regulated by a separate law. Sakrebulo in Tbilisi is a representative body with elected members (it drafts local budgets and works on the local taxes). The post of Premier is unique. This official is a head of a local government in Tbilisi. The candidate for the Premier's post is nominated by the Mayor of Tbilisi. This official in turn nominates a member of the local government. The position of Mayor of Tbilisi is of lower status than that of Premier. The former is more a political figure in the local government. In approximately 8 cities the system is similar. The Mayor is a head of Gamgeoba, the executive body in a local self-government system (equivalent of Tbilisi Government). Members of Gamgeoba are nominated by the Mayor and are appointed by Sakrebulo, a representative body, like a local legislature. In the remaining cities, the head of the executive branch is Gamgebeli. He is nominated and elected by Sakrebulo.

<sup>243</sup>*Ibid.*

<sup>244</sup>Revaz Okruashvili was detained by the local police in August 2004. For details, see p.65

request. The official responsible for releasing information refused to accept the request claiming that the official in possession of this information had been replaced. Despite the journalist's persistence, the Administration's staff kept refusing to accept his request. Finally, the head of the Governor's Secretariat asked Revaz Okruashvili to bring his request on 28 April, and the Secretary accepted it officially.

After almost five months with no response from the authorities, Revaz Okruashvili chose to rely on other sources and personal contacts for the information.

As demonstrated by the story from Azerbaijan, those attempting to get information from public bodies may run the risk of being arrested.

As reported by the Internews,<sup>245</sup> on 7 July 2003, Rauf Mirkadyrov, a team leader and a journalist of the *Zerkalo* newspaper, was found guilty and fined by the Nizami district court for the offence of hooliganism. Rauf Mirkadyrov was taken to the police station after he asked the Baku City Mayor to reveal the name of a contractor in charge of repairing a highway in front of an apartment block. The road remained closed for a long period of time due to the ongoing construction. The Mayor replied that he personally was in charge, after which he called the police who forcibly took the journalist to a police station where he was detained on charges of hooliganism.

The next story proves that it could be easier to obtain information of public importance when filing a request as a media representative rather than as an ordinary citizen.

In 2002 Sopho Okhanashvili, correspondent of the *24 Saati* newspaper in Georgia, worked on a story about problems faced by mothers with three and more children.

The initial purpose was to investigate how the funds allocated as financial aid for such families were used and whether they were properly distributed. The correspondent chose the Isani-Samgori District Gamgeoba<sup>246</sup> for her investigation. She filled in a written request not as a journalist but as an ordinary citizen, intending to test the level of transparency and accessibility of the information. When she brought this letter to the Gamgeoba, the official ignored her letter. Sopho Okhanashvili demanded that the letter be officially registered in order to know the name and position of an official responsible for releasing information. If her request was ignored she would know from whom she should demand an official answer. Officials started questioning her on who she was and why she needed the information; she was even referred to as a "spy". Sopho

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<sup>245</sup> For details, see <http://www.internews.az/eng/articles/20030707.shtml>.

<sup>246</sup> See note 242 above.

Okhanashvili said she was an ordinary citizen. The official responsible for public information refused to grant her any kind of information and asked her to leave the premises.

Only after she said she was a journalist, and following the involvement of the head of the executive branch, the journalist managed to obtain all requested information, even information not intended for public use (for example, addresses of aid recipients and their personal information).

More cases on the topic of exposing corrupt systems and malpractice by public officials are presented below.

In August 2004, a journalist from “60 Minutes” investigative programme on Rustavi-2, Nana Biganashvili, was working on a story about the Red Cross. She requested information that would enable her to identify the recipients of Georgia’s Red Cross humanitarian aid from overseas, which was supposed to be distributed among the different humanitarian organisations or directly to people who live in extreme poverty in Georgia. While working on the story, the journalist addressed personally Director Nana Keinishvili at the Red Cross Office on how justly the humanitarian aid was distributed. The Director did not respond to the requests, or provide documentation. Moreover, she made several attempts to force the programme’s journalist out by physically assaulting her. The TV crew managed to film the scene.

Later journalists managed to acquire the information at customs which angered Nana Keinishvili, who verbally abused the journalists.

When Aslan Abashidze was still in power as governor in Ajara Autonomous Republic (Georgia) in February 2004, the investigative TV programme “60 Minutes” of Rustavi-2 was working on a story in Batumi about persons closely related to the corrupt ruling regime in Ajara. While in Batumi, journalists were followed by the Security Service police.

Journalists could not obtain an original text of the Ajara Constitution. Aslan Abashidze published the amended new Constitution as an official document in a reprinted issue of a regional newspaper, without approval of the legislative body of Ajara. As a result, in Batumi, journalist Vakhtang Komakhidze found two issues of the same newspaper published on the same date, but with different content. One of them did not contain the text of The Constitution (the original issue), while the second reprinted one did. The journalist chose not to use alternative sources of information to verify which of the issues was truly original. The full story was never aired because Vakhtang Komakhidze was attacked in Batumi.

Journalists working for the Rustavi-2 “60 Minutes” programme requested the text of the Ajara Constitution from the Ajara Ministry of Justice. Trying to remain unnoticed, they asked one of the residents of Batumi to file a formal request. His request was based on the General

Administrative Code. Later journalists received an official response from the Ministry alleging that as there was a state of emergency in the Autonomous Republic, they did not consider it expedient and possible to provide the journalists with a copy of the Constitution.

Rustavi- 2 journalist Nana Intskirveli was unable to get any official information on the reasons for the dismissal of hundreds of policemen from the Georgian Police Force in the summer of 2004. Members of the public were concerned because according to the lawyers' statements, the dismissal of the police officers was illegal thus constituting a violation of their human rights. It was alleged that the policemen were fired more on the basis of personal dislike rather than the lack of the professional skills. The story was not aired due to the lack of sufficient materials and sources of information.

## 5.4 Refusals by Type / Motivation

### 5.4.1 Denial of Access to the Meetings of Public Bodies

It is a widely recognised FOI principle that formal meetings of decision-making governing bodies should be public.<sup>247</sup> They may be closed, however, in accordance with established procedures and when there are adequate reasons such as public health and safety, law enforcement or investigation, employment or personnel matters, privacy, commercial matters and national security.<sup>248</sup>

According to Internews Georgia,<sup>249</sup> on 29 September 2004, 14 journalists from Poti sent a petition to the national authorities asking for their assistance in tackling abuses by local officials. The latter had cut access to all information sources for the media and made the accreditation procedure extremely difficult. Journalists had to wait several weeks for their accreditation.

According to the petition, meetings of the local governmental authorities and the city council became inaccessible to journalists when the Mayor of Poti, Vakhtang Alania, ordered a new entry system to the building. The new rules required that every journalist interested in attending the public meetings have a special pass. Regional media representatives say that it became impossible to cover or access municipal information or meetings as accreditation is extremely restricted. They say Vakhtang Alania intentionally deprives journalists of their rights and provides information based on his personal sympathies to the journalists. "Local Authorities absolutely ignore the General Administrative Code of Georgia. We can't reach the members of

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<sup>247</sup> See "Principle 7 – Open Meetings", note 6 above.

<sup>248</sup> *Ibid* at 10.

<sup>249</sup> <http://www.internews.ge>.

local government, access public meetings. Sometimes it takes weeks for our FOI requests to be responded to,” journalists noted.

#### **5.4.2 Information Released to Selected Media**

An incident below highlights the problem of officials choosing to disseminate public information to chosen media only and putting obstacles in the way of other media obtaining timely information. This is particularly obvious in cases involving the opposition media. Pro-government journalists have more opportunities and privileges when seeking access to official information.

In Azerbaijan *Ekho*, *Zerkalo* and *Azadlig* newspapers claim that they frequently experience difficulties obtaining information from the State Customs Committee, Statistics Committee, national and regional offices of the Public Prosecutor and Ministries of Ecology and Health.

In September 2003, the Armenia’s Public Prosecutor’s office issued an official press release concerning the case of an assault against a high-ranking official. The press release was not sent to all the media. For example, *Yerkir* weekly didn’t receive it. When *Yerkir*’s reporter Sona Truzyan asked for a copy of the previously published press release, the public relations officer in the Prosecutor’s office, Gurgen Ambaryan, advised the reporter to obtain the press release from the news agencies who had already received it.

In 2003, before the presidential elections in Armenia, a reporter from *Haikakan Zhamanak* newspaper, Vahagn Hovakimyan, applied to the Central Elections Commission requesting biographies of all the candidates in the election. The representative of the Commission told the reporter that the biographies would soon be provided to the *Hayastani Hanrapetyutyun*, a daily newspaper with which the Commission has a special agreement. The *Haikakan Zhamanak* had to approach all candidates individually for their biographies.

#### **5.4.3 Denial without Providing a Reason**

Lack of helpfulness on the side of civil servants is common.

Armenian reporter Lusine Barseghyan applied to the Ministry of Culture requesting a list of all the theatres in Armenia. She was refused without being given any reasons.

#### **5.4.4 Tacit Denials**

The phrase “tacit denials” applies when the person seeking information never receives a reply and is therefore effectively denied access to the information. Such inaction by public bodies effectively means there is no official denial and no grounds for further appeals.

In February 2004, the *Ekho* newspaper requested a list of expired medicines from the head of the Agency controlling the import of pharmaceutical goods within the Ministry of Health, Elsever Agayev. The Agency did not respond to the query.

#### **5.4.5 Delayed Replies due to Ineffective Infrastructure**

The anecdotal situations below illustrate some of the existing trends among public bodies in Georgia.

In March 2004 the *Rezonansi* newspaper began monitoring<sup>250</sup> how Chapter 3 – On Freedom of Information – of the General Administrative Code of Georgia was followed (and interpreted) by public institutions. Three ministries were monitored: the Ministry of Internal Affairs; the Public Prosecutor’s Office; and the Ministry of Justice; because these are the three institutions to which both the general public and the media apply most frequently with information requests. Journalists from the *Rezonansi* newspaper visited these institutions and made information requests as ordinary citizens.

The reception desk of the Ministry of Internal Affairs (MIA) failed to locate a person responsible for information. When journalists called the free inquiry service number, they were told that there was no information on whether such a position existed. Ministry representative Ketevan Vadachkoria referred them from the reception to the Judicial Department; according to the journalists, she behaved in an arrogant manner and demonstrated ignorance of who is responsible for providing information. Avtandil Jashi, head of the Ministry’s Information Department, commented that confusion was caused by the internal reforms within the Ministry.

A similar situation occurred at the Public Prosecutor’s Office. Staff members at the reception desk were not aware of who was in charge of answering information requests. Unlike MIA’s staff, Prosecutor on Duty Gela Chikvaidze met visitors politely and contacted the head of the 'control-organisational' department, Vazha Kelauridze. The latter explained that a person responsible for releasing official information had not yet been appointed. In the past, vice-General Prosecutor Giorgi Tvalavadze was assigned this duty. Valeriy Khaburdzania, who replaced him, refused to accept this duty and said that a separate staff member would be appointed to deal with requests.

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<sup>250</sup> Information communicated to Liberty Institute by Eliso Chapidze, deputy editor-in-chief of the *Rezonansi* newspaper.

Of the three official institutions, the best situation was at the Ministry of Justice. Although there was no contact information for the Ministry on its notice board, its staff said that Nino Guchiashvili had been dealing with requests for almost a year, despite her not being officially assigned with this duty. Journalists passed two information requests on to her. The one concerning a Ministry's resolution was answered immediately, while an extract from the written conclusion on the medical examination of the accused Imeda G. was provided several days later because the document had to be requested by the Ministry from a penitentiary.

According to the journalists, the Georgian NGO "UN Georgian Association" was not able to obtain a copy of the draft law on State secrets from the Ministry of Security for 12 days. Zviad Devdariani, head of this NGO, informed the journalists that one of the Ministry's staff informed him 10 days after the request was filed that he would ask deputy minister Amiran Meskheli whether he was allowed to release the draft law to the NGO representatives.<sup>251</sup>

Vakhtang Komakhidze, an investigative journalist from the "60 Minutes" programme on Rustavi-2, commented that of all the ministers, only Kakha Targamadze who was Minister of Internal Affairs during the Shevardnadze period, had appointed a person responsible for releasing public information within his Ministry.

Correspondents of the *Alia* newspaper raised concerns that it was getting harder to acquire any kind of information after the "Rose Revolution" in Georgia, especially from newly formed institutions. Ketii Khatiashvili commented that officials often refuse to deal with [*Alia* correspondents] arguing that they were forbidden to have any contacts with the *Alia*. According to the *Alia's* journalist, her colleagues were not informed of the deadlines for requesting accreditation at the State Chancellery; as a result, most of them do not have passes to the building at the moment. She says that quite often nobody responds to her phone calls to the State Chancellery or the Ministry of Security, and she has to rely on personal contacts to get information.

In September 2004 the *Alia* newspaper worked on a story about the debts Georgia owes to the United Nations. An official request was sent to the Ministry of Foreign Affairs, asking for the phone number of Kakha Chitaia, Deputy Head of the Mission of Georgia to the United Nations. The Ministry of Foreign Affairs mistakenly referred the journalist to the Parliament because they thought Kakha Chitaia was an MP. Officials advised the journalist to request information at the PR department; the latter referred her to the Personnel Department where she was advised to

<sup>251</sup> Ironically, the Minister of Security, Zurab Adeishvili, is one of the authors of Georgia's Administrative Code which contains the FOI Law. Together with Amiran Meskheli, a former NGO representative, he won several court cases on the matter of withholding public information from different public bodies, before joining the government after the "Rose Revolution". As his background suggests, he should have assisted with the information request.

make a phone call to the hot line of the Ministry. Finally, she managed to obtain the Press Centre's phone number, but the line was "dead".

After having pursued so many dead ends when looking for information, the journalist had to rely on her personal and other confidential contacts to finally get the information needed.

In September 2004 a journalist from Rustavi-2 programme "60 Minutes" requested information on the projects carried out by the Georgian Ministry of Health. The officials responded by noting that the Ministry had a new staff after the Revolution which had not become familiar with the procedures, and that they were unable to process the request until their staff was trained and gained competence.

After the "Rose Revolution" in Georgia, Sopho Okhanashvili worked on a story about several arrests<sup>252</sup> ordered by the Prosecutor's Office of Georgia in June 2004, and on money confiscated in July 2004. She requested detailed information on arrests and funds, but nobody had any information on how many persons were detained or how much money or property was confiscated. Later it was officially announced that the money was forwarded by the State Treasury to the Public Prosecutor Office's account. The only institution which had the exact information was the State Treasury.

Sopho Okhanashvili requested information by phone, but she was asked to submit a written request. She did so, but it was ignored. The journalist requested an official justification for the denial. About three weeks later, she got a letter saying that the information requested by her was not a responsibility of the Treasury, and referring her to the Prosecutor's Office.

She managed to get the information from her personal sources; the head of the Prosecutor's Press Centre told her what he could recall, but the information was partial and inconsistent. Sopho Okhanashvili said that she found herself in a blind alley – with the Treasury directing her to the Prosecutor's Office and the latter directing her back to the Treasury again. The correspondent even addressed the Ministry of Finance, but was told that the information was only held at the Treasury.

In March 2004 reporter Lilit Galstyan applied to the Armenian Ministry of Education and Science requesting that they provide her with information on how many public schools have been closed as a result of State reforms in the secondary education system. The reporter didn't receive any official data; each department referred her to another department within the same Ministry. Lilit managed to find the information in a Government publication, since all the information was published there a month before.

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<sup>252</sup> Former officials of the Shevardnadze government were accused of corruption and arrested.



The Ministry was either unaware of this publication or unwilling to release the information.

In 2003 Sopho Okhanashvili was working on an investigative story about the new identification documents issued during January–March 2002. She also sought information on the number of passports issued by the Ministry of Internal Affairs. Her attempts were unsuccessful, and she had to contact the Press Centre. Sopho called them almost every day demanding information. Even the Judicial Department at the Ministry became involved, although it was not their field of responsibility.

Being experienced with filing official requests, Sopho worded her inquiry in a detailed manner and was persistent in her attempts, sending repeat seven-paragraph requests to the Ministry. The Ministry staff were confused and unable to understand why she was so well informed. According to Sopho, they were alarmed by her behaviour, which she likened to that of the correspondents of the “60 Minutes” investigative programme on Rustavi-2. She asked the Press Centre to arrange a meeting with the officials responsible for public information but nobody ever answered the phone when she used the number given by officials. The situation dragged on for six months. Finally, she was granted the requested information.

The next story provides evidence that a system might affect even former journalists after their appointment as officials.

Sopho Ediberidze, a correspondent of *The Georgian Times* newspaper, worked on a story about the Ministry of Internal Affairs. In September 2004 the journalist requested information on the names, positions and short biographies of the ministerial leadership, including the Minister, the Deputy Minister, heads of the departments and other senior officials. The written request was addressed to the head of the Ministry’s PR Department, Guram Donadze (ironically himself a former journalist of Rustavi-2). Several days later, on 17 September, the newspaper received a letter from the Ministry of Internal Affairs stating that although the requested information was not secret, due to the ongoing process of re-organisation, the Ministry would abstain from providing any official response to this request.

Sopho Ediberidze published an article based on materials acquired through her personal contacts, in which she mentioned refusals by the Ministry.

In one Armenian situation a journalist was denied information because officials said they did not have a copying machine. The journalist brought a portable copier from Gyumri to Yerevan in order to prove that the information should be made available.

The next example illustrates how often the lack of communication between departments within the same Ministry can cause delays.

In response to a written request from a journalist of the *Aravot* daily, the Legal Department of the Defence Ministry of the Republic of Armenia suggested in writing that the newspaper should forward their request to the Public Relations Department of the same Ministry.

#### **5.4.6 Providing a Partial Answer**

During the visit of the President of Azerbaijan Ilham Aliyev to Georgia in September 2004, a correspondent of *The Georgian Times* newspaper requested information from the Protocol Office on how many people were involved in the preparation and implementation of the Presidential visit, the number of cars and motorcycles used and what the cost was to the State Budget. The officials released only part of the information. The journalist had to check it through his personal sources.

#### **5.4.7 Dislike of the Media**

Many times journalists from Rustavi-2's "60 Minutes" investigative programme in Georgia have had reason to believe that the rights of detainees were being violated. Examples include cases of bribery or unfairness, such as when people are offered money for giving certain testimony.

Recently journalist Magda Memanishvili worked on a case in which police investigating an attempted murder arrested the wrong person. The journalist had information that this person was asked to name the real culprit or otherwise he would be framed for the crime.

In such cases journalists are restricted; they are not allowed to interview a detainee or a victim. The detective in charge of the investigation usually is the one to decide whether or not a journalist can talk to detainees, and in the majority of cases access is denied. Sometimes, although the investigation is complete, journalists still cannot meet the accused persons as the latter may be critical of how the investigation was carried out.

Magda Memanishvili asked Valeri Grigalashvili, then Prosecutor of Tbilisi,<sup>253</sup> for an explanation of this behaviour, but he refused to answer and was instead critical of how he was presented on a previous TV programme.

According to the journalist, the decision on whether or not to grant information was always made based not on the interests of investigation, law or the impact such coverage might have, but on the personal judgment of law-enforcement officials.

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<sup>253</sup> He was dismissed and transferred to the General Prosecutor's Office as head of one of the departments.

### **5.4.8 Claiming Open Information as a State Secret**

In July 2002 the Association of Investigative Journalists of Armenia was working on an article about convicted persons.

On 9 July Edik Baghdasaryan, The Association's President, sent a written request to Artashes Toumanyanyan, Head of the Presidential Administration. The request contained the following questions:

- How many convicted persons apply each year for amnesty to the President of the Republic of Armenia?
- How many convicted persons have been granted amnesty during the last three years?
- On what articles of the Criminal Code were they convicted, and with what charges?
- What criteria does the Amnesty Committee use for granting amnesty?
- What are the steps for the amnesty applications, and which officials possess information on the application process?
- What legislative principles guide the work of the Amnesty Committee?

45 days after submitting the request, the Association still had not received any response. In reaction, the Association included Mr Toumanyanyan's name in a 'black list' of officials which violate the right of access to information. The Association discovered that Mr Toumanyanyan referred their request to the head of the Amnesty Department, Jemma Hakobyan. During a phone conversation with the journalists she said that she would not provide the requested information because it was secret.

When the Association threatened to publicise this situation and file a complaint against the head of the Amnesty Department with her supervisor, Mrs Hakobyan replied, "You are free to complain to whoever you want, but do not refer to Mr Toumanyanyan's name."

## **5.5 Court Cases**

The media in all three States acknowledge that they do not publicise the fact when they are refused information but try instead to use alternative sources, which keeps the public unaware of the infringements of their rights. Journalists believe that the courts are one of the most ineffective ways of trying to resolve such instances, because they are biased and lack political independence from the government. Therefore, the media choose litigation as a last option.

Some court cases on the issue of freedom of information and the media in the South Caucasus exist, including several with successful outcomes in favour of FOI.

To date, few individual journalists have applied to courts to protect their right of access to official information.

### **5.5.1 Armenia**

#### **CASE 1**

The significance of the two successful cases below is that all the events took place prior to the adoption of the advanced Law “On Freedom of Information”.

Although the first case did not end with a court’s verdict obliging the University Admissions Commission to provide the requested documents, it had an impact on the attitudes of the public officials who, in turn, became more considerate in handling information requests by journalists.

#### ***Asparez Journalists’ Club of Gyumri v. City [University] Admissions Commission***

On 7 August 2001, a journalist reporting on entry exams to state university was refused permission to watch a four-hour written exam conducted by the Gyumri University Admissions Commission. The Commission decided not to allow media in the exam room one hour prior to the end of the written exam.

The following day the president of the Asparez Club requested a copy of this decision and copies of the minutes of other sessions of the Commission in order to protest the decision in court. He was refused.

The Club’s journalists repeated their request on 9 August 2001, stressing that they were asking for documents that did not contain secret information. This request also remained unanswered. Journalists condemned the attitude of the Commission. On 30 August 2001, they filed a lawsuit along with a journalist from *Iravunk* newspaper asking for annulment of the Commission’s decision to restrict media’s access to the exam rooms, and requesting to see the protocols from the Commission’s meetings. After two hearings in a regional first instance court in Shirak (October 1<sup>st</sup> and 25<sup>th</sup>), the case was transferred to Yerevan’s first instance court.

***The Court declined to rule on the lawsuit because during a series of hearings the University Admissions Commission agreed to provide the requested documents.***

#### **CASE 2**

#### ***Association of Investigative Journalists NGO v. State Customs Committee***

On 9 October 2001, the President of the Association of Investigative Journalists, Edik Baghdasaryan, sent a written request to the Head of the State Customs Committee Armen Avetisyan requesting the following information:

- 1) the names of the organisations that operate non-metal mines and export their products (mainly stones);
- 2) the volume of their exports between 1997 and the present; and
- 3) the amount of taxes paid for exports of these products between 1997 and the present.

On 10 October 2001, the Deputy Head of the State Tax Committee, Samvel Tadevosyan, circulated a letter in which he refused to answer the questions, arguing that, according to Article 16 of Armenia's Customs Code, "information provided to the Customs bodies for the purpose of carrying out the customs' activities, cannot be used by the Customs bodies for other purposes."

On 6 November 2001, the Association of Investigative Journalists filed a lawsuit with the Kentron and Nork Marash Communities' First Instance Court requesting that the Head of the State Customs Committee provide complete information on the above-mentioned issues within the shortest time possible.

During the court hearing on 18 December 2001, the court held that the requested information constituted a commercial secret and the request from the Association of Investigative Journalists was rejected.

On 2 February 2002, the Court of Appeals decided to partially satisfy the journalists' claim, obliging the State Customs Committee to answer fully the Association's third question.

***The State Customs Committee provided all the requested information.***

### **CASE 3**

Although the events around this case started prior to the adoption of the FOI Law, the Law proved to be important later in overcoming excessive fees.

#### ***Vanadzor Branch of Helsinki Citizens' Assembly NGO v. Vanadzor Municipality***

In October 2003 the Vanadzor branch of the Helsinki Citizens' Assembly (HCA)<sup>254</sup> requested copies of all decisions adopted by the Mayor and the Senior Citizens' Council in 2002–2003, from the Mayor of Vanadzor City in Lori region.

The Mayor, Samvel Darbinyan, turned down the request on the grounds that, according to the Law "On Legal Acts", documents intended for private use can be only provided to their addressees. However, the Mayor suggested that the "Community Handbook of Legal Acts" be checked for the resolutions on types and rates of local fees and taxes. HCA staff failed to obtain the Handbook from the Municipality.

On 10 December 2003, HCA's Vanadzor branch filed a lawsuit with Lori region's First Instance Court, convinced that the Mayor's refusal was groundless. The Chairman of the Court, the Municipality and NGO representatives agreed to suspend the legal procedure. Despite its promises, Vanadzor Municipality did not release the documents; instead, it demanded a fee of 1,000 AMDs (approx. US\$2) per decision, making reference to the 2003 decision of the Senior Citizens' Council on "Providing Copies of Documents During the Current Year".

On 30 April 2004, Lori region's First Instance Court (judge Mushegh Harutyunyan) ruled in favour of HCA and obliged Vanadzor Municipality to provide copies of decisions adopted by the Mayor and the Senior Citizens' Council during 2002–2003, except for those decisions which, according to Armenian legislation, are not for publication.

Despite the ruling, a resolution by the First Instance Court clarifying its previous ruling on this case, dated 10 June, obliged HCA Vanadzor branch to pay a fee of 1,000 AMDs per copy of each of the requested documents.<sup>255</sup>

On 24 August HCA Vanadzor branch appealed to Armenia's Court of Appeals. They ruled in favour of the appellant.

***The Municipality was obliged to provide the requested documents at 1,000 AMDs. HCA Vanadzor branch paid only 1,000 AMDs as a local tax instead of the 2,600,000 AMDs (approx. US\$4,600) demanded by the Municipality.***

#### CASE 4

Although the two following cases are not purely media cases, one of the parties represents a professional organisation of journalists working on freedom of information issues.

Despite positive infrastructure changes after Armenia ratified the Aarhus Convention,<sup>256</sup> the Ministry of Environmental Protection<sup>257</sup> proved to be uncooperative when information requests were filed.

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<sup>254</sup> The NGO publishes a newspaper, *Civil Initiative*. They required information for an article.

<sup>255</sup> For details see YPC Newsletter, 11-17 June 2004, <http://www.ypc.am>.

<sup>256</sup> Following accession to *the Aarhus Convention*, the Department on Public Relations was established within the Ministry of Environmental Protection in early 1998. The primary goals of the Department are to inform the general public on the activities of the Ministry, and involve the public in the decision-making process. For details see [http://www.grida.no/enrin/htmls/armenia/soe\\_armenia/englilsh/educati/publicinf.htm](http://www.grida.no/enrin/htmls/armenia/soe_armenia/englilsh/educati/publicinf.htm).

***Association of Investigative Journalists NGO v. Ministry of Environmental Protection***

Since 2001, the Association of Investigative Journalists of Armenia has made several unsuccessful attempts to access information from the Ministry of Environmental Protection. Their written requests asked whether the Alaverdi Metallurgical “ACP” (Armenian Copper Programme CJSC (formerly Manes-Valex) had undergone ecological examination.

For about a year and a half, the journalists working on articles about environmental pollution in Alaverdi City had been unsuccessful in getting information from the Ministry of Environmental Protection. Ministry officials gave incomplete and vague responses to all their written requests.

On 28 November 2002, the Association sent the last request to Minister Vardan Ayvazyan on whether the Manes-Valex Company has ever been responsible for breaking the requirements of Armenian Law “On the Expertise on Environmental Impact”, performing activities without expert documentation. If this were the case, the journalists further requested information on the amount of fines imposed on the Company and paid to the State budget. The journalists also requested access to the actual contract signed with the company in order to verify what ecological measures ACP undertook in order to reduce any harmful effects of its activities on the environment. The Minister of Environmental Protection did not reply.

On 14 March 2003, the Association of Investigative Journalists of Armenia submitted two claims to the Kentron and Nork-Marash Communities’ First Instance Court asking the court:

1) to require the Ministry of Environmental Protection, as soon as possible, but within no later than 10 days, to respond to the written request from the President of the Association of Investigative Journalists, Edik Baghdasaryan, dated 28 November 2002 (No. 28-h3); and

2) to require the Ministry of Environmental Protection, as soon as possible, but within no later than 20 days, to complete the expertise procedure as foreseen in the Law, and provide the Association of Investigative Journalists with the ecological expertise conclusion.

Before the first court hearing, scheduled for 16 April, the Ministry of Environmental Protection tried to rectify the violation, sending judge Aramyan a letter with answers to all the questions from the journalists. A copy of the letter was sent to the Association of Investigative Journalists. Although the Ministry of Environmental Protection provided the journalists with almost all the case-related documents in its possession, they were not able to find the Contract signed between the Manes-Valex Company and the Government of Armenia. As the journalists

<sup>257</sup> In Armenia this Ministry is referred to in English as the Ministry of Ecology as well as the Ministry of Environmental Protection.

found out later, the Ministry was barely involved in signing the Contract, which meant that the activity of ACP was allowed to operate without any supervision by the Ministry of Environmental Protection in areas which affected the environment. On 2 May, during the Court hearing, the journalists attempted to bring in as a mediator Environmental Expertise, a State non-commercial organisation. The Court agreed to it and postponed its session until 16 May. Prior to this, all four parties involved in the case – the Ministry of Environmental Protection, Environmental Expertise, the Association of Investigative Journalists and the ACP -met to discuss why the Alaverdi Metallurgical Plant had not undergone environmental vetting after its reopening. It later emerged that the reason this was not done was because the ACP did not submit the documents necessary for arranging the vetting. An official letter followed (No. GA-052, dated 7 May 2003) from Mr Gagik Arzumanyan, Executive Director of the ACP, addressed to the Minister of Environmental Protection, in which the Company agreed to submit all the necessary documentation within 6 weeks; they also expressed their readiness to discuss with the Ministry ecological projects aimed at decreasing pollution in Alaverdi city. Significantly, for the first time the ACP took the initiative to discuss environmental issues with a State body.

Two parties involved in the case, the Ministry of Environmental Protection and the Association of Investigative Journalists, signed a settlement agreement. After receiving all necessary documents from the company, the Ministry was obliged to vet completely the activities of the ACP and assess any possible damage to the environment caused by their activities. This had to be completed within 80 days and a copy of the ecological conclusion had to be submitted to the Association of Investigative Journalists.

***Two claims of the Association of Investigative Journalists were satisfied.***

## CASE 5

### ***Association of Investigative Journalists v. Mayor of Yerevan***

In October 2003, Edik Baghdasaryan, chairman of the Association of Investigative Journalists, requested permission from Yerevan Mayor Yervand Zakharyan to see resolutions approved by the previous mayors of Yerevan made between 1997 and 2003, regarding land allocations in the public park surrounding Yerevan's Opera House. This information was necessary for completing an investigation on illegal constructions in a public green zone around the Opera theatre. According to the journalists, in the past 12 years numerous cafes and restaurants were built in this area, causing a number of public protests that were ignored by the local authorities.



In reply to the journalists, the Mayor's chief of staff, Samvel Koshetsyan, said they should specify the exact information they wanted to receive from the Yerevan Mayor's Office. The Association sent a letter to the Control Chamber of the Armenian President, Robert Kocharyan, who redirected it to the Mayor's office. The letter was refused again.

Being unable to obtain the necessary information, the Association of Investigative Journalists filed an application with the Centre and Nork-Marash Communities' First Instance Court (14 April 2004). On 21 June 2004, Judge Gayane Karakhanyan of the Court of First Instance of the Kentron and Nork-Marash Communities of Yerevan dismissed the Association's application without giving reasons. Edik Baghdasaryan appealed to the

Chairman of the Justice Council, President Kocharyan, to institute disciplinary proceedings against Judge Karakhanyan for being biased in her judgments and breaking Article 132 of the Administrative Code of Armenia. In addition, the Association sent a letter to the chairman of the newly created Council on Fighting Corruption, Prime Minister Andranik Margaryan, asking him for support in obtaining public information. In response, they received a letter from the Government's Chief of Staff Manuk Topuzyan, referring to the recent court decision and, therefore, being unable to discuss this issue any further. Shortly after the court's verdict, the journalists sent a repeat request to the Mayor's office, in which they mentioned the names of all the cafés located in the public park surrounding Yerevan's Opera House, as was demanded by Mayor's representatives during court sessions. Once again the Yerevan Mayor turned down the organisation's request. In early July the Association challenged the first court's decision in the RA Court of Appeals. The latter ruled against it on 16 September. The Association challenged this decision with the Court of Cassation.

*On 29 October the highest court in Armenia, The Court of Cassation, ruled in favour of the Association of Investigative Journalists. The case was sent back to the Court of Appeals for review.*<sup>258</sup>

## CASE 6

This is a positive example of a court case against those who assaulted journalists (the events of 24 August 2004<sup>259</sup>). It sets out a progressive precedent recognising media's duty to report.

On 24 August 2004, Anna Israelyan, a reporter and Mkhitar Khachatryan, a photo-journalist for an opposition daily newspaper *Aravot* and photo-agency "PhotoLure" (photo news), were

<sup>258</sup> We later found out that the Armenian Court of Appeal ruled in favour of the Association of Investigative Journalists on 1 December 2004.

<sup>259</sup> For more details on events, see Yerevan Press Club's newsletter at <http://www.ypc.am>.

physically attacked while trying to take photos of private villas in the northern town of Armenia called Tsaghkadzor. The villas belong to public officials; and the journalists wanted to report, using photographs, on how State officials use public resources to build private luxury houses. Bodyguards of the owners beat the journalists and took their digital camera disc by force. On 11 October 2004, the Court of First Instance of the Kotayk Marzes sentenced the bodyguard Gagik Stepanyan to six months in prison for the assault. This was the first time in Armenia's contemporary political history that an individual has been imprisoned for assaulting journalists and interfering in their professional duties.

### **5.5.2 Azerbaijan**

Unlike Armenia and Georgia, we could find only one case relating to freedom of information in Azerbaijan's recent history. The end result was successful, despite there being no court hearing.

This suggests that media professionals are reluctant to appeal to courts due to the lack of an impartial and independent court system in the country. In fact, the courts became an effective 'penal' tool in the hands of officials and are frequently used against the opposition media.

#### **CASE 1**

In 2001 the editor of a regional newspaper requested from the Finance Department information on the amount of money allocated by the State for regional schools. After waiting for a month, he filed an application in Masally court.

When the head of the Finance Department discovered how far the situation had developed, he provided all the necessary information to the editor and mentioned during a conversation with the editor that he was unaware that journalists possessed such rights. The court hearing was cancelled.

### **5.5.3 Georgia**

#### **CASE 1**

##### ***Newspaper Alia v. General Prosecutor's Office***

In 2003 unofficial information appeared that linked the name of an MP to the case of Mamuka Aslanikashvili's suicide several years ago.<sup>260</sup> Rumours had been circulated that the MP was not

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<sup>260</sup> Mamuka Aslanikashvili used to be the First Secretary of the Kutaisi City Committee of the Communist party in the 1980s. In 1984 he committed suicide. Reasons for this remain unknown. In the evening prior to his death

in good health and that he did not do his military service due to a mental disorder. In order to check the credibility of this information, the *Alia* newspaper submitted a request to the Public Prosecutor's Office requesting information about the suicide. This request was based on the General Administrative Code of Georgia.

On 31 January 2003, the Public Prosecutor's Office refused to provide the requested information through an administrative act N18-2-03. According to them, this case contained material classified as a personal secret.

The newspaper filed a complaint with the Mtatsminda-Krtsanisi District Court demanding that the Public Prosecutor's Office be ordered to grant the requested information and abolish the administrative act of N18-2-03. The Mtatsminda-Krtsanisi District Court held against the plaintiff.

After the judgment of the district Court the newspaper filed an appeal with Tbilisi Appeals Court and demanded that the decision of the Mtatsminda-Krtsanisi district court be revoked and that the newspaper's information request be satisfied.

The Court held that the refusal of the Public Prosecutor's Office to grant public information did not comply with the requirements for the following reasons:

1) The case of Mamuka Aslanikashvili's suicide was handed to the Archive of the General Prosecutor's Office and was not kept in the National Archive Foundation. Access to some types of documents kept in the National Archive Foundation, including documents on criminal proceedings, is restrained. However, Aslanikashvili's case was not attributed to this special archive and therefore, according to Article 2 paragraph "L" of the General Administrative Code of Georgia, information kept in a public organization is considered to be public information.

2) Concerning the issue of whether the General Administrative Code extends to the General Prosecutor's Office, Article 3 of the Code (the chapter on FOI) extends to the judicial institution's administrative activity, and the Public Prosecutor's Office falls into this category. Because the activities of the Prosecutor's Office in this case were of an administrative nature, the court stated that the Prosecutor's Office had no right to refuse the request, as long as the information was not classified as a personal secret. According to Article 27 of the same Code, information can be classified as secret only by the person who is the subject of that information, except if otherwise prescribed by law.

Although the Prosecutor's Office informed Mamuka Aslanikashvili's son about the information request, the son had not replied to say that the information should be classified as a

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Mamuka was called to Tbilisi by the Communist Party Central Committee. After this trip he returned to Kutaisi and committed suicide. There were rumours that one of the members of the Georgian Parliament (1991-2003) who used to work in the Kutaisi City Communist Party during the 1980s was involved in Mamuka Aslanikashvili's death.

personal secret. The decision of the Tbilisi District Court was appealed by the General Prosecutor's Office to the Supreme Court of Georgia. The Prosecutor's Office demanded that the decision be revoked and the case be sent back to the district court for a second review.

***The Supreme Court decided against the Public Prosecutor's Office stating that the decision of the Appeals Court should not be revoked. The decision of the Supreme Court is final and is not subject to further litigation.***

## CASE 2

### ***Khalkhis Gazeti v. Secretariat of Shida Kartli's Governor***

On 10 June 2004, the correspondent of the regional newspaper *Khalkhis Gazeti* (People's Newspaper), Ketevan Gikashvili, submitted an information request to the Secretariat of Shida Kartli Governor concerning the biography and health certificate of Governor Mikheil Kareli. Three days later the newspaper received an answer from the Secretariat stating that the requested information was available in the 14th issue of the *Trialeti* local newspaper.

The journalist was dissatisfied with the response and filed an administrative lawsuit with the Gori District Court, demanding that the Secretariat be ordered by the Court to provide access to the requested information.

At its session on 22 July 2004, the Gori District Court did not satisfy the plaintiff's complaint on the grounds that the information request was addressed to the wrong public body.

***Following the Court's judgment, the newspaper submitted the same request to the State Chancellery of Georgia, but to date the request has not been answered.***

## CASE 3

### ***Newspaper Batumelebi v. Ajara Development Foundation***

The regional independent newspaper *Batumelebi* (Citizens of Batumi) from Batumi (Ajara) had been working on a story concerning individuals compelled to transfer funds to the Ajara Development Foundation. Journalists possessed unconfirmed information that individuals closely related to the Abashidze's former ruling regime were forced to transfer a certain amount of money to the Foundation after the Revolution in Ajara.

On 19 July 2004, the newspaper submitted an official inquiry to the Ajara Development Foundation requesting a copy of the Charter and information on the amounts transferred to the Foundation's account during the previous months.

Responding to the information request of the *Batumelebi* newspaper, the Foundation provided the Charter of the organisation but failed to provide information on money transfers.

Dissatisfied with the information provided, journalists filed a repeat request asking for the same information, and additionally, detailed information on allocations and use of funds by the Foundation. The Foundation refused to release information on the grounds that the Foundation is not a public entity and, according to the General Administrative Code of Georgia, is not obliged to disclose information.

The *Batumelebi* newspaper initiated an administrative lawsuit in the district Court of Batumi demanding that the Ajara Development Foundation be ordered by the Court to disclose to the newspaper the amounts received via money transfers and how the funds were allocated.

***At present, Batumi District Court is in the process of revising a lawsuit (dated September 2004) initiated by the Batumelebi local newspaper, concerning the refusal of the official request to access information on money transfers received and allocated by the Ajara Development Foundation.***

The following two cases do not involve journalists directly. However, both of them were initiated by the Liberty Institute; the organisation has journalists among its staff and also publishes a newsletter on human rights topics. The first case involves information related to elections, and the second case concerns *the Aarhus Convention*.

#### CASE 4

##### ***Liberty Institute v. District Election Committee #37 in Akhaltsikhe***

Liberty Institute's regional representative Amiran Meskheli, while conducting monitoring for the newsletter "*Liberty*", made several requests for copies of the reports from election polls, the number of registered voters and the number of those who voted during the local elections held on 2 June 2002, from the District Election Committee #37 in Akhaltsikhe.

The Head of the Commission refused to provide information claiming that she was not obliged by law to provide information to a non-governmental organisation. After one more request was refused, Amiran Meskheli initiated a lawsuit at the regional court on 18 June 2002. The plaintiff requested that the defendant release copies of reports from election polls and reimburse 10 GEL (approx. US\$5) of State duty and 150 GEL (approx. US\$70) of legal services paid by the plaintiff.

On 16 November 2002, the Appeals Court satisfied the claim in part: following the Akhaltsikhe district court decisions of 16 July 2002 and a supplementary decision of 2 August 2002, the court obliged the District election committee #37 to release the copies of election poll reports. The plaintiff did not receive a reimbursement.

*Decision by the court of cassation dated 29 May 2003: cassation claim was satisfied.*

## CASE 5

### *Liberty Institute v. Akhaltsikhe Local Government*

In 2001 an epidemic of hepatitis A broke out in the region of Akhaltsikhe, reaching its peak in October-November. According to official statistics, 487 people were infected. Before the spread of the epidemic, the local sanitary service conducted regular checks of drinking water and informed local authorities several times that there was a potential threat for epidemic to break out in the region. Local authorities ignored these warnings and did not inform the local population about the danger.

Liberty Institute and the Akhaltsikhe local community (425 of those affected) in cooperation with a regional partner NGO "The Union of Democratic Meskhs", initiated a collective civil lawsuit in the local district court, basing their arguments on the Aarhus Convention.

The plaintiffs demanded compensation of about 600 GEL (approx. US\$290) for each person affected by the water pollution, amounting to a total of 24,883 GEL (approx. US\$12,190). Under the complaint, Akhaltsikhe Gamgeoba,<sup>261</sup> who is the single owner of the "Tskhalkanal" company (responsible for water supply of the region), was announced as the defendant in the case.

*In April 2004 the Regional Court decided to award the infected persons 150 GEL (approx. US\$70) each as expenses for medical services and 50 GEL (approx. US\$20) for moral damages.*

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<sup>261</sup> See note 242 above.

## 6. FREEDOM OF INFORMATION SURVEY RESULTS

*Freedom will be bereft of all effectiveness  
if the people have no access to information.  
Access to information is basic to the democratic way of life.  
The tendency to withhold information from the people  
at large is therefore to be strongly checked.*<sup>262</sup>

Abid Hussein  
UN Special Rapporteur on Freedom of Opinion and Expression  
(1993 - 2002)

In order to obtain first-hand information on the latest trends in access to official information by the media, we conducted a survey among representatives of public bodies and mass media professionals. Survey findings are summarised below.

### 6.1 Survey Methodology

The survey was carried out in Armenia, Azerbaijan and Georgia in late September/early October 2004, by holding face-to-face interviews. The interviews were carried out jointly by ARTICLE 19's local partner organisations and local pollsters,<sup>263</sup> using separate questionnaires for public officials and for the media, all designed by ARTICLE 19.<sup>264</sup>

The aim was to yield information in four main areas of interest:

1. *Profile of interviewees* – studying the professional experience and sociological background of interviewees;
2. *The right to access official information* – assessing what understanding interviewees have of the right to freedom of information and of the existing legal provisions in their country;
3. *Requests of information* (for mass media professionals) and *practice of releasing official information* (for public officials) – examining experiences of media professionals in requesting and receiving information from public

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<sup>262</sup> Special Rapporteur's report to the UN Commission on Human Rights, E/CN.4/1995/32, para.35.

<sup>263</sup> Detailed survey results are available from the Freedom of Information Centre (Armenia), Yeni Nesil Union of Journalists (Azerbaijan) and Liberty Institute (Georgia). Reports on the survey findings are available from ARTICLE 19 Europe Programme. A sociological group of Baku Press Club (Azerbaijan), Business Consulting Group Research (Georgia) and Freedom of Information Centre's staff from Yerevan and three regional coordination councils (Armenia) carried out the interviews.

<sup>264</sup> Appendices to this report contain diagrams and charts illustrating the selected findings. See appendices 1-7.

- authorities; studying in what way (if at all) officials publicise information and process information requests;
4. *Other forms of access to information* – assessing access to meetings, parliamentary sessions and courts.

An additional area was added in the questionnaire designed for officials: a set of questions to assess their attitude toward and perception of the media.

The survey's aim was to examine whether and how existing freedom of information acts are observed in the three South Caucasus States, to identify challenges faced both by mass media and public officials, and to assess the degree of awareness of the right to freedom of information among these target groups.

Survey findings were used to draw up recommendations for fostering freedom of information regimes in Armenia, Azerbaijan and Georgia.

Altogether 105 officials and 135 media representatives were interviewed.<sup>265</sup> Journalists formed the majority among the media professionals interviewed as they are the ones most often seeking information from public bodies.

Although the survey sample is not high in number and gathered examples represent mainly personal experiences, they give insight into the difficulties that can affect quality journalism when journalists request information from the authorities.

### **6.1.1 Armenia**

In Armenia the survey was carried out in five regions. They were selected based on their size and geographic location: Shirak, Lori, Syunik, Ararat and Tavush. Shirak and Lori in the North are two of the most active regions in implementing the Law "On Freedom of Information". Syunik in the far South is one of Armenia's largest regions. Ararat region was chosen because of its close location to the country's capital Yerevan. Tavush region represents Armenia's border with Azerbaijan. The survey hoped to examine whether the location and distance from the country's capital affects, either positively or negatively, the implementation of the FOI law.

The number of *journalists* interviewed in each region was chosen based on two different criteria – the size of the region and the degree of media representation in that region. Of 40 interviewed media professionals, 23 were from the city of Yerevan and 17 were region-based. Because Shirak, Lori and Syunik are large regions, four journalists were selected from each of them (two from TV and two from the print media). Three journalists were selected from Ararat region (two from TV and one from the print media). Two journalists were selected from Tavush region (one TV and one print media). Out of 23 media professionals interviewed in Yerevan, two

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<sup>265</sup> In Armenia and Azerbaijan, 40 media representatives and 40 officials were interviewed; In Georgia 55 media representatives and 25 officials participated.



represented news agencies and three were from online newspapers. The remaining 18 journalists represented TV and print media, nine in each category. Of the 17 media professionals interviewed in the regions, nine represented TV stations and eight were from the newspapers. 32.5 per cent of respondents were male and 67.5 per cent female. This describes a female-dominated media landscape in Armenia. 30 per cent of those interviewed fell into the 18–24 age group, and 50 per cent were in the 25–40 age group. This marks another growing trend of having more young professionals involved in media work.

The distribution of interviewed *officials* was based on the size of the region and the degree of representation of different levels and branches of government. Of 40 public officials interviewed, 19 represented regional State and self-governing bodies and 21 were from the capital city of Yerevan. Out of 21 officials interviewed in Yerevan, 10 represented central government ministries (executive branch), 8 were from Yerevan district administrations (self-governing bodies), 2 were from first instance courts and 1 was from the Parliament. The ministries included the Ministry of Health, Ministry of Environmental Protection, Ministry of Urban Development, Ministry of Education and Science, and Ministry of Labour and Social Affairs. On a regional level 19 officials were interviewed: 9 from government offices (executive branch) and 10 from municipalities (self-governing bodies).

25 per cent of all interviewed officials were female (10 officials) and 75 per cent were male (30 officials). This indicates a general employment trend within public bodies in Armenia. Both in local self-government and State government bodies, officials above the age of 40 formed a majority (67.5 per cent of those interviewed).<sup>266</sup>

### **6.1.2 Azerbaijan**

Interviews were carried out in the country's capital, Baku, and the three large cities of Ganja (the second largest city in Azerbaijan), Mingechevir (an industrial centre in the country's West), and Masally (a district centre in the country's South). According to Yeni Nesil Union of Journalists, the majority of the functioning media are concentrated in these regions.

Survey target groups were selected by random sample. Media representatives were chosen based on statistical data provided by the Press Council while public bodies were picked from five-year old data of the State statistics agency.

Individuals from both print and electronic media were interviewed. Unlike in Armenia, the media interviewed in Azerbaijan appeared to be male dominated: 29 male (72.5 per cent of those interviewed) and 11 female (27.5 per cent of those interviewed) media professionals were interviewed. Similar to Armenia, the age range of those interviewed was young: 25 journalists

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<sup>266</sup> 30 per cent of those interviewed represented officials aged 25–40 and only one person (2.5 per cent of those interviewed) fell in the 18–24 years old category.

were aged 25–40 (62.5 per cent of those interviewed) and three were aged 18–24 (7.5 per cent of those interviewed).

The interviewed officials represented the Azerbaijani Parliament, Ministry of Education, Ministry of Culture, Ministry of Economic Development, Ministry of Agriculture, Ministry of Taxes, Ministry of Internal Affairs, as well as banks, the Ombudsman's office and local executive authorities. Public officials aged 40 and above represented 50 per cent of those interviewed. 18 public officials represented the age group of 25–40 (45 per cent of those interviewed). The majority of the interviewed officials were male: 26 individuals. Of 40 officials interviewed, 14 were senior heads of public institutions, 20 were ordinary officials, 2 were MPs, 2 worked as parliamentary support staff and 2 were judges.

### **6.1.3 Georgia**

In Georgia interviews were conducted in the country's capital Tbilisi and in the three regions of Imereti, Ajara and Kakheti. 55 media representatives and 25 officials were interviewed. Of the 55 interviewed media professionals, 40 were based in the country's capital Tbilisi (72.7 per cent of those interviewed) and 15 were from the regions (27.3 per cent).

The media included television companies and newspapers. Radio and news agencies were not covered because, according to the pollsters, they broadcast mainly entertainment programmes and official events such as press conferences or open public meetings, and therefore rarely or never send official requests.

Four major national TV companies were interviewed in Tbilisi, including two companies with nationwide coverage – State TV First Channel and Imedi TV. One TV company from each of the three regions participated in the interview.

Newspapers in Tbilisi were selected based on their ratings and popularity. In Tbilisi three dailies and two weekly newspapers were interviewed, and one newspaper was selected from each of the three regions in Georgia.

The mass media professionals in Georgia, in common with Armenia, are mainly female (65 per cent of those interviewed) and relatively young (69.1 per cent of those interviewed, or 38 media representatives, were aged 25–40; 23.6 per cent, or 13 persons, were aged 18–24). 25 *officials* were interviewed in Tbilisi. Official institutions included the Ministry for Security, Ministry of Defence, Ministry of Internal Affairs, Supreme Court, State Chancellery, Parliament of Georgia, City Hall and other government institutions. Unlike Armenia and Azerbaijan, female public officials (76 per cent) and those aged 25–40 (20 officials or 80 per cent) formed the majority of the respondents in Georgia. This suggests that Georgia has a younger and less male dominated civil service, both prior to and after the "Rose Revolution".

## 6.2 Survey Results

### 6.2.1 Mass Media

#### a. Profile of the Interviewed Journalists

The majority of those interviewed had a number of years of professional experience in the media field. For example:

- In Armenia 27.5 per cent of those interviewed had 10 or more years of experience in journalism; only 7.5 per cent of those interviewed had less than one year of professional experience as journalists.
- In Azerbaijan 37.5 per cent had over 10 years of professional experience in the field, 27.5 per cent had 6–10 years, and 22.5 per cent had been involved in media for 3–5 years.
- In Georgia 28.1 per cent had over 10 years of professional experience in media, 31.2 per cent of those interviewed had 6–10 years of professional experience in the field, and 28.1 per cent had 3–5 years of experience in the media.

In all three countries the media professionals came from different educational backgrounds – economics, philology, international relations, law and other related and unrelated fields. For example, 32.5 per cent of the journalists interviewed in Armenia were philologists by education. In Azerbaijan 37.5 per cent of the interviewed media were journalists by education; followed by 17.5 per cent who were philologists. In Georgia 41.7 per cent of those interviewed were journalists by education; as with Azerbaijan, the second largest group was represented by philologists (16.7 per cent).

Only 7.5 per cent of the journalists interviewed in Armenia mentioned that they covered specific subject areas, with most reporting on various issues, at times completely unrelated (for example, art and the judicial system). 10 per cent of those interviewed in Armenia were engaged in investigative reporting. In the case of Georgian journalists' thematic coverage, issues were broader and included: politics (54.5 per cent of journalists), economics (32.7 per cent), social issues (16.4 per cent) and investigative stories (16.4 per cent). In Azerbaijan politics proved to be more popular among Baku media (30 per cent), while on a local level the media write more on social issues (27.5 per cent or 11 journalists).<sup>267</sup>

NGOs seem to be frequently used as sources of information by the media in all three countries (47.5 per cent in Armenia and Azerbaijan, 63.6 per cent in Georgia). However, the majority in the countries preferred using official institutions and personal contacts in official

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<sup>267</sup> According to the pollster, this trend is explained by low standard of living in the regions thus putting social issues at the centre of media attention. There might also be higher risks for the media when reporting on political issues, especially on domestic politics on a local level.

institutions as their two main sources of information (89.1 and 69.1 per cent in Georgia, 70 and 32.5 per cent in Azerbaijan, 85 and 72 per cent in Armenia). Experts also proved to be a popular source of information cited by 52.5 per cent of those interviewed in Azerbaijan, 72.7 per cent in Georgia and 67 per cent in Armenia.

The Internet is the least popular source of information in Georgia and in Azerbaijan. However, surprisingly, in Armenia, 62.5 per cent (25 journalists) said they relied on Internet resources when working on stories about activities of public bodies. This was unexpected in view of the fact that not all the public bodies have official websites and the existing sites are not regularly updated or are missing even basic contact information, much like in Azerbaijan and Georgia. Only 1.8 per cent of the Georgian media professionals claimed to use it, and in Azerbaijan this figure is about by 2.5 per cent.

## **b. The Right to Access Information**

### **Armenia**

The survey findings in Armenia revealed that although journalists complained about the lack of access to official information, they themselves were not totally familiar with the legal guarantees of their right to information, particularly the Law “On Freedom of Information” and its provisions.

Three quarters of the media professionals interviewed were aware of the right of journalists to receive official information. 77.5 per cent said that this was a right belonging to every individual. According to the pollsters, journalists in the regions were better informed about the contents of the Law on FOI than their colleagues in Yerevan.<sup>268</sup> Nevertheless, media professionals know that the Law exists (82.5 per cent of those interviewed said they read the Law “On Freedom of Information” but do not use it; while 10 per cent stated that they knew about the law but they did not use it. All of the interviewed media professionals agreed that the Law “On Freedom of Information” should be better implemented. Significantly, 70 per cent of those interviewed expressed the hope that the new Freedom of Information Law would substantially improve the situation in accessing official information in Armenia.

One of the journalists from *Haikakan Zhamanak* proudly mentioned to the interviewers that he always carries the FOI Law in his bag.

However, as noted by the Freedom of Information Centre, some journalists confuse the FOI Law with the Law “On Mass Communication”.

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<sup>268</sup> Only one journalist from Yerevan mentioned the FOI Law.

While 33 media professionals (82.5 per cent) said they made reference to a particular piece of legislation when making an information request, only 14 journalists (35 per cent) mentioned they referred to the Law on FOI when requesting information from official institutions. This can be explained by the lack of trust in public bodies and excessively bureaucratic and time-consuming procedures for providing information. Journalists reiterated the importance of respect of the FOI law by officials.

In one situation, when a journalist tried to justify his request by making reference to the FOI Law, the regional governor of Shirak demanded that he leave the building immediately as the information would not be released.

Only 19 of 40 interviewed media professionals said they referred to the country's Law "On Archives" in their requests for information. The rest said that they either did not know that such a law existed or were not familiar with its provisions.

Although the Republic of Armenia ratified the Aarhus Convention in 2001 and both this fact and the Convention provisions received wide coverage by the media, only 16 out of 40 of those interviewed said they were familiar with it; only one journalist from a region said that he was aware of the Aarhus Convention.<sup>269</sup>

## Azerbaijan

The majority of the interviewed media professionals in Azerbaijan (38 media professionals or 95 per cent) stated they had a right to access official information, having based their response on the Law "On Mass Media". 70 per cent of media professionals said they should receive information as a matter of priority in order to ensure its wide dissemination. Although Azerbaijan does not have a comprehensive Law "On Freedom of Information", having instead a Soviet-type law declaring guarantees but not offering mechanisms for securing them, 80 per cent of those interviewed said they referred to its provisions when requesting official information. 57.5 per cent said they believed the situation with access to official information would improve after a new Law "On Freedom of Information" is adopted; 60 per cent said they are familiar with the draft law on freedom of information.

Only 20 per cent of all journalists interviewed were familiar with the Aarhus Convention, and 10 per cent said they relied on it in their professional activity.<sup>270</sup> This possibly suggests that either issues related to the protection of the environment do not exist in Azerbaijan or, more likely, insufficient work has been done to facilitate the implementation of the Aarhus Convention, and to raise public awareness.

<sup>269</sup> Only 4 of 16 media professionals who knew of the Convention said they referred to its provisions in their information requests.

<sup>270</sup> Interviewers said that only one of those 10 could give an example of how the Convention was used in practice.

## Georgia

All of the media interviewed in Georgia claimed that public bodies were under a legal obligation to provide information. Incidentally, 100 per cent of the interviewed officials agreed with them.

54 per cent of the media professionals said they should be given preference over the general public in accessing official information while the remaining 46 per cent acknowledged that this was a right of every individual. Similarly 72 per cent of officials said that no preference should be given to the media when releasing information. Although Chapter III of Georgia's General Administrative Code covers freedom of information and was the first legislation of its kind in the South Caucasus, only 78 per cent of those interviewed said they based their requests on its provisions; 73.5 per cent preferred relying on Constitutional guarantees. Despite this fact, 56 per cent agreed that the FOI chapter improved the situation in accessing official information in Georgia, and 84 per cent said that the FOI chapter increased the availability of official information to the media.

49 per cent of those interviewed said that the recently adopted Law "On Freedom of Speech" was not helpful for facilitating their access to official information.

As in Armenia, many media professionals (68.5 per cent) were not familiar with the provisions of *the Aarhus Convention*. 68 per cent said they never referred to its provisions.

Several of the respondents said that information related to the environment is easy to obtain, unless it relates to international agreements. For example, information on the Baku-Tbilisi-Ceyhan pipeline and environmental issues linked to it is hard to obtain.

### c. Requests for Official Information

The general view of the media professionals in all three countries is that accessibility of official information is far from being satisfactory. Among some of the major obstacles they indicated are the following:

- The absence of appropriate mechanisms and procedures for responding to requests (65 per cent of respondents in Armenia, 67.5 per cent in Azerbaijan, 63 per cent in Georgia);
- The lack of awareness among media professionals of their legal right of access to information (62.5 per cent in Armenia, 32.5 per cent in Azerbaijan, 33.3 per cent in Georgia);
- The ingrained mentality and attitudes of public officials (50 per cent in Armenia, 70 per cent in Azerbaijan, 48.8 per cent in Georgia);
- the lack of appropriate legislation (17.5 per cent in Armenia, 17.5 per cent in Azerbaijan, 14.8 per cent in Georgia); and

- the underutilisation of the right of access to information by media professionals due to self-censorship(40 per cent in Armenia, 12.5 per cent of respondents in Azerbaijan, and 16.7 per cent in Georgia - due to self-censorship).

Despite the general recognition that the right of access to information belongs to every individual, in practice it is easier to obtain information from public bodies as a media representative than as an ordinary citizen. In part this can be explained by a tendency among the public bodies to use the media exclusively for informing the general public of State policies and to release any official information. This was the practice in the Soviet system, and it was inherited by public bodies in the new independent States.<sup>271</sup> In all three States there is a common belief that it is easier to access official information while on duty rather than as ordinary members of the public; this was the opinion of 80 per cent of respondents in Armenia, 95 per cent in Azerbaijan and 96 per cent in Georgia.

The fact that the Soviet regime gave the media a ‘privileged position’, mainly for disseminating State ideology, explains why many respondents believed that mass media should retain this privilege when accessing official information. A high percentage of the journalists interviewed in Georgia and Azerbaijan mentioned that they should be given priority in receiving access to official information as compared to other members of the general public: 54 per cent in Georgia, and 70 per cent in Azerbaijan. However, in Armenia 77.5 per cent of those interviewed were against journalists having a privileged position and emphasised that the right of access to official information belongs to everybody.

Better understanding among the Armenian journalists of the concept of freedom of information could be an indicator of the rise in public awareness due in large part to the efforts of NGOs around the recently adopted FOI laws.

As for public bodies that are difficult to access, media professionals in Armenia mentioned the Ministries of Health, Culture, Education, Science, the Public Prosecutor’s offices, police, detention institutions, National Security Services, the National Bank, courts, customs authorities, as well as two local municipalities (Vanadzor and Yerevan). In Georgia this list included the Ministry of Defence, Ministry of State Security, Department of Intelligence, General Prosecutor’s Office, the Ministry of Interior, the Ministry of Finance, State Chancellery, Ministry of Foreign Affairs, Prosecutor’s Office of Ajara, Ministry of Internal Affairs of Ajara, and Council of Ministers of Ajara.

For example, journalists are often not permitted to enter the premises of the General Prosecutors Office; Ajara Council of Ministers and Ajara Development Foundation provide information only when approved by the Head of the Council of Ministers.

<sup>271</sup> States that emerged after the collapse of the Soviet Union in 1991.

In Azerbaijan media professionals mentioned the Prosecutor's Office, police, courts, Ministry of Finance and the Ministry of Defence as being difficult to get information from.

According to many of the interviewed journalists, the secretive nature of particular public bodies can be challenged by journalists' professionalism and through personal contacts.

Media professionals in all three States agreed on the following indicators of openness and transparency of a particular public body: effective mechanisms and procedures in place (including trained staff, unrestricted access to the buildings and a well-maintained archive for storing documents); and unlimited Internet access and quality equipment. In Armenia some of these can be found in selected municipalities and regional governors' offices; media professionals included the Government and National Assembly of the Republic of Armenia in this list, mainly due to the recently launched professional looking websites.<sup>272</sup> In Azerbaijan the list included the Presidential office, the Ministry of Education, the Ministry of Foreign Affairs and the Ministry of Defence. One of those interviewed, however, explained this list by noting that the media's personal connections often facilitate their access to official information from these institutions. According to those interviewed in Georgia, such 'model' public bodies include the Ministry of Education, the Ministry of Economy and Development, Parliament of Georgia, the Ministry of Energy, the Supreme Council of Ajara, Tbilisi Mayor's Office, Telavi Gamgeoba<sup>273</sup> and regional administrations of Imereti, Kutaisi, and Kakheti.

The survey reveals three key types of issues in Azerbaijan where information is easily accessible: social issues (55 per cent of respondents); the state of environment/ecology (50 per cent of respondents); and the status of refugees (57.5 per cent of respondents).

For example, a journalist from Masally responded that the Ministry of Ecology provided all requested materials when he worked on an article about cutting down forests; a journalist from Baku mentioned that he sends queries to the Ministry of Foreign Affairs almost every week, and rarely receives complete information from them.

In Armenia the list of topics on which information is readily available includes social issues (70 per cent of respondents); healthcare (55 per cent of respondents) and information related to women's issues (50 per cent of respondents).<sup>274</sup> According to Georgian media professionals, information that is easy to obtain includes court-related issues (38.9 per cent of respondents), information on ethnic minorities (35.2 per cent of respondents) and information on women's issues (40.7 per cent of respondents).<sup>275</sup>

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<sup>272</sup> <http://www.gov.am>; <http://www.parliament.am>.

<sup>273</sup> See note 242 above.

<sup>274</sup> 19 respondents or 47.5 per cent said that statistical data is easy to obtain.

<sup>275</sup> 25.9 per cent of respondents said that information on refugees is easy to obtain. No difference was made in the survey between refugees and internally displaced persons; the term 'refugees' is possibly used for both. Statistical data was mentioned among easily accessible types of information (20.4 per cent of respondents).



The top three "closed" thematic areas identified in Armenia include: military/defence (60 per cent of respondents), information on criminal matters/police (57.5 per cent of respondents); and information on corruption (52.5 per cent of respondents). In Azerbaijan these areas include military/defence (67.5 per cent of respondents), information on corruption (70 per cent of respondents); and information related to conflict resolution and peace negotiations (50 per cent of respondents).<sup>276</sup> In Georgia the list is led by military/defence issues (70.9 per cent of respondents); internal politics (40 per cent of respondents); and foreign affairs (34.5 per cent of respondents).<sup>277</sup>

- In Georgia, the State Property Management Agency refused to provide information concerning salaries paid to the board members.
- The National Bank of Georgia refused to provide information about financial loans provided by order of the then-President Shevardnadze.
- A journalist from Masally in Azerbaijan was not able to obtain information on State budget funds allocated for one of the district schools.
- An editor from Baku said that none of the public bodies responded to his queries relating to corruption issues.

Officials in all three countries often ask for justification for requesting a particular piece of information.

- For example, an official from the Armenian Ministry of Health refused to provide information to a journalist on the grounds that he did not know how the requested information would be used.
- The Georgian Ministry of Finance released information on the condition that financial information on a taxpayer should not be used against that person.

60 per cent of respondents in Azerbaijan declared that officials asked for reasons for seeking particular information, and that officials requested journalists' IDs.<sup>278</sup> In the case of Georgia, 29 per cent of respondents said that officials did not ask for justification when information was requested from them while 66 per cent gave a positive answer; 55 per cent of journalists said that officials did not ask for their IDs.

Often delaying tactics are employed by officials.

<sup>276</sup> A journalist noted that the Ministry of Defence replies to each request by claiming that it falls under the category of military secrets. 55 per cent of respondents in Azerbaijan said that statistical data is difficult to obtain.

<sup>277</sup> Information on corruption was partly recognised as easy (29.6 per cent of respondents) and partly as difficult (29.1 per cent of respondents) to access.

For example, a journalist from *Hetq* online newspaper received a response from Yerevan City Hall asking for clarification of a request 40 days after it was submitted.

With such an approach information, if ever provided, will in most cases have lost its value for the journalist who needed timely data. Such behaviour discourages journalists from seeking information from public bodies.

Grounds for denials are manifold and sometimes rather absurd.

For example, the Minister of Culture refused to provide information to an Armenian journalist saying that he had not yet been in office for 100 days.

The length of time in office should obviously never affect the obligation of public officials to provide information.

An official from the Ministry of Health in Armenia refused to provide information to a journalist saying that he did not know how this information would be used.

57.5 per cent of the journalists in Armenia reported that officials had sometimes released false information.

- A journalist from Vanadzor TV commented that he compared a verbal information from a false and an accurate source of information by arranging a meeting with both sources together.
- A journalist from the Arminfo news agency decided to use the false information and publish it referring to its source.
- A journalist from *Yerkir* weekly said she published both the accurate information and the false information provided by a PR official from the Public Prosecutor's Office.

32.5 per cent of the interviewed media professionals from Azerbaijan said that they had occasionally been given false information by public officials. These 13 journalists said that they stopped approaching officials who released false information. In Georgia the situation is somewhat different from the other two States: 74 per cent of the interviewed media professionals denied having ever been given false information by public bodies; journalists said that public officials either release correct information or do not release any information.

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<sup>278</sup> Because opposition journalists in Azerbaijan are often subject to persecution by the authorities for political reasons and the number of people claiming to be journalists is growing, the Press Council of Azerbaijan agreed that all professional journalists will be issued journalist identity cards.

15 per cent of the journalists in Armenia mentioned that accreditation was a hampering factor for receiving official information. 7.5 per cent of the interviewed journalists from Azerbaijan said that suspension of accreditation prevented their access to parliamentary sessions, government meetings and court trials.

- One journalist from a daily newspaper in Baku said that he was no longer allowed to attend the events at the Presidential Administration because he published a series of articles criticising officials.
- Another regional journalist mentioned that he was denied access to a district meeting held by the President of Azerbaijan with the local population because local executive authorities had suspended his accreditation.

In Georgia, 89 per cent of those interviewed said that their accreditation has never been suspended.

In Armenia, in case of refusals, 60 per cent of the journalists (24 persons) publicise to the fact, and 42.5 per cent (17 persons) said they would try to obtain information by other possible means. Only two out of 40 interviewed journalists (five per cent of those interviewed) said they applied to courts. When refused, many Azerbaijani media use all other possible ways to obtain the information (60 per cent), and publicise the fact they were refused the information (55 per cent). Only one journalist said he/she applied to court. Similar to their colleagues from Armenia and Azerbaijan, half of the Georgian journalists publicise the fact that they were denied information (63 per cent) and use all other possible sources (58.7 per cent). Only six journalists (13 per cent) said they appealed to court. Journalists' reluctance in going to court illustrates the lack of trust in the fair administration of justice. The lengthy proceedings in court would also mean the information would be outdated even if the case was won.

#### **d. Other Forms of Access to Information**

Media representatives were requested to rate their ability to access court hearings, parliamentary sessions, national government meetings and meetings of local authorities.

In all three States court hearings were ranked relatively high, being recognised as fully accessible by 42.5 per cent of the interviewed in Armenia, 47.5 per cent in Azerbaijan and 47.3 per cent in Georgia. While parliamentary sessions were rated easily accessible in Georgia (70.9 per cent), in Armenia and Azerbaijan figures appear to be lower – only 20 per cent of the interviewed in Armenia reported full access, and 42.5 per cent in Azerbaijan. In Azerbaijan, meetings of the local authorities were described as the easiest to access by 65 per cent. The same is true for Armenia – 60 per cent of the respondents said that meetings of the local self-government bodies are easy to access. The score is lower in Georgia – 45.5 per cent said that they had full access to the meetings of local authorities. National government meetings receive

quite low marks in all three States. Only 27.5 per cent of those interviewed in Armenia reported that they had full access. This can be explained by the fact that accreditation is compulsory for participating in public meetings of the national government. In Azerbaijan 40 per cent of the interviewed media professionals said that they had full access to public meetings of the national government. In Georgia the number of those who reported full access to public meetings of the national government is the lowest – 10.9 per cent.

### **6.2.2 Officials**

#### **a. Profile of the Interviewed Officials**

Age and gender data of interviewed officials proved to be quite interesting.

While in Armenia and Azerbaijan public bodies proved to be male-dominated – 75 per cent of those interviewed in Armenia and 65 per cent in Azerbaijan were male – in Georgia woman made up 76 per cent of the public body officials interviewed.

Similarly, more young people within the age group of 25–40 seem to work in public bodies in Georgia: 80 per cent of the interviewed Georgian officials fell in the age group compared with 30 per cent in Armenia and 45 per cent in Azerbaijan. In all three States the majority of public officials interviewed have been working in this capacity for 6 to 10 years or more: 52 per cent of those interviewed in Georgia, 62.5 per cent in Azerbaijan and 65 per cent in Armenia.

#### **b. The Right to Access Information**

In Georgia 100 per cent of the interviewed public officials acknowledged that public bodies have an obligation to release official information.

Significantly, the vast majority (87.5 per cent) of respondents in Azerbaijan agreed that public bodies have to be transparent. Only 3 respondents argued that information has to be released at the discretion of public bodies because circulation of certain types of information may harm the State).

Overall, officials in the three States are satisfied or partially satisfied with how the media use released information. In Georgia, 76 per cent are partially satisfied and 20 per cent are satisfied; in Armenia 47.5 per cent are satisfied and 5 per cent are dissatisfied; and in Azerbaijan, 27.5 per cent are satisfied and 52.5 per cent are partially satisfied. Officials from Azerbaijan said that the media often publish distorted information and/or information reflecting the political views of their funders. A public relations officer from the Armenian Ministry of Environmental Protection thought that the media was looking mainly for sensational news or scandals and was not interested in environmental issues.

While in Armenia and Azerbaijan officials stated that the media should have more rights and privileges when requesting official information as compared to ordinary citizens (42.5 per cent in Armenia and 70 per cent in Azerbaijan), 72 per cent of public officials in Georgia spoke against such privileges, supporting their answers with the Constitutional provision guaranteeing equal access to all citizens. They argued that on some occasions outright support of the media's right to access official information leads to discriminatory treatment of other citizens.

- In Armenia, for example, the Freedom of Information Centre mentioned that an official from one of the Yerevan courts allegedly stated that the general public had no right to know what information was released to the media.<sup>279</sup>
- During the interview, an official from Armenia's Ministry for Town Construction expressed his opinion that a distinction should be made between professional and unprofessional journalists, rather than between the media and the general public.

Despite the fairly recent adoption and slow implementation of the Law "On Freedom of Information" in Armenia, 75 per cent of the interviewed officials knew of its existence, and only 10 per cent (4 persons) declared that there was no such law in the country. As was the case with the journalists, the regional officials were better informed – all 19 of the interviewed regional officials knew about the law. But only 50 per cent were familiar with the law's contents, while 32.5 per cent said that they were not familiar with the law's provisions.

- Officials from the Ministry of Health said that because the law was poorly implemented so far it had not improved relations between officials and the media.
- An official from the National Assembly stated that the law's implementation would commence only after the adoption of some amendments.

92 per cent of the interviewed officials from Georgia knew of the existence of the freedom of information law. Furthermore, the majority of officials – 84 per cent – stated that a separate chapter on freedom of information in the General Administrative Code facilitated the media's access to official information because it defined procedures, a time-frame for dealing with requests, types of unrestricted information, and provided a right of appeal in court to the media in cases of refusals. 22 per cent of officials said they referred to the law "On Freedom of Information" when responding to requests. 79 per cent of the interviewed officials said that a recently adopted law "On Freedom of Speech" facilitated access to official information by the media.

<sup>279</sup> The same official was also not aware of the existence of the Law "On Freedom of Information".

In Azerbaijan 72.5 per cent of officials knew about the existing law “On Freedom of Information”. 75 per cent of the officials mentioned that the adoption of a new advanced law on Freedom of Information would improve the situation in accessing official information in Azerbaijan. According to them, the new law will bring Azerbaijani legislation in line with the country’s Council of Europe obligations; it will be more specific and will create mechanisms for making officials more responsible. 75 per cent of respondents added that the law “On Mass Media” facilitated access to official information, and referred to it as one of the most liberal laws in the country.

The situation is gloomier in respect to knowledge of *the Aarhus Convention*. Only 17.5 per cent of the interviewed officials from Armenia knew about it. Out of four officials who mentioned its use, two were from the Ministry of Environmental Protection. In Azerbaijan 20 per cent of the officials knew about the Convention. 17.5 per cent answered that they released information based on the Convention's provisions. Awareness among officials appeared to be the best in Georgia, where 52 per cent of respondents knew about *the Aarhus Convention*, although only 10 per cent replied that they relied on its provisions while on duty.

### **c. Practice of Releasing Information**

77.5 per cent of Armenian officials said that the media was the fastest and most effective way of releasing official information. Regional authorities gave preference to television because of its greater influence on the local population. Press conferences were cited as the second most effective channel for disseminating information by 45 per cent of Armenian officials. Websites and official newsletters scored almost equally in Armenia, being supported by 32.5 per cent of respondents in the case of official websites and 30 per cent in the case of newsletters.

In Azerbaijan the media scored the highest – 67.5 per cent of the respondents think information is best released through the mass media; the second choice was the official websites (57.5 per cent of the respondents) and third was press conferences (40 per cent of the respondents).

In Georgia websites were considered the best means of releasing information (28 per cent of the respondents), followed by press conferences (24 per cent). Responding to information queries and the mass media were both favoured equally by 18 per cent of the respondents.

Although the Internet is not widely used in the South Caucasus because of financial difficulties, especially in the regions, and many public bodies either do not have websites or if they do, rarely update them, officials in the countries rated the Internet quite highly: 28 per cent in Georgia, 57.5 per cent in Azerbaijan, and 32.5 per cent in Armenia.

Procedures and mechanisms for answering information requests require improvement and changes in all three States.

For example, all the written queries addressed to the Armenian Ministries are entered in a general log, thus making it impossible to distinguish how many of them were made by the media. Although the Law “On Freedom of Information” defines a five-day time period for responding to requests, public bodies widely use the 15-days term that was in the previous law. According to the monitoring carried out by the Freedom of Information Centre, several Ministries have information centres for the media, equipped with the necessary technical means (e.g., the Ministry of Health and the Ministry of Environmental Protection). Among the regional authorities in Armenia the situation is the best in Lori and Shirak’s regional governors’ offices.

In Azerbaijan 32.5 per cent of public body respondents said that they registered incoming requests while another 32.5 per cent stated that they did not. 14 respondents mentioned that every month they received up to two queries from journalists. 30 per cent said that in their institutions mechanisms and procedures for responding to requests were in place, while 35 per cent denied this. Positive answers often came from press and public relations departments. Two of the respondents mentioned that they had public hours. One of the officials said that official information was disseminated through regular press releases.

70.8 per cent of the interviewed Georgian officials mentioned that they registered incoming requests, although only 44 per cent managed to give figures (56 per cent refused to answer this question). 92 per cent of Georgian institutions agreed that they had the necessary mechanisms and procedures in place for handling information requests. For example, there are officials assigned to respond to queries, there are established public hours, the archives are maintained and they have registrars and request forms.

According to the interviewed Azerbaijani officials, information about natural disasters, emergencies and the state of environment should be subject to immediate release, while information related to various types of secrets, in particular State secrets, military secrets and national security, should not be released unconditionally. 62.5 per cent of the respondents said they refused to release information if it proved to be secret, and explained the reasons for such refusal. 47.5 per cent of the interviewed officials do not release even partial information in such cases. 55 per cent of the respondents said they provided reasons for refusals. For example, a judge refused to disclose information on child adoption and explained his reason to the journalist. Two respondents said they refused to provide information about a draft law because the latter was still being debated in the Parliament. An official from a local municipality remembered that he once refused to release information to a journalist "who was incompetent to deal with the requested topic." Notably, only one respondent said that he would release classified information to the media if it were in the public and State interest.

Old traditions of secrecy seem to prevail even after the change of political regime in Georgia. 96 per cent of the respondents said they never released classified information to the media in an emergency situation. According to those interviewed, the following types of information are subject to immediate release:

- all public information which does not include personal, State or commercial secrets;
- information on human rights topics; and
- information about citizens' security, the spread of epidemic diseases, and other significant issues.

Information that should not be released includes:

- information containing personal, commercial and State secrets;
- strategic military information; information that may result in social and moral damages;
- information that can endanger the integrity of the State and personal security;
- information on assessments of potential outcomes of certain court cases; and
- unverified information.

Armenian officials argued that they would need approval from their supervisors in order to decide which secret information may be released to the media. They unanimously stated that for the sake of public and State interests secret information should not be disclosed. When discussing restrictions on freedom of access to official information, none of the officials in Armenia raised the argument of privacy protection. It is interesting that among the obstacles against providing official information to the media, lack of appropriate mechanisms and procedures (the opinion of 30 officials or 75 per cent of the respondents), as well as a low level of professionalism among the journalists (the opinion of five officials or 12.5 per cent of the respondents) were mentioned in Armenia. The main obstacles in Azerbaijan included the lack of mechanisms and procedures (60 per cent or 24 respondents). 5 officials mentioned that the media needed to improve their level of professionalism. In Georgia such reasons included the lack of procedures (28.6 per cent of the respondents), and the lack of awareness of the rights of journalists in the media community (23.8 per cent of the respondents). Only one of the interviewed officials said that journalists were not objective in their reporting.

#### **d. Other Forms of Access to Information**

As did the journalists, officials in the three States assessed access to court trials, parliamentary sessions, national government meetings and meetings of the local authorities.

Officials were asked whether meetings of local government bodies, courts, public meeting of the national government and parliamentary sessions were open to the media. In Armenia, meetings of local authorities scored the highest – 70 per cent reported full access and 30 per cent reported partial access. Court hearings scored the lowest – 52.5 per cent have only



partial access and 7.5 per cent reported no access. In Georgia the best scores were awarded to the parliamentary sessions: 72 per cent reported full access while the lowest scores were awarded to national government meetings with 16 per cent reporting full access. In Azerbaijan officials said that there were no significant problems with accessing any of the institutions, although court trials were reported partially open by 52.5 per cent of those interviewed.

### 6.3 Summary Findings

Access to official information remains a major problem area for the media in Armenia, Azerbaijan and Georgia.

Although public officials seem to be aware that they have a duty to release information, the journalists interviewed rated the accessibility of official information as unsatisfactory.

Among the major obstacles mentioned by the journalists were:

- the lack of appropriate mechanisms and procedures for filing, maintaining and providing information based on the freedom of information laws (or the lack of a progressive law in Azerbaijan);
- overly bureaucratic attitudes and the ‘old’ ways of thinking by officials who assume that information in their possession belongs to the public body and that there is no duty to release it;
- the lack of awareness of their legal rights among the media professionals; and
- the low level of professionalism among the media.

The lack of procedures and mechanisms, or lack of appropriate legislation, leaves an enormous amount of discretion to officials, allowing for arbitrary refusals, manipulation of information, and, in extreme cases, even the release of false information.

Despite a general understanding among public officials that the right to information belongs to everyone, in practice it proves to be easier for the media to obtain official information than for a private individual. The media in turn believe that they should maintain their ‘privileged position’ when requesting information. This view stems from the Soviet times when media were treated as a mouthpiece of the State, and the practice of the public requesting information was not developed.

Non-governmental organisations prove to be frequently used as sources of information by the media in all three countries. However, the majority of media professionals in Armenia, Azerbaijan and Georgia favour official institutions and personal contacts in official institutions as their main sources of information.

E-governance is underdeveloped in the South Caucasus. Official websites are either non-existent or are poorly maintained with insufficient basic information.

Soviet traditions of secrecy still dominate public bodies in all three states, and threaten to undermine emerging democratic values in the three transitional societies. The majority of officials say they will not release classified information to the media even in an emergency situation.

Defence and security institutions, together with the Public Prosecutor's Offices, prove to be the least accessible to the media, while many of those interviewed acknowledged the openness of meetings of local authorities. Information on military and security issues is the most difficult to obtain. At the same time, information on social security and other topics of general use is available.

When refused access to information, the media prefer to use alternative sources. However, not all publicise the fact that they were refused information. Despite awareness of the rights and provisions in respective freedom of information legislation, there is no tradition of defending rights in court. There is a common feeling of skepticism about the impartiality of the judiciary. Moreover, due to lengthy court proceedings requested information may become obsolete and lose its value for publication.

## **7. CONCLUSIONS AND RECOMMENDATIONS**

### **7.1 Conclusions**

Free access to government-held information is a fundamental prerequisite for providing members of the general public, including the media, with information on matters in the public interest. On the one hand, it enables broad public participation in policy debates and is crucial for making informed choices, while on the other it exposes wrongdoing and corruption, thus contributing to eliminating a culture of secrecy and improving government's accountability and transparency. It is also beneficial to governments by helping to ensure openness and transparency of the decision-making processes. It encourages inclusiveness at all levels, helps government to develop policies and adopt decisions in response to society's needs, and, finally, helps in developing public trust in government actions.

In the past four years, Armenia, Azerbaijan and Georgia have made significant progress toward securing freedom of expression and are beginning to develop freedom of information regimes in their countries. They have acceded to a number of important international human rights mechanisms, and incorporated important international standards in their legal and constitutional frameworks, including guaranteeing the media as well as the public the right to access official information.

However, the existing media freedoms are very fragile. After a 'boom' of media liberalisation in the early nineties, governments more recently have reasserted their control over the information sector: they have been running State-owned media as their 'mouthpiece', and

hindering the development of independent broadcast media. Georgia is the only country in the South Caucasus where broadcast media critical of authorities were able to resist attempts of government interference. Since the change of leadership after the "Rose Revolution", however, they have been accused of lacking independence toward the new government.

The media in their turn lack professionalism and the ability to support pluralistic debate; they enjoy little public trust, and are dependent on support from the State, particular political interest groups or 'oligarchs', thus coming under pressure to reflect their donors' often narrow political agendas. Self-censorship is common among the media. As State control is on the rise again, it engenders a culture of secrecy.

Of the three States, Armenia and Georgia have adopted comprehensive laws on freedom of information. However, the authorities at all levels hamper their full implementation. The situation is even worse in Azerbaijan where the authorities to date resist the adoption of an advanced freedom of information law.

Although many key actors, including officials, the media and the public at large in Armenia are aware of the right to access information, they lack knowledge on how to exercise it. Thanks to the activity of some journalists and lawyers in a number of precedent-setting cases, the right to access information has been successfully asserted in court. This highlights the crucial importance of journalists' persistence in seeking justice.

In Georgia the right of access to information is contained in Chapter III of the General Administrative Code. Our survey and other monitoring projects show that many institutions have not established the necessary mechanisms or institutional practices to satisfy the public's right to know, despite the public officials being fully aware of their duty to release information. The survey suggests greater understanding of the concept of freedom of information in Georgia than in the other two countries.

In Azerbaijan, with the adoption of a freedom of information bill pending, journalists and the public lack effective legal tools to access information, and public bodies are in most cases reluctant to respond to information requests. An additional difficulty is the politicisation of the media in Azerbaijan and its polarization along political lines, resulting in a situation where information is being granted or denied by officials based on political loyalty or rivalry.

The survey we conducted has highlighted the numerous obstacles – structural, procedural, legal, cultural or political – that the media face when trying to access information. Media are greatly disempowered by the difficulty of obtaining the information they so critically rely on in order to do their job in a responsible and effective manner. The repercussions of this situation are serious: it perpetuates poor-quality journalism, and leaves the general public ill-informed, largely excluded from decision-making processes and policy debates. As a result the population is unable to make informed choices during elections. Public bodies have levels of power and control that are open to abuse, and they are largely unaccountable for malpractices and infringements of human rights. At the same time, this lack of information available to the public has serious disadvantages for public administration itself: it undermines public trust in

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institutions and their work. The lack of public debate leads to poorly informed decision-making and weak policies that do not adequately address real needs.

Concerted efforts by the media and their professional associations, civil society groups, international actors, and, above all, government institutions, are needed to advance the important right of access to information and to enable the media to play its key role as an intermediary between the people and the government.

## 7.2 RECOMMENDATIONS

### 7.2.1 General Recommendations

#### a. To the Governments of the Region:

- *Engage in transparent law-making and decision-making processes. Involve key stakeholders such as the media, NGOs, and independent experts in drafting legislation through joint working groups and advisory bodies within appropriate parliamentary commissions/committees, and within specialised ministries, other State institutions, including at a regional and local level. Carry out public consultations on draft laws, and invite broad public debate of the latter.*
- *All public institutions and government departments must establish procedures and mechanisms to effectively enable the media and the public to access information held by the institution. For example, public bodies should appoint information officers, set up information management systems, and create and maintain official web sites. The web sites should, at least, contain contact details for information officials, information request forms, describe a procedure for applying for information, and contain main, if not all, the public documents produced by the government bodies, e.g. regulations, laws and by-laws, procurement documents, public contracts and related policy papers.*
- *Take measures to change the culture of secrecy prevailing in public institutions. Civil servants need to be instructed that openness is the presumption, and secrecy constitutes an exception. Design and implement regular on-the-job training programmes for public officials on the right to access information.*
- *Place responsibility at the correct level: the management of public institutions has to be made responsible for ensuring access to information, and for fostering cultural change in their institutions. (Making scapegoats of individuals who deny information within an overall climate that strongly discourages openness is not the solution). The management of public institutions and government departments who fail to comply with freedom of information duties should be reprimanded.*
- *Take steps to implement existing national and international human rights standards on freedom of information. Develop jointly with the media and NGOs a comprehensive strategy for the implementation of freedom of information legislation.*

- *Freedom of information legislation must provide for an independent review mechanism to challenge denials, and include protection for ‘whistleblowers’.*<sup>280</sup>
- *Restrictions on the right to freedom of information have to be brought in line with international standards and best international practices. Restrictions have to be prescribed by law, and must relate to a legitimate aim as outlined in the ECHR (Article 10) or the ICCPR (Article 19). They should include a ‘harm test’ and a ‘public interest override’, where denial of information is only permissible if its disclosure would do substantial harm to one of the legitimate aims prescribed by law. But if a public interest in knowing the information is greater than the harm caused, the information should still be disclosed.*
- *The independence of the judiciary has to be strengthened, so that the right of access can be enforced through legal processes if otherwise denied.*
- *Include freedom of information training in the curriculum of public administration academies, journalism departments and law schools.*
- *Accreditation requirements for journalists should be established only for reasons such as safety considerations or limited space. Any accreditation rules and procedures must be fair and transparent.*
- *All illegal restrictions on freedom of information, attacks on journalists, and punishment of journalists for seeking and publishing information regarded to be of public interest have to be immediately and fully investigated.*

**b. To the Media of the Region:**

- *Follow the principles of professional ethics. Engage in quality reporting.*
- *Know your legal right of access to information.*
- *When researching and writing stories, seek to use the access law as much as possible.*
- *Make reference to the corresponding laws when making information requests.*

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<sup>280</sup> See *The Public’s Right to Know*, note 6 above, “Principle 9 –Protection for Whistleblowers” (“individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing”).

- *Challenge unlawful denials in courts. Create positive court precedents of freedom of information protection.*
- *Cooperate with specialised NGOs who work to promote access to information.*
- *Actively participate in the development of high-quality freedom of information legal frameworks by commenting on draft laws and regulations.*
- *Give media coverage to freedom of information issues (wide coverage of court cases should be provided, including FOI court cases) so as to increase public awareness of the right to access information. Educate the public on the meaning of the FOI law.*
- *Give media coverage to requests for information that have been illegally denied and publicise these cases through all media, including the internet, to prevent further violations.*

**c. To NGOs of the Region:**

- *Actively participate in the development of high-quality freedom of information legal frameworks by participating in the development of draft laws and regulations.*
- *Support the implementation of freedom of information legislation by helping public institutions to build their capacity: provide know-how, training and advice.*
- *Assist public institutions in making use of modern communication and information technologies such as the Internet for greater transparency of governance and stronger involvement of the public in decision-making processes.*
- *Watch over the implementation of legislation by regularly monitoring projects and publicizing results.*
- *Educate both the media and the public on how to exercise their right to access information.*
- *Foster cross-border cooperation, especially within the South Caucasus region, to transfer know-how and share best practices.*

**d. To International Governmental and non-Governmental Organisations:**

- *Help initiate and widen discussion around access to official information and the rights of the media.*
- *Provide assistance - both financial and technical - to advocacy campaigns for the adoption and implementation of freedom of information laws.*
- *Assist NGOs in designing monitoring tools to ensure accountability of officials and transparency of their decision-making processes.*
- *Assist governments of the region to develop mechanisms and procedures to promote freedom of information.*
- *Train media and professional NGOs in strategic litigation.*

**7.2.2 Country-Specific Recommendations**

**a. Armenia:**

- *With the participation of civil society the relevant government institutions should immediately draft and adopt the regulations needed for to access information in State bodies, as required by the Law “On Freedom of Information”. The government should introduce standards for referencing, titling, indexing and securely controlling records.*
- *State and local government bodies should speedily set up the internal mechanisms to provide access and ensure openness of their activities as stated by the Law “On Freedom of Information”. Each central, regional and local government department must have in place a record-keeping system. This will preferably be an electronic system, though paper records management systems are acceptable where this is not possible. Within a short period of time State bodies should nominate Freedom of Information Officers in charge of providing access to information and publish a register of information they possess on a regular basis as stated by the law.*
- *State bodies, both central and regional, are strongly recommended to construct their own official web sites, keep them regularly updated, and post there all information listed in the FOI law.*



- *It is necessary to train public officials in FOI issues by including training of FOI legislation in the curricula of the State Administration Academy and the Council of State Service qualification training.*
- *The law does not foresee an independent administrative appeals mechanism. Such a mechanism should be created for the review of freedom of information cases. For a transitional period, appoint a representative on freedom of information with the Human Rights Defender's office.*
- *The legislative and sub-legislative acts of the Republic of Armenia that are related to the activities of media and to access to official information must be brought into compliance with the laws "On Freedom of Information" and "On Mass Communication", adopted in 2003.*
- *The Law "On State and Official Secrets" and associated decrees on secrets should be revoked. It should be replaced with a law that protects for a limited time information whose disclosure would, or would be likely to, substantially harm the legitimate national security interests of the country.*
- *Limit provisions in the Criminal Code that criminalise disclosure of State secrets to cases where the disclosure caused harm and there is no compelling public interest in the disclosure of the information.*
- *Journalists need to be familiar with the provisions of the FOI law and how to use it in their work. It is recommended that manuals and guidelines be produced for journalists on how to use the FOI legislation. The same may be true of the Aarhus Convention.*
- *A full investigation should be carried out into the cases of violence against journalists which occurred on 22 October 2002 and on 5, 12 and 23 April 2004.*
- *The media community should develop a functioning media self-regulation mechanism that will help uphold standards of professional ethics.*

**b. Azerbaijan:**

- *The government should bring the freedom of information draft law in line with established international standards. This shall include a provision for an independent information commission (or Information Ombudsman) to oversee the implementation and operation of the law and a provision for the protection of 'whistleblowers'.*

- *The law should be adopted as soon as possible, and implemented without delay.*
- *The government should make law development processes generally more transparent and base them on broad public consultation. It should set up a working group involving NGOs, members of parliament, lawyers, media and other qualified experts to design a strategy and action plan for the implementation of the freedom of information law.*
- *All legislation that conflicts with the right to access information should be amended or repealed to bring it in line with freedom of information requirements.*
- *The 2004 State Secrets Act should be amended to limit coverage to only information whose disclosure would or would be likely to substantially harm the legitimate national security interests of the country. The 2002 Decree on State Secrets should be repealed.*
- *Limit provisions in the Criminal Code that criminalise disclosure of State secrets to cases where such disclosure would cause harm and there is no compelling public interest in knowing this information.*
- *The Mass Media Law should be amended to limit the restrictions in Article 10.*
- *A full investigation should be carried out into the cases of violence against journalists which occurred on 2 March 2005 and after the Presidential Elections of October 2003.*
- *The Press Council should be strengthened for the media to observe professional and ethical standards.*

**c. Georgia:**

- *The government should ensure the implementation of the requirements of the General Administrative Code (Chapter III) and make sure that public institutions follow its requirements, such as the appointment of persons responsible for releasing official information, publishing contact information, putting in place internal regulations for accessing information both by media and the general public, and creating and regularly updating official websites.*
- *Mechanisms of internal and external accountability of public officers and institutions on FOI should be elaborated. Administrative review bodies within the public*

*institutions should be formed to review complaints on restrictions of access to information.*

- *An independent administrative appeals mechanism should be created: for a transition period, the Public Defender’s office could serve as an external oversight institution for freedom of information cases, while in the long run it is recommended that a post of Information Commissioner be established.*
- *The General Administrative Code should be amended to shorten time-frames for court proceedings. The current law defines a five month period for court proceedings stemming from FOI requests. Amendments setting out new shorter time limits (10 days) for requesting proceedings would allow the media to use the courts when necessary to get information in a timely fashion.*
- *The law “On State Secrets” should be revoked. It should be replaced with a law that protects for a limited time information which, if disclosed, would be likely to substantially harm the legitimate national security interests of the country.*
- *Limit provisions in the Criminal Code that criminalise disclosure of State secrets to cases where the disclosure caused harm and there is no compelling public interest in the disclosure of the information.*
- *Develop a series of training sessions for public officials on FOI legislation and related laws, media relations, and human rights. This should be undertaken in order to improve access to information in accordance with the public's right to know.*
- *Organise a series of training sessions on FOI legislation and other related laws, ethical issues and freedom of speech and expression for journalists, editors, and other media representatives.*
- *Civil society and the media should join forces to promote professional and ethical standards within the media, including the establishment of self-regulation mechanisms.*
- *NGOs and other civil society groups should initiate and support long-term media monitoring programmes and ensure results are being published on a regular basis. They should support professional publications and discussions on media issues, and support cooperation and exchange of ideas between media professionals, academics, students and other groups of interest.*

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- *Media professionals, civil society and NGOs should undertake the activities necessary to promote media literacy within both targeted audiences and society in general.*

## FURTHER READING AND RESOURCES

### Books

- Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights*, (Butterworths), 2001, Chapter 10, Article 10, Freedom of Expression, pp.443-539
- ARTICLE 19, *The Public's Right To Know: Principles on Freedom of Information Legislation*, London, 1999
- ARTICLE 19, *The Johannesburg Principles: National Security, Freedom of Expression and Access to Information*, London, November 1996
- ARTICLE 19, *A Model Freedom of Information Law*, London, July 2001
- ARTICLE 19, *Azerbaijan: Press Freedom or Personal Fiefdom? A Comparative Survey of Media Law and Practice*, January 2001
- ARTICLE 19, *Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe*, October 2002
- *Blackstone's International Human Rights Documents*, 3<sup>rd</sup> edition, P.R.Gandhi, (Oxford University Press), 2002 (1948 Universal Declaration of Human Rights pp.22-25; 1966 International Covenant on Civil and Political Rights pp. 64-77; 1950 ECHR)
- Clare Ovey & Robin C.A. White, *Jacobs and White European Convention on Human Rights*, (Oxford University Press), 2002, third edition, 13 Freedom of expression, pp.276-290
- *Freedom of Information Training Manual for Public Officials* available at <http://www.article19.org/ViewArticle.asp?AreaID=31&SubAreaID=110&PageID=202>&
- Gilles Dutertre, *Key Case-Law Extracts, European Court of Human Rights*, (Council of Europe Publishing), 2003 (Article10 ECHR – Freedom of expression, pp.311-333)
- *Harmonization of Media Legislation of South Caucasus with European Standards*, (Yeni Nesil, Baku) 2004
- Javaid Rehman, *International Human Rights Law: A Practical Approach*, (Pearson Education Limited) 2003, pp.77-80, 153-155
- *Mass Media Laws and Practice in the CIS and Baltic Countries (Comparative Analysis)*, (Galeria, Moscow) 2000
- Monica Macovei, *Freedom of Expression: A Guide to the Implementation of Article 10 of the European Convention on Human Rights*, Human Rights Handbooks No.2, 2001
- Philip Leach, *Taking a Case to the European Court of Human Rights*, (Blackstone Press Limited), 2001, Chapter 7, The Substantive Rights of the European Convention, 7.11 Article 10: Freedom of expression, pp.166-171
- Rhona K.M. Smith, *Textbook on International Human Rights*, (Oxford University Press) 2003, Chapter 18 "Freedom of Expression", pp.283-295
- *The Armenians. Past and Present in the Making of National Identity*, ed. by Edmund Herzig and Marina Kurkchian (RoutledgeCurzon, London) 2005
- Toby Mendel, *Freedom of Information: a Comparative Legal Survey* (UNESCO) 2003
- Yasha Lange, *Media in the CIS: A Study of the Political, Legislative and Socio-Economic Framework* (EIM, Brussels) 1997

## **Useful FOI Websites:**

*ARTICLE 19, Global Campaign For Free Expression*

<http://article19.org>

*Campaign for Freedom of Information*

<http://www.cfoi.org.uk>

*Council of Europe Media Division*

<http://www.coe.int/media>

*FOIA Advocates Network*

<http://foiadvocates.net>

**The Georgian Young Lawyers' Association (GYLA)**

<http://gyla.ge>

**Open Society Justice Initiative (Hungary/US)**

<http://www.opendemocracy.org.za>

**Organization for Security and Co-operation in Europe (Representative on Freedom of the Media)**

<http://www.osce.org/fom>

*Privacy International*

<http://privacyinternational.org/issues/foia/indez.html>

*Statewatch*

<http://www.statewatch.org>

*The Online Network of Freedom of Information Advocates*

<http://freedominfo.org>

*Transparency International*

<http://www.transparency.org>

*The United Nations Association of Georgia*

<http://una.org>

*United Nations Development Programme*

<http://www.undp.org>

**United Nations Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression**

<http://www.unhchr.ch/html/menu2/7/b/mfro.htm>

### **Some Useful South Caucasus Websites:**

[http://www.osce.org/field\\_activities/](http://www.osce.org/field_activities/) - a link for the **OSCE offices in Armenia, Azerbaijan and Georgia**

<http://www.liberty.ge> - **Liberty Institute**, Georgia

<http://www.ypc.am> - **Yerevan Press Club**, Armenia

<http://www.hetq.am> - joint site of the **Association of Investigative Journalists and Freedom of Information Centre**

<http://www.eng.kavkaz.memo.ru/news>

<http://www.eurasianet.org>

<http://www.cascfen.org> - **Central Asian and Southern Caucasus Freedom of Expression Network**

<http://www.azfreespeech.org> - **The Azerbaijani Free Speech Foundation**

<http://www.internews.ge>; <http://www.internews.am>; <http://www.internews.az> - **office of Internews in Armenia, Azerbaijan Georgia**

## APPENDIX 1

### QUESTIONNAIRE ON ACCESS TO OFFICIAL INFORMATION BY THE MEDIA IN THE SOUTH CAUCASUS REGION

#### Personal Information

1. Age group (✓)

- 18–24
- 25–40
- 40 and over

2. Gender (✓)

- F
- M

3. Location (✓)

- capital city
- regional capital
- other local town
- village

4. Education (✓)

- journalism department
- other ( please specify) \_\_\_\_\_

#### Media experience

5. Present occupation in the media (✓). You may tick more than one if appropriate

- editor-in-chief
- journalist
- freelance correspondent
- other (please specify) \_\_\_\_\_

6. How many years of professional experience do you have? (✓)

- less than 1 year
- 1–2 years
- 3–5 years



- 6–10 years
- over 10 years

7. What form of media do you work in? (✓). You may choose more than one if appropriate

- TV (state, private, public service broadcaster) , tick and underline
- radio (state, private, public service broadcaster) , tick and underline
- print media (daily, weekly, monthly, quarterly) , tick and underline
- news agency
- other (please specify) (i.e. internet edition) \_\_\_\_\_

8. Is it a national  or a local  medium? (✓). You may tick more than one if appropriate

9. How would you describe the medium in which you work: (✓) you may give more than one answer if appropriate

- serious news media
- light entertainment/news media
- other (please specify) \_\_\_\_\_

10. What type of stories do you work on?

- news reports
- analysis, commentary, opinion
- investigative stories

11. What thematic issues do you cover? (You may mention more than one)

- 
- 
- 

12. What are your sources of information? (You may tick more than one) (✓)

- official institutions
- personal contacts in official institutions
- other confidential sources
- experts
- NGOs
- colleagues (other journalists)
- friends, relatives
- other (please specify) \_\_\_\_\_

### **The right to access official information**

13. As a media representative, do you have a (legal) right of access to official information? (✓)

- Yes

- No

Support your answer with reasons.

14. Should there be any distinction, when providing access to official documents, in favour of or against journalists as opposed to other categories of persons? (✓)

- Yes
- No

Explain your answer

15. Have you ever requested any information from official institutions? (✓)

- Yes
- No

Describe your experience.

16. In your information request/s, do you refer to: (✓) (You may tick more than one if appropriate):

- FOI Law; and/or Yes  No
- Constitutional right to access information? Yes  No

17. In your opinion, will the recently adopted Freedom of Information Law (**in Armenia**) make any difference in improving the current situation in accessing official information by media/you as a media representative? (✓)

Yes  No

Explain your answer.

18. Are you familiar with its provisions? (✓)

Yes   
No

OR

- In your opinion, will the adoption of a Freedom of Information Law (**in Azerbaijan**) improve the current situation in gaining access to official information by the media/you personally? (✓)

Yes  No

Explain your answer

Are you familiar with its provisions?

OR

- In your experience, has the Freedom of Information chapter in the Administrative Code **(in Georgia)** made any difference to improving the situation in gaining access to official information by media/you personally? (✓)

Yes  No

Explain your answer. Provide examples.

19. Is the Law on Mass Media (**Freedom of Speech in Georgia**) helpful for facilitating access to official information by the media/you personally? (✓)

Yes  No

Explain your answer. Provide examples.

20. Are you familiar with the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters)? (✓)

Yes  No

Do you rely on its provisions in your professional capacity? (✓)

Yes  No

Provide examples.

21. Have you ever used your country's Archive Act to obtain information? (✓)

Yes  No

### **Requests for official information**

22. In your experience, what is the most speedy and efficient way to obtain official information?

23. When seeking information about the functioning of official institutions, do you refer to their: (✓) (You may tick more than one if appropriate):

- web sites
- official publications
- none
- other (please specify) \_\_\_\_\_

24. With which level of official institution/s have you filed request/s? You may give more than one answer. (√)

- Central Government
- Regional Government
- Local Government

25. To which branch/es of government was your request addressed? You may give more than one answer. (√)

- Executive
- Legislative
- Judicial

Name the official institution/s.

26. Please name official institution/s (national/local) that are easy to access (i.e., unrestricted access to the building to make an information request; having in place procedures and mechanisms – public hours, guidelines, request forms, archives – which allow you to find information you need– in place).

27. Please name official institution/s (national/local) that fail to meet the conditions described in question 26.

28. In what field/s is it easy to get information? You may give more than one answer.

- environment/ecological issues
- foreign affairs
- social issues (pension, employment benefits, etc)
- military/defence
- questions related to conflict and peace negotiations
- ethnic minorities
- refugees
- women's issues
- statistical data (name area)
- economy
- legal
- judicial
- healthcare
- internal affairs
- criminal matters/police
- corruption
- legislation
- other (please specify) \_\_\_\_\_

Explain your answer using examples from personal experience

29. In what field/s is it difficult to obtain information?

- Environment/ecological issues
- foreign affairs
- social issues (pension, employment benefits, etc)
- military/defence
- questions related to conflict and peace negotiations
- ethnic minorities
- refugees
- women's issues
- statistical data (name area)
- economy
- legal
- judicial
- healthcare
- corruption
- internal affairs
- criminal matters/police
- legislation
- no difficulty with obtaining any type of official information
- other (please specify)\_\_\_\_\_

Explain your answer using examples from personal experience

30. Have you attempted to access official information and been unjustly denied? (✓)

- Yes
- No
- Not requested

Provide examples.

31. If a public authority denies access to an official document wholly or in part, does it give reasons for its decision? (✓)

- Yes
- No

Provide examples and list the reasons.

32. Do officials release partial information (blacking out/withholding part of the document)? (✓)

- Yes
- No

33. What type of information is it? Give examples.

34. Please describe the situation in your country regarding media access to documents which deal with national security and defence. Under what conditions are such documents made accessible to the media?

35. Please describe the situation in your country on access by media to documents dealing with rules on environment/protection of nature. Under what conditions are such documents made accessible to the media?

36. In your opinion, what are the greatest barriers to getting official information? (✓) You may give more than one answer

- mentality/attitude of public officials
- journalists do not know their legal rights
- journalists do not apply their legal right due to self-censorship
- legislation exists ,but regulations/procedures have not been developed
- appropriate legislation is not in place
- institutions do not have mechanisms in place (forms, public information officer, etc.)
- other (please specify)\_\_\_\_\_

37. Do officials ask for justification when you request information from them? (✓)

- Yes
- No

Give examples

38. Do officials ask for identification documents when you request information from them? (✓)

- Yes
- No

Give examples.

39. When submitting request/s for official information, do you file it as (✓) (You may give more than one answer):

- a media representative
- member of a professional association
- as an ordinary individual
- without identifying yourself
- other (please specify)\_\_\_\_\_

40. In your opinion, does it help or hinder to be a journalist when requesting access to official information? (✓)

- Yes
- No
- Neither

41. Have you ever been given false official information? (✓)

- Yes
- No
- Never requested

What did you do?

42. When refused an information request, what do you do? (✓) You may give more than one answer

- publicise the refusal through the media
- address the superior of the official who refused to provide information
- use all other possible ways to get information
- defend your right to information in court

Give example from personal practice.

### **Other forms of access to official information**

43. Do you have access to: (✓) You may give more than one answer.

- court trials: full  partial  no access
- parliamentary sessions: full  partial  no access
- national government meetings: full  partial  no access
- meetings of local authorities: full  partial  no access
- other (please name) \_\_\_\_\_

44. Has your accreditation ever been removed, thus preventing you access to open court trials, parliamentary sessions, government meetings? (✓) You may give more than one answer.

- Yes
- No

Provide examples.

## APPENDIX 2

### QUESTIONNAIRE (for officials) ON ACCESS TO OFFICIAL INFORMATION BY MEDIA IN THE SOUTH CAUCASUS REGION

#### Personal Information

1. Age group (✓)

- 18–24
- 25–40
- 40 and over

2. Gender (✓)

- F
- M

3. Location (✓)

- capital city
- regional capital
- other local town
- village

#### Professional experience

4. What branch of government do you represent: (✓)

- executive
- legislative
- judicial

5. What level does your institution/agency represent? (✓)

- national
- regional
- local
- city
- other (please specify) \_\_\_\_\_

6. Level of your position (✓). You may tick more than one if appropriate

- senior official
- junior official



- other (please specify \_\_\_\_\_)

7. How many years of professional experience as a public official do you have? (✓)

- less than 1 year
- 1–2 years
- 3–5 years
- 6–10 years
- over 10 years

8. Name the official institution in which you work.

9. Do your duties include releasing official information to the general public and the media? (✓)

- Yes
- No
- Not certain

### **Media in your country**

10. From your experience, are you satisfied with the way the media uses official information released to them? (You may tick more than one) (✓)

- Yes
- No
- Partially
- Other \_\_\_\_\_

Support your answer with reasons.

### **The right to access official information**

11. Are public institutions under an obligation to release official information? (✓)

- Yes
- No

Support your answer with reasons.

12. Should there be any distinction, when providing access to official information, in favour of/or against journalists as opposed to other members of the public? (✓)

- Yes
- No

Explain your answer

13. Is there a Law on Freedom of Information (Access to information) in your country?

- Yes
- No
- Do not know

14. In your opinion, will the recently adopted Freedom of Information Law (**in the case of Armenia**) increase availability of official information to the media? (✓)

Yes  No

Explain your answer.

15. Are you familiar with its provisions? (✓)

Yes   
No

OR

- In your opinion, will adoption of Freedom of Information Law (**in the case of Azerbaijan**) increase availability of official information to media? (✓)

Yes  No

Explain your answer.

Are you familiar with its provisions?

OR

- In your opinion, has the Freedom of Information chapter in the Administrative Code (**in Georgia**) increased availability of official information to the media? (✓)

Yes  No

Explain your answer. Provide examples.

16. Does the Law on Mass Media (**Freedom of Speech in Georgia**) facilitate access to official information by media? (✓)

Yes  No

Explain your answer. Provide examples.

17. Are you familiar with the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters)? (✓)

Yes  No

Do you provide information based on its provisions? (✓)

Yes  No

Provide examples.

### **Releasing official information**

18. In your opinion, what is the most speedy and efficient way of releasing official information? (✓) You may give more than one answer.

- Through an official web site
- Through press conferences
- Through official publications
- Through the media
- Through answering information requests
- Other (please explain) \_\_\_\_\_

Support your answer with reasons.

19. Do media representatives request any information from your institution? (✓)

- Yes
- No
- Do not know
- It is not part of my duty

20. What types of information/documents are most frequently requested by the media? In what subject area?

21. Do/does you/your department register incoming information requests? (✓)

- Yes
- No
- Do not know
- It is not part of my duty

Please provide the number of information requests you have received from the media.

22. Does your institution/department/section have procedures in place (public hours, rules and guidelines, information officer, etc.) and mechanisms (forms, archives allowing for search, etc.) for providing information ?

- Yes
- No
- Do not know
- It is not part of my duty

Explain your answer using examples.

23. Please name official institution/s (national/local) which have procedures in place (as described in question 22).

24. Please name official institution/s (national/local) which fail to meet the conditions described in question 22.

25. In your opinion, what kind of information (in what subject areas/types of documents) should be released without any delay?

26. In your opinion, what kind of information (e.g. subject matter/types of documents) cannot be released unconditionally? Under what conditions can such information be is released?

27. What do you do if you decide that requested information should be kept secret (is personal information; is part of official secrets, etc.)?

28. Do you release partial information (blacking out/withholding part of the document)? (✓)

- Yes
- No
- It is not part of my duty

29. If you deny access to an official document wholly or in part, do you give reasons for your decision? (✓)

- Yes
- No

Provide examples.

If Yes, do you give answers verbally or in writing? (Underline appropriate answer)

30. In your response to information request/s, do you refer to(✓) (You may tick more than one if appropriate):

- FOI Law; and/or Yes  No
- Constitutional provision? Yes  No

31. Please describe the situation in your country regarding media access to documents which deal with national security and defence. Under which conditions are such documents made accessible to the media?

32. Please describe the situation in your country regarding media access to documents dealing with rules on the environment/protection of nature. Under which conditions are such documents made accessible to the media?

33. As a public official, do you classify information as a state secret? (✓)

- Yes
- No
- Other(please explain)\_\_\_\_\_

34. How often do you deny access to official information to media/journalists because it is classified as secret? (✓)

- Frequently (please indicate)
- Seldom
- Never

35. As a public official, do you declassify information? (✓)

- Yes
- No
- Other (please specify)\_\_\_\_\_

36. Have you ever released, or will you ever release classified information to media/journalists in an emergency situation/s?

- Yes
- No

Provide examples to both parts of the question.

37. In your opinion, why might the media have difficulty in obtaining official information? (✓) You may give more than one answer:

- appropriate legislation is not in place
- legislation exists, but regulations/procedures have not been developed
- an institution does not have mechanisms in place (forms, public information officer, etc.)
- journalists do not know their legal rights
- journalists do not apply their legal right due to self-censorship
- mentality/attitude of public officials is obstructive
- other (please specify)\_\_\_\_\_

38. In your opinion, how could the media use their right of access to official information more effectively?

### **Other forms of access to official information**

39. In your country, do the media have access to: Please underline your answer

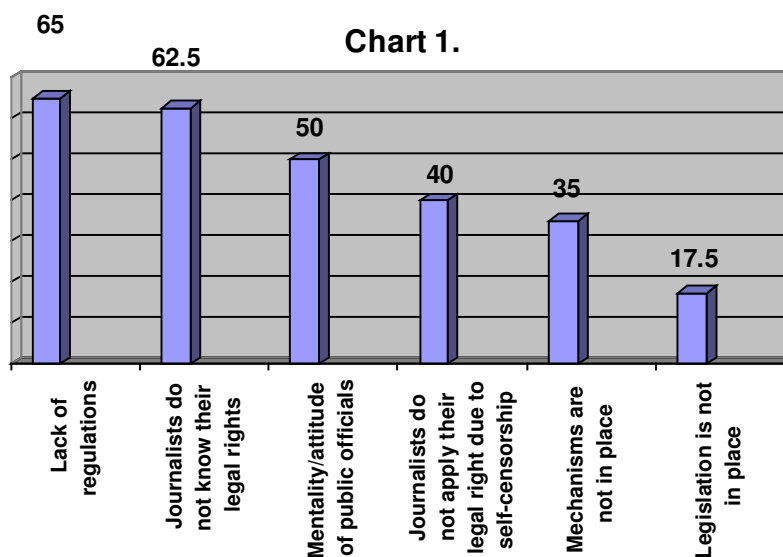
- court trials: full  partial  no access
- parliamentary sessions: full  partial  no access
- national government meetings: full  partial  no access
- meetings of local authorities: full  partial  no access

## APPENDIX 3

### ARMENIA

#### MEDIA REPRESENTATIVES

##### 1. What are the greatest barriers to getting official information? (in %)



##### 2. In what field/s is it easy/difficult to get information? (in numbers)

###### Easy to access fields:

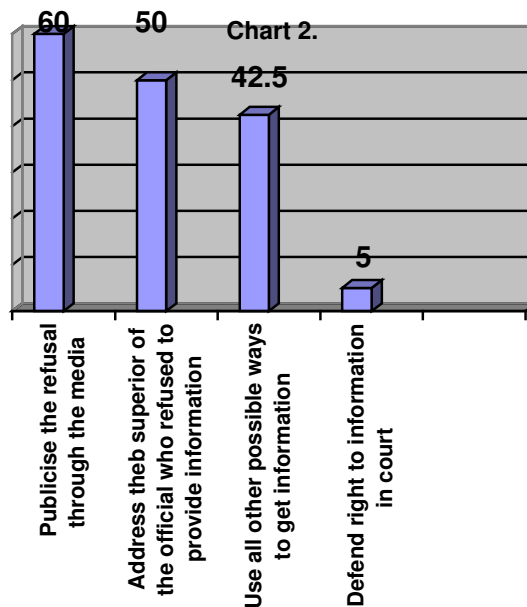
List of fields	Number of journalists
<i>social issues (pension, employment benefits, etc)</i>	28
<i>healthcare</i>	22
<i>women' issues</i>	20
<i>economy</i>	20
<i>statistical data (name area)</i>	19
<i>environment/ecological issues</i>	16
<i>refugees</i>	15
<i>ethnic minorities</i>	13
<i>judicial</i>	11
<i>legal</i>	9
<i>foreign affairs</i>	8
<i>questions related to conflict and peace negotiations</i>	7
<i>internal affairs</i>	6
<i>legislation</i>	6
<i>military/defence</i>	4

<i>corruption</i>	3
<i>criminal matters/police</i>	3

**Difficult to access fields:**

<b>List of fields</b>	<b>Number of journalists</b>
<i>military/defence</i>	24
<i>criminal matters/police</i>	23
<i>corruption</i>	21
<i>foreign affairs</i>	14
<i>judicial</i>	14
<i>internal affairs</i>	13
<i>healthcare</i>	9
<i>legal</i>	9
<i>questions related to conflict and peace negotiations</i>	8
<i>economy</i>	7
<i>environment/ecological issues</i>	6
<i>statistical data (name area)</i>	4
<i>social issues (pension, employment benefits, etc)</i>	2
<i>refugees</i>	1
<i>ethnic minorities</i>	1
<i>women</i>	0

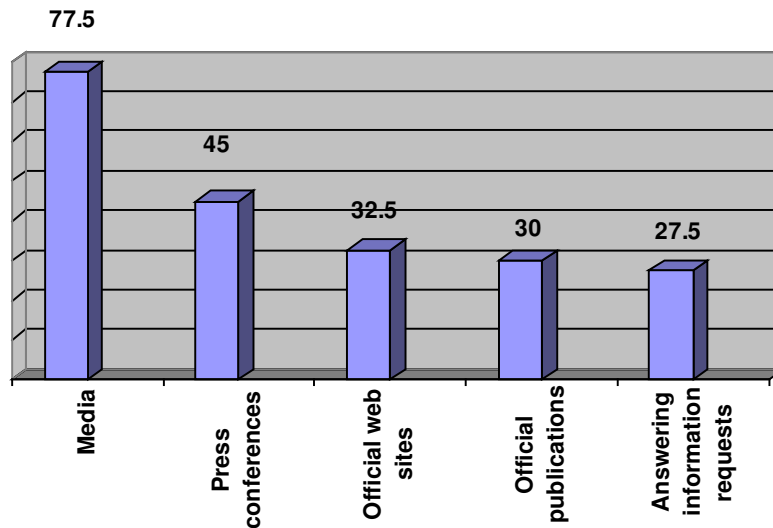
**3. When refused information, what do you do? (in %)**



## PUBLIC OFFICIALS

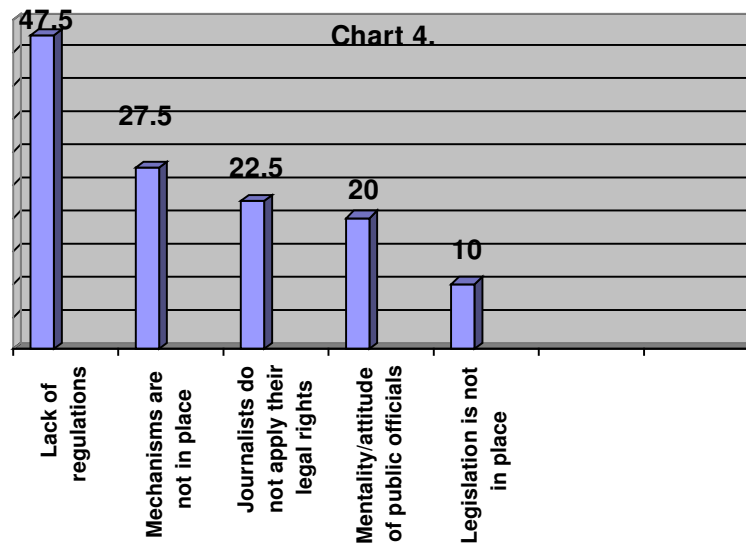
4. In your opinion, what is the most speedy and efficient way of releasing official information? (in %)

Chart 3.



5. In your opinion, why might the media have difficulty in obtaining official information? (in %)

Chart 4.





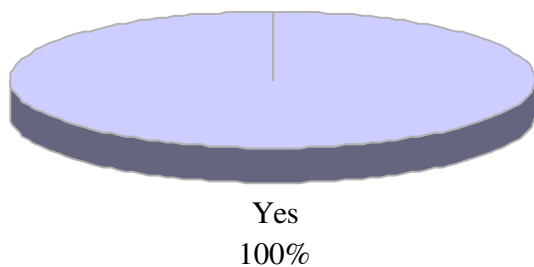
## APPENDIX 4

### GEORGIA

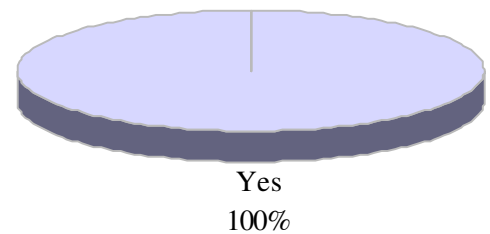
#### 1. *The right to access official information*

**Are public institutions under an obligation to release official information?**

**Media representatives**



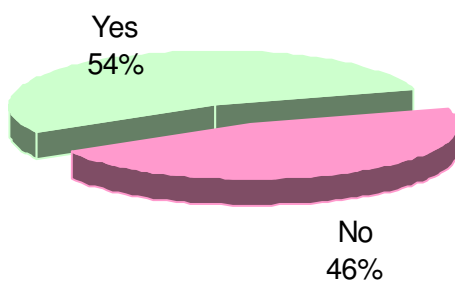
**Public officials**



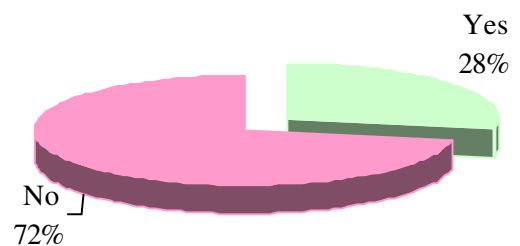
#### 2. *Preferences on access to official information*

**Should there be any distinction, when providing access to official documents, in favour of or against journalists as opposed to other categories of persons?**

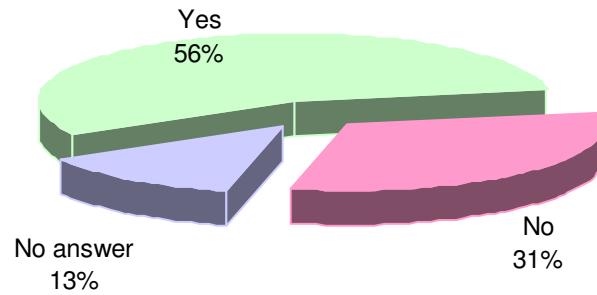
**Media representatives**



**Public officials**



**In your experience, has the Freedom of Information chapter in the Administrative Code made any difference to improving the situation in gaining access to official information by media/you personally? (*Media representatives*)**



### 3. Aarhus Convention

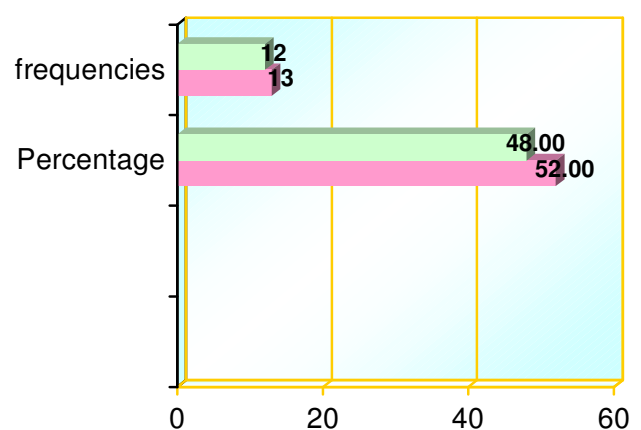
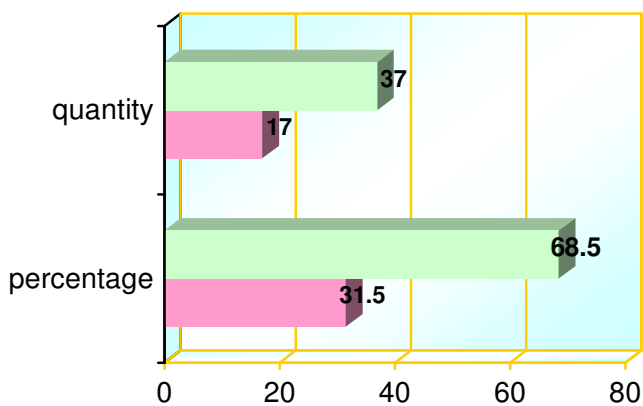
**Are you familiar with the Aarhus Convention (Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters)?**

**Media representatives**

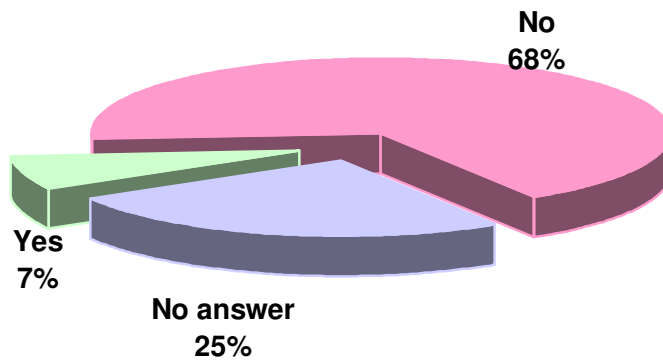
**Public officials**

Yes No

Yes No

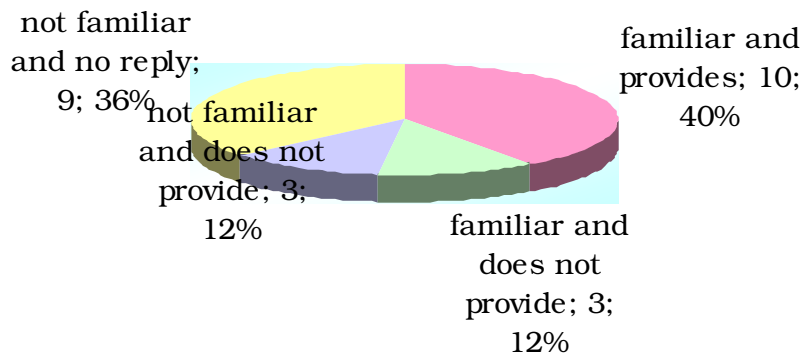


**Do you rely on its provisions in your professional capacity? (*Media representatives*)**



**Do you provide information based on its provisions? (*Public officials*)**

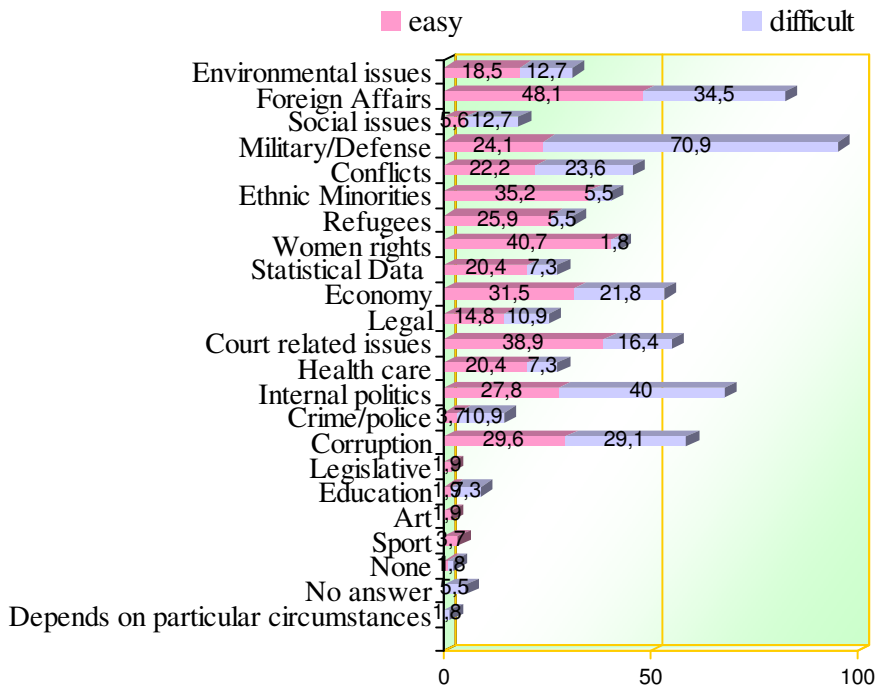
- familiar and provides
- familiar and does not provide
- not familiar and does not provide
- not familiar and no reply



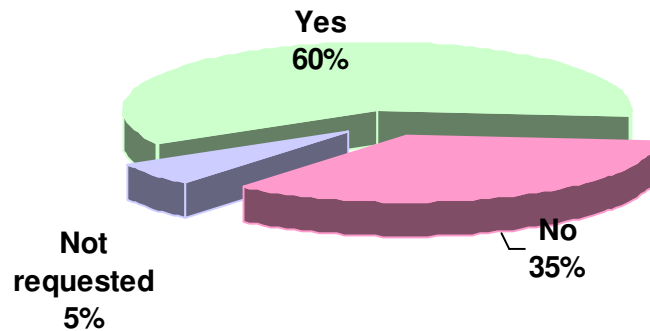
## MEDIA REPRESENTATIVES

### 4. Requests for official information

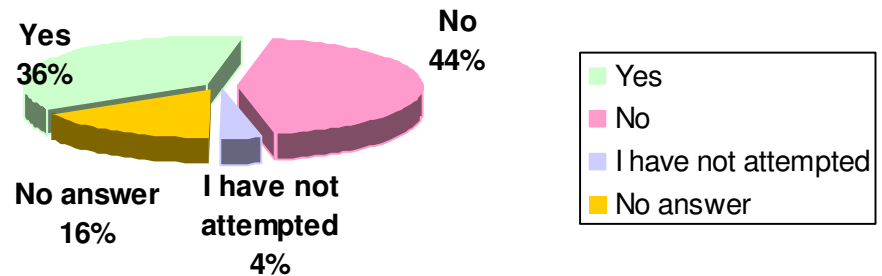
In what field/s is it easy/difficult to obtain information?



Have you attempted to access official information and been unjustly denied?



**If a public authority denies access to an official document wholly or in part, does it give reasons for its decision?**



**5. Please name official institution/s with undeveloped mechanisms and procedures of gaining information, or which fail to appoint persons responsible for the information, or where the person responsible is hard to contact and therefore access to information in these official institution is complicated and restricted.**

<b>1</b>	<i>The Ministry of Defence</i>	<b>11</b>	<i>Council of Ministers of Ajara</i>
<b>2</b>	<i>The Ministry of State Security</i>	<b>12</b>	<i>The Ministry of Health of Ajara</i>
<b>3</b>	<i>The Ministry of Internal Affairs</i>	<b>13</b>	<i>Imereti regional office of The Ministry of Internal Affairs</i>
<b>4</b>	<i>Department of Intelligence</i>	<b>14</b>	<i>Imereti regional office of The Ministry of Security</i>
<b>5</b>	<i>The Ministry of Foreign Affairs</i>	<b>15</b>	<i>Kakheti regional administration</i>
<b>6</b>	<i>The Ministry of Finance</i>	<b>16</b>	<i>Kakheti regional office of the Ministry of Security</i>
<b>7</b>	<i>The Ministry of Economy</i>	<b>17</b>	<i>Telavi office of The Ministry of Defense</i>
<b>8</b>	<i>State Chancellery</i>	<b>18</b>	<i>Kakheti regional office of the Ministry of Internal Affairs</i>
<b>9</b>	<i>The Prosecutor's Office of Ajara</i>		
<b>10</b>	<i>The Ministry of Internal Affairs of Ajara</i>		

## APPENDIX 5

### AZERBAIJAN

#### MEDIA REPRESENTATIVES

##### 1. What are your sources of information?

Sources of information	Number of respondents (in capital)	Number of respondents (in regions)	General number of respondents	%
Official institutions	16	12	28	70
Experts	15	6	21	52.5
NGOs	11	8	19	47.5
Personal contacts in official institutions	7	6	13	32.5
Other confidential sources	9	4	13	32.5
Colleagues (other journalists)	6	7	13	32.5
Friends, relatives	5	8	13	32.5
Political parties	1		1	2.5
Internet	1		1	2.5
Municipality		1	1	2.5

##### 2. In your experience, what is the most speedy and efficient way for obtaining official information?

The most speedy and efficient way for obtaining official information	General number of respondents	(%)
Personal contacts with officials	14	35
Direct access with oral request	6	15
Direct access with official request	3	7.5
Organisation of frequent briefings	2	5
To have permanent newsmakers	2	5
Publication of daily news-releases	2	5
To force officials to respect law	2	5

**3. Please name official institution/s (national/local) that are easy to access (i.e.: unrestricted access to the building to make an information request; having in place procedures and mechanisms - public hours, guidelines, request forms, archives – which allow you to find information you need - in place).**

<b>Name official institution/s</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
President Office and local branches		7	7	17.5
Ministry of Education	1	6	7	17.5
Ministry of Foreign Affairs	5		5	12.5
Ministry of Defence and their local branches	3	1	4	10
Police	1	2	3	7.5
Cabinet of Government	3		3	7.5
Parliament	2		2	5
Ministry of Health		2	2	5
Ministry of Culture		2	2	5
None of them	9		9	22.5

**4. Please name official institution/s (national/local) that fail to meet the conditions described in question 3.**

<b>Name official institution/s</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
President Office and local branches	1	2	3	N/A
Courts	2	3	5	
Police	4	2	6	
Prosecutor's office	4	3	7	
Ministry of Defence and their local branches	1	2	3	
Ministry of Finance and local branches		5	5	
Ministry of National Security	2		2	
Other ministries, state committees and their local branches	3	7	10	

### 5. In what field/s is it easy to get information?

Field/s	Number of respondents (in capital)	Number of respondents (in regions)	General number of respondents	%
environment/ecological issues	11	9	20	50
foreign affairs	15	1	16	40
social issues (pension, employment benefits, etc)	10	12	22	55
military/defense	4	2	6	15
questions related to conflict and peace negotiations	3	1	4	10
ethnic minorities	3	3	6	15
refugees	13	10	23	57.5
women	5	8	13	32.5
statistical data (name area)	6	5	11	27.5
economy	6	10	16	40
legal	9	4	13	32.5
judicial	5		5	12.5
healthcare	5	9	14	35
internal affairs	5	3	8	20
criminal matters/police	6	3	9	22.5
corruption	3	1	4	10
legislation	11		11	12.5
education	1	1	2	5
sports	1		1	2.5
culture		1	1	2.5

### 6. In what field/s is it difficult to obtain information?

Field/s	Number of respondents (in capital)	Number of respondents (in regions)	General number of respondents	%
environment/ecological issues	2	7	9	22.5
foreign affairs	4	5	9	22.5
social issues (pension, employment benefits, etc)		9	9	22.5
military/defense	9	18	27	67.5
questions related to conflict and peace negotiations	6	14	20	50
ethnic minorities	6	11	17	42.5
refugees	1	9	10	25
women		4	4	10
statistical data (name area)	8	14	22	55



economy	2	11	13	32.5
legal	4	5	9	22.5
judicial	9	11	20	50
healthcare	1	9	10	25
internal affairs	3	14	17	42.5
criminal matters/police	5	8	13	32.5
corruption	7	21	28	70
legislation	3	3	6	15
finance		1	1	2.5

**7. When submitting request/s for official information, how do you file it?**

<b>When submitting request/s for official information, do you file it as:</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
as a media representative	23	15	38	95
as a member of a professional association	2		2	5
as an ordinary individual	1		1	2.5
without identifying yourself				0

**PUBLIC OFFICIALS**

**8. What types of information/documents are most frequently requested by the media? In what subject matters? (The following areas were mentioned in more than 2 questionnaires)**

<b>Lists of subject matter</b>	<b>Number of questionnaires</b>
Legislation	4
Social life	4
Economics	3
Human Rights	3
Criminal developments	3
Finances	3
Official visits of statesmen	3

**9. Please name official institution/s (national/local) which is/are open to the requests of official information.**

<b>Official institution/s</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
Parliament	8	1	9	22.5
Cabinet of Ministries	2	0	2	5
All institutions	5	3	8	20
Local executive powers		2	2	5
Ministry of Foreign Affairs		1	1	2.5
Ministry of Internal Affairs		1	1	2.5
President Office		1	1	2.5
Ministry of Social Security		1	1	2.5
Ministry of Education	1	1	2	5
Ministry of Youth and Sport		1	1	2.5
Ministry of Health		1	1	2.5

**10. Please name official institution/s (national/local) which fail to meet the requests of official information.**

<b>Official institution/s</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
Ministry of National Security	15	4	19	47.5
Ministry of Defense			17	42.5
Cabinet of Ministries	1		1	2.5
All institutions		1	1	2.5
Local executive powers	1		1	2.5
Ministry of Foreign Affairs		1	1	2.5
Ministry of Internal Affairs	5	1	6	15
President Office	1	1	2	5
Ministry of Agriculture		1	1	2.5
Ministry of Economic Development	1		1	2.5
Ministry of Justice	1		1	2.5
Costumes Committee	1		1	2.5
Prosecutor's Office	2	1	3	7.5
Ministry of Finance	1		1	2.5
Supreme Court		1	1	2.5
Ministry of Health	1	1	2	5

**11. If you deny access to an official document wholly or in part, do you give reasons for your decision?**

<b>Do you release partial information?</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
Yes	14	8	22	55
No	11	3	14	35

**12. In your response to information request/s, do you refer to FOI Law and/or Constitutional provisions?**

<b>In your information request/s, did you refer to:</b>	<b>Yes (%) (respondents)</b>	<b>No (%) (respondents)</b>
FOI Law	21 (52.5%)	8 (20%)
Constitutional provision	29 (72.5%)	7 (17.5%)

**13. In your opinion, why might the media have difficulty in obtaining official information?**

<b>Main reasons</b>	<b>Number of respondents (in capital)</b>	<b>Number of respondents (in regions)</b>	<b>General number of respondents</b>	<b>%</b>
appropriate legislation is not in place	2	2	4	10
legislation exists ,but regulations/procedures have not been developed	18	6	24	60
institution does not have mechanisms in place (forms, public information officer, etc.)	13	7	20	50
journalists do not know their legal rights	7	8	15	37.5
journalists do not apply their legal right due to self-censorship	3		3	7.5
mentality/attitude of public officials is obstructive	12	3	15	37.5

## APPENDIX 6

### COMPARATIVE DATA FOR ARMENIA, AZERBAIJAN AND GEORGIA

#### RESPONSES OF MEDIA REPRESENTATIVES

##### 1. Age group and gender of the interviewed.

	Armenia	Azerbaijan	Georgia
<b>Age group</b>	%	%	%
18-24	30	7.5	23.6
25-40	50	62.5	69.1
<b>Gender</b>			
Male	32.5	72.5	35
Female	67.5	27.5	65

**2. How many years of professional experience do you have?**

<b>Years</b>	<b>Armenia %</b>	<b>Azerbaijan %</b>	<b>Georgia %</b>
Less than one	7.5	12.5	6.25
3-5	65	22.5	28.1
6-10 and over 10	27.5	27.5; over 37.5	31.2; over 28.1

**3. Statistical data on journalists' education.**

<b>Armenia %</b>	<b>Azerbaijan %</b>	<b>Georgia %</b>
55	37.5	41.7

**4. What are your sources of information?**

	<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
<b>Source of information</b>	<i>%</i>	<i>%</i>	<i>%</i>
Official institutions	85	70	89.1
Personal contacts in official institutions	72	32.5	69.1
Experts	67	52.5	72.7
NGOs	47.5	47.5	63.6
Internet, official web-sites	62.5	2.5	1.8

**5. Are you familiar with the provisions of the Law on Freedom of Information (in Armenia, Azerbaijan) / Freedom of Information chapter in the Administrative Code (in Georgia)? Do you rely on its provisions in your professional capacity?**

<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
82.5 % familiar 35% use the law	80% refer to the Soviet type Law	78% refer to chapter 3 of General Administrative Code 73.5% to Constitution

**6. Are you familiar with the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters?) Do you rely on its provisions in your professional capacity?**

<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
20 % (10% refer to it)	20% (10% refer to it)	31.5% (7% refer to it)

**7. In your opinion, what are the greatest barriers to getting official information?**

	<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
<b>Barriers</b>	%	%	%
Appropriate mechanisms/procedures are not in place	65	67.5	63
Mentality/attitude of public officials	50	70	48.1
Appropriate legislation is not in place	17.5	17.5	14.8
Journalists do not apply their legal right due to self-censorship	40	16.4	16.7

**8. Comparative list of official institution/s (national/local) that are difficult to access:**

<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
<i>Customs bodies</i>	<i>Prosecutor's Office</i>	<i>Ministry of Defence</i>
<i>Prosecutor's office</i>	<i>Police</i>	<i>Ministry of State Security</i>
<i>Courts</i>	<i>Courts</i>	<i>Department of Intelligence</i>
<i>Police</i>	<i>Ministry of Finance</i>	<i>General Prosecutor's Office</i>
<i>Central Bank</i>	<i>Ministry of Defense</i>	<i>Ministry of Interior</i>
<i>Detention institutions</i>		<i>Ministry of Finance</i>
<i>State Security bodies</i>		<i>State Chancellery</i>
<i>ArmenTel</i>		<i>Ministry of Foreign Affairs</i>
<i>Ministry of Health</i>		<i>Prosecutor's Office of Ajara</i>
<i>Ministry of Culture and Youth</i>		<i>Ministry of Internal Affairs of Ajara</i>
<i>Ministry of Science and Education</i>		<i>Council of Ministers' of Ajara</i>

**9. In what field/s is it easy to get information?**

	<b>Armenia (%)</b>	<b>Azerbaijan (%)</b>	<b>Georgia (%)</b>
Social issues	70	55	48.1
Healthcare	55	50	38.9
Women's issues	50	57.5	25.9

**10. In what field/s is it difficult to get information?**

	<b>Armenia (%)</b>	<b>Azerbaijan (%)</b>	<b>Georgia (%)</b>
Military/defence	60	70	70.9
Corruption	52.5	67.5	29.1
Information on criminal matters/police	57.5	50	0.9
Internal affairs	32.5	42.5	40
Foreign affairs	35	22.5	34.5



**11. When refused an information request, what do you do?**

	<b>Armenia (%)</b>	<b>Azerbaijan (%)</b>	<b>Georgia (%)</b>
Publicise the refusal through the media	60	55	63%
Defend your right to information in court	5	<i>1 journalist</i>	13%
Use all other possible ways to get information	42.5	60	58.7%

**12. Other forms of access to official information: Do you have access to:**

	<b>Armenia (%)</b>	<b>Azerbaijan (%)</b>	<b>Georgia (%)</b>
Court trials - fully accessible	42.5	47.5	47.3
Parliamentary sessions - easily accessible	20	27.5 ( <i>full access</i> )	70.9
Meetings of local authorities – the easiest to access	60	65	45.5( <i>full access</i> )
National government meetings – full access	27.5	40	10.9

## APPENDIX 7

### COMPARATIVE DATA FOR ARMENIA, AZERBAIJAN AND GEORGIA

#### RESPONSES OF PUBLIC OFFICIALS

##### 1. Age group and gender of those interviewed

	Armenia	Azerbaijan	Georgia
<b>Age group</b>	%	%	%
25-40	30	45	80
40 and Over 40	67.5	50	4
<b>Gender</b>			
Male	75	65	24
Female	25	35	76

**2. How many years of professional experience as a public official do you have?**

<b>Years</b>	<b>Armenia %</b>	<b>Azerbaijan %</b>	<b>Georgia %</b>
Less than one	n/a	2.5	20
1 – 2 years	n/a	10	16
3-5	35	25	12
6-10 and over 10	65	62.5	52

**3. What branch of government do you represent?**

<b>Branch</b>	<b>Armenia %</b>	<b>Azerbaijan %</b>	<b>Georgia %</b>
Executive	88	85	84
Legislative	4	10	4
Judicial	8	5	12

**4. What level does your institution/agency represent?**

<i>Level</i>	<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
	Number	%	%
National	11	40	84
Regional / City	9	47.5	4
Local	20	12.5	12

**5. Name the official institution in which you work:**

	<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
<b>Institution</b>	number	%	%
Ministries and their local branches	19	57.5	60
Local executive authority	18	25	16
Ombudsman`s Office	n/a	2.5	N/A
Parliament	1	10	4
Courts	2	5	20

**6. Do your duties include releasing official information to the general public and the media?**

	Armenia %	Azerbaijan %	Georgia %
Yes	n/a	22.5	96
No		50	0
Not certain		27.5	4

**7. From your experience, are you satisfied with the way media uses official information released to them?**

	Armenia %	Azerbaijan %	Georgia %
Yes	47.5	27.5	20
No	5	20	4
Partially	47.5	52.5	76

**8. Is there a Law on Freedom of Information (Access to information) in your country?**

	Armenia %	Azerbaijan %	Georgia %
Yes	75	72.5	92
No	10	5	0
Do know	15	22.5	8

**9. Are you familiar with the Aarhus Convention (convention on Access to information, Public Participation in Decision-Making and Access to Justice in Environmental Matters)? Do you provide information based on its provisions?**

	<b>Armenia %</b>	<b>Azerbaijan %</b>	<b>Georgia %</b>
Yes	17.5	20	52
No	82.5	80	48

**10. In your opinion, what is the most speedy and efficient way for releasing official information?**

	<b>Armenia</b>	<b>Azerbaijan</b>	<b>Georgia</b>
<b>Way for releasing information</b>	<b>%</b>	<b>%</b>	<b>%</b>
Official website	32.5	57.5	28
Press conferences	45	40	24
Official publications	30	37.5	10
Media	77.5	67.5	18
Answering information requests	27.5	17.5	18



ARTICLE 19, the Global Campaign for Free Expression, champions freedom of expression and the free flow of information as fundamental human rights that underpin all others. We take our name from Article 19 of the Universal Declaration of Human Rights. It states:

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

ARTICLE 19 believes that freedom of expression and of information is not a luxury but a basic human right. It is central to achieving individual freedoms and developing democracy. When people are denied freedom of speech or access to information, they are denied the right to make choices about their lives.

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