



Internews` Center For Information Law and Policy

Assessment of Digital Broadcasting Introduction in Armenia from the point of view of legal and practical consequences

1. Law “On Television and Radio” of the Republic of Armenia

The activity of TV and radio companies in the Republic of Armenia is regulated by the RA Law “On Television and Radio” (the Law). The Law was adopted on 9 October 2000; and until September 2009 twelve amendments and/or supplements have been made to the Law, among which the most noteworthy is the supplement made to Article 59 on 10 September 2008 (HO-137-N). The draft of this supplement has been elaborated by the RA Ministry of Economy and has been adopted at an extraordinary session of the National Assembly.

2. Reasons and consequences of making a supplement to the Law

In accordance with Supplement HO-137-N a moratorium on issuing television and radio broadcasting licences was lifted till 20 July 2010. This Supplement to the Law is officially justified by the necessity to implement the digital system of TV and radio programme broadcasting. The supplement to the Law was subject to criticism by both local and international organizations, being determined by a number of circumstances.

1. First of all this supplement to the Law has been made without consultations and public discussions with stakeholders, which in its turn contradicts to the principle of legal certainty, since the moratorium has created an unpredictable environment in the circles of business entities, bringing to uncertainty of what is expected in the nearest future.
2. The latter is also determined by the fact that the process of digital broadcasting implementation has been initiated without any conceptual and/or strategic document required by the Recommendation Rec(2003)9 of the Committee of Ministers to member states¹. Whereas, experience of leading countries in transition to digital broadcasting shows that digital broadcasting system is implemented first of all on the basis of a road map or concept formed in the result of public discussions, which, inter alia, ensures market predictability and legal certainty for business entities.
3. In fact, making a supplement to the Law cuts off entrance of new broadcasters into the market. According to statements of a number of local and international independent experts, addressed to the Armenian authorities, “if the broadcasting landscape in a country is not sufficiently pluralistic and diverse, it would be appropriate to delay digitalization and undertake other reforms first”. In accordance

¹Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting (Appendix, clause 1)

with Recommendation Rec(2003)9 “it is still early to make the transition to digital broadcasting without ensuring pluralism and diversity”. The same opinion has been also expressed by an independent European expert: “Since for a certain period of time new licences shall not be issued, then it is of crucial importance to have pluralistic and diverse media at the moment of implementing digital broadcasting system”, which in his opinion currently does not exist in Armenia.

4. According to statements of several organizations and experts, the moratorium meant upholding of new licenses, in particular a license to TV company A1+. Moreover, this means that Armenia will not be able to comply with the June 2008 decision of the European Court of Human Rights, which acknowledged the fact of violation of the freedom of expression of the TV company A1+.
5. Hence, according to Article 59 of the Law “No licensing tenders shall be announced till 20 July 2010. Those TV companies whose licenses shall expire before 21 January 2011, can submit an application for extension of the license to the National Commission on TV and Radio” (In view of the applications submitted in September, licenses of 13 TV companies have been extended). Despite the fact that moratorium was lifted till 20 July 2010, tenders for 24 broadcasting licenses were also revoked in the result of making the supplement to the Law, since 10 TV companies in Yerevan and 14 TV companies in the RA regions² instead of participating in the tender shall extend their licenses.

It should be mentioned that despite the fact that radio frequencies spectrum is a limited resource, according to Article 48 of the RA Law “On Television and Radio”: “The National Commission when necessary, however at least once a year, publishes a complete list of frequencies and announces a tender for free (unallocated) frequencies. Simultaneous tender for all free frequencies is not mandatory”. Nevertheless, starting from 2006 no tender for frequencies has been announced within the whole territory of Armenia, which only in case of Yerevan can be explained by the overloading of frequencies. **Hence, each year the Commission shall publish a complete list of frequencies, and if free frequencies are available then it shall announce a tender. It should be also mentioned that the complete list of frequencies is accessible on the website of the National Commission on Television and Radio³, where however no information on free frequencies could be found.**

Response of international organizations

Several international organizations have also expressed their opinions on the amendment to Article 59 of the Law.

In a letter to Armenian President Serzh Sargsyan, the OSCE Representative on Freedom of the Media, Miklos Haraszti wrote⁴: “By cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia's broadcasting sector will be further diminished”, adding that “a moratorium on new licences

² In Yerevan: “The Armenian second TV Channel”, “ARMENIA TV”, TV company, “AR TV COMPANY”, “ARMNEWS” TV Editorial, “Yerevan – Prometheus” TV and radio editorial, “Dar 21” TV company editorial, “TV 5” TV editorial, “A-TV” LLC, “Yerkir Media” TV editorial.

In regions: “STV1” TV editorial, “Lori TV” TV company editorial, “Corner plus 3” TV company editorial, “6+6” TV editorial, “Lusalik” TV company editorial, “Zayg” TV studio editorial, “Shant” TV studio editorial, “Last” TV editorial, “Syunik” TV editorial, “SOSI” TV editorial, “Qamut” TV editorial, “Qamut” LLC, “Ijevan Studio” LLC, “Qyavar” TV studio editorial, “HRAZDAN” TV company editorial.

³ National Commission on Television and Radio – www.tvradio.am

⁴ Armenia should lift moratorium on licensing broadcasters to ensure media pluralism, says OSCE media freedom representative. Obtained from: <http://www.osce.org/item/33196.html> 19 September 2009

for analogue transmission should not be the first step in the transition to digital broadcasting. If the broadcasting landscape in a country is not sufficiently pluralistic and diverse, it would be appropriate to delay digitalization and undertake other reforms first".

The OSCE independent expert Catherine Naiman-Matklauff, referring to Recommendation Rec (2003)9 of the Committee of Ministers noted that: "The Recommendation is for a rapid transition to digital broadcasting, noting however that it should be performed with a view of the interests of the public and all broadcasters. For this purpose an appropriate legal framework (concept/strategy) and favorable technical and economic conditions must be provided. Even if moratorium is inevitable it should not be applied at the expense of diminishing the level of pluralism".

It is noteworthy that clause 3 of Appendix to Recommendation Rec (2003)9 mentions that with other public interests, inter alia, interests of non commercial and regional broadcasters should be taken into account, in particular providing appropriate legal framework and favorable technical and economic conditions.

Besides, based on the fact that regulation of the broadcasting field is one of the most significant prerequisites of the freedom of speech and media, the Parliamentary Assembly of the CoE (PACE) in its 1609 (2008) formula of 2008 mentioned the necessity of reviewing the legal procedures on composition of the National Commission on Television and Radio and Public Television and Radio Council. It is notable that another 1620(2008) June Resolution of 2008 of the Parliamentary Assembly calls Armenia to provide "a public, just and transparent licensing procedure". 1677(2009) PACE Resolution "The functioning of democratic institutions in Armenia" and clause 10.2 of the Resolution 1643(2009) "The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008)" mention that: "technical requirements necessary for implementation of digital broadcasting shall not be used by the authorities as justification for inappropriate delay of open, just and transparent tenders for broadcasting licenses as well as for incompliance with the decision of the European Court of Human Rights".

The supplement to the Article found response in the world famous "Article 19" dealing with the protection of human rights, freedom of speech and information, which states that this supplement to the Law is aimed at non compliance with the verdict of the European Court of Human Rights on A1+ case. «Article 19» in its article criticizes application of such mechanisms and calls the Armenian Government to put an end the to the licensing moratorium as well as to provide participation of A1+ in the open, just and transparent licensing tender before transition to digital broadcasting system. At the same time the organization points that the supplement to the Law contradicts to Article 19 of UN Covenant on Civil and Political Rights (ICCPR) and to Article 10 of the European Convention of Human Rights and Fundamental Freedoms that were ratified by Armenia.

As opposed to the above mentioned, the independent analyst Alec Thomas who is contracted by the CoE expressed an ambiguous opinion on ceasing the licensing tenders in Armenia: "in the short to medium term, ceasing to offer further analogue TV licences, particularly in the capital, Yerevan, is probably wise."⁵

It should be noted that the supplement to the Law was also criticized in the USA State Department annual report on Human Rights of 25 February 2009 indicating that the supplement to the Law was adopted by the extraordinary session of the National assembly without preliminary notifications and public discussions which diminishes the perspective of media diversity and pluralism in Armenia.

⁵ Report on the utilisation of the UHF spectrum in the Republic of Armenia by Mr. Alec Thomas, Legal and Human Rights Capacity Building Division, Strasbourg, 30 April 2009, Obtained from: <http://www.mineconomy.am/upload/file/UHF%20SPECTRUM.pdf>

3. Opinion

Hence, Supplement to Article 59 of the Law became a cause of several negative consequences for Armenia.

First of all without public discussions and consultations with stakeholders and without any strategic document this supplement to the Law created a legal uncertainty environment for the market players having its negative impact not only on the investment plans of the TV companies, but also on the activity of the latter and overall development of the market.

The fact that pluralistic and diverse media is in the stage of development in Armenia should be taken into account and consequently the inappropriate delay in broadcasting licenses nearly for two years prevented the process of formation of diverse media in Armenia.

By ratification of a number of international conventions and treaties, particularly International Covenant on Civil and Political Rights and European Convention on Human Rights and Fundamental Freedoms, Armenia, through making this supplement to the Law, violates several provisions envisaged in these international conventions and agreements. As a result Armenia will lose trust in international arena. Also it is worth noting that this supplement has been a reason for non compliance with the verdict of the European Court of Human Rights. Non fulfillment of the provisions envisaged by the CoE 1609(2008), 1620(2008), 1677(2009) and 1643(2009) Resolutions may in its turn serve as a reason for applying sanctions against Armenia, which hinders fruitful cooperation between Armenia and Council of Europe.

October 5, 2009