



## **INTERNEWS**

### **Concerning Inconsistencies And Omissions Between CoE Recommendation CM/Rec(2008)6**

**and**

### **Armenian Legislation and Restrictions Imposed on Freedom of Expression, Internet Sites During the State Of Emergency Following the 2008 Presidential Elections**

The aim of this document is to make a comparative analysis between the provisions of Recommendation CM/Rec(2008)6 (Recommendation) of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters and the provisions of most essential and principal significance of RA Legislation and restrictions imposed on freedom of expression, Internet sites during the state of emergency following the 2008 Presidential Elections.

#### **I. Recall of March state of emergency events**

1. Due to well-known events of March 1 which took place in Yerevan, to prevent the danger threatening to the constitution of the RA and to protect the population rights and legal interests, being guided by clause 6 of Article 14 and clause 6 of Article 117 of the Constitution, the President of the Republic of Armenia made a decision to declare state of emergency in Yerevan starting March 1 for the period of 20 days approved by Parliament. According to point 4 of Section 4 of this order “publications related to state and internal political issues can be made exclusively within the limits of official information of state bodies”.

2. Consequently in the evening of March 2 during the time period of 22:00-23:00 access to some Internet periodicals was blocked- [www.a1plus.am](http://www.a1plus.am), [www.echannel.am](http://www.echannel.am), [www.azatutyun.net](http://www.azatutyun.net), [www.armenianliberty.am](http://www.armenianliberty.am), [www.persons.am](http://www.persons.am) as well as content on [www.armtoday.info](http://www.armtoday.info), [am.com](http://am.com) and org domains of “levonforpresident”, [www.youtube.com/a1plusnews.com](http://www.youtube.com/a1plusnews.com), [www.payqar.am](http://www.payqar.am), including internet sites for some newspapers: [www.aravot.am](http://www.aravot.am), [www.hzh.am](http://www.hzh.am), [www.zhamanak.am](http://www.zhamanak.am), [www.chi.am](http://www.chi.am), [www.taregir.am](http://www.taregir.am), [www.lragir.am](http://www.lragir.am). Moreover, broadcasting of “Azatutyun” radio station was terminated in Armenia and all the Internet sites of the mentioned radio station on eu, org and other domains were blocked. “Aravot” (The Morning), “Haykakan jamanak” (Armenian times), “168 jam” (168 hours), “Hraparak” (The Square), “Taregir” (Year book), “4-rd Ishkhanutyun” (The 4<sup>th</sup> estate) and some other newspapers suspended their publishing. On the whole some Armenian and foreign oppositional internet periodicals were blocked during the emergency state.
3. Not only Armenian content sites but also the public network of YouTube video clips occurred under attack, after appearance on YouTube a video clip showing March 1 clashes with the law enforcement bodies. However in case with YouTube the blocking did not last long. Firstly, the video clips undesirable to the authorities immediately appeared on other similar sites, which made the situation uncontrollable. Secondly, long-lasting blockage of YouTube could cause a big scandal in the world.<sup>1</sup> The Russian information site [www.regnum.ru](http://www.regnum.ru) was also subject to such short-term blocking.
4. Internet censorship is implemented in two ways. Firstly, the Armenian Internet Society simply froze several sub-domains in “am” domain. Thus the sites were accessible only by their IP address. Only one week later the Society appearing under international pressure due to illegal activities, informed that this measure was enforced by the National Security Service (NSS) and made the following statement: “When State of Emergency was declared on March 1, 2008 the National Security Service of the Republic of Armenia applied to the Internet Society of Armenia with a request to temporarily freeze some domains”. Subsequently, it was followed by pressure on Internet providers, the latter were ordered by the National Security Service to block access to the sites on the “black list”.
5. Afterwards on March 13 the President of the RA, Mr. Robert Kocharyan, made an amendment to the point 4 of Section 4 of the Order on state of emergency, restating it as follows: “certain falsehood or information on state or internal political issues which can lead to destabilization of the situation or any unreported (illegal) calls for participation in actions, including publication or dissemination of such information or calls in similar way are banned”.

Finally on March 21 the state of emergency regime in Yerevan established by March 1 Presidential Order was terminated.

## II. Observations on the Recommendations

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<sup>1</sup> According to Samvel Martirosyan ([kornelij.livejournal.com](http://kornelij.livejournal.com)), [http://www.echannel.am/?topic\\_id=1676](http://www.echannel.am/?topic_id=1676)

1. First of all we consider it characteristic to recall requirement of the last paragraph of the Preamble to the Recommendation, according to which member-states are recommended to adopt common standards and strategies with regard to Internet filters to promote the full exercise and enjoyment of the right to freedom of expression and information and related rights and freedoms in the European Convention on Human Rights, in particular by:
  - taking measures with regard to Internet filters in line with the guidelines set out in the appendix to this recommendation;
  - bringing these guidelines to the attention of all relevant private and public sector stakeholders, in particular those who design, use (install, activate, deactivate and implement) and monitor Internet filters, and to civil society, so that they may contribute to their implementation.<sup>2</sup>
2. According to the Recommendation the users must be informed in advance of any decision that Internet blocking or filter is active and, where appropriate be able to identify and to control the level of filtering the content they access is subject to.

Moreover, they should have the possibility to challenge the blocking or filtering of content and to seek clarifications and remedies.<sup>3</sup>
3. In co-operation with the private sector and civil society, member-states should ensure that users are made aware of activated filters and, where appropriate, are able to activate and deactivate them and be assisted in varying the level of filtering in operation, in particular by:
  - Developing and promoting a minimum level of information for users to enable them to identify when filtering has been activated and to understand how, and according to which criteria, the filtering operates (for example, black lists, white lists, keyword blocking, content rating, etc., or combinations thereof),
  - Providing clear and concise information and guidance regarding the manual overriding of an activated filter, namely whom to contact when it appears that content has been unreasonably blocked and the reasons which may allow a filter to be overridden for a specific type of content or Uniform Resource Locator (URL);
  - Ensuring that content filtered by mistake or error can be accessed without undue difficulty and within a reasonable time.<sup>4</sup>
4. This paragraph of the Recommendation specifies in detail certain approaches to the use and application of Internet filters. Thus, according to the second Guideline of the Appendix, mentioning the wider public service value of the Internet, public actors on all levels, such as administrations, libraries and educational institutions, which introduce filters or use them when delivering services to the public, should ensure full respect for all users' right to freedom of expression and information and their right to private life and secrecy of correspondence.

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<sup>2</sup> The last paragraph of the Recommendation.

<sup>3</sup> First guidelines to the Appendix to the Recommendation, paragraph 1.

<sup>4</sup> First guidelines to the Appendix to the Recommendation, paragraph 2.

In this context, member-states should:

- refrain from filtering Internet content in electronic communication networks, operated by public actors for reasons other than those laid down in Article 10, paragraph 2, of the European Convention on Human rights, as interpreted by the European Court of Human Rights;
- guarantee that nationwide general blocking or filtering measures are only introduced by the state if the Conditions of Article 10, paragraph 2, of the European Convention on Human Rights are fulfilled. Such action by the state should only be taken if the filtering concerns specific and clearly identifiable content, a competent national authority has taken a decision on its illegality and the decision can be reviewed by an independent and impartial tribunal or regulatory body, in accordance with the requirements of Article 6 of the European Convention on Human Rights;
- introduce, where appropriate and necessary, provisions under national law for the prevention of international abuse of filters to restrict citizens' access to lawful content;
- ensure that all filters are assessed both before and during their implementation to ensure that the effects of the filtering are proportionate to the purpose of the restriction and thus necessary in a democratic society, in order to avoid unreasonable blocking of content;
- provide for effective and readily accessible means of recourse and remedy, including suspension of filters, in cases where users and/or authors of content claim that content has been blocked unreasonably<sup>5</sup>.

5. Nevertheless, member-states and the private sector are encouraged to:

- regularly review and supervise effectiveness and proportionality of the filters' deployment;
- strengthen the information and guidance to users who are subject to filters in private networks, including information about the existence of, and reasons for, the use of a filter and the criteria upon which the filter operates;
- co-operate with users (customers, employees, etc.) to improve the transparency, effectiveness and proportionality of filters.

In this context, civil society should be encouraged to follow the development and deployment of filters both by key state and private sector actors. It should, where appropriate, call upon member-states and the private sector, respectively, to ensure and to facilitate all users' right to freedom of expression and information, in particular as regards their freedom to receive information without interference by public authorities and regardless of frontiers in the new information and communication environment<sup>6</sup>.

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<sup>5</sup> Third guidelines to the Appendix to the Recommendation, paragraph 1

<sup>6</sup> Third guidelines to the Appendix to the Recommendation, paragraph 3

6. In addition it is worth noting that according to the EU Declaration on Human Rights and Rule of Law in information society<sup>7</sup>,
- There should be full respect for the rights to freedom of expression, access to information and communication in digital and non-digital environments which should not be subject to restrictions for the reasons not mentioned in Article 10, paragraph 2 of the European Convention on Human Rights only for the reason that the communication is fulfilled in a digital mode;
  - Member-states should maintain and enhance legal and practical measures to prevent state and private censorship<sup>8</sup>.

### III. Conclusion

First and foremost, it is worth noting that citizens' freedoms of expression, press, receiving and disseminating information, as well as freedom of information media and other information means are guaranteed by Article 27 of the RA Constitution. Moreover, according to Article 4 of the RA Law on Mass Media censorship is clearly forbidden and freedom of Mass Media in the Republic of Armenia is declared.

No official review or statement has been published by the RA authorities with regard to blocking of Internet periodicals, in particular to benchmarks guiding to blocking the periodicals, choice of the latter and the legal remedies existing to appeal against such decisions and the party responsible for blocking of Internet periodicals. Only based on the interpretation of the RA Law on Mass Media, it is possible to assume that some Internet information periodicals are also mass media and were obliged to follow the Order on state of emergency. On the other hand, the proportionality of these measures to the implementation of the purpose of the Order is subject to doubt, especially with regard to the sites on the Armenian domain. In addition, we call for attention to the fact that these blockings were unexpected and shocking not only for the citizens of the Republic of Armenia, but also the editorial offices and authors of the periodicals, who were not informed of this decision in advance, in particular of what was the authorized body taking this decision as well as the responsible party. Per se, blocking of Internet sites of public actors, such as opposition actors is also controversial therewith. Moreover, the above-mentioned Internet periodicals were blocked evidently as a result of censorship.

According to Article 43 of the RA Constitution, provisions, major rights and freedoms envisaged by Article 27 protecting Mass Media freedom can be restricted *solely by the Law*, provided it is necessary to maintain state security, public order, prevention of crimes, to protect public health and morale, constitutional rights and freedoms, honor and good reputation of others in a democratic society. In contradiction, clause 6 of Article 117 of the RA Constitution defines that prior to establishment of state of emergency by the Law, in case of immediate threat to the Constitution, the President of the Republic, consulting with the Chairman of the National Assembly and the Prime Minister, implements *measures based*

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<sup>7</sup> CM(2005)56 final 13 May 2005,  
[http://www.coe.int/t/e/integrated\\_projects/democracy/02\\_activities/00\\_declaration\\_on\\_information\\_society](http://www.coe.int/t/e/integrated_projects/democracy/02_activities/00_declaration_on_information_society)

<sup>8</sup> EU Declaration on Human Rights and Rule of Law in information society, Chapter 1, Part 1, paragraphs 2 and 4

*upon the situation* and addresses the people with regard to this. In this context, can “*measures based upon the situation*” be regarded as restriction of Mass Media freedom, in contradiction with Article 43 of the same Constitution. In our opinion, such an interpretation is inconsistent with the spirit of the RA Constitution and does not proceed the purposes of international legal acts, in particular of Article 10 of the Convention on Human Rights and Fundamental Freedoms.

Based on the above mentioned, we conclude that the Republic of Armenia has not only followed the principles protected by the Recommendation, but also ignored the peculiarities of Internet information freedom and the significance of its role in modern life.

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