

A Study of Occurrences of Hindrance to the Lawful Professional Activities of Journalists and Legal Practice in 2006

Within the framework of the project on the protection of the rights of journalists and mass media, the legal service of Internews NGO conducted *a study of occurrences of hindrance to the lawful professional activities of journalists in Armenia in the period of 2003 – 2005 and of relevant legislation*. The report was presented to the public attention still on December 6, 2005, at a round table discussion on the topic Legal Protection of Journalists and the Reality.

The study of the occurrences between 2003 and 2005 has shown that while carrying out their legal professional activities journalists are unprotected as both a journalist and an RA citizen. The ones at fault remained unpunished, and in some cases the punishment was unequal. Impunity allows multiple opportunities to continue criminal activities, as well as encourages others to commit crimes.

The guarantees of the protection of the right to freedom of speech in mass media are stipulated in the RA Law on Mass Media. Particularly, Article 4 Part 3 Paragraph 3 **prohibits hindrance to the legal professional activities of a journalist**. According to Part 1 of the same article **“the journalist is protected by the RA legislation, while realizing his professional activities as an entity doing his public duty.”** Moreover, hindering the lawful professional activities of a journalist is not only prohibited by law, but is also viewed as a crime by the Criminal Code currently in force. Thus, according to Article 164 of the Criminal Code of the RA:

1. Hindrance to the legal professional activities of a journalist, or forcing the journalist to disseminate information or not to disseminate information

is punished with a fine in the amount of 50-150 minimal salaries, or correctional labor for up to 1 year.

2. The same actions committed by an official abusing one’s official position

is punished with correctional labor for up to 2 years, or imprisonment for the term of up to 3 years, by deprivation of the right to hold certain posts or practice certain activities for up to 3 years, or without that.

The atmosphere of impunity which has been reigning in the RA for the last few years allows new intimidations and threats towards the representatives of mass media.

Within the framework of the above-mentioned project the study of the incidents hindering the legal activities of the journalists and mass media continued into 2006.

The situation testifies to the fact that the authorities are unable to guarantee the security of the representatives of mass media and neutralize the criminals. And it gives reasons for serious anxiety.....

This research gives a clear idea of the occurrences in 2006 and the attitude of the authorities towards them.

1. At about 15:00 on January 30, 2006, David Jalalyan, the sport correspondent at the newspaper Haykakan Zhamanak /Armenian Times/ (currently Zhamanak Yerevan /Times Yerevan/) was stabbed by an unidentified person. The former was wounded in the region of the abdomen as a result of resistance. Fortunately the wound was not a serious one. Besides, the jacket that Jalalyan was wearing played a considerable role in defending him.

Before the incident the unidentified person had had a telephone conversation with Jalalyan and had made an appointment in order to discuss some private matters, however, there was no discussion and that person attacked the journalist with his knife immediately.

The telephone conversation with David Jalalyan made it clear that he had turned to the law enforcing authorities and legal proceedings were instituted according to the features stipulated in Article 117 of the RA Criminal Code / Infliction of willful light damage to health/. However, later the case was dismissed on the basis of Article 35 Part 1 Paragraph 4 of the RA Criminal Procedure Code ” in the event of absence of a complaint of the injured.”

2. At around 21:00 on February 7 the Jeep Prado, belonging to Suren Baghdasaryan, the founder of the Football+ newspaper and sport commentator, was put to fire at the building of the Football+ newspaper. There were no casualties, the car was partially damaged.

3. According to the executive director of the Lori TV station, at 11 p.m. on February 23 she was approached by the son-in-law of a police employee, nicknamed Aka, in a Vanadsor shop and was threatened that “she would not end well if she continued to count his money.”

The thing is that since the beginning of the year the fare for the Vanadsor city transport has increased and the Lori TV station regularly covers this issue in its programs. The man who threatened announced to the journalist that the routes belonged to him and he would do whatever he liked.

Talking to Narine Avetisyan, the executive director of the Lori TV station, we have found out that there was no proceedings instituted because the parties had reconciled.

4. At around 1 a.m. on May 16, 2006, the car belonging to the executive director of the Lori TV station Narine Avetisyan was thrown stones at by unidentified people. On the same day the police conducted an examination of the venue and correspondingly filed a report on the fact. A talk-show devoted to the problems of the residents of the wagon district in Vanadsor was broadcast by the Lori TV a few hours before the incident. Residents of the wagon district, as well as Artur Saqunts, head of the Helsinki Citizens Assembly Vanadsor Office, and Grisha Paravyan, head of the Utilities Department of the Vanadsor Municipality were participating. It should be mentioned that Narine Avetisyan, who is a member of the Journalists Union of Armenia, was intimidated three times during the past year (April 2005, February 2006 and May 2006) for doing her professional duty.

On the basis of Article 185 of the RA Criminal Code, criminal proceedings have been instituted about the fact, however, two months later, on June 15, a part of the case was suspended based on Article 31 Paragraph 1 Point 1 of the RA Criminal Procedure Code “the person, who must be presented as the accused, is not identified.” The other part of the case was dismissed.

5. On May 23 at the National Assembly Alexander Sargsyan, a deputy of the National Assembly, made indecent comments addressed to the correspondent of the Irvunq daily Taguhi Tovmasyan and threatened her. The threat aimed at finding out the source of the information published in an Irvunq article titled “Sorting things out at the Airport?”

We have learnt from Taguhi Tovmasyan that no criminal proceedings were instituted about the fact. According to Taguhi Tovmasyan, she did not personally go to the law enforcing authorities, however, two days after the incident, a statement signed by the editor-in-chief on the May 23 National Assembly incident was published in the Iravunq. Nonetheless, no action was brought about by the law enforcing authorities after this either. Whereas, according to Article 176 of the RA Criminal Procedure Code, among the reasons for initiation of criminal prosecution are mass media reports about crimes. The concept of “mass media reports about crimes” is also stipulated in Paragraph 1 of Article 179 of the same Code, according to which “Reports on committed or prepared crimes, in press, on the radio, on TV, in documentary films, as well as reports forwarded to mass media and unpublicized, are considered mass media reports.” Moreover, reports on crimes must be discussed and solved immediately. And if there is a necessity to check the legitimacy of the reason and the sufficiency of bases to institute proceedings, the solution is given within 10 days after the reception of the reports.

6. In the evening of June 12 the policemen guarding the entrance to the Yerevan Municipality blocked the way of Galust Nanyan, a correspondent of the Republic of Armenia daily into the building. The latter was to participate in a press conference convened at the municipality building. The correspondent was first stopped, and then he was pushed out of the building. The police explained their actions stating that Nanyan’s dressing style was improper for entering the Municipality building. When the journalist tried to protect his rights, the policemen felt more forceful and threatened that if he continued his speech, he would be detained. The correspondent of the *Republic of Armenia* daily immediately tore his municipality accreditation certificate and threw it at the policemen.

7. Artur Saqunts, Head of the Helsinki Citizens Assembly Vanadsor Office, received an e-mail message containing a death threat on June 19. The message titled “Death to the Helsinki Assembly and Artur Saqunts” and written in the Latin alphabet said: “Mister Saqunts, we are sentencing you to death. You may wonder why. We will tell you: for shamelessly writing some nonsense on religions in the latest issue of the Civic Initiative newspaper. Death to the Helsinki Assembly and Saqunts.” Let us mention that in this connection Artur Saqunts has already applied to the Lori Prosecutor’s Office.

On August 3 this year a decision was made by the law enforcing authorities to reject instituting criminal proceedings on the basis of Article 35 Part 1 Paragraph 2 of the RA Criminal Procedure Code “the alleged act contains no corpus delicti;”

8. On June 21 the *Syunyants Yerkir (The Land of Syuniq)* newspaper editor’s office was visited by the director and two deputy directors of the Tatev branch of the Electrical Networks of Armenia CJSC (which supplies energy to the whole of the Syuniq marz) who arbitrarily cut off the energy supply of the editor’s office.

The problem had emerged after an article was published in the June 15, 2006 issue of the *Syunyats Yerkir*, titled “The Energy system in Syuniq is Becoming Corrupt if it has not Become Fundamentally Corrupt yet.” While discussing the article, the heads of the Tatev branch of the Armenian Electrical Networks CJSC were suggested they should present a response or a follow-up, within the limits of the law in force if they really had objections to the material published. However, the administration of the branch was not satisfied with the suggestion. And the editorial office was immediately deprived of energy supply by the order of the director Arayik Grigoryan. The newspaper had to remain idle because of no energy supply.

The statement disseminated by the newspaper says: “The occurrence once again testifies to

the fact that the energy system in the marz of Syuniq is really fundamentally corrupt and has become a punitive organ in the regional policy realized in Syuniq. The occurrence once again asserts that the terror that started against the newspaper the *Syunyats Yerkir* continues. The occurrence once again proves that the Inquisition hovering in Syuniq and a tough guy behavior remain an accepted form of governing.”

The newspaper again turned to Robert Kocharyan as the guarantor of the Constitution “demanding to finally put an end to the endless persecutions against the *Syunyats Yerkir* newspaper, to evaluate the barefaced impudence of the almighty director of the electrical network and to allow a resumption of the activities of the newspaper.”

We learnt from the editor-in-chief S. Alexanyan that five days after the occurrence the energy supply to the editorial office was restored. To our question “Who was punished for this occurrence?” the editor-in-chief answered: “No one, as always.”

9. On June 26 Arman Babajanyan, the editor of the *Zhamanak Yerevan* (*The Times Yerevan*) was arrested. According to the announcement made by the RA General Prosecutor’s Office a suit was filed in the department of Investigations at the General Prosecutor’s Office by Article 327 Part 2 Paragraph 2 of the RA Criminal Code against the RA citizen Arman Shamir Babajanyan for forging documents and evading term military service draft by means of deceit in November 2002. The materials received from the military police served as a basis for the case.

Later the volume of the accusation was increased by another article - Theft or damage to documents, stamps or seals (RA Criminal Code, Article 324 Part 2).

*It should be mentioned that initially detainment was chosen as a precautionary measure against A. Babajanyan. The first instance court of Kentron and Norq-Marash districts of the city of Yerevan, presided by the Judge Gayane Karakhanyan, satisfied the June 27, 2006 motion of the investigator Samvel Sinanyan from the Department of Investigations of the General Prosecutor’s Office on choosing a two-month detainment as a precautionary measure against the editor-in-chief of the *Zhamanak Yerevan* Arman Babajanyan.*

The first instance court decision was appealed by the lawyer in the Appellate Court of Criminal and Military Cases. The Court turned down the lawyer’s appeal complaint leaving the precautionary measure against Babajanyan unchanged. Whereas according to Article 135 Part 3 of the RA Criminal Procedure Code:

“While considering the issue of necessity and kind of the precautionary measure the following shall be taken into account:

- 1) the nature and the degree of danger of the incriminated action;**
- 2) the personality of the suspect or the accused;**
- 3) the age and the health condition of the suspect or the accused;**
- 4) sex;**
- 5) the occupation of the suspect or the accused;**
- 6) their marital status and availability of dependents;**
- 7) their property situation;**
- 8) availability of a permanent residence;**
- 9) other relevant circumstances.”**

However, the court neglected not only the absence of bases to apply precautionary measures stipulated by Article 135 of the RA Criminal Procedure Code, but also the motion presented to the court by a number of MPs in which the legislators guaranteed that Arman Babajanyan would demonstrate appropriate behavior if released.

On September 8, 2006, the litigation around the Zhamanak Yerevan newspaper editor-in-chief Arman Babajanyan's criminal case was over in the first instance court of Kentron and Norq-Marash districts. As it has already been mentioned, A. Babajanyan was accused by Article 324 Part 2 and Article 327 Part 2 Paragraph 2 of the RA Criminal Code, but the court found that the accusation put forward by Article 324 Part 2 was not found; A. Babajanyan's deed was not rightly qualified and within the charge brought "his innocence was subject to acknowledgement and declaration and by the article he was subject to acquittal." As for the other accusation the court brought in a verdict of guilty in the crime stipulated by Article 327 Part 2 Paragraph 2 of the RA Criminal Code and sentenced him to a four-year imprisonment.

The verdict of the first instance court has been appealed by A. Babajanyan's lawyer in the order of revision.

The sanction in Article 327 Part 2 of the RA Criminal Code stipulates the following punishment: "arrest for the term of 1-3, or imprisonment for 1 to 5 years."

According to article 10 of the RA Criminal Code: "The punishment and other legal and penal measures applied to the person who committed an offence must be fair, appropriate to the gravity of the crime, to the circumstances in which it was committed, to the personality of the criminal; they must be necessary and sufficient to correct the criminal and to prevent new offences."

In our opinion this strict punishment proves that the court has neglected the PRINCIPLE OF THE INDIVIDUATLIZATION OF JUSTICE AND RESPONSIBILITY stipulated in this article.

10. From the article published in the 10.07.2006 issue of the Hetq Online electronic newspaper we learnt that during the first week of July the Association of Investigative Journalists received e-mail messages onto the Hetq electronic newspaper address, full of threats and swearing. The messages warned against writing any more articles about Gagik Tsarukyan, otherwise they threatened they would square their accounts with the Hetq Online staff.

On July 7, Edik Baghdasaryan, the President of the Investigative Journalists NGO and editor-in-chief of the Hetq newspaper, turned to the Head of the RA National Security Service Gorik Hakobyan with a request to find the author of the threatening messages and apply punitive measures stipulated by law.

In a conversation with Edik Baghdasaryan, the President of the Investigative Journalists NGO and editor-in-chief of the Hetq newspaper, we learnt that no measures were taken by the law enforcing authorities with an explanation that the e-mail messages had been sent from the USA and because of the absence of a contract relevant measures were impossible to take. According to E. Baghdasaryan, he also turned to the US Embassy, however, this time again with no results.

11. At around 20:30 – 21:00 on July 12 Gagik Shamshyan, a correspondent of the Chorrord Ishkhanutyun (The Fourth Power) was attacked in Nubarashen. According to Shamshyan, everything had started that morning when the father of the Nubarashen taghapet (head of the self-governing district agency), Andranik Hovhannisyan in his Mercedes blocked the way of the taxi that Gagik Shamshyan was in, took him out of the taxi and poured down with threats.

The cause of these threats was a Chorrord Ishkhanutyun article with the details of the robbery committed in the Shahumyan branch of the ArdShinInvest bank. According to the published material, the suspects were the relatives of the head of the Nubarashen taghapetaran. Gagik Shamshyan told about the morning incident on the Azatutyun radio (Radio Liberty) after which he was attacked. According to Shamshyan, a few dozen attackers were led by Ruben, the brother of the taghapet. Among the participants of the attack Shamshyan recognized Vardan, the deputy taghapet and the son of the Nubarashen electrical network director Gurgun. The attackers grabbed Shamshyan's cell phone, the dictophon, the money he had on him and beat him up. Later in the same evening G. Shamshyan submitted a statement to the police station of the Erebuni district.

On 12.07.2006 criminal proceedings were instituted in Erebuni and Nubarashen districts Prosecutor's Office in connection with Shamshyan's report with the features of the articles on hindrance to a journalist's legal professional activities, on robbery and hooliganism (RA Criminal Code, Article 164, Article 176 Part 1, and Article 258 Part 3 Paragraph 1).

"Within the framework of the criminal case one person – Ruben Hovhannisyan was accused on July 25. He was accused on the basis of the three articles," said the speaker of the General Prosecutor's office. By the decision of the court detainment was applied as a precautionary measure against Hovhannisyan. However, he did not plead guilty in the charge brought. Moreover, by the decision of the same court the precautionary measure was changed: detainment was substituted by a mortgage of 500.000 drams.

The occurrences of the past few days testify to the fact that the law enforcing authorities are trying to turn the case against the victim instead of finding those who were hindering the correspondent's legal activities. In the end on August 3 in the department of Investigations of the RA Police Erebuni branch other criminal proceedings were instituted, but in this case against the Chorrord Ishkhanutyun (combining that job with the one in the Aravot (The Morning)) photo correspondent G. Shamshyan was accused according to the RA Criminal Code Articles 182 (Extortion) Part 1, Article 178 (Swindling) Part 2 and Article 136 (Insult) Part 1.

On August 8 Gagik Shamshyan made an announcement on the actions taken by the law enforcing authorities against him. On August 9 a statement was published in the Aravot according to which an illegal search was conducted in the apartment rented by the correspondent in Nubarashen. The search was headed by the Deputy Head of the Police Erebuni and Nubarashen branch Investigations department Vardan Mesropyan. As a result, a necessary tool for G. Shamshyan's professional activities, his dictophon, as well as his passport were seized. The apartment was sealed, because of which Shamshyan is deprived of the opportunity of having a place of residence.

On August 4, 2006, during an interview with the correspondent of the Chorrord Ishkhanutyun Gagik Shamshyan, also attended by the lawyer of the Program of the Protection of the Interests of Journalists and Mass Media of Internews NGO, it became clear that numerous illegal actions were done by the law enforcing authorities.

I have prepared a preliminary professional opinion on the actions done by the employees of the Investigation Department of the RA Police Erebuni and Nubarashen branch against the correspondent of the Chorrord Ishkhanutyun Gagik Shamshyan which is placed on the www.media.am website.

By the 10.11.2006 decision of the Deputy Prosecutor of Erebuni and Nubarashen districts D. Grigoriyan criminal persecution was terminated and Criminal Case 12204206 was dismissed. According to G. Shamshyan, he was forced to accept this decision when he went to the

Prosecutor's Office of Erebuni and Nubarashen districts on some other business on November 13. G. Shamschyan submitted a complaint against the decision to the RA General Prosecutor A. Hovsepyan on November 20. A copy of the complaint has been sent to the RA ombudsman.

12. Early in the morning on July 20 the driver of the Chorrord Ishkhanutyun newspaper noticed that the window of their newspaper office was at fire and was able to put it out.

A conversation with the director of the Chorrord Ishkhanutyun newspaper M. Ghalechyan made it clear that the newspaper had not submitted any application to the law enforcing authorities, but a worker of the fire department visited the newspaper and filed a report on the spot. Late in July criminal proceedings were instituted in the Investigation Department of the Police Kentron branch based on the report of the Fire service.

13. In the morning of September 6 unidentified people beat Hovhannes Galajyan, the editor-in-chief of the Iravunq (The Right). Immediately after the incident H. Galajyan has appealed to the Arabkir branch of Yerevan Police.

In a telephone conversation with H. Galajyan we found out that criminal proceedings were instituted with the feature of the RA Criminal Code Article 118 (Battery) at the Arabkir branch of the Police on the basis of the September 6 violence against the latter.

14. On October 2 the frontier guards at the RA Bagratashen checkpoint prohibited Ashot Aramyan, a Golos Armenii (the Voice of Armenia) reporter who was leaving for Tbilisi on business to exit the republic.

The editor of the newspaper had turned to the Gorik Hakobyan, head of the RA National Security service, requesting to clarify the situation and to take relevant measures to abolish the illegitimacy. In the October 10 reply of G. Hakobyan to the editor it was mentioned that the measures taken had made it clear that without any legal foundation Ashot Aramyan's name was included into the database on the initiative of the Federal Security Bureau of the Russian Federation and that Aramyan's data were already removed from the register of the Frontier Agency.

15. On October 13 in the Parliament the MP Nahapet Gevorgyan made indecent remarks addressed to Anna Israelyan, the correspondent of the Aravot (The Morning) newspaper and threaten to her. The MP was dissatisfied with the article published in the newspaper where his name was mentioned. However, the deputy was not aware that the author of the article was another reporter at the same newspaper Naira Mamikonyan. After the interference of some other MPs N. Gevorgyan apologized to N. Mamikonyan.

16. On October 26 in the town of Ijevan of Tavush marz the police hindered the professional activities of the Ijevan TV station Susanna Chabukhyan and cameraman Armen Asatryan. According to the reporter the police took them out of the City Hall by the order of the Tavush Head of the Police who was in the building at the same time. The policemen have also tried to take away the camera battery.

Talking to the director of the Ijevan TV station, we have found out that on the day following the incident a notice was sent to the Police of the marz on behalf of the TV station. They received an oral reply, saying that relevant measures would be taken. However, the TV station did not receive any written reply. Subsequently, the guilty were not punished.

In our opinion all the illegal actions mentioned in the report also contain corpus delicti of hindrance to the professional activity of a journalist. However, as the study of practice shows the incidents mentioned have received a different qualification by the state, and particularly by the law enforcing authorities. Unfortunately, this phenomenon has become regular in Armenia and the intimidation and threats at journalists continue to hinder the processes of informing the public which in its turn contributes to the limitations of freedom of speech.

Whereas, the right to the freedom of speech is the constitutional right of every single one of us and is clearly stated in Article 27 of the RA Constitution: “Everyone has the right to freedom of speech, inclusive of the freedom of search for, reception of and dissemination of information and ideas through any mass medium regardless of state frontiers.” Moreover, the freedom of mass media and other information media is guaranteed by the Constitution.

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