

Diversity- The legal framework for Armenian media

MEDIA DIVERSITY INSTITUTE

Diversity- The legal framework for Armenian media

Armenian and international
laws and codes that govern
diversity in the media



Commissioned by the Media Diversity Institute.
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govern diversity in the media
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This document has been produced with the financial assistance of the European Community and the Netherlands Ministry of Foreign Affairs. The views expressed herein are those of the Media Diversity Institute and can therefore in no way be taken to reflect the official opinion of the European Community and the Netherlands Ministry of Foreign Affairs.

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London, 2005

A Media Diversity Institute publication with
the support of the European Community and
the Netherlands Ministry of Foreign Affairs

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Introduction

The Media Diversity Institute is working with journalists and editors in your country to develop coverage of minority and vulnerable groups.

Every day, Armenian journalists and editors are faced with diversity decisions. For example, when is it justifiable - or legal - to identify the race of a criminal, the ethnicity of an interviewee, or the sexual orientation of a politician?

Reporting on diverse groups has both a moral and a legal dimension. It is the legal dimension that this booklet concerns.

What does the Armenian constitution say about these issues? Are these topics covered by other Armenian laws, or international laws that Armenia has agreed to abide by? What does the European Convention on Human Rights say?

Whether you know about these laws or not, the reality is that you are bound by them. But the fact is that a journalist's busy working life does not usually leave time to read pages of legislation to find out the details. For this reason, the Media Diversity Institute has asked Yerevan Press Club media expert Mesrop Harutyunyan to do just that.

He has identified the key sections of the Armenian laws and codes that impact on the diversity reporting aspects of your work as journalists and editors, as well as the international laws and conventions that Armenia has ratified and agreed to abide by.

We hope that it will be of use to you.

Milica Pesic
Director
Media Diversity Institute

Preface

In any country, the restriction of freedom of information about or on behalf of all groups of the society is only acceptable when it is both stipulated in law (according to the European Convention on Human Rights) and necessary to protect the rights and liberties of others. Thus, the main preconditions here are stipulated by legislation and respect for the rights of others (who naturally include minorities). Taking this into account, the laws of nations, including Armenia, should not provide for many such restrictions, as that would immediately result in censorship and the restriction of freedom of information or freedom of expression.

In reality, the most strict restrictions can often be imposed by the journalists themselves, through self regulation. Moreover, because they are voluntary and not imposed from on high, journalists are more inclined to follow their own codes of ethics.

The objective of this study is to determine what restrictions exist in Armenia's media-related legislation with regard to coverage of various minorities and socially vulnerable groups, what voluntary commitments journalists have assumed in this regard through codes of ethics and what is stipulated by international norms. The paper will also provide a certain perspective on media regulation and self-regulation practices in other countries.

The analysis is subdivided into several parts:

1. Constitutional norms
2. International norms that Armenia has ratified or acceded to
3. Republic of Armenia (RA) legislation
4. Codes of ethics

I. Constitutional norms

The Republic of Armenia (R.A) Constitution was adopted in 1995. Like in other countries, the Constitution of our country provides protection for the fundamental rights and liberties of a human being.

Thus, Article 15 of the RA Constitution says:

Citizens, regardless of national origin, race, sex, language, creed, political or other persuasion, social origin, wealth or other status, are entitled to all the rights and freedoms, and subject to the duties determined by the Constitution and the laws.

Article 16 of the Constitution says:

All are equal before the law and shall be given equal protection of the law without discrimination.

It naturally follows from these two articles that all citizens enjoy the same rights and have the same responsibilities.

Let several Articles of the Constitution be considered that in one way or another can be related to the freedom of information -- or its restriction - - as well as to the rights of certain groups.

Thus, Article 20 of the Constitution stipulates:

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.

Why do we think it necessary to quote this article? The point is that the factors that make a person a representative of a certain group are often a part of his or her private life. Therefore, the broadcasting of private facts about a person's life

can be considered as an invasion of privacy, which is prohibited by the Constitution.

Article 23 of the Constitution refers to the freedom of conscience. It stipulates:

Everyone is entitled to freedom of thought, conscience, and religion. The freedom to exercise one's religion and beliefs may only be restricted by law on the grounds prescribed in Article 45 of the Constitution.

Article 24 fully refers to the freedom of information and expression:

Everyone is entitled to assert his or her opinion. No one shall be forced to retract or change his or her opinion.

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.

The latter two, in essence, are the basic provisions that any further analysis should stem from. It is by these articles that the Constitution stipulates the freedom of conscience and religion and the right to freedom of expression.

Article 44, however, states:

The fundamental human and civil rights and freedoms established under Articles 23 and 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 morality, and the rights, freedoms, honour and reputation of others.

Thus, the Constitution already states that advancing one religion over another, for example, can be restricted by legislation if it endangers the rights and liberties of others, or is necessary to protect the honour and reputation of others. This restriction fully corresponds to international norms. In particular, Article 10 of the European Convention on Human Rights and Fundamental Freedoms gives member states the opportunity to

impose similar restrictions. There are two conditions provided for both by the Convention and the Armenian Constitution: a) the restriction must be stipulated by legislation, b) it must be necessary in a democratic society to protect the interests of the state, the public and other citizens (Article 10 of the Convention will be fully presented below).

Coming back to the subject of our study, it should be noted that the Constitution in essence does not and cannot provide any other restrictions with regard to the gathering and dissemination of information on any minority or social group.

There is another Constitutional provision that is relevant to the subject - Article 37 of the Armenian Constitution:

Citizens belonging to national minorities are entitled to the preservation of their traditions and the development of their language and culture.

If this is augmented by the provision of a right to social security for the elderly, the disabled, the infirm, families affected by the loss of a breadwinner and the unemployed under Article 33, it looks as though the rights of all groups are provided for by the Constitution. Yet, as we have already noted, the basis for this analysis will be Article 24 and 44, the former of which refers to the freedom of expression, and the second to its possible restrictions.

II. International Agreements

Let us now review several clauses of international law, to see whether Armenian legislation provides further restrictions with regard to the gathering and disseminating information about a certain social group.

"Universal Declaration of Human Rights",

Article 1:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 of the same document:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

It should be repeated here that these two articles naturally refer also to the freedom of information and diversity. Therefore, it is important for our study to try and see what their point is.

Article 19 of the Declaration states:

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.

At the same time, **Article 18 of the Declaration** refers to the freedom of ideas, conscience and religion, which is directly related to our subject, so, this Article should be quoted here, too:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Since the provisions of international agreement are widely known we are not going to dwell on them, since it is of particular importance to consider the Armenian laws -- and the restrictions in them -- that stem from international laws and the Constitution. However, before that, the European Convention of Human Rights and Fundamental Freedoms should be considered herein:

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

We are fully quoting the Article of the

European Convention because it gives the best definition of the freedom of expression and information and its possible restriction. As noted above, it lists the conditions for the restriction: a) the restriction must be stipulated for by the law, b) it must be necessary to protect the interests of the state, the public and other citizens.

And last, but not least, Article 14 of the European Convention prohibits discrimination:

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The presentation of the provisions of the European Convention would not be complete if we omitted the recommendations of the Council of Europe Committee of Ministers that directly follow from the Convention. The recommendations are not obligatory - they mostly make recommendations about what needs to be changed in the legislation of member countries, and how they should go about it. However, taking them into account makes any legislation more democratic and conforms with the common norms of international law.

Here we will be considering two recommendations that fully refer to the subject of our study.

The first is Recommendation No. R (97) 20 on hate speech, adopted by the Committee of Ministers on 30 October 1997:

The term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

Also, the Recommendation, as it will be shown

below by direct quotations, places the priority on the freedom of expression principle, noting that in all cases it is protected by Article 10 of the European Convention, and any restriction must be made only proceeding from the conditions stipulated by Part 2 of Article 10.

Herein several principles of the recommendation are presented:

Principle 1

The governments of the member States, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.

Principle 2

The governments of the member States should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member States should examine ways and means to:

- stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;*
- review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;*
- develop a co-ordinated prosecution policy based*

on national guidelines respecting the principles set out in this recommendation;

- add community service orders to the range of possible penal sanctions;

- enhance the possibilities to combat hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;

- provide the public and media professionals with information on legal provisions which apply to hate speech.

Principle 3

The governments of the member States should ensure that in the legal framework referred to in Principle 2 interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of or interference with freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.

Principle 4

National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.

Principle 5

National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.

Principle 6

National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas.

To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech on the one hand and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.

Principle 7

In furtherance of principle 6, national law and practice should take account of the fact that:

- reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision;*
- the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10 as established in the case law of the Convention's organs, having regard, inter alia, to the manner, contents, context and purpose of the reporting;*

- respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.

The second document that relates to our subject is Recommendation No. R (97) 21, on the media and the promotion of a culture of tolerance, which was adopted by the Committee of Ministers on 30 October 1997. It contains provisions on tolerance and also stipulates that it be developed by education. The very first clause of the section of Recommendation titled "Professional practices conducive to the promotion of a culture of tolerance" says:

Schools of journalism and media training institutes, in so far as they have not yet done so, might usefully introduce specialist courses in their core curricula with a view to developing a sense of professionalism which is attentive to:

- the involvement of the media in multi-ethnic and multicultural societies;*
- the contribution which the media can make to a better understanding between different ethnic, cultural and religious communities.*

Further, the Recommendation mentions the role of the media with regard to the advancement of tolerance:

2. Media enterprises

The problem of intolerance calls for reflection by both the public and within the media enterprises. Experience in professional media circles has shown that these enterprises might usefully reflect on the following:

- reporting factually and accurately on acts of racism and intolerance;*
- reporting in a sensitive manner on situations of tension between communities;*
- avoiding derogatory stereotypical depiction of members of cultural, ethnic or religious communities in publications and programme services;*

- *treating individual behaviour without linking it to a person's membership of such communities where this is irrelevant;*
- *depicting cultural, ethnic and religious communities in a balanced and objective manner and in a way which also reflects these communities' own perspectives and outlook;*
- *alerting public opinion against the evils of intolerance;*
- *deepening public understanding and appreciation of difference;*
- *challenging the assumptions underlying intolerant remarks made by speakers in the course of interviews, reports, discussion programmes, etc;*
- *considering the influence of the source of information on reporting;*
- *the diversity of the workforce in the media enterprises and the extent to which it corresponds to the multi-ethnic, multicultural character of its readers, listeners or viewers.*

4. Codes of conduct

Such initiatives and actions could go hand in hand with professional codes of conduct drawn up within the different media sectors, which address the problems of discrimination and intolerance by encouraging media professionals to make a positive contribution towards the development of tolerance and mutual understanding between the different religious, ethnic and cultural groups in society.

The Recommendation sees the solution for this task to be the introduction of self-regulation systems and the adoption of codes, since, as mentioned above, any legal intervention can result in the restriction of freedom of expression.

III. Republic of Armenia Legislation

Let us now proceed to the internal legislation of Armenia, which, as has been noted from the very start, does not provide much ground for discussion. The legislation directly refers to various minorities and groups in terms of free expression, so, for example, the issue of honour and reputation is common and can apply to any member of the society, including representatives of a minority or a socially vulnerable group.

The Law "On Mass Communication" adopted on December 13, 2003 contains only a most general formulation in Article 7:

Article 7. Restrictions of the freedom of speech in the sphere of the media

1. It is prohibited to disseminate secret information as stipulated by law, or information advocating criminally punishable acts, as well as information violating the right to privacy of ones' personal or family life.

2. It is prohibited to disseminate information obtained by video and audio recording conducted without notifying the person of the fact or recording, when the person expected to be out of sight or earshot of the implementer of video and audio recording and has taken sufficient measures to ensure it, with the exception of situations when such measures were obviously not sufficient.

3. The dissemination of information related to one's personal or family life as well as those mentioned in the second part of this Article is allowed if it is necessary for the protection of public interest.

Thus, from point 1 of Article 7, we can see that the promotion of racial intolerance can be met with the full weight of the law, while points 2 and 3 uphold the rights of an individual to a private life.

So, under Armenian law, what actions could be met with criminal prosecution? The Criminal Code has several articles that refer to incitement of national, religious or racial hostility, as well as libel and insult.

Article 226 of the Criminal Code, Inciting National, Racial or Religious Hatred, states:

1. Actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of 200 to 500 minimal salaries, or with correctional labour for up to 2 years, or with imprisonment for the term of 2-4 years.

2. The actions envisaged in part 1 of this Article committed:

- 1) publicly or by mass media, with violence or threat of violence;*
- 2) by abuse of official position;*
- 3) by an organised group, are punished with imprisonment for the term of 3 to 6 years.*

Those Articles referring to libel and insult should also be mentioned, as they are common to all citizens including minorities.

Article 135. Libel.

1. Dissemination of false information humiliating the person's good reputation, dignity and honour, is punished with a fine in the amount of 100 to 500 minimal salaries,

The same actions committed repeatedly are punished with a fine in the amount of 300 to 1000 minimal salaries, or with imprisonment for up to 1 year.

Article 136. Insult.

1. Insult is improper humiliation of other person's honour and dignity, is punished with a fine in the amount of from 100 to 400 minimal salaries.

2. The same action committed repeatedly is punished with a fine in the amount of 200 to 800 minimal salaries.

The Republic of Armenia's Civil Code also has a provision on the protection of honour and business reputation, which can be applied to minorities and other groups with certain reservations.

According to Article 19 of the Civil Code:

Article 19. Protection of Honour, Dignity, and Business Reputation

1. A citizen has the right to demand in court the retraction of communications impugning on his honour, dignity, or business reputation, unless the person who disseminated such communications proves that they correspond to reality.

On demand of interested persons, the protection of honour and dignity of a citizen is allowed also after his death.

2. If the communications impugning the honour, dignity, or business reputation of a citizen were distributed in media of mass information, they must be retracted in the same media of mass information.

If the aforementioned communications are contained in a document emanating from an organization, such a document is subject to replacement or recall.

The procedure for retraction in other cases shall be established by the court.

3. A citizen with respect to whom a medium of mass information has published communications infringing on his rights or interests protected by statute has the right to publication of his answer in the same medium of mass information.

4. A citizen with respect to whom communications have been disseminated impugning his honour, dignity, or business reputation, has the right together with the retraction of such information also to demand compensation for losses caused by their dissemination.

5. If it is impossible to identify the person who disseminated communications impugning the honour, dignity, or business reputation of a citizen, the person with respect to whom such communications was disseminated has the right to apply to court with a request for the recognition of the communications that were disseminated as not corresponding to reality.

6. The rules of the present article on the protection of the business reputation of a citizen shall be applied correspondingly to the protection of the legal reputation of a legal person.

IV. Codes of Ethics (self-regulation)

Armenian media today, with some rare exceptions, do not have formal codes of editorial ethics, although some journalists' organisations have drafted guidelines for their members. It's worthwhile exercise to examine some of these.

The Ethics Code of the Journalists Union of Armenia (JUA) says:

RESPECT FOR THE COMMON VALUES OF THE HUMANITY

Adopting the common values of the humanity, the JUA member advocated humanism, peace, democracy, social progress and protects the human rights.

When preparing stories and presenting viewpoints the JUA member avoids aggression and violence, social, religious, racial and national discrimination, promotion of cruelty and pornography.

The JUA member treats the cultural values and identity of all nations with respect, assists the elimination of any interethnic hostility.

Therefore, those who are members of the Journalists Union of Armenia - and many practicing journalists are - assume the responsibility of being non-discriminative and not to advance ideas that can be discriminative towards any minority or social group.

Code of the Yerevan Press Club

A Yerevan Press Club member must:

...

- *Refrain from actions that can be viewed as a restriction of the freedom of speech or an attempt of censorship.*

For a Yerevan Press Club member the following are unacceptable:

- *Libel, defamation, insult.*

The section on professional conduct of the same Code reads:

- *To respect and protect the right to differing opinions, views.*
- *Not to promote war, national, religious hatred and intolerance*

The Yerevan Press Club states that its members must refrain from actions that can be viewed as a restriction of the freedom of speech or an attempt of censorship. It also calls on members to respect and protect the right to differing opinions, and views and not to promote war, national, religious hatred or intolerance. The code states that libel, defamation and insult are all unacceptable.

This code shows us that two principles - the freedom of expression and the non-advancement of hate -- are equipotent for journalists. Thus, if any non-journalist has an opinion that can be viewed by others to be hostile or defamatory, they still have a right to voice it. However, the journalist and the media cannot themselves advocate hostile or discriminatory views, or contribute to their dissemination.

The biggest number of provisions on the subject of our discussion is contained in the Ethics Code of Internews Armenia.

Internews Journalists' Code of Ethics

3.1 The facts shall not serve the purpose of compromising, insulting, or humiliating a person or an organization. The nationality, race, religion, physical and intellectual conditions of a person shall not be labelled.

3.2 For showing victims of violation, people with incurable or severe diseases, criminals, as well as for publishing their relatives' names, it is necessary to obtain their consent. Persons that suffer from a severe grief or a psychological shock, as well as people under legal age, should be free from inappropriate pursuits of journalists.

4.1 We serve all the groups of the society regardless of their political, economic and ideological aspirations. Ties of kinship, family ties, friendship and other relations cannot change the principles of equality that we have adopted.

These provisions have moved from the general issues to specific, mentioning also that a person cannot be labelled for belonging with a certain group. This is closer to the ethical norms of jour-

nalists of other countries and of international journalists' associations. Thus, the Code of Conduct of the National Union of Journalists of the United Kingdom calls on members to avoid the inappropriate mentioning of the social group a person belongs to: *"A journalist shall mention a person's age, sex, race, colour, creed, illegitimacy, disability, marital status, or sexual orientation only if this information is strictly relevant. A journalist shall neither originate nor process material which encourages discrimination, ridicule, prejudice or hatred on any of the above-mentioned grounds"*.

Let us now cite from the code of ethics adopted in Gyumri on the initiative of the "Asparez" club:

11. We do not have discrimination on the basis of sex, religion, ethnicity, physical ability, race, health or other in our work. We do not promote and we do not encourage intolerance, prejudices, stereotypes.

We would also like to quote several codes of conducts acting in many other countries. It would be effective for Armenian media to have a definition similar to the one in the Swedish code of journalistic ethics.

"Do not emphasize race, sex, nationality, occupation, political affiliation or religious persuasion in the case of the persons concerned if such particulars are not important in the context or are disparaging". (Sweden, Code of Ethics for the Press, Radio and Television)

"If this is not a significant piece of news, there is no point in emphasising the nationality, race, religion, political stance or gender..."

Information and opinions on the health of a specific person (mental as well as physical) are not published with the exception of the cases when the person agrees to that or the publication of such information is motivated by the interest of the public" (Code of Ethics of Estonian Journalists).

And so on infinitum...

Before summing up this overview, let us also present a European Court of Human Rights case, "Jersild vs. Denmark". The Danish court found Olaf Jersild, a television journalist, to be guilty of disseminating racist remarks and liable for a penalty for broadcasting an interview with the leader of the country's Young Nazi Party. In September 1994 the ECHR, having considered the appeal of Jersild, found that the purpose of the journalist was not the dissemination of racist ideas, moreover, he did not mean to threaten, insult or disparage people, and his appeal against conviction was upheld. The ruling stated: "*The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.*"

Conclusion

The ruling on the case of Jersild is the best demonstration of how closely related the two principles are - that of freedom of expression and that on non-advancement of intolerance towards a certain group. In our country, too, nationalist leaders are free to host press conferences in which they express their -- sometimes disparaging -- opinions on religious, sexual or other minorities. It is up to press to decide whether to publish these opinions or not.

Like in many countries, Armenia's legislation cannot allow many restrictions to the freedom of expression. While intolerance and discrimination can be punished under criminal law, the distinction between the right to express an opinion and the advancement of intolerance or discrimination is not clear. This is where the problem of insulting someone on the basis of religious, national, racial, social identity. We believe the laws consider this insult to be a justification for a punishment.

However, it is much more important for the media to establish their own rules of conduct and to avoid the inappropriate identification of a person's social, religious or ethnic status. The word "inappropriate" here is very important, since there are cases when the religion of a person or their identification with a certain group is important in explaining and interpreting their activities. In all cases, when news publications or broadcasts are being prepared, we must ask what the priority is - the non-advancement of intolerance or freedom of expression?

**Summary of laws
included in the text**

Citizens, regardless of national origin, race, sex, language, creed, political or other persuasion, social origin, wealth or other status, are entitled to all the rights and freedoms, and subject to the duties determined by the Constitution and the laws.

**Constitution of Republic of Armenia,
Article 15**

Everyone is entitled to freedom of thought, conscience, and religion. The freedom to exercise one's religion and beliefs may only be restricted by law on the grounds prescribed in Article 45 of the Constitution.

**Constitution of Republic of Armenia,
Article 23**

Everyone is entitled to assert his or her opinion. No one shall be forced to retract or change his or her opinion. 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.

**Constitution of Republic of Armenia,
Article 24**

Citizens belonging to national minorities are entitled to the preservation of their traditions and the development of their language and culture.

**Constitution of Republic of Armenia,
Article 37**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Universal Declaration of Human Rights,
Article 1**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Universal Declaration of Human Rights,
Article 2**

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.

**Universal Declaration of Human Rights,
Article 19**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

**European Convention on Human Rights and
Fundamental Freedoms, Article 9**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

**European Convention on Human Rights and
Fundamental Freedoms, Article 10**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**European Convention on Human Rights and
Fundamental Freedoms, Article 14**

The term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

**CE Committee of Ministers Recommendation
No. R (97) 20 on “Hate Speech”**

The governments of the member States, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.

The governments of the member States should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member States should examine ways and means to:

- stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;*
- review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;*
- develop a coordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation;*
- add community service orders to the range of possible penal sanctions;*
- enhance the possibilities to combat hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law*

actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;

- provide the public and media professionals with information on legal provisions which apply to hate speech.

The governments of the member States should ensure that in the legal framework referred to in Principle 2 interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of or interference with freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.

National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.

National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.

National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas.

To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech on the one hand and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.

In furtherance of principle 6, national law and practice should take account of the fact that:

- reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision;*
- the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10 as established in the case law of the Convention's organs, having regard, inter alia, to the manner, contents, context and purpose of the reporting;*
- respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.*

**CE Committee of Ministers Recommendation
No. R (97) 20 on "Hate Speech"**

Schools of journalism and media training institutes, in so far as they have not yet done so, might usefully introduce specialist courses in their core curricula with a view to developing a sense of professionalism which is attentive to:

- the involvement of the media in multi-ethnic and multicultural societies;*
- the contribution which the media can make to a better understanding between different ethnic, cultural and religious communities.*

**CE Committee of Ministers Recommendation
No. R (97) 21 on the Media and the Promotion
of a Culture of Tolerance**

The problem of intolerance calls for reflection by both the public and within the media enterprises. Experience in professional media circles has shown that these enterprises might usefully reflect on the following:

- reporting factually and accurately on acts of racism and intolerance;
- reporting in a sensitive manner on situations of tension between communities;
- avoiding derogatory stereotypical depiction of members of cultural, ethnic or religious communities in publications and programme services;
- treating individual behaviour without linking it to a person's membership of such communities where this is irrelevant;
- depicting cultural, ethnic and religious communities in a balanced and objective manner and in a way which also reflects these communities' own perspectives and outlook;
- alerting public opinion against the evils of intolerance;
- deepening public understanding and appreciation of difference;
- challenging the assumptions underlying intolerant remarks made by speakers in the course of interviews, reports, discussion programmes, etc;
- considering the influence of the source of information on reporting;
- the diversity of the workforce in the media enterprises and the extent to which it corresponds to the multi-ethnic, multicultural character of its readers, listeners or viewers.

Such initiatives and actions could go hand in hand with professional codes of conduct drawn up within the different media sectors, which address the problems of discrimination and intolerance by encouraging media professionals to make a positive contribution towards the development of tolerance and mutual understanding between the different religious, ethnic and cultural groups in society.

**CE Committee of Ministers Recommendation
No. R (97) 21 on the Media and the Promotion
of a Culture of Tolerance**

1. It is prohibited to disseminate secret information as stipulated by law, or information advocating criminally punishable acts, as well as information violating the right to privacy of ones' personal or family life.

2. *It is prohibited to disseminate information obtained by video and audio recording conducted without notifying the person of the fact or recording, when the person expected to be out of sight or earshot of the implementer of video and audio recording and has taken sufficient measures to ensure it, with the exception of situations when such measures were obviously not sufficient.*

3. *The dissemination of information related to one's personal or family life as well as those mentioned in the second part of this Article is allowed if it is necessary for the protection of public interest.*

**RA Law "On Mass Communication",
Article 7**

Article 226. Inciting national, racial or religious hatred.

1. *Actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of 200 to 500 minimal salaries, or with correctional labour for up to 2 years, or with imprisonment for the term of 2-4 years.*

2. *The actions envisaged in part 1 of this Article committed:*

- 1) *publicly or by mass media,*
- 2) *with violence or threat of violence;*
- 3) *by abuse of official position;*
- 4) *by an organized group, are punished with imprisonment for the term of 3 to 6 years.*

RA Criminal Code, Article 226

Adopting the common values of the humanity, the JUA member advocated humanism, peace, democracy, social progress and protects the human rights.

When preparing stories and presenting viewpoints the JUA member avoids aggression and violence, social, religious, racial and national discrimination, promotion of cruelty and pornography.

The JUA member treats the cultural values and identity of all nations with respect, assists the elimination of any interethnic hostility.

**Code of Ethics of the Journalists
Union of Armenia**

A Yerevan Press Club member must:

...

- *Refrain from actions that can be viewed as a restriction of the freedom of speech or an attempt of censorship.*

For a Yerevan Press Club member the following are unacceptable:

- *Libel, defamation, insult.*

Code of Yerevan Press Club Member

- *To respect and protect the right to differing opinions, views.*
- *Not to promote war, national, religious hatred and intolerance*

Code of Yerevan Press Club Member

3.1 The facts shall not serve the purpose of compromising, insulting, or humiliating a person or an organization. The nationality, race, religion, physical and intellectual conditions of a person shall not be labelled.

3.2 For showing victims of violation, people with incurable or severe diseases, criminals, as well as for publishing their relatives' names, it is necessary to obtain their consent. Persons that suffer from a severe grief or a psychological shock, as well as people under legal age, should be free from inappropriate pursuits of journalists.

4.1 We serve all the groups of the society regardless of their political, economic and ideological aspirations. Ties of kinship, family ties, friendship and other relations cannot change the principles of equality that we have adopted.

Internews Journalists' Code of Ethics

11. We do not have discrimination on the basis of sex, religion, ethnicity, physical ability, race, health or other in our work. We do not promote and we do not encourage intolerance, prejudices, stereotypes.

Code of Ethics of Gumri Journalists

"A journalist shall mention a person's age, sex, race, colour, creed, illegitimacy, disability, marital sta-

tus, or sexual orientation only if this information is strictly relevant. A journalist shall neither originate nor process material which encourages discrimination, ridicule, prejudice or hatred on any of the above-mentioned grounds”.

**Code of Conduct of the National Union
of Journalists of the United Kingdom**

“Do not emphasize race, sex, nationality, occupation, political affiliation or religious persuasion in the case of the persons concerned if such particulars are not important in the context or are disparaging”.

**Sweden, Code of Ethics for the Press,
Radio and Television**

“If this is not a significant piece of news, there is no point in emphasizing the nationality, race, religion, political stance or gender...”

Information and opinions on the health of a specific person (mental as well as physical) are not published with the exception of the cases when the person agrees to that or the publication of such information is motivated by the interest of the public”

Code of Ethics of Estonian Journalists

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Diversity – The legal framework for Armenian media

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Cover design: Leonard Vucinic

Layout: Armineh Soukiasyan

Printing: “Antares” Publishing House

Author: Mesrop Harutyunyan for the
Media Diversity Institute

Translated by: Anna Simonyan

Publishers: Artur Papyan and Lydia El-Khoury for
the Media Diversity Institute

ISBN number: 99941-32-76-8