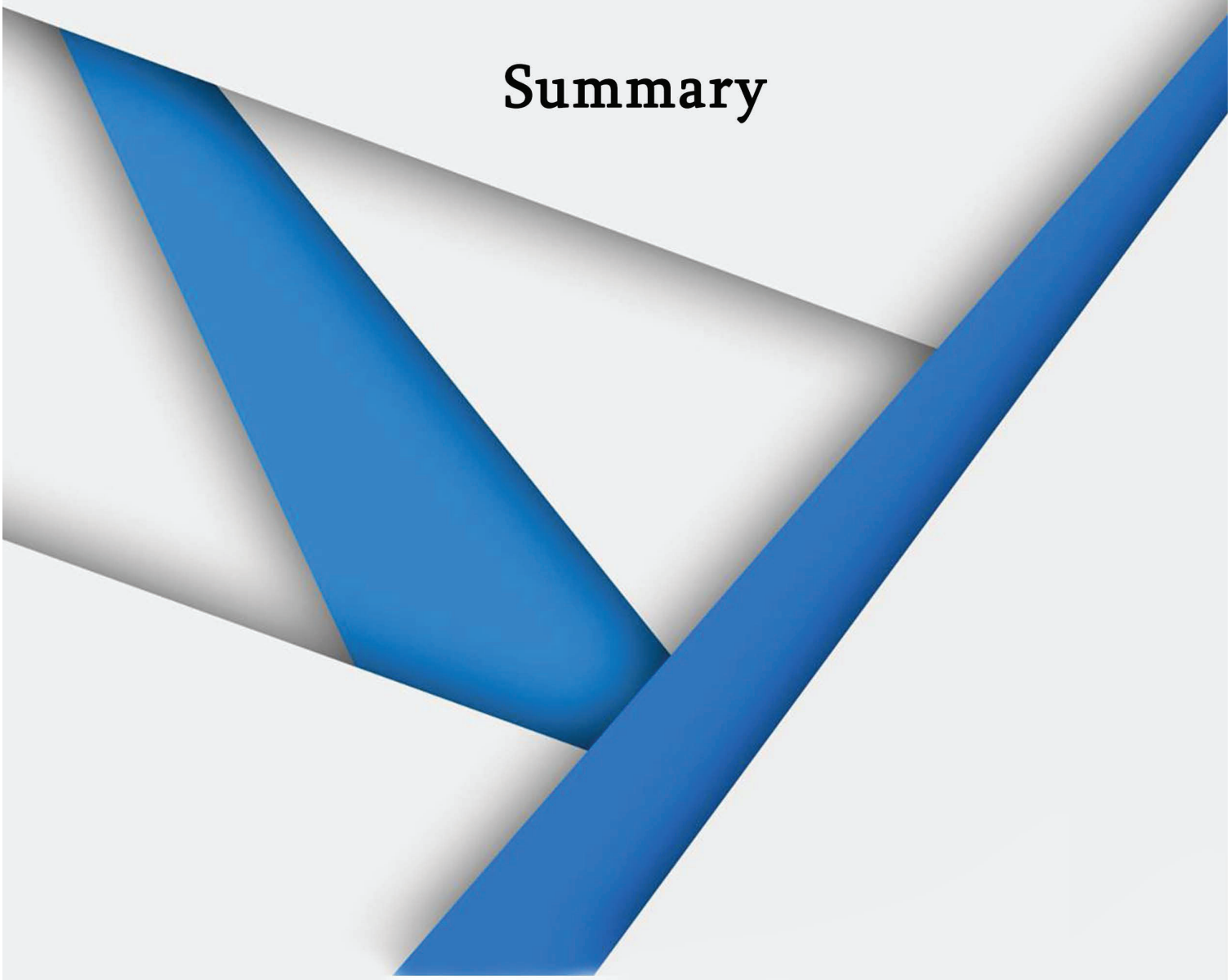
Fundamental Issues Pertaining to Freedom of Information in the Republic of Armenia

Summary



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Introduction

This Summary has been developed within the framework of a project aimed at promoting freedom of information in the Republic of Armenia. The project was implemented by the Law Development and Protection Foundation, with the support of the "Open Society Foundations Armenia".

The main objective of the project was to study and reveal the legislative and practical issues concerning the situation with the freedom of information and recommend comprehensive solutions. It should be noted that the need for and the logic of the reforms in the area of freedom of information also hinged on the demands of the 2018 revolution, which, among others, include the establishment of democracy, of its offshoots: public accountability and transparent governance, the emergence of and building further trust in bodies of public governance.

Alongside the Law of the Republic of Armenia "On the Freedom of Information", the experts of the program have examined anciliary sectors and legal acts, where access to information is of axial significance. In particular, this refers to the realms of state and official secrets, operational intelligence activity, archives, criminal litigation, personal data protection, procurement and public service.

This summary is a recap of the report, which was the deliverable of the study. It lays down the main issues revealed by the study, as well as the proposed solutions. For those with an interest in the subject, this may provide an incentive, by way of a guideline, to peruse the full report. We hope that the summary of the report shall fulfil its purpose, exposing stakeholders to the highlights of the report.

Fundamental issues pertaining to the Law of the Republic of Armenia "On the Freedom of Information" and related legal acts

The principal legal act regulating the freedom of information is the Law of the Republic of Armenia "On the Freedom of Information" (hereinafter also referred to as the Law), which stipulates the procedure, modalities, and conditions for accessing information, the grounds for refusal thereof, as well as the duties of holders of information. The Law was enacted in 2003, and has not been amended to this date, a number of legislative initiatives to that effect notwithstanding, including attempts at a complete overhaul of the Law. By the same token, neither were there any amendments to the rules prescribing administrative liability, which were adopted concurrently with the Law. The Law of the Republic of Armenia "On the Freedom of Information", along with its related legislation, fail to comply, in a number of aspects, with the international standards[1] on the right to freedom of information, regulations based on best practice, and it contains risks of unlawfully limiting the right to freedom of information. The following are the main issues identified and the proposed solutions:

1. It is necessary to expand the scope of information holders, as defined by the Law of the Republic of Armenia "On the Freedom of Information", ensuring conformity with the notion of a public authority, in line with the international standards.

It is recommended to also include in the Law's list of information holders the following: organisations in which the state or communities have a more than a 50% share; foundations established by the state or a community, or by state non-commercial organisations and community non-commercial organisations, by organisations in which the state or communities have a more than a 50% share; state and community organisations; legal entities exercising powers delegated to them by state and local self-government bodies; organisations using public resources.

2. The law does not regulate specifics of providing information to people with disabilities conditioned by vision or hearing issues, which limits access to information sought by the latter.

It is recommended to define in the Law the obligation of the information holder to release the information requested by people with disabilities in a format accessible by the latter.

3. The current language of the provision in Article 8, part 2 of the Law, on parts of information in the same document that are subject to release and other parts that are not, creates a danger of unlawfully rejecting the release of the document in question.

It is recommended to enshrine in the Law the obligation to relase the unrestricted part of the information also in cases when it is contained in the same document with restricted information, as well as include a provision that will require, in the event of

[1] Including the February 2, 2002, Recommendation Rec(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, the 18.06.2009 Convention of the Council of Europe on Access to official documents, the 12.06.2013 Global Principles on National Security and the Right to Information (Tshwane principles), the opinions of the Venice Commission of the Council of Europe, criteria emanating from the Global RTI Rating, etc.

deleting/covering information in a document, to clearly mark the place and the volume of information thus deleted, with a reference to the restriction that justifies it.

4. There is regulation contained in the Laws of the Republic of Armenia "On State Duty", "On State Registration of Property Rights" and other legal acts, that is in direct contradiction with the Law of the Republic of Armenia "On the Freedom of Information" and with international standards with respect to the prohibition to charge for the release of information.

It is recommended to amend the Laws of the Republic of Armenia "On State Duty", "On State Registration of Property Rights" and other legal acts voiding every provision that imposes an obligation to pay a fee for releasing information, which is not conditioned by the volume thereof, that is, the number of pages or the provision of special services.

5. The Law does not provide for a possibility to release information in response to a written request, in cases of vital necessity, by the tightest possible deadline. Neither does the Law explain the notion of "additional work needed", or define a procedure for notifying the applicant of the need to pay for releasing requested information and the amount thereof, by organisations of public importance that are holders of information.

In view of the above, it is recommended that the Law provide for:

1) the possibility of a shorter than generally prescribed deadline for releasing information, i.e. 2 days, for the cases when a written request validly submits that the information in question is required for the exercise of the right to life or liberty;

2) the duty of an organisation of public importance that is the holder of information to notify the seeker of information about the need for making a payment, and establish a definition of the notion "additional work needed".

6. The legislation of the Republic of Armenia lacks guarantees for the possibility to effectively access information at the venue of the holder of information.

It is recommended to define in the Law the obligation of the information holder to ensure minimal reasonable conditions for accessing the information requested, including to provide reasonable time and technical means, as well as allow the person to duplicate with his/her own technical means (including through photographing) the information sought, without any obligation to pay.

7. The legislation of the Republic of Armenia does not provide for the establishment of an independent body specialized in the freedom of information.

It is recommended to establish an independent body to oversee lawfulness in the freedom of information sector, granting it a constitutional status, [the members thereof] to be appointed by the National Assembly of the Republic of Armenia by at least 3/5th of the total number of MPs, and to endow this body with competences to:

1) examine complaints against refusal to provide information, as well as to order disclosure of information, and demand from the holder all the information, which is required to resolve the dispute in question;

2) monitor the freedom of information sector;

3) provide support to the holders of information in matters of application of the freedom of information legislation[2].

8. The legislation of the Republic of Armenia does not provide special, shorter procedural timeframes and procedures for examining cases pertaining to the protection of the right to freedom of information, as a consequence of which protracted examination of cases in this group often deprives a person of effective legal remedies.

Prescribe in the legislation of the Republic of Armenia contracted timeframes for examining cases pertaining to the protection of the right to freedom of information (within 30 days).

9. The list of information to be published proactively does not include a range of information of public significance and importance.

It is recommended to supplement the list defined in the Law of the Republic of Armenia "On the Freedom of Information" with concise information pertaining to the process of procurement, notifications about information that has been declassified, accessible and uniformely formatted information about the budget and its performance, the implemented programs and reports on their performance.

10. The liability stipulated by the Code of the Republic of Armenia "On Administrative Offences" and the Criminal Code of the Republic of Armenia is extremely disproportionate and does not cover all instances when the holders of information fail in their duty to ensure access to information.

It is recommended to:

1. amend Article 189[7] of the Code of the Republic of Armenia "On Administrative Offences" to the following effect:

a) include liability for providing incomplete information, providing false information (in the event when the action of the official [in question] does not entail the *corpus delicti* of official forgery), failure to release information within prescribed timeframe, as well as for not publishing information which is subject to proactive publication by the force of law;

b) to prescribe more proportionate sanctions, that is: raise the minimum threshold of the fine under part 1 of the article to AMD 30,000, capping it at AMD 150,000, raise the minimum threshold of the sanction under part 2 of the article to AMD 150,000, capping at AMD 300,000.

2. Amend Articles 97[5] and 97[6] of the Code of the Republic of Armenia On Administrative Offences, prescribing more proportionate sanctions, that is: raise the minimum threshold of the fine up to AMD 150,000, capping it at AMD 300,000.
3. Amend Article 282 of the Criminal Code of the Republic of Armenia:

a) formulate the language in the disposition of part 1 of the Article as follows: "Concealing information about events, facts, phenomena creating danger for

[2] In the event of establishing a combined body for the protection of both privacy and the freedom of information, the powers of the designated body shall also extend over the realm of protection of personal data.

environment, concealing information about environmental pollution dangerous for life and health through radioactive, chemical, bacteriological and other hazardous biological materials, or deliberately providing obviously false information about such pollution, by a person who had a duty to inform about it the population or the body empowered to neutralize such hazards or eliminate the consequences of pollution";

b) raise the minimum threshold of the sanction under part 1 of the article to AMD 1,000,000, capping it at AMD 3,000,000, also prescribe another type of the main sanction, i.e. deprivation of liberty for 1 to 3 years;
c) prescribe the term of deprivation of liberty for acts covered by part 2 of the article to be between 4 to 10 years.

4. Amend Article 278 of the Criminal Code of the Republic of Armenia, and:

a) raise the minimum threshold of the sanction against an act under part 1 of article 278 to AMD 1,000,000, capping it at AMD 3,000,000, also prescribe another type of the main sanction, i.e. deprivation of liberty for 1 to 3 years;
b) prescribe the term of deprivation of liberty for acts covered by part 2 of the article to be between 4 to 10 years.

11. The legislation of the Republic of Armenia does not prescribe effective guarantees for ensuring prohibition to refuse litigation parties the release of any information of evidential significance pertaining to a dispute heard in a court.

Prescribe by procedural codes additional guarantees ensuring the prohibition to refuse litigation parties the release, within the framework of criminal, civil or administrative procedure, of materials/evidence of evidential significance for outcome of the case.

12. The Law of the Republic of Armenia "On the Freedom of Information" and related legislation do not envisage any privilege for legal counsel with respect to accessing information that is protected by law, including information containing confidential personal data.

It is recommended to define:

1) in the law the duty of the state civil register office, of the state agency for registering legal persons, and of national security bodies to respond within 5 days to requests submitted by advocates and provide to them the documents/information requested, provided the advocate mentions in the request the first and last names (designation) of the client, providing legal service to whom necessitated the request;

2) in the Code of the Republic of Armenia "On Administrative Offences" appropriate liability for failure to observe the above rules.

13. In practice, the investigative bodies and the police decline requests to release to non-litigant parties materials from the case file (initially prepared materials) when they refuse to instigate a criminal case, neither do they release such materials with respect to abated criminal cases.

It is recommended for heads of investigative bodies and the Chief of police to issue decrees/circulars, which will instruct the responsible officials to:

1) release prepared materials, materials of abated criminal cases and information requested with respect to these to non-litigant parties, guided by the Law of the Republic of Armenia "On the Freedom of Information", with due notice to limitations prescribed therein;
2) release materials about investigation of crimes [listed] in Chapter 29 of the Criminal Code of the Republic of Armenia (crimes against state service), [as well as] materials of abated criminal cases, irrespective of whether they contain any information protected by law, with the exception of information constituting state secrets, unless it directly contains particulars about a criminal act.

14. The legislation of the Republic of Armenia fails to define the notion of "trade secret" with sufficient clarity, something that creates fertile ground for arbitrary interpretation and for unlawful limitations on the right to freedom of information.
It is recommended to clarify by law the notion of a "trade secret" and the scope of information that it covers. At the same time, to define an exhaustive list of data which cannot be qualified as a trade secret, [as well as] the cases and conditions when a trade secret may be divulged.

15. The Law of the Republic of Armenia "On the Freedom of Information" does not require to ensure a "public interest test".
It is recommended to stipulate by the Law the public interest test, which will ensure the release/publication of limited access information in all cases when the public interest in disclosing the information shall prevail over the damage to the interest being thus protected.

The main issues of the legislation on state and official secrets and its enforcement practice, pertaining to the right to freedom of information

The examination of the laws and secondary legislation regulating the aspects of state and official secrets, as well as the enforcement practice based theron, clearly highlights the existence in these areas of serious issues pertaining to the right to freedom of information, which are mostly of systemic nature. The existing regulation by laws and secondary legislation, from the viewpoint of ensuring guarantees for exercising the right to freedom of information, mostly fail to comply with the international standards enshrined in advisory documents, opinions and reports by international organisations, groups of international experts[3], as well as by the sectoral legislation of many foreign states. The issues identified and proposed solutions entail the following:

1. The Law of the Republic of Armenia "On State and Official Secrets" (hereinafter also referreed to as the Law) lacks sensible and clear classification of grounds for limiting the

[3] Opinions by the Venice Commission, the expert document "The Tshwane principles", the RTI Rating system, Opinins by the OSCE Representative on Media Freedom, etc. (for more details, see the relevant section of the Report).

right to freedom of information, and the timeframes for classification are unreasonably long.

In this respect it is recommended to enshrine in the Law three classes of secrecy: "Special importance", "Top secret" and "Secret" and provide their clear definitions, on the basis of the criterion of the degree of harm to national security of the Republic of Armenia, which an unathorised disclosure of information may cause. [It is recommended to] stipulate respectively the maximum of 20, 10, and 5-year periods for classifying said information, which may be extended by a Decree of the Government, but not more, than by the terms defined before. Define by law the duty of officials to classify information for the minimal and realistically necessary term.

2. The Law does not provide for a legal possibility to classify information until the onset of a particular condition (event, circumstance).

It is recommended to define by the Law a possibility to classify information not only by a deadline, but also until the onset of a particular condition (event, circumstance).

3. The Law of the Republic of Armenia "On State and Official Secrets" and the Decree of the Government, which stipulates the list of classified information, include, in an unjustified manner, several types of information subject to classification (for example: "defense purchase order", "works of major economic significance", etc.), at the same time the Law defines an extremely narrow list of information not subject to be classified.

It is recommended to strike out from the current law and from the list prescribed by the respective Decree of the Government the types of information, the classification of which cannot be directly justified by the interest of ensuring national security, and expand the list of information not subject to be classified on the grounds of constituting a state secret, including in it a number of types of information widely incorporated [as not classifiable] in legislations of a number of democratic states.

4. The Law empowers particular state bodies to develop expanded intra-agency lists of information subject to be classified, something that opens up broad opportunities for arbitrary discretion, as well as contradicts the application of uniform classification standards.

It is recommended to remove the legislative regulation, by the power of which state bodies are granted competence to develop expanded intra-agency lists of information subject to be classified, prescribing instead their duty to, in classifying and determining the class of confidentiality of information, to be guided solely by correspondence of the information in question to the list of information subject to be classified prescribed by the Decree of the Government.

5. The Law does not define a requirement to justify, when classifying information, the need for such classification, [hence] in practice the classification of information is warranted exclusively by the fact of belonging in a respective list.

It is recommended to define by law the duty of officials to provide the rationale for the need to classify (including for assigning a particular class of confidentiality and for the term of its duration) every piece of information.

6. No definition is provided, when declassifying information, of the duty to publish it or post public notification [of the fact] and while, upon the expiry of a 3-month period of undergoing examination of value following declassification, data may simply be destroyed. Getting acquainted with the information within the said 3 months is also practically impossible.

It is recommended to provide by the law for:

1) the duty of a state body, when declassifying information, to inform the public through posting a public notice, and;

2) the possibility, for a period at least of one year following declassification of information, to get acquainted with it, before undertaking the examination of value and determination of the subsequent destiny of documents.

7. The Law lacks a possibility to apply the test of balancing between the preservation of a state secret and the interest of the public to be informed.

It is recommended to define the right for officials to publish classified information, with respect to which the public interest of being informed prevails over the interest of preserving the classification. At the same time it is recommended to also define the right for natural persons and organisations to submit to the state body/official who had classified the information a well-reasoned request to declassify it.

8. Independent inter-agency oversight over the processes of classification and preservation of classification is absent, since this duty is currently assigned by law to an agency with a vested interest, the NSS.

It is recommended to establish an independent body, which shall regulate the sector of the freedom of information, and endow it with the competence to also oversee the lawfulness of activities by state bodies with respect to the preservation of state secrets. To define the competence of the body [in question] to carry out checks on the lawfulness of [the instances of] classification of information, to periodically review the need for continuing the preservation thereof, to oversee the timeliness of the declassification process, to act on complaints with respect to issues referred to above.

9. No liability is prescribed for unlawful classification of information and other related offences.

It is recommended to provide, in the Code of the Republic of Armenia "On Administrative Offences", liability against unlawful or unjustified classification of information as a state secret, [or] assigning a manifestly longer than necessary term for the preservation of classification, failure to periodically review, as prescribed by the Law, the need for continuing to preserve the classified status, and failure to declassify information upon the expiry of the prescribed term.

Principal issues associated with the right to freedom of information in the legislation on criminal procedure and operational intelligence activity

Defining dedicated guarantees of access to information is also a necessity in the legislation regulating the criminal procedure and operational intelligence activity. In this respect the legislation of the Republic of Armenia in effect has a number of shortfalls, as well as regulations that contradict international best practices. The issues identified and proposed solutions entail the following:

1. The Code of Criminal Procedure does not provide a definition for the notion of "preliminary investigation data", neither does it clearly define cases when such data may (or may not) be published, at the same time a presumption of limiting information, rather than of access, applies in the context of this issue. Moreover, liability against the publication of investigation data may arise regardless of the circumstances of not being warned about it or having received it from a third-party.

It is recommended to:

stipulate in the Code of Criminal Procedure of the Republic of Armenia that the prohibition not to publish preliminary investigation data does not extend over the cases when [such] data is published within a court hearing with respect to the criminal case [in question], is used in the content of motions, appeals and other procedural documents with respect to the criminal case, as well as in the content of documents addressed to domestic or international structures and judicial bodies for the protection of human rights;

define, in Article 342 of the Criminal Code, as the subject of a crime, exclusively those paricipants/persons participating in the inquiry, who have been warned in writing.

2. A number of provisions in the Code of Criminal Procedure define an in camera regime for hearing complaints against apprehension, motions against detention as a measure of compulsion or against the extension thereof, appellate complaints against rulings made with respect to these.

It is recommended to remove provisions within Articles 283, 289.4 and 288 of the Code of Criminal Procedure of the Republic of Armenia, which prescribe an *in camera* regime of [such] court hearings, defining, as a general rule, the public nature of judicial hearings.

3. The Constitutional Law of the Republic of Armenia "The Judicial Code" and respective decisions of the Supreme Judicial Council do not define a procedure for entering and publishing in the [web] site of judicial authority information about cases of judicial oversight over pre-trial processes, their progress and resulting rulings.

It is recommended to prescribe, through a decision of the Supreme Judicial Council, a duty for the courts to enter and publish in the [web] site of judicial authority information about cases of judicial oversight over the pre-trial process. As for rulings with respect to cases of complaints against apprehension, motions against detention, the extension or replacement thereof by an alternative measure of compulsion, it is recommended to publish these, whenever the case is heard:

a) in public;

b) *in camera* on the grounds of maintaining the confidentiality of preliminary investigation data, beginning with the moment when the preliminary investigation of the case is completed (the case is assigned for examination by the court);
c) *in camera* on any other grounds defined by law, in which case the concluding part of the ruling shall be published.

4. The Code of Criminal Procedure allows, by a judgment of the court or by a decision to abate the criminal case, to destroy certain physical evidence, provided it is of no value, at the same time no duty or procedure is defined to preserve samples taken for a test (they are not deemed to constitute evidence at all).

It is recommended to provide, in the Code of Criminal Procedure of the Republic of Armenia, the following formulation for the preservation of physical evidence and comparison samples: to preserve the instruments of premediated crimes, items taken out of circulation and objects of no value, as well as comparison samples, for the same term as prescribed by the respective Decree of the Government for materials of a criminal case.

5. The Code of Criminal Procedure of the Republic of Armenia does not sufficiently clarify the grounds for limiting the public nature of judicial hearings.

It is recommended to remove:
1) provisions within part 2, Article 16 of the Code of Criminal Procedure of the Republic of Armenia, which provide for the possibility to limit the public nature of judicial hearings on grounds of protecting the interests of justice and in "other cases envisaged by the Code", supplementing, instead, the protection of litigants and their close relatives with the provision on the protection of the witness, the [forensic] expert, the specialist and the close relatives thereof, as grounds for limiting the public nature of hearings;
2) part 8, Article 16 of the Code of Criminal Procedure of the Republic of Armenia, eliminating the disproportionate limitation on the right to a public nature of a judicial hearing.

6. The Law of the Republic of Armenia "On Operational Intelligence Activity" does not provide for a procedure to notify persons about operational intelligence measures carried out against them, while the right to demand [access to] materials received through such measures is reserved only to the acquitted, and within an extremely limited timeframe.

It is recommended to provide for the right to demand materials received through operational intelligence measures regardless of the fact of acquittal of a person, providing for a reasonable timeframe and ensuring access to them for the accused prior to the beginning of court hearings. It is also recommended to prescribe by law a procedure to notify the person about operational intelligence measures having been carried out with respect of him/her.

7. The Law of the Republic of Armenia "On Operational Intelligence Activity" does not provide for any procedure to contest the lawfulness of carrying out operational intelligence measures.

It is recommended to stipulate, in the Law of the Republic of Armenia "On Operational Intelligence Activity", the right of a person, through extra-judiciary (by lodging a

complaint with the prosecutor's office) and judiciary processes, to contest the the lawfulness of decisions to conduct operational intelligence measures carried out with respect to him/her, the actions of the bodies performing the OIM, as well as of court rulings permitting to carry out [said] operational intelligence measures.

Principal issues associated with the right to freedom of information in the legislation pertaining to archiving

Current archival regulations in the legislation of the Republic of Armenia contain a number of issues of systemic nature with respect to ensuring access to information. In this area too, the legislation of the Republic of Armenia often fails to comply with the best international practices and standards[4]. The main issues identified and their proposed solutions entail the following:

1. The legislation of the Republic of Armenia does not define necessary mechanisms for oversight over compliance with the requirements of archival legislation, neither is there a provision establishing liability for the violation of archival legislation.

It is recommended to establish oversight by the Armenian National Archive SNCO over compliance with the requirements of archival legislation, endowing the latter with the mechanisms necessary to carry it out, including through expansion of its powers, furnishing it with necessary resources and instruments.

To define, in Code of the Republic of Armenia "On Administrative Offences" and the Criminal Code of the Republic of Armenia, liability against violating the requirements of archival legislation.

2. The order on charging fees for services, established by the Director of the ANA SNCO[5], contradicts the requirements of the Law of the Republic of Armenia "On the Freedom of Information" and a number of other laws, both in terms of timeframes for releasing information, and the established requirement per se of charging a fee.

It is recommended to ensure the conformity of the types of paid-for services provided by the Archive with the requirements of the Law of the Republic of Armenia "On the Freedom of Information" and establish reasonable fees against them, which [proceeds] shall be directed to recover the costs of services rendered, excluding charges for rendering services of social-juridical nature.

3. The legislation of the Republic of Armenia does not define the selection criteria of information constituting personal and family secrets of a person, neither does it define a special procedure for accessing materials pertaining to persons who had undergone repressions.

It is recommended to:

[4] The universal declaration on archives, "The principles of access to archives", Recommendation No. R(2000)13 of the Committee of Ministers of the Council of Europe to member states on a European policy on access to archives, etc. (for more detail, see the relevant section of the Report).

[5] Decree #17-L, of March 21, 2016.

1) clarify in the Law of the Republic of Armenia "On Archiving", (hereinafter also referred to as the Law), the notions of *personal and family secrets*, excluding the use of the term personal data, as well as to define a possibility to receive permission to access archival materials with any type of limitations before the expiry date of respective [limitation] terms;
2) shorten the law-prescribed limitation term on the accessibility of materials containing personal and family secrets, setting it at [the date of] a person's death and, provided such date is impossible to determine, to remove the limitation upon the expiry of 75 years from the date of a person's birth, at the same time excluding any limitation on accessing archival materials pertaining to persons who had undergone repressions.

4. The legislation of the Republic of Armenia does not define a prohibition on classifying or destroying archival materials that had originally been open [access].
It is recommended to define in the Law a provision prohibiting the classification of open (declassified) materials, as well as establish liability by law for violating the above prohibition.

5. The inclusion of competent specialists in the composition of commissions that determine the question of including documents in archival collections, that perform expert valuation, is not ensured, and the operation of [such] commissions is beyond public oversight. These commissions are reserved the right to determine the lists of documents subject to preservation in the archives of organisations, and subsequently to decide whether to hand them over to the National Archive or to destroy.
It is recommended to:
1) define by legislation a requirement to publish the lists of documents, which are, as a result of the annual expert assessment, approved by the head of the relevant body as singled out and subject to be handed [either] to permanent safekeeping, long-term safekeeping, or destruction, prescribing a mandatory function of the methodological and expert commission of the Armenian National Archive SNCO to execute oversight over compilation of such lists. At the same time, [it is recommended] to define by legislation a possibility for public oversight over the operation of expert commissions (for example, by observing the sessions thereof), as well as [establish] the requirement to include respective specialists (for example, representatives of educational institutions) in the composition of such commissions;
2) review the sample list of documents, approved by the Decree of the Government 397-N of April 4, 2019, that contain notice of a prescribed term of safekeeping, through introducing in the list certain types of documents presenting apparent archival value (for example, pertaining to crimes of corruption, crimes against humanity, against the constitutional order, [documents] of historical and social significance).

6. No legal act defines the procedure and conditions for archivivng the declarations of persons bound to submit declarations.
It is recommended to define a procedure for the preservation/archiving of declarations by persons who are bound to submit declarations, providing for longer periods of safekeeping

for declarations by higher-ranking officials, and in certain cases prescribing a period of archival safekeeping without limitation of the term.

Principal issues associated with the right to freedom of information related to the process of organising procurement

An examination of the legislation pertaining to the process of procurement indicates the presence, in certain legal acts, of disproportionate limitations of the right to freedom of information, as well as of inconclusive legal regulation, which impede with ensuring the necessary level of accountability and transparency in the sector of procurement, as well as of access to information. The main issues identified and their proposed solutions entail the following:

1. Protocol expenditures of the President of the Republic, the Prime Minister, the President of the National Asssembly, the goods, works and services necessary for their catering, lodging and transportation, are included in the procurement plan that constitutes a state secret, without any reservation, in conditions of absence of a possibility to differentiate expenditures and services.

It is recommended to ensure conformity of part 2, Article 15, of the Law of the Republic of Armenia "On Procurement" and other regulations emanating therefrom, with the requirements of the Law of the Republic of Armenia "On State and Official Secrets", excluding, within the process of procurement, classification of any information pertaining to expenditures, goods, works and services that do not proceed from the interests of safeguarding the national security of the Republic of Armenia.

2. The goods, works and services procured, under Appendix 2 of the Decree of the Government of the Republic of Armenia #526-N of May 4, 2017, through a procedure of a periodic closed tenders, often do not directly relate in their content to the scope of information that may contain state secrets.

It is recommended to review the Decree of the Government mentioned above, ensuring its conformity with the requirements of Law of the Republic of Armenia "On State and Official Secrets", as well as with the international commitments assumed by the Republic of Armenia in the areas of the freedom of speech, including ensuring the right to freedom of information.

3. The legislation of the Republic of Armenia lacks an effective toolkit for disclosure, in the process of procurement, of beneficial owners.

In this respect it is recommended, through enacting laws and secondary legislation, to establish a unified registry for the disclosure of beneficial owners, endowing the designated body with the necessary powers to verify the correctness of information entered in such register, as well as prescribe a requirement to publish information about beneficial owners in an open format, defining adequate measures of responsibility for failure to publish information about beneficial owners, concealing such information, providing [it] inaccurately.

4. The legislation of the Republic of Armenia does not provide for liability mechanisms to ensure compliance with the requirements of accountability and transparency in the procurement sector.

Therefore, it is recommended:

1) to prescribe, in the Code of Republic of Armenia "On Administrative Offences", liability vor violating the requirements of accountability and transparency that are required by law in the procurement sector, and;

2) to criminalize abuse of office in the procurement process by the officials of public organisations.

Principal issues associated with the right to freedom of information related to protection of personal data

The legislation pertaining to the protection of personal data, in the context of its interpretation in enforcement practice, as well as the inadequacy of safeguards for the independence of the designated body for the protection of personal data, also creates certain problems from the perspective of guaranteeing the right to freedom of information. The main issues identified and their proposed solutions entail the following:

1. In enforcement practice, the release of requested information is often groundlessly refused under the pretext of it containing personal data, something that takes place through identifying the notion of "personal data" with that of "personal life secret". Pursuant to current legal regulation, the scope of information subject to be handed over without a person's consent, is determined not by taking into account the nature, type, specifics of the preservation of the information [in question], but rather depends on the fact of being envisaged (or not) by another piece of legislation.

Therefore, it is recommended to prescribe, by the legislation of the Republic of Armenia, criteria that will create a possibility for designated bodies to establish an equilibrium between the norms that define freedom of information and the limitations of these norms, including in the process of data transfer, thus precluding, in various situations, contradictions that emerge between the legislative framework for processing (publishing) personal data and the provisions of particular laws. Considering that the public interest test that is recommended to be included in the Law of the Republic of Armenia "On the Freedom of Information", pertains to the segment of personal data which contains personal life secrets, it is necessary to define by legislation the possibility to publish, without the consent of the subject of information, non-publicly accessible personal data, which does not constitute a personal life secret, as required by public interest.

2. Pursuant to the Code of Administrative Procedure of the Republic of Armenia, audio recordings made without the consent of the person are not deemed admissible evidence, terefore may not be used in a case as a basis of a judicial act.

It is recommended to eliminate the limitations in the Code of Administrative Procedure of the Republic of Armenia on admissibility of audio and video recordings made by private individuals.

3. The legislation of the Republic of Armenia does not ensure sufficient independence gurantees for the operation of the designated body of personal data protection.

Therefore, it is recommended to remove the Personal data protection agency from the structure of the Ministry of Justice, creating an autonomous body in conformity with Article 122 of the Constitution of the Republic of Armenia[6], and:

- while preserving regulations that ensure civil society participation in nominating the head of the Agency, reserve the appointment of the head of the designated body to the National Assembly;
- extend the tenure of the head of the designated body, exluding the possibility of re-election;
- endow the designated body with necessary guarantees against external interference;
- also endow the designated body with real financial independence;
- increase the transparency level of the operation of the designated body.

Principal issues associated with the right to freedom of information in the public service sector

Analysis of the legislation regulating the public service sector indicates the existence of certain issues associated with recruitment in the public service, the implementation of public service, as well as due public oversight of publc service, all of which directly pertain to ensuring access to information. The main issues identified and their proposed solutions entail the following:

1. The scope of information subject to be published on the assets and incomes of a declarant official's family members is not extensive enough, which may create impediments for the exercise of full-fledged public oversight.

Therefore, it is recommended to:

1) null and void, in part 2, Article 43 of the Law of the Republic of Armenia "On Public Service", the following provision: "the location of real estate property may be published without divulging its [street] address and other identifiers", as well as part 3 of the same article, and;

2) amend Decree [of the Government] #306-N of 12.03.2020, and expand the scope of information contained in the declaration, which is subject to be published, in particular, including in the list the addresses and identification data of declared real estate properties, [and] information about the property belonging to underage offspring of the declarant.

[6] Considering that the realms of the freedom of information and the protection of privacy conain continually conflicting and balancing legal regulations, and the agency, in exercising its powers, shall ofteh reflect on issues pertaining to the limitations on the freedom of information, and keeping in mind the need for most efficient use of public resources, we believe that the possibility of establishing a single designated authority handling issues of the freedom of information and the protection of personal data may be discussed.

2. Administrative and criminal liability measures stipulated by the legislation of the Republic of Armenia against violating the requirements in declaring property, income and interests are not sufficient.

For this very reason it is recommended to:

1) ensure conformity of part 4, Article 26 of the Law of the Republic of Armenia "On Corruption Prevention Commission" with the requirements and regulations of the Criminal Code and the Code "On Administrative Offences" of the Republic of Armenia;

2) prescribe liablity for the act defined by Article 314.2 of the Criminal Code of the Republic of Armenia, irrespective of the modality of guilt;

3) view the prohibition of the right to hold particular office or engage in particular activity, envisaged by articles 314.2 and 314.3 of the Criminal Code of the Republic of Armenia, as a mandatory supplementary punishment, subject to be imposed alongside both a fine and deprivation of liberty;

4) include the offence covered by part 5, Article 169.28 of the Code "On Administrative Offences" of the Republic of Armenia in part 3, Article 169.28 of the Code, as the objective feature of the offence: modality of committing it, at the same time, make the sanction in part 3, Article 169.28 more stringent.

3. In practice there exist impediments to releasing/publishing information pertaining to public servants, officials holding public office, including information with respect to their benefits, based in such cases on the rationale of it constituting personal life secret or even simply personal data.

It is recommended to enshrine in the legislation of the Republic of Armenia the principle of public access to information concerning the benefits coferred upon persons holding public office, community and state servants, through prescribing a requirement of publication of said information or its release upon request.

4. The laws of the Republic of Armenia "On Public Service", "On Civil Service", "On Community Service", as well as the laws on other types of public service do not provide guarantees for the participation of the media and observers during the competititve procedure for filling vacancies. Neither are these guarantees envisaged with respect to competitions for supplementing the lists of candidates for prosecutorial service or service in the Investigative Committee of the Republic of Armenia, or the assessment with the purpose of promotion.

It is recommended:

1) for the Law of the Republic of Armenia "On Public Service" to guarantee the possibility for participation of media and non-governmental organisations during the competititve procedure for filling state and community service vacancies without any precondition (invitation), to get acquainted with the competition and all documents pertaining to the contestants;

2) to enshrine in the Law of the Republic of Armenia "On the Prosecutor's Office" the right of the representatives of the media and non-governmental organisations to be present (in the status of observers) during the conduct of open and closed competitions for supplementing the lists of candidates for prosecutorial service, as well as during the

assessment with the purpose of promotion, prescribing an obligation to post a public notification on the holding of a closed competition;
3) to enshrine the same guarantees in the laws of the Republic of Armenia "On the Investigative Committee of the Republic of Armenia" and "On the Special Investigative Service of the Republic of Armenia".

Principal issues associated with the right to freedom of information in conditions of the state of emergency regime

Taking into consideration the cases of proliferation of the coronavirus disease (COVID-19) in the world and in the Republic of Armenia, and the fact that the World Health Organisation has qualified it as a pandemic, the Government of the Republic of Armenia passed Decree #298-N on March 16, 2020, "On declaring a state of emergency in the Republic of Armenia", which prescribed limitations, among others, on particular publications, newscasts by media outlets. In view of this Decree, the analysis of the provisions of the Law of the Republic of Armenia "On the Legal Regime of the State of Emergency" has identified the existence of grave issues pertaining to the right to freedom of information. The main issue identified and its proposed solution entail the following:

1. The analysis of the Law of the Republic of Armenia "On the Legal Regime of the State of Emergency" allows to conclude that it creates a possibility to carry out inadequate intervention into the right to freedom of information. Moreover, the possibility of such an intervention is not envisaged in the legislation of both a number of European countries[7], as well as the legislation of post-Soviet countries[8], and the international community has clearly acknowledged that official communications cannot be the only source of information[9].

It is recommended to amend the provision of part 12, Article 7 of the Law of the Republic of Armenia "On the Legal Regime of the State of Emergency", and stipulate that a limitation of the right to freedom of information is an extreme measure, which may apply in exceptional circumstances, when it is impossible to prevent by any other measure harm endangering human life, health or the environment.

[7] Finland, Estonia, Canada.
[8] The Russian Federation, Ukraine, Kazakhstan.
[9] For more detail see: joint statements by the UNO observers of the freedom of speech and the media, Inter-American commission on human rights and the Media Freedom Representative of the Organisation for Security and Cooperation in Europe.