

**ACHIEVING A BALANCED POLICY BETWEEN THE RIGHT TO PRIVACY AND
FREEDOM OF EXPRESSION IN AZERBAIJAN**

By
Parvana Persiyani

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Supervisor: Professor *Kristina Irion*

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Abstract

This issue is topical because recently Azerbaijani Parliament passed new amendments to the law on Mass Media. The amendments are aimed at changing the media policy. New amendments aimed at restrictions on investigative journalism by forbidding any video or voice recordings without permission. This paper assesses whether these new rules strike the right balance between the two fundamental rights (right to privacy and freedom of expression) in the light of recent amendments. Methodology of the introduced paper is qualitative mainly. Collection of the descriptive data on the experiences of European countries facing and tackling this problem; current debates in Azerbaijani society around question of privacy and freedom of expression are introduced. The research finding is that the amendments do not reflect a clear and precise definition of the individuals involved in the term of „media representatives.” In addition, they are not legitimized, not coherent with the policy goals and internationally acknowledged standards to which the country is obliged by becoming a member of international organizations, and they are in contradiction with the principles of creation positive enabling environment for media development, free press, and free speech. Conclusively, it is of great importance for Azerbaijani government to reconsider these amendments. A recommendation package is introduced for this purpose.

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Introduction

Azerbaijan is one of the Post Soviet countries that regained its independence in 1991 after the collapse of the Soviet Union. The territorial war of 1988-1994 between Armenia and Azerbaijan ended with the cease-fire agreement in 1994, but weakened proper development of the social and economic areas. Unemployment, poor economic records, chaotic performance of the political forces, almost dead industry was among the most affected primarily. Rich natural resources, mainly oil industry attracting foreign investors helped to drive out the country from critical economic situation. However, corruption and monopoly remain ubiquitous and government is often accused of authoritarianism in the reports of different international organizations (Central Intelligence Agency, 2010). Local media also accuse the current government in authoritarianism and criticize it constantly. In its turn, this brings to the clash of media and government relations resulting in the strict formal and informal media policy by the Azerbaijani Government.

This issue is topical because recently Azerbaijani Parliament passed new amendments to the law on Mass Media. The amendments are aimed at the change of the media policy. Basically, new amendments aimed at restrictions on investigative journalism by forbidding any video or voice recordings without permission. (Database of Central Asian and Southern Caucasian Freedom of Expression Network on Azerbaijan, March 10, 2009)

Since January of 2001, Azerbaijan is a member of the Council of Europe, and has ratified the European Convention on Human Rights (ECHR), which obligates the state to fulfill range of requirements (Database of the Council of Europe). In line with the ECHR, the constitution of Azerbaijan recognizes the fundamental right of freedom of expression on the one hand and the right to privacy on the other hand. But adoption of the amendments caused immediate debates in the society on keeping balance between privacy and freedom of expression. It is generally believed that this the method of informal censorship used by government as a policy tool for media regulation.

This paper will assess whether these new rules strike the right balance between the two fundamental rights (right to privacy and freedom of expression) in the light of recent amendments.

This topic has been a subject for a wild amount of debates in Azerbaijan. So far debating sides-media representatives, activists paid little attention at the theoretical framework on injunction of these two fundamental rights, mostly focusing on the penalties caused by violation of new amendments. However, issues of privacy and free speech are gaining more and more attention in the scholars' and policy-makers' world. Theorists acknowledge the role of proper policy balancing enabling environment for free speech with other fundamental rights such as freedom of association, freedom of thought, right to property, or right to privacy. (Human Rights Education Associates study Guides)

Restrictions on the freedom of expression undermining its importance before other fundamental rights bring to the society no more than regressive development of democracy. The research finding is that freedom of expression deserves more careful policy approach in balance with other fundamental rights, in this particular case with the right to privacy. This is the best solution for achieving positive results in protection of both rights almost equally. Doing this the government can achieve successful results in creating an enabling environment for free speech, respecting privacy right at the same time. In its turn, fulfillment of the obligations taken before international organizations will bring more credits to the developing government and can be a positive sign in its future election campaigns.

Methodology of the introduced paper is qualitative mainly. Collection of the descriptive data on the experiences of European countries facing and tackling this problem; current debates in Azerbaijani society around question of privacy and freedom of expression will be introduced.

The research will focus on the building of the conceptual framework by referring to different theorists (N.Warburton, N.Negroponte, M.Greenwald, J.Bernt, K.Yakubowicz and

M.Sukosd, F.H.Cate, E.Brems, others) and practices of the developed democracies for finding out how similar problems were tackled out by those countries.

The paper will introduce existing theory looking at media freedoms and privacy rights, guiding principles and case law from the Council of Europe and the European Court of Human Rights, introduce, and apply the concept of enabling environment for freedom of the media in the light of the recent changes of the media law in Azerbaijan. Research aim of the paper is determination of balanced approach to the policy of privacy and freedom of expression.

Introductory part of the paper is followed by theoretical analysis of the conflict between privacy and information. Theoretical framework of the conflict of the two fundamental rights is discussed in this chapter. It also includes the presentation of the theories around the issues of public interest, guidelines for public interest test, enabling environment for free speech, chilling effect. Citizen journalism and journalistic privileges are also discussed in the light of the amendments.

The second chapter of the paper is a brief overview of the current situation in Azerbaijan and discussion of the new amendments from the perspective of local legislation and internationally acknowledged standards. Regulation of analogical situations in Europe and US is described by presenting case law samples from ECHR and US jurisprudence. Comprehensive analysis of the deviation of these amendments from international standards is also provided.

The third chapter of the paper contains recommendations package for proper regulation of the conflict situation in media, particularly conflict between the right to privacy and freedom of expression in Azerbaijan.

The research is concluded by summing up presented facts and theories, findings and recommendations once more.

Chapter 1. Theoretical Analysis of the conflict between Privacy and Information

1.1. Privacy and the media: Two fundamental rights in conflict

Right to privacy and freedom of expression are the notions concentrating upon themselves a wide range of scholar works and literature in general. These two issues have been a subject to a large amount of researches on the way of building theoretical framework for the development of good governance and proper policies.

Presented research focuses on the particular case of Azerbaijan. Before introducing the analysis of the case and practical applications, it is important to set up a theoretical framework. Considering the fact that the Azerbaijani constitution benefited from the US Constitution principles during its formulation (particularly, the fundamental rights section) and acknowledges certain standards of the Council of Europe, conceptual framework for privacy protection and balance with freedom of expression in US and Europe also will be introduced.

This chapter analyzes the issues of privacy and freedom of expression particularly. Clash of two fundamental rights- privacy right and freedom of expression is often observed during journalist investigations. But we also know that journalist investigation is made for the sake of public interest. Thus, I will seek a solution to the conflict on clash of the rights during investigative phase of journalism. Consequently, theoretical framework of privacy and media, i.e. public interest theory and enabling environment for the media will be discussed. An important element of the modern media- analysis of citizen/online journalism, its benefits in the light of journalistic privileges in regard with the new amendments are also included in this chapter.

Daniel J. Solove and Paul M. Schwartz call privacy „a global concern.” According to Solove and Schwartz, privacy laws in the North America, Europe and Asia are based on the

principles of the guidelines prepared by the Organization of Economic Cooperation and Development (OECD) in 1980. The European Union also released the European Community Directive on Data Protection „which outlines the basic principles for privacy legislation for European Union member countries” (2008, 38). On the other hand, freedom of expression and media freedom are essential elements of a democratic and developing society.

Right to the freedom of speech and access to information are distributed equally among media and private individuals. Professional journalists throughout the world have special rights and privileges. Frost brings several examples from different countries stating, „for example, in Portugal, journalists have special rights to access government sources of information and a legal right not to be coerced into acting against their consciences, whilst in both Portugal and Italy, journalists cannot work for the media without being registered and obtaining a press card. France, Britain, Luxembourg, and the Netherlands all have national identity card schemes in co-operation with the police.” (2000, 49) The most interesting part of this qualitative data is distribution of the mentioned identity card schemes for cooperation with police in several countries. This is considered as a policy for enabling free media environment and contribution to the journalist investigation. Because, in Frost’s terms „... these are voluntary and you can operate as a journalist without them, but they do make working in dramatic situations such as demonstrations, riots and disasters much easier” (2000, 49). By this way the journalist does not have to wait until someone issues an official permission for him to take photo or to make recording in a particular event of public concern. Because in order to report the news journalists have to get access to information and gather this information. This process can be „noisy, inquisitive and aggressive” (Solove and Schwartz 2008, 78). In its turn „the vast proliferation of media and the tremendous competition to get breaking information and live video or photographs” increases the possibility of media being „intrusive and harassing, especially when a person becomes the subject of a prominent story” (2008, 78). Because investigative journalism disseminates information about „publicly related abuses that certain individuals and organizations want to

remain secret.” Mission of the investigative journalism is stated as the „discovery of truth” (Waisbord 2000, 3). Frost supports the fact that „in a democratic society, there must be a defense for the media which is intent on revealing what those with criminal or anti-social motives are intent on keeping secret.” According to Frost, the public must be aware of the corrupted and bribed politician, because it is a matter of the public interest and usually journalists’ choice on their decision about „extent of their research” depends „on the needs of their audience” (2000, 127). So far, importance possibility of the investigated and delivered information allows giving privileged on the favor of freedom of media. However, there are still several another ways for the solution of the conflict. Eva Brems in her *Conflict between Fundamental Rights* offers one of them. The author provides a useful analysis for solving the problem under legislative framework of the European Court of Human Rights, stating the following:

„When emerging under Article 10, little attention is paid to the privacy-side of this type of conflict. ... The Court does not differentiate according to whose reputation is being protected (a politician, an important businessman, a big multinational or a non-public person), what exactly is being made public. Nevertheless, these assessments are made only in view of what is necessary for democracy: knowledge of a politician’s opinions on certain political topics and of the economic situation of certain businesses, the stimulation of public debate, or the search for truth” (2008, 43)

So far, the assessment of the conflict between privacy and freedom of expression is made upon the principle of determining necessity for democracy and pluralistic society. Public interest, free media environment are important factors in this regard. For this purpose, it is necessary to analyze the theories around public interest and public interest test, creation enabling environment free speech or just chilling effect of the freedom of press.

1.2. Public Interest theory, enabling environment for the media, censorship and chilling effect

When mentioning term „public interest” it is useful to have a look at its definition. Concept of „public interest” is considered a „defense for media intrusion of privacy under appropriate circumstances” (Morrison and Svennevig 2002, 1). However, neither regulators nor media representatives have a clear and precise definition of public interest. David Morisson and Michael Svennevig classify the issues under sub contents such as „crime, health, national security and so on” of public interest. Nevertheless, at the same time they point out that the issues, such as lives of celebrities not of public interest, but are great interest of many members of the public. Talking about „privacy right”, the authors classify it as the right conditionally depending on the „behavior of the organization or individuals” (Morisson and Svennevig 2002, 1). Moreover, the authors claim that there is a higher interest that the right to privacy and this interest is the public interest. (Morisson and Svennevig 2002, 2)

So far, the clashing points are not only privacy and freedom of expression. If to dig deeper another element of the clash-public interest issue pops up from the context. Public interest is the potential impact of the society on certain issue-subjected disclosure of the information, which is regarded as a concern matter of the society. However, despite its general definition public interest concentrates upon itself such an elements like „a general right to access held by public officials”. It is important to keep on mind that public interest is subjected to frames in the issues such as national security, state confidence, national safety, etc. However, sometimes there is a group of exemption, which requires the decision-maker to consider public interest considerations when deciding whether to release information even where an exemption applies. This mechanism implies „public interest test” which also means, „public interest considerations overrides the exemptions”. (Cook 2003, 11)

Several mechanisms exist for deciding the extent of the relevance of a certain issue to public interest and regulating public interest test. Most European countries offer Information

Commissioner as a policy making body that manages public interest test. Section 2(2)(b) of the Freedom of Information Act of UK ensures that restrictions on the issues of „public interest” can be removed only if:

“In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.” (Cook 2003, 11)

Thus, this is very important for decision maker to be aware of the weight of the exemptions and public interest test means to make decisions on „confirming or denying the information.” (Cook 2003, 14)

For this purpose, the UK Government developed a Code of Practice on Access to Information, which contains guidelines for the decision makers. Cook presents these guidelines in the following format as the best practices:

- “The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue that is subject to current national debate
- The issue has generated public or parliamentary debate
- Proper debate cannot take place without wide availability of all the relevant information
- The government has placed its general assessment and judgment on the public record
- The issue affects a wide range of individuals or companies
- Views and representations which influence the legislative process should be open to public scrutiny

- Public participation in political debate
- The public interest in a local interest group having sufficient information to represent effectively local interests on an issue
- Facts and analysis behind major policy decisions
- Knowing reasons for decisions
- Political issue of virtually unprecedented importance “ (2003, 16)

However, in spite of being subjected to arguments and discussions enabling environment for public discussions and free media has terrifically positive impact on solving the problem. But how far is this trend of favoring media freedom characteristic for non-established democracies where regulatory policies are used as the tools for informal censorship and chilling effect on the freedom of expression? For the societies with problematic governance regimes investigative journalism urging the government to accountability is regarded as an additional problem by authoritarian governments. But supportive environment is a preliminary condition for investigative reporting. (Greenwald and Bernt 2000, 5) A brief conceptual analysis of the creation of the enabling environment for freedom of speech might help to lead to construction of more precise tools of regulation of the conflict between privacy and freedom of expression.

Freedom of expression is universally recognized fundamental human right. Even freedom of thought is considered to be a part of the freedom of expression according to the Article 13 of the Universal Declaration on Human Rights. However, being „recognized as an absolute

right” (Cook 2003, 18) freedom of expression is often subjected to limitations by regimes. These limitations on free expression might be imposed either by a group or by individuals. Such limitations are defined within the scope of law and must be legitimized. These limitations are permitted „in the interest of national security, defense, and public morals.” (Cook 2003, 18). Besides fulfilling obligations on provision of freedom of expression, a government must ensure that all limitations imposed on it are „necessary in a democratic society.” (Cook 2003, 18) This implies that limitations cannot be imposed in arbitrary manner. In addition, it concentrates upon itself an idea that restrictions put on freedom of expression indirectly by any private or governmental group is inadmissible. (An expert group opinion 2003, 11).

Freedom of expression is an essential basis for creation of the democratic society and enabling environment. Thus, insurance of freedom of expression and restrictions must be „prescribed by law, one needed in a democratic society and meeting legitimate purpose”. (An expert group opinion 2003, 11). This legitimate purpose must serve for the development and promotion of democracy „rather than representing a narrow interests of the government” (An expert group opinion 2003, 18). Otherwise, formal insurance of best practiced based laws and regulations, but failure of real applications of the fundamental rights, including freedom of expression results with chilling effect. This effect is a decorative impression of freedom of expression, which is contradictory with the above-mentioned standards of democratic society trying to create enabling environment for freedom of speech. Nevertheless, from the perspective of the successful balancing policy, the system is aimed at keeping this balance as much as possible and even accepts the fact that freedom of expression is the paramount when it faces clashed with other fundamental rights.

In this phase the privileges given to journalists, investigative phase of journalism and the privileges of citizen journalism is to be discussed, since they are all elements of the free speech and free media environment.

1.3. Citizen journalism, Investigative journalism and Journalistic Privileges

Citizen journalism is described as a set of individuals „playing an active role in the process of collecting, reporting, analyzing and disseminating news and information." (Centre for Media and Democracy Source Watch). Shayne Bowman and Chris Willis describe it in their report *We Media: How Audiences are Shaping the Future of News and Information*, as the „intent of this participation is to provide independent, reliable, accurate, wide-ranging and relevant information that a democracy requires." (Bowman and Willis, 2003, 9) Nicholas Negroponte, in his book *Being Digital* (1996) claims that online media gives this possibility to the audience to choose and read the topic they are interested in. Even if it worries defenders and representatives of the classical journalism, this fact is obviously non-escapable with nowadays cyber development reality. The information age enhanced with the technological innovations day by day extends the opportunity of collecting and disseminating the information for any amateur journalist interested in it. Bowman and Willis claim that this speedy trend was impacted by terrorists' attacks in New York. Referring to Pew Internet Project, the authors state that the attack of September 11, 2001 „generated the most traffic to traditional news sites in the history of the Web" (2003, 8). Since the news sites were overloaded „under immense demand" people turn to the social networks, blogs and forums for getting and dissemination of information (2003, 8).

Today blogs and social networks are known as the most popular means of citizen journalism. Blogs especially, received enormous attention from the main media stream. Last events in Iran or Moldova are the brightest examples of this. Countries with the authoritarian regimes see more and more development of cyber space, in spite of the controlling efforts by government. This trend is happening without any planning and decentralized. According to the statistics (Willis and Bowman 2003, 15) by May of 2003, there were at least 40.4 million web sites through the world, thousands of which were added or removed by today. According to Howard Rheingold, this kind of non-decentralized organization is „an irrepressible human

drive and the Internet is a toolkit for self-organizing” (Rheingold, 2002). The audience always wants to receive the most recent news, but there is a range of individuals with internal drive of willingness to be the first in posting the news. Technological innovations such as mobile phones, Blackberries, I phones and internet increase possibility of realizing it. It also increases public participation and opens broader platform for discussions and debates in the society. Thus, citizen journalism is called social media. So far, everyone on the society is a potential journalist. Information brokers with the camera on their mobile phone and easy internet access may appear anywhere and anytime, record the events and post it immediately. This could be an amateur of video recording or a citizen journalist investigating a certain case of public interest. Generally, be it citizen journalism or traditional stream a case of public interest followed and covered by journalist requires a detailed investigative work. Thus investigative journalism phase has a range of specific peculiarities.

Investigative journalism is committed in producing and presenting the truth. Investigative journalism connect „fact and values” for reporting „profoundly moral facts” or better to say „immoral facts of suffering and injustice in the world.” (Settema and Glasse 1998, 185) For sure it introduces the public negative aspects around a certain issue, but it is not committed to stand as the „final arbiter of moral standards”. However it does gather, „select, interpret” information and „apply the standards for accessing the performance of officials and institutions.” (Settema and Glasse 1998, 185) This simply means that access to the data is an essentially important element of investigative journalism. A journalist needs to get the facts and for this purpose to be in the centre of the events without any direct or indirect restrictions for access to information.

By shaping the information collected and introducing it to the audience investigative journalism participates in „crafting of moral values” in its turn. (Settema and Glasse 1998, 185) Investigative journalism analyses the facts and makes a judgments based on these facts. According to Bruce Page (in Spark 1999, 3) investigative journalism must „check the facts, never take anything on trust, never take anything on trust from people who have an interest in

pushing a particular view”. He also argues that journalism and reporting are about investigation as a whole. He also claims that a journalism, especially investigative part of it is not „about asking people what happened, but finding it out yourself” (Spark 1999, 3) But at certain point the investigative journalism must be aware of the details of fact it reveals. Because very often it is corruption, election fraud, money laundry, physical violation or torture facts. So far, it is against the interests of „guilty powers” and usually each minor opportunity is being used by authoritarian regimes to suppress the investigative phase. At this point, a scenario of the clash of privacy and freedom of expression takes a new round. Scaling privacy right and freedom of expression from the perspective of professional journalism, freedom of speech is privileged, argumenting it with public interest. But is it possible to imply the same theory to non professional journalism while scaling it with right to privacy? Hugo de Burgh in his „*Investigative Journalism*” (2008) argues that even asking the question whether blogging is journalism or not is wrong from the content, because being a platform or space for expressing the views blogs are like newspapers, web sites disseminating information despite their quality and „extraordinary range and number”. (2008, 97)

Article 19 of the Universal Declaration of Human Rights states that the right to freedom of expression includes „ freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (UN database). Receiving the information is a passive, but collecting and disseminating it is an active phase of the process. Being active in collecting and impart information and ideas citizen journalists, bloggers for example, become information brokers and analyzers of the public interest issues. Richard Posner (in Warburton 2009, 82) states out the quality control as one of the dangers created by Internet, claiming that everyone can publish any post on Internet. But it is worth mentioning that blogging activism takes new stream through the world recently. Quality control has become a priority not only for web site controllers, but also for bloggers. Only by doing so can they keep and extend their audience. So far the amount quality and most importantly the impact of the work done by citizen journalists match

absolutely that done by main stream journalism. Thus, the scaling takes broader effect of facing privacy with freedom of speech in general. Barendt's terminology that „media freedom is intimately connected with freedom of speech” is an auxiliary tool for explaining the need of implying privileges of mainstream journalism to the citizen journalism as well (Barendt 2000, 15). Consequently, citizen journalism should benefit the same privileged position while talking about freedom of media and freedom of speech in general.

Talking about the certain case of Azerbaijan, in regard with the new law amendment on collecting information for media representatives, its connection to the citizen journalism is still not precise, because from the perspective of administrative legislation the amendment concentrates upon itself range of unclear definitions. One of them –implementation of it over citizen journalism still remains undefined, though new media representation is not mentioned in the amendment at all, but there is a potential threat that individuals representing social media can be subject to the court for violating this law in the future.

The introduced chapter tried to explain theories of citizen journalism, investigative journalism phase, and journalistic privileges for both. This theoretical background is needed for further analysis of the amendments for determining the benefits and negative impacts of them on journalistic activity in Azerbaijan. Thus, an overview of Azerbaijani media policy for today is essential.

Chapter 2. Azerbaijani Media Policy and Freedoms: Irreconcilable subject

2.1. A quick overview of the current situation of media in Azerbaijan

At present 1830 mass media agencies have been registered in Azerbaijan and 1750 of these are newspapers, 80 are TV and radio agencies. 15% (fifteen per cent) of newspapers and magazines were founded by governmental structures. More than 65% (sixty-five per cent) of newspapers belong to different political and public organizations, private structures, and legal persons. (“Azerbaijan” newspaper, data archive on Mass Media)

It is a undeniable fact that media plays an important role of on the way for constructive development of the social-political trends during different time layouts. Azerbaijani media has been no exception in this sense since its creation. As the main information broker institution, media is subjected to the set of regulations and policies. In fact, these regulations and policies are presented by governmental authorities as the essential tools for further positive development of the media. Despite of countless argues around the question of the real effect of these policies on the proper development of media there are several points to be stressed out as positive signs of these policies. One of these positive policy directives is the creation of Press Council in Azerbaijan.

On March 15, 2003 „190 leading news agencies, newspapers, magazines, and journalistic organizations of the country” organized the first Congress of Journalists in Azerbaijan. The Press Council of Azerbaijan was founded. (Reynolds Journalism Institute) It is worth mentioning that creation of the Press Council was a part of the commitments taken by the Azerbaijani government before international organizations. Settlement of the conflict between privacy and freedom of information is basically the key detail in the activity of the organization. So far, major function of Press Council is removal of the disputes, „between mass media and individuals as well mass media and private companies, till lawsuits” (OSI Mass Media Program). Monitoring of newspapers, „implementation of provisions of code of

journalist ethics” (OSI Mass Media Program) are also among the functions fulfilled by the Council.

A distinguished part of the media is independent media organizations existing throughout the world. These organizations unite range of professional individuals and small organizations for covering the general needs and protection of the rights without depending on any governmental structure. Being a part of the civil society infrastructure independent organizations set up their rules in accordance with the regulation policy by the government.

In Azerbaijan, a vast majority of the court claims focuses on the issue of infringement of privacy rights or honor by the media representatives. (Universal Human Rights Index of United Nations). Media Centre, Institute of Reporters Freedom and Safety, Media Rights Institute, „New Generation” Journalists Union is among the most important media organizations created during recent years in Azerbaijan. Specific factors uniting all these organizations are that the key aspect of their activity is focused on the issue of protection of the rights of journalists. In its turn, this need is created by the fact that there is a frequently observed conflict between media representatives and governmental authorities. These conflicts result in the court claims on breaching of their privacy by media. Thus, independent media organizations use their resources for monitoring and solving the disputes.

With its option to increase an opportunity for ordinary people to collect and disseminate information, facilitating this time and energy consuming process online journalism has become very popular through the world. The limited opportunities of Azerbaijani media allowed journalists and even ordinary people to grasp this opportunity very quickly. Blogging became one of the most popular types of online journalism. Social networks such as Twitter, Facebook, the GoogleBuzz has the highest rates in the context of information dissemination. But to some extent popularization of the new media means is the result of the fact that application of free speech and access to information are still the most problematic issues of Azerbaijani media. Although the Constitution of Azerbaijan ensures freedom of expression,

formal guarantees of independence does not always translate into de fact independence. Jakubowicz and Sukosd explain application of free speech in the Post-Soviet countries, including Azerbaijan with the fact that after fall of the communism the process of change in Eastern Europe, especially in the places close to the West were subjected to the western influence. So „following the fall of communism, nearly all East European countries embarked on the building of a new, free media”. The authors also refer to the annual survey conducted by Freedom House, where „less than half of the former communist countries” are presented as free countries. The rest of the countries are „stranded between partly free and not free.” The authors call „revolution” the fact of several countries such as Hungary, Poland, Czech Republic „evolving from not free to free” (Jakubowicz and Sukosd 2008, 90) According to Jakubowicz „a large sector of non-viable media living on covert sponsorship indicates a captured, not an autonomous media”. Economically dependant and censored media cannot be democratic and operate in a democratic society. (2008, 91)

2.2. Privacy protection as a policy tool to restrain media freedoms

The standards and laws provided by the Constitution of Azerbaijan are in line with the international standards in general. However, their implementation process shows opposite of this very frequently.

The Constitution provides and supports free speech officially prohibiting censorship, but in practice, mass media liberty is restricted by all means. The OSI Mass Media Program states that journalism has been attacked and weakened by different means since the presidential election of 2003. The report also claims „...the trend has been increased throughout the following years.” (OSI Mass Media Program).

The Freedom House country report for the year of 2009 assess situation in the field of press and media freedom in Azerbaijan as following;

„Despite constitutional and legal protection for freedom of speech and of the press, media freedom in Azerbaijan continued to deteriorate in 2008. Continuing the pattern of the last few years, the government exhibited no tolerance for criticism and used libel suits, unfair trials, physical attacks, and financial pressure to clamp down on opposition media. The government wields significant control over the National Television and Radio Council (NTRC), the country’s broadcasting regulator and license issuer, as all nine members of the council are appointed by the president.” (Freedom House country report on Azerbaijan, 2009)

Moreover, after brutal murder (by unknown killers) of the journalist and editor-in chief of the analytical journal „Monitor”, Elmar Huseynov in 2005, journalists acknowledge the fact that they established self-censorship for themselves to a certain degree.

All this negative trend of unofficial censorship and pressure attempts of Azerbaijani government on free speech is condemned by international organizations. Thus being condemned for negative trend of pressure on media, the methods of restrictions are brought to the new level recently. Local legislation is being used as a tool with this purpose. Recently the Azerbaijani Parliament passed amendments to the law on Mass Media. The amendment states that, „Except in operation and investigation cases, following someone and subjecting them to video, photo, or voice recording by media representatives without them knowing it or with

them objecting to it will be punishable as defined by law.” (IFEX, database on Europe and Central Asia, February 17, 2010) The amendment is debated as an action of the government using privacy protection as a policy tool for informal censorship. One of the most debated moments in this amendment is the term „except in operation and investigative cases.” This term is not explained properly, remains as lacking, and gives an impression of an incomplete part of the amendment. Furthermore, the amendment does not precisely touch on the issue of citizen journalism and it is still not clear whether this amendment applies to citizen journalists or not. Reasons of the introducing of this amendment by the government are not presented along with it, which reduces its legitimacy.

The amendments deviate from local legislation and international standards. For this purpose, a brief explanation of deviation in local scale and from international standards is introduced.

2.2.1. Local Scale: Privacy Right vs. Right for the Freedom of Expression

This section contains description of the local legislation on privacy right and on the right for freedom of expression. This is required for obtaining a clearer picture for the future analysis of the clashes.

Besides international obligations, the local legislation of the Republic of Azerbaijan also provides precise articles on privacy right and freedom of expression separately. Article 47 of the Constitution of the Republic of Azerbaijan is presented under the heading „Freedom of Thought and Speech”. According to this article, “Everyone may enjoy freedom of thought and speech. Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions”. The third part of the article defines the limits of this right; “Propaganda provoking racial, national, religious, and social discord and animosity is prohibited.” (Constitution of the Republic of Azerbaijan)

At the same time, article 50 of the Constitution envisages freedom of information. The first part of this article states that „Everyone is free to look for, acquire, transfer, prepare and distribute information” The second part of the article guarantees that „state censorship in mass media, including press is prohibited” (Constitution of the Republic of Azerbaijan)

Obviously, the Constitution does provide the essential basis for free speech which is an important basis of the good governance and democratic society governed by rule of law, but practically in Azerbaijan freedom of expression is mainly exercised through mass media means. Thus very often the great majority of the court claims against mass media representatives are raised by government officials who are targets of media criticism (INAM Centre for Pluralism, report on the current condition of democracy in Azerbaijan, February 2009) Privacy right is one of the key issues addressed in these claims against media representatives. To shed more light on the issue it is worth presenting the provision of the Constitution of Azerbaijan for the right to privacy. It also should be mentioned that right to privacy is entitled as the “right for personal immunity” in the Constitution of the Republic of Azerbaijan. Article 32 of the Constitution states that:

“Everyone has the right for personal immunity and everyone has the right for confidentiality concerning personal and family life. Except cases envisaged by legislation interference in personal life is prohibited. Gaining, storing, use, and spreading information about the person private life without his/her consent is not permitted. The state guarantees everyone the right for confidentiality with respect to correspondence, telephone communications, post, telegraph messages, and information sent by other communication means. This right might be restricted, as specified by legislation, to prevent crime or to find out true facts when investigating criminal case.” (Constitution of the Republic of Azerbaijan)

So far, the local legislation ensures one of the best practices of the world in the field of protection of the two fundamental rights *de jure*. However, practical application of the ensured rights and policy tools used by government for *de-facto* prevention of one of these rights- freedom of expression is reflected explicitly in the new law amendment. It is believed that exercise of the passed amendments will have short term and long-term effects. In the short term, the possible effect of the amendment will be directly on new media means and secondly on printing media. Opposition oriented media will suffer from this a lot. Since TV is believed to be under direct censorship of the government in the short term, it might not be affected by the amendment. In general, process of journalistic investigation will be damaged which will have crucially negative impact on media development in long-term period.

2.2.2. Council of Europe: Article 8 vs. Article 10

As mentioned above, as a member of the Council of Europe Azerbaijani government took an obligation to correspond its local legislation with the terms of the European Convention on Human Rights. Therefore, Article 8 (on Privacy Right) and Article 10 (on Freedom of Expression) of the ECHR are the subjects for analysis of this part.

Implicit definition of the Right to privacy ensured by Article 8 of the European Convention on Human Rights states that:

„1. Everyone has the right to respect for his private and family life, his home, and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others” (European Convention on Human Rights)

Obviously, the statement above does not contain any restrictions for the individuals’ and journalistic investigation in regard with the interference to privacy right. The second part of the Article 8 claims restrictions against public authority with the exercise of this right. On the other hand, Article 10 of the Convention states the following:

„ 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.” (European Convention on Human Rights)

The article claims the necessity of the exercise of these freedoms in a democratic society. Thus, the law claims direct application of the freedom of expression by creating the enabling environment free speech. Being a member of the CoE the Republic of Azerbaijan is automatically obligated to exercise the terms of the Convention. In fact, as stated above, formal laws and regulations are almost coherent with the requirements and the laws of the

Convention. But application and implementation policy of local legislation deviates significantly from internationally acknowledged standards.

First, the new amendment is a clear prevention for the journalist investigation. Restriction, censorship, and prevention of researches, journalist investigations and media work in general is in contradiction with international standards.

Second, if we argue around the issue of the privacy right, this amendment is not coherent with the standards of the Convention. Because the privacy right protected by the Convention is „never absolute” according to Brems’s terminology. (2009, 40) Furthermore, the underlined policy goal of the amendment allows doubting it in the context of proper policy implementation and good governance. Deviation of the media policy from internationally acknowledged standards and unbalanced policy methods are much clear in the comparative examples from two jurisprudences- cases from ECHR and US law, standards ratified by Azerbaijan while becoming a member of the Council of Europe and the similar laws on which Azerbaijani Constitution is based.

2.2.3. ECHR Case Law

There are hundreds of cases the European Court on Human Rights expressed its concerns on violation of freedom of expression vis-à-vis the right to privacy. These are the cases where public interest and freedom of expression shedding light to the concern of public prevailed right to privacy.

The case of this Flinkkilä a.o. and four other connected cases v. Finland is interesting in relevance with this respect, as;

„The European Court of Human Rights in five judgments of 6 April 2010 came to the conclusion that Finland had violated the right of freedom of expression by giving too much protection to the right of private life under Article 8 of the Convention. In all five cases the Court was of the opinion that the criminal conviction of journalists and editors-in-chief and the order to pay damages for disclosing the identity of a public person’s partner amounted to an unacceptable interference with the freedom of

expression guaranteed by Article 10 of the European Convention of Human Rights.” (Database on legal information relevant to the audiovisual sector in Europe).

Alternatively, another case where the Court found that the French side violated freedom of expression of the journalists is Case of Dupuis and Others v. France. The judgment made on June 7, 2007 found out that the conviction of the journalists accused of „using confidential information in their book called *Les Oreilles du President (The Ears of the President)*” is a breach of freedom of speech. Because according to the decision the book concerned a debate of considerable public interest, a state affairs, which was of interest of public opinion. Moreover, the court also referred to the fact that Mr. G.M., deputy director of President Mitterrand’s private office (the journalists were accused of breaching his right to privacy) is a public figure and is always in the centre of public interest. (Database on legal information relevant to the audiovisual sector in Europe)

As for the voice recording, a decision of 19 December 2006 of the European Court of Human Rights for the case of Radio Twist vs. Slovakia considers;

„The sanctioning of a radio station to be a violation of freedom of expression as guaranteed by Article 10 of company that was convicted the Convention. The applicant, Radio Twist is radio broadcasting for broadcasting the recording of a telephone conversation between the State Secretary at the Ministry of Justice and the Deputy Prime Minister in a news program. Referring to the general principles that the European Court of Human Rights has developed in its case law regarding freedom of expression in political matters, regarding the essential function of the press in a democratic society, and regarding the limits of acceptable criticism of politicians, the Court emphasized that the context and content of the recorded conversation was clearly political and that the recording and commentary contained no aspects relevant to the concerned politician’s private life” (Database on legal information relevant to the audiovisual sector in Europe).

The court experienced the cases where the applicant was not a public figure, but still freedom of expression (to impart and disseminate information) was acknowledged as outweighed. (Database on legal information relevant to the audiovisual sector in Europe)

By all these example Council of Europe emphasizes once more importance of the freedom of expression and proper balance of it with other fundamental rights (privacy right in this case) which should be carried out by good governance and proper policy implementation principles at local level.

2.2.4 US jurisdiction

In regards with the right to privacy, it must be mentioned that specifically, right to privacy is mentioned in the US Constitution. However, through years of court decisions by Supreme Court has been established as one of the fundamental human rights and protected by the ninth Amendment.¹

Fred Cate claims that the privacy issue in Europe is even more protected than in US. Because, privacy laws and regulations in the United States „most often prohibit certain disclosures, rather than collection, use or storage of information” (1997, 99). This conception gives information about the privileged policy on freedom of expression and free speech in general. Again, turning to Cate’s terminology, regulation of the privacy right and its legal protection to a certain extent „is influenced by the importance placed by society on the prevention of crime and prosecution of criminals, free expression and an investigatory press” For example, paparazzi had become a serious problem for celebrities to have anything in their private. This trend is especially strong in the United States. However, American law and the courts protect paparazzi. Even if not considered to be a part of “serious journalistic investigation” they are aligned with the press and thus constitutionally protected and privileged for “gathering information” (1997, 100).

So far, in spite of the restrictive regulations and laws to some extent freedom of expression is privileged in most cases in the US. Not only in the case of problematic questions around pornography issues, but in confrontation with privacy right „investigative press”, as mentioned by Cate, (1997, 100) and free expression are assessed as the more important and significant elements to be advantaged.

By introducing the case law from ECHR and jurisprudence of the US, to both of which Azerbaijani legislation has a certain connection, the research demonstrates the importance and

¹For more information On the Ninth Amendment, see <http://caselaw.lp.findlaw.com/data/constitution/amendment09/>

possibility of proper and balanced approach to freedom of expression and media policy subsequently.

2.3. Comparative policy analyses: conceptual frameworks for the freedom of the media

Amendments to the law on Mass Media passed by the Azerbaijani Parliament are clear substance of the restrictive media policy, especially with the focus on investigative journalism. Even with the privacy policy in local scale the new amendment emphasizing awaiting punishment for the media representatives making a video, photo, or voice recording of a person is extremely irrational and incoherent with the standards of enabling free environment for media and free speech.

The researched amendments deviate significantly from the standards of the Council of Europe to which local legislation is basically subjected. Case law example from the ECHR is brought for showing this deviation more clearly. In addition, another example from established democracy –US practice is an auxiliary tool for presenting the lacks and negative impact the current policy might have on the development of media and free speech in the future. Clash of the two fundamental rights demands extremely careful approach to the essential elements of democracy. Another important detail is that the amendments were passed without being subject to any public discussion. Moreover, any legal and policy change must be legitimate and needful. Transparent discussion of the legitimacy and importance of any policy implementation are essential basis of the good governance. As seen above, this perspective is lacking in the drafting, passing, and implementation of the discussed amendments.

Precisely, there are two sets of problems stressing deviation of these amendments from international standards. First, this is the conflict of Article 8 and Article 10. Despite the fact that Article 8 provides right to privacy to everyone, it is an undeniable fact that a public figure is treated as a public matter. Because it is strongly believed by scholarly works that a public

figure (government representative/official) enjoys right to privacy much less than an ordinary citizen.

Internationally acknowledged standards require more tolerance of public officials than ordinary citizens do. There are three main reasons for that. First, is their opportunity to participate in open public debates and defend their position afterwards, second public officials voluntarily accept being subject to public criticism and press investigations „by virtue of their positions”, third the condition of accountability by public officials and their adequate response to any journalistic material about their activity. (Buckley 2007, 115)

Public figures must be accountable before people and realizing this openness and transparency, easy access to information has to be provided. These amendments are actually closing all means of access to information and „hiding” a public figure, i.e. issue of public interest concern behind the legislation.

The second set of problems is the issue of proportionality. Even if we suppose that right to privacy has to be considered in same portions for everyone including public figures, there is no proportional legitimate reason for adoption of this kind of law amendment. Adoption of the certain law must be proportional to its aim. General interests are never regarded as proportionate by the ECHR. So far, all restrictions put without proportional and legitimized reason that contain threats for the principles of democratic society are regarded as vulnerable and inadmissible by ECHR.

The faced problem is usually solved by measuring the importance of one of the conflicting sides within societal interest. An indicative criterion for scaling is a public interest test in this research. Reviewing theoretical conceptual and practical framework of the public interest in vis-à-vis the press freedom and investigative journalism the research has found out that the best theoretical and practical experiences try to keep balanced approach to the questions of privacy versus freedom of expression. Moreover, the most beneficial component

of the given situation is privilege of the freedom of expression, until to a certain extent. (When it is not used for dissemination of the ideas on terrorism, ethnic, racial or sexual discrimination, etc.) For achieving positive results in creation of enabling policy environment for the development of media a quick review of the basic theory is essential.

While being a fundamental human right and ensured by a vast majority of the constitutions, real and effective application of the freedom of expression is dependant on the political will of the governing forces. It is of „particular value in a democratic society” (Warburton 2009, 3). Some theorists even go further and connect it to the legitimacy of the government. For example, Ronald Dworkin’s position in this regards is as follows:

„Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be” (Dworkin 2006, 5)

Basically, this position clarifies the statement made above on the legitimacy and importance of the implemented policies as part of the good governance concept.

Following Buckley’s terminology, political will for implementation of the regulations or policies is „a vital precondition.” „Strong guarantees for freedom of expression” have significant impact on the development by „providing underpinning for improvement in governance and for the adoption of legal and regulatory frameworks.” This is ensured when regulations and laws on the freedom of expression and free speech are respected and implemented. (2007, 78). Buckley, calls the constitutional set ups and guarantees a „peak of the standard setting documents.” They fulfill a role of the „reference point for governmental behavior,,. These documents create „public expectations” for which government is accountable and which give confidence to the people to criticize the governmental publicly or demand improvements for any service delivered by it. As the author states, even „if implementation is legally flawed, failure to conform to the standards is unacceptable.” (Buckley 2007, 78)

This idea matches exactly the situation described in Azerbaijan in regard with the media policy and in regard with particular amendments to the law on Mass Media. Never mind the lack of clarity around the issue of „punishment” (Will the journalists violating this law be subjected to criminal or administrative court?; what are the level of punishments; what is the definition of the terminology „it will be punishable as defined by law”, i.e. what kind of punishments does law foresee for such cases? and etc.), these amendments step the red line of the internationally acknowledged standards and are unacceptable along with being non-eligible for the proper policy implementation. Proper policy implementation contains the principles of good governance-transparency, accountability, and legitimacy. Since this terminology and fulfillment of it by the new amendments has been discussed above, this kind of policy is an obvious deviation from the standards and accepted principles.

In regard with the privacy of ordinary citizens, ensured law on privacy right by the Constitution of the Republic of Azerbaijan matches in the standards and principles of effective policy. Thus, any additional narrowing of this law by reducing opportunities of investigative journalism is actually censoring free speech. This initiative is hidden behind the policy methods used as a tool for censorship in reality. Censorship is, in fact „a removal of the individual or group’s voice” (Warburton, 2009, 6). Even communicating facts is not a precise expression of the thoughts, but analysis. Thus it requires, journalists or any other individual (writers, actors, photographers) investigating the material of public interest to get information, verify, analyze and disseminate it. So far, any attempt for prevention of material collection during investigation is a clear example of censorship, even if it is veiled with the policy tools.

However, even in the case of threatening alarm for safety of privacy right international standards and principles set up by the precedents of the best practices offer range of possibilities to implement clearer, more transparent, accountable, and legitimate policy tools for this purpose.

Chapter 3. Policy recommendations

3.1. Reforming media regulation standards

Media and journalists particularly are named as „eyes” and „ears” of the public. In a democratic society, enhanced with the arena for plurality, they are free „to investigate and report matters of public concern.” Not always, people finding themselves in the news are happy about these news; „the way the story has been presented or the way journalists have obtained information”. Annual complaints received by regulatory bodies are amounted in ten thousands. There are laws restricting certain content of the material to be published, but regulation standards and restrictions are not implied on the behavior of journalists. (The Media Wise Trust guidelines)

Regulation is multiplicity of standards and functions the set up by the government. Thus independent media is directly connected with the „ideological foundations of the nation’s state” such as enabling environment for freedom of speech and the elements this concept concentrates upon itself. (Siochru and Girard 2002, 1)

Sean O. Siochru and Bruce Girard come up with very interesting and important question in their *Global Media Governance* (2002, 3) on the reason why media products are so important and how they must be regulated. The research is interested in the second part of the question particularly. In addition, the authors answer their own question explaining it by the fact that setting down of the rules, criteria, and standards are not obligatory to be ensured by legislation or „enforced through agencies or courts.” Even without them these criteria and standards will exist, because they will be created by the groups or individuals in the result of the fact that investors need to secure their returns in the market. At the end of the day, regulation is subject to the use of power. Nevertheless, what matters is the usage scale of this power, implementation of these regulations in the society, control, and insurance of public participation in „determining its priorities”. (Siochru and Girard 2002, 4)

Introduced law amendments are to the set of social regulation in political context according to Siochru and Girard's terminology. Media are a basis of enforcing democratic standards, enhancing arena for public discussions of the publicly concerned issues and public participation in decision-making process. The research finding through previous chapters and theoretical framework introduced in those chapters was that these amendments need to be reconsidered by policy makers in the government several practical recommendations are offered for this purpose. First set of application box shall contain reformation of the media regulation standards generally. Implementation of the further described principles during consideration of certain articles for regulation can be useful:

- Regulation shall encourage transparent and impartial standards for enabling environment of the freedom of expression and achieving positive results for the development of pluralistic values;
- Media regulation standards shall offer impartial insurance of the possibilities to reflect different ideas, investigate, and analyze the issue of public concern for any kind of media coverage.
- The issues such as „public participation”, „public sphere,” and „public interest” shall not be ignored or treated as a multiplicity of terminologies. It shall clearly be defined and ensured by the regulatory tools and methods.
- Up-to-date, constitution is not a right area for discussion and implementation of the regulation of media standards through it. Besides legal protection of the fundamental rights media, regulation policy shall be set down and managed by separately created agency. However, this agency shall be independent from government or any other institutions.

All these mentioned principles and values shall be the main criteria in policy determination. Never mind that impartiality, transparency, and accountability have to be visible as well

3.2. Balancing the rights. World practice

The focus of this research is to find a balanced policy for the conflict of fundamental rights raised in the result above mentioned law amendments passed by the Azerbaijani Parliament recently. The second set of recommendations contains the usage and implementation of world practice in balancing fundamental rights. In this particular case it implies impartial and fair balancing of conflict between privacy and freedom of expression. This need of practical application is obviously reflected by describing conceptual framework of conflict resolution between privacy and freedom of expression. Furthermore, this is chain process in the context of societal development. Thus any damage to the freedom of expression must have very careful approach of resolution for not damaging this or another institute more. Suggested applications contain general elements of the certain policy implementation. Nevertheless, in their turn they can be developed and balanced with local legislation and state priorities for achieving better results in way that is more constructive. These recommendations are multiplicity of the best experiences, such as;

- Conflict resolution through setting up a professional agency benefiting from experiences of established democracies. Three models- US, EU or UK models can be discussed at this stage. In the US, it happens through civil society and constitutional protection. UK model of Privacy and Press Complaint Commissions may be used as well. Transforming this model into local level this can be resulted in creation of Media and Press Ombudsman that shall act as an independent and impartial body.
- Reformation in court assessment process. Fair assessment of the contribution shall be provided while determination of the level of interference of the freedom of expression with private life. Guidelines provided by CoE Resolution 1003 (exhibit 1) shall be considered as the main principle during this process

- Negotiation on creating a commission consisting of international and local experts, analyzers, and consultants on media regulation issues. In its turn, recommendations and analysis of the situation by international analyses would be an asset to evaluate the situation and solve the conflict according to the world practice and internationally acknowledged standards. In addition, the created commission can work and benefit from the recommendations of The Council of Europe's Committee of Ministers' form example, established for promoting public service value of internet. Recommendations contain precise definitions of the elements needed for the development of democracy, rule of law in line with media. (Database on legal information relevant to the audiovisual sector in Europe)
- Netherlands National Commission for UNESCO adopted a package of recommendations on „Freedom of expression, access to information and means of communication, and privacy.” (Database on legal information relevant to the audiovisual sector in Europe)

Exhibit1. The Council of Europe Resolution 1003 (1993)

7 The media's work is one of "mediation", providing an information service, and the rights which they own in connection with freedom of information depend on its addresses, that is the citizens

8. Information is a fundamental right, which has been highlighted by the case law of the ECHR relating to Article 10 of the Convention and recognized under Article 9, as well as in all democratic constitutions. The owner of the right is citizen, who also has the related right to demand that the information supplied by journalists is conveyed truthfully, in the case of news, and honestly, in the case of opinions, without outside interference by either the public authorities or the private sector

9. Public authorities must not consider that they own information. The representative ness of such authorities provides the legal basis for efforts to guarantee and extend pluralism in the media and to ensure that the necessary conditions are created for exercising freedom of expression and the right to information and precluding censorship...

Source: Chris Frost, Media Ethics, and Self-Regulation 2000, 226

- International protection- control of the implementation of supremacy of acknowledged standard and principles, precedents before local legislation shall be ensured practically.

Conclusion

The presented paper analyzed theoretical background of the conflict between privacy and freedom of expression. Literature review has been made through the first chapter of the research for finding out various theoretical or scholar suggestions to the resolution of this conflict. For having a clearer image, it is worth mentioning that the literature review focused mainly on solving the conflict between the right to privacy and freedom of expression and investigative journalism. Public interest test, censorship and chilling effect of the media has been used as indicators for the determination of solution way. In its turn, this moment raised a question of journalist privileges and citizen journalism.

A quick overview of the current situation of Azerbaijani media and recent amendment passed by the Parliament on Mass Media law prohibiting any video, image and voice recording by media representatives of the person, without his or her permission and promising a legal punishment for doing so, has given this possibility to come to the conclusion that these amendments are policy tools for informal censorship. Thus, concepts of the freedom of expression, enabling environment for this have been discussed as well. Local scale legislation and international standards have been presented for showing deviation of the discussed amendments from internationally acknowledged regulations and principles. The research has determined that the main purposes of these amendments is the usage of the law as a policy tool for informal censorship of the media. This intentional challenge is also proved by a brief overview of the positive developments and challenges of the current Azerbaijani media. Lacks of free speech exercise, problems existing in the field of access to information are sourced by governmental policy. Thus for Azerbaijan-a country with a strong presidential system of governance perspective of the amendments are more censored-policy oriented, than a legal protection of the privacy of individuals.

The last chapter of research offers range of policy recommendations, which can be used by government for shaping and formulating a transparent, independent, and accountable

system of media regulation. The recommendations are specific in the terms of their implementation perspectives. They can be implemented in chain or separately as well.

In general, passed amendments can be discussed from different perspectives for their justification or vice-versa. Since this research focuses on its policy sides two important subheadings of public policy are essential to be considered. First, these amendments do not respond the acknowledged requirements of the public administrative law, such as transparency, clearness, fairness, and impartiality.

The amendments do not reflect a clear and precise definition of the individuals involved in the term of „media representatives.” Citizen journalism is not mentioned in any form in these amendments. This fact remains lack in the law and serves for possibility of future disputes between authorities and representatives of new social media. Furthermore, a term of „punishment regarded in local legislation” also does not introduce a precise and fair impression from the point of view of the principles of public administrative law.

Second, from policy implementation perspective the amendments are not coherent with the policy goals to which the country had been obliged by becoming a member of international organizations, i.e. ratifying their standards, principles, and acknowledging supremacy of these standards and principles before the local legislation by this way. Moreover, they are in contradiction with the principles of creation positive enabling environment for media development, free press, and free speech. Theoretical background of the freedom of expression and conflict with privacy right, media development and its coherency with the societal development as a whole have introduced the contradictions of these amendments with theories. In addition, the case law and examples from different countries’ experiences contributed to it.

Each person has a right to privacy. Privacy can defined individually. However, chain of legal system helps to build a protective sphere for everybody equally and fairly. Thus, privacy defined within legal framework is available for everybody, at the same time no person can go beyond this definition and take more portion of privacy or any other fundamental right.

Freedom of expression is one the most essential values and fundamental rights of the human being. It affects development of individuals and acts as the basis of democratic, pluralistic society. The weight of this value in the ideological market is always more. Again this is also regulated within certain rules and borders. Thus, formal or informal pressure on the media through different institutions and policy tools are alerting threat for the future development of the country. Today, freedom of expression, investigation of the current situation in this field and implementation of proper policies are of great importance for opening an arena for active citizen participation and public discussions in the fields of public concern.

Conclusively, it is of great importance for Azerbaijani government to reconsider these amendments; come up with the set of regulatory tools for media, establish more precise, transparent and accountable institutions and organizations for media regulations; balance its policy in conflict situations of another fundamental rights with freedom of expression benefiting from resource opportunities given to it by international organizations and world practice .

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