

FREEDOM OF INFORMATION CENTER OF ARMENIA

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Project Director: Shushan Doydoyan



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The “Mulberry” System Already Operates in All Regional Administrations

Since the 1st of March the electronic Mulberry system for document-circulation operates in all the RA Regional Administrations. From now on, all the internal and external correspondences are to be done electronically. The installation of the following electronic system of document-circulation is a nuance for the Regional Administrations. This is why on the 26th-27th of February the FOICA, together with the RA Ministry of Territorial Administration organized a workshop discussion in Aghveran, with the topic of "Ensuring Publicity in the State Government System".



The meeting aimed at foreseeing the issues that could arise while using the “Mulberry” system and to prevent them. This system gives an opportunity to ensure an online watch over the course of the applications sent by citizens to the state governing bodies. It is also an opportunity to receive an immediate response from the official, who is proceeding the application and to receive the answers to the applications online, without visiting the state body. Through the “Mulberry” electronic document-circulating system citizens can easily keep track of their applications - at the time of registration citizens are given a receipt with security numbers. So, at any time citizens can watch the course of their application due to the information needed for the online tracking of the application process and the "Keep Track of Your Application" sections in the official websites of state departments.

Staffs of Regional Administrations ensure that the Mulberry system has dramatically eased their work. However, citizens have difficulties accepting the new system. Particularly, when a receipt is given to the applying citizens, they ask in astonishment what they should do with those numbers. Thus, it is necessary to teach the population in regions to the new system of document-circulation. "The investment of new technologies promotes the freedom of information. When the information was paper-based, its access was limited. Now the installation of the Mulberry system has promoted the freedom of information", stated the head of the department of "Info technologies, Databases and Communication" of the RA Ministry of Territorial Administration Mr. Suren Koshetsyan.

Mrs. Shushan Doydoyan, the FOICA president noted, that due to this electronic system the waste of technical resources of the state bodies would be decreased. In addition, which is the most important thing, nerves and time of people will be saved in the process of information seeking.

It is worth mentioning, that in 2009 by the financial support of the USAID Armenia, in the frames of the "Access to Information for Community Involvement" USAID funded project, FOICA gratuitously presented each of the 3 Regional Administrations (Armavir, Tavush and Gegharkunik) with 2 computers in order to operate the Mulberry system. It has also organized a special training for the staffs of the Regional Administrations, in order to introduce the skills of using the system.

Assuring Publicity in the State Government System

On the 4th of March, 2010 the FOICA, together with the "Public Relation and Information Center" SNCO of the RA President's Administration organized a workgroup discussion with the topic of "Assuring Publicity in the State Government System" for the heads of the departments of "Information and Public Affairs" of the RA Regional Administrations and the press secretaries of the Regional Governors.

FOICA President Mrs. Shushan Doydoyan noted that development of a unified electronic system is of great importance for providing the public with complete and on-time information by the state institutions.

The deputy director of the "Public Relation and Information Center" SNCO of the RA President's Administration Mrs. Mary Harutyunyan talked about the work of the heads of the departments of "Information and Public Affairs" of the RA Regional Administrations and the press secretaries of the Regional Governors in the context of providing information.

Also, M. Harutyunyan introduced them to the "Joint Informational Board" developed by their SNCO. This is a joint system where all the ministries, Adjunct bodies to the RA Government, the Central Bank, and other state government bodies are included. It is planned to include all the Regional Administrations in this system, as well. The board is an active system; it assures everyday communication with the departments of "Public Affairs" and press secretaries of all the state bodies. The board consists of a number of sections, a part of which is open to all the registered members, and the other part is to be available only for the administrators. There are two more sections, too - "Upcoming Events" and "Press Releases" - which are to be available for journalists as well.

The participants to the discussion received the idea of a unified platform with great excitement. However, they also brought up a couple of issues which are directly related to the effectiveness of the system. Particularly, the board has a section called "Monitoring", which suggests an everyday monitoring of different means of mass media. Whereas, the departments of "Public Affairs" of a number of Regional Administrations have no TV sets, means to subscribe for enough newspapers, and finally, they have not enough human resources. E.g., there is only one employee (the head of the department) in the department of "Public Affairs" of the Regional Administration of Vayots Dzor. As for the Regional Administration of Ararat, the head of the department of "Public Affairs" has a number of additional duties, which are not included in the job description of her post.

The deputy director of the "Public Relation and Information Center" SNCO of the RA President's Administration Mary Harutyunyan promised to discuss raised problems with the RA Vice Prime Minister, RA Minister of Territorial Administration Armen Gevorgyan, and try to find possible solutions.

The event was organized by the financial support of the USAID Armenia, in the frames of the "Access to Information for Community Involvement" USAID funded project.

FOICA Could Break the Ice

Since passing the RA law on "Freedom of Information" (2003) the FOICA has been conducting trainings for various groups. Due to the trainings organized by the FOICA during the past 7 years, over 6 thousand people have received knowledge and skills about the use and implementation of the FOI law.



Due to the trainings organized only in the period from April, 2008 to 1st of January, 2010, which are implemented in the frames of the "Access to Information for Community Involvement" USAID funded project, over 1993 officials and representatives from the civil society in the RA have acquired knowledge and skills regarding the use and implementation of the RA law on "Freedom of Information". In this period over 1200 representatives of state and local authorities (self-government institutions) have participated in the trainings organized by the FOICA. The trainings were held all around Armenia in order to teach the statutory provisions of the RA law on "Freedom of Information" and to contribute to the transparency and accountability of the local authorities.

"First it was very difficult to organize trainings for community administrators since the word 'training' suppressed them for a moment - they thought that we were to teach them something. We, in our turn, use the term "workshop" instead of "training" which is more acceptable

for community administrators. At present, over 50% of the country community administrators have participated in our trainings, as a result of which today it is much easier to receive information from them. The most important thing is that everyone, without exception, agrees with the statutory provisions of freedom of information, and they also admit that they should work openly and publicly, and be of account to the public", - notes Anahit Qocharyan the training coordinator of the organization.

Also, by means of evaluation sheets, FOICA evaluates the effectiveness of the trainings. 98% of the participants have evaluated the trainings organized by the FOICA regarding the RA FOI law as positive and useful.

"During the trainings the community administrators are asked a couple of principle questions: first, every state body must give information. Second, why is the freedom of information important? What will the mayor gain as a result of providing information? Also mechanisms and practical tools are presented which they can and have to use. These 3 principles make the officials change their attitude and develop their working manners", - explained the FOICA and National Assembly expert Marine Hakobyan. - "At first they don't take the topic serious. They are even surprised that the freedom of information is talked about, since they think that there are more important issues. And, as a rule, their presence is just a duty to be done. However, when you show them all the actual reasons that create obstacles and difficulties, and all the solutions that are possible as a result of being informed the attitude changes, and the participants become active. When officials realize that being informed is first of all a precondition for their power, then during the discussions they seek for ways that will make them less vul-



nerable, and more flexible and skillful, that will make them fair in their decisions and will increase their reputation."

The staffs of the regional administrations are also content with these trainings. "The discussions organized by the FOICA were of great use in the region of Shirak - in the process of assuring transparency and publicity by the mayors. Since January, 2010 there was a turning-point in assuring publicity in the decisions of mayors and councilors. In the past the mayors of our region paid little attention to the pub-

licity and availability of the documents adopted by themselves. However, due to the discussions organized by FOICA it is already 9 months that we have had no problem with the mayors regarding the publicity of their decisions. After the sittings of mayors or councilors all the adopted documents are fixed in that community. Also, they make it available for us so that we can have them in the official website of our regional administration. Due to the FOICA the community administrators of our region finally realized that the decisions adopted by them are not their personal properties, but they belong to the community. The FOICA could break the ice", noticed Samvel Grigoryan - head of the Department of Information and Public Affairs of the regional Government office of Shirak.

It is worth mentioning that the FOICA has planned to hold 48 trainings in all the regions of Armenia from April, 2008 to April, 2010. 1700 officials from state and local authorities, as well as civil society representatives from all the RA regions are to take part in them. It is to say, that by April, 2010 400 more people will have learnt the statutory provisions of the RA law on "Freedom of Information".

FOI COURT CASES

Practice of the Judicial Defense of the Right of Access to Information

*By Gevorg Hayrapetyan,
FOICA Lawyer*

Introduction:

the right of access to information and the necessity of the judicial defense

Every person has the right to seek and receive information. The right of access to information is defined both in the RA Constitution and the RA "Law on Freedom of Information", as well as in the international legal acts ratified by the Republic of Armenia. The right of access to information is one of the basic human rights. It ensures the realization of other human rights, thus, the violation of this right may result in the violation of the others. The right to seek and receive information ensures transparency and publicity of the state bodies and local authorities. Finally, without a thorough knowledge of human rights, it will be impossible to exercise and protect them. Thus, the right of access to information is a precondition for the realization of all the other human rights, and an appropriate judicial control over this right is needed.

The RA "Law on Freedom of Information" was adopted on the 15th of November, 2003. As one of the best laws on freedom of information, this law establishes the right of individuals and organizations to seek information and to receive appropriate responses in certain deadlines. The right of access to information is defined in the chapter "Basic human and civil rights and freedoms" of the RA Constitution together with the rights to life, to dignity, to equality before the law, to judicial protection, etc.

Judicial practice of freedom of information:

general overview of the court precedents in the field of freedom of information

In order to provide a complete and coherent picture of judicial practice in the field of freedom of information, all court cases on freedom of information, included the former ones, should be discussed. But these data will be provided separately, taking into consideration the peculiarities of the previous and current judicial practices.

It will give an opportunity to have an idea of the general judicial practice at the same time providing an opportunity to compare the former and current judicial practices, showing their similarities and differences. We distinguish 3 phases of judicial practice of the freedom of information:

1. **Court cases that were filed in 2001-2003**, before the adoption of the "Law on Freedom of Information",
2. **Court cases that were filed in 2003-2006**, after the adoption of the "Law on Freedom of Information",
3. **Court cases filed in 2007-2009.**

The separation of court cases that occurred after the adoption of the "Law on Freedom of Information" is necessary because their content has changed: the main goal of the court cases that took place during 2001-2003 was to judicially obtain information from officials. In 2007-2009 a requirement to impose administrative sanctions against the officials violating the right of access to information was added to the abovementioned requirement.

The process of the judicial defense and restoration of the right to know began in 2001, i.e. before the RA "Law on Freedom of Information" was adopted. In 2001-2003 six court cases on the freedom of information were held. In two cases the court partially satisfied the claims. However, the other four cases failed. One of the partially satisfied cases was

initiated by "Aquilles" Armenian Association to Defend Drivers' Rights, claiming that the RA Ministry of Internal Affairs be obliged to give information. This was in 2001 – two years before the RA "Law on Freedom of Information" was adopted. On the 14th of March, 2001 "Aquilles" NGO referred to the RA Ministry of Internal Affairs, asking them for some statistical data on the number of drivers who were penalized for violating traffic rules, on the amount of the penalty and about the number of the State Traffic Inspectorate employees who did not do their duties or abused their power. The Deputy Minister of Internal Affairs Mr. Ararat Mahtesyan refused to give information with a written note saying, "The Ministry of Internal Affairs does not find it expedient to make those statistical data available for you." On the 12th of September, 2001 a court claim was filed in the court of first instance of the Centre and Nork-Narash communities against the Ministry of Internal Affairs.

On the 10th of October, 2001 the court partially satisfied the claim of "Aquilles" NGO against the Ministry of Internal Affairs deciding that the case regarding the demand for information should be quashed because it is to be given by another state body. However, the court satisfied the second part of the claim by obliging the defendant to provide a reasoned and comprehensive answer to the request of "Aquilles" NGO.

After the adoption of the RA "Law on Freedom of Information", from 2003 to 2006 by the initiative of different NGOs 11 court cases took place about the freedom of information, 10 of which had positive outcomes and one was partially satisfied. So, in general the forensic practice in 2001-2006 on the freedom of information has the following picture: 17 proceedings were taken, 10 of which were satisfied, 4 failed, and 3 were partially satisfied. It is worth mentioning

that the FOICA initiated 7 cases out of 17. Those cases are:

- FOICA vs. the regional administration of Ararat region,
- FOICA vs. the city municipality of Aparan,
- FOICA vs. the city municipality of Gyumry,
- FOICA vs. the city municipality of Armavir,
- FOICA vs. the village municipality of Lukashin, in the region of Armavir,
- FOICA vs. the village municipality of Nurnus, in the region of Kotayk,
- FOICA and citizen Martiros Karapetyan vs. "Berlin Mother's and Child's Centre Polyclinic" CJSC and the Ministry of Healthcare".

All the seven abovementioned cases were satisfied. Moreover, in three cases the defendant gave the demanded information before the trial would begin, in order to avoid court proceedings.

The Court Practice of the Freedom of Information: Present Statistics of Court Precedents in this field (2007-2009)

As was mentioned, in 2003-2006 the FOICA initiated 7 court cases in the sphere of Freedom of Information. In 2007-2009 this record was tripled. In this period the FOICA took 20 court proceedings in order to restore the violated right of access to information and to penalize the officials who violate this right.

The overall statistics of the FOI court cases filed in 2007-2009 has the following picture: from the 20 proceedings only 16 were finished out of which 6 cases were fully satisfied, 5 were partially satisfied, 4 were dismissed and one was quashed without being proceeded in essence. In 2 cases of partially satisfied the court itself has decided to uphold the claim of the FOICA partially. And the rest 3 cases were

quashed since during the court hearing the defendant provided the FOICA all the requested information. In these 3 quashed cases, too, the FOICA had demanded that the officials be penalized but after the information was voluntarily provided, the FOICA renounced this claim.

Out of 16 satisfied cases that were initiated by the FOICA in 2007-2009 six were against village municipalities, three were against community administrations, two were against State Non-Commercial Organizations, two were against political parties, one was against a city municipality, and one was against a court decision (see in the section "Bodies that have Violated the Freedom of Information"). In one of the cases the RA National Assembly was the defendant, for the case was about the constitutionality of the articles 151 and 152 of the RA Administrative Procedure Code. Thus, it should be noted that out of 16 cases that were initiated by the FOICA and were finished 11 have had positive outcome, and 5 cases have failed.

Satisfied Cases

As it was already mentioned out of 11 cases that had had positive outcomes six were fully satisfied. Those cases are:

- FOICA vs. the Arabkir Community Administration,
- FOICA vs. the Davtashen Community Administration,
- FOICA vs. the village municipality of Bjni,
- FOICA vs. the village municipality of Elpin,
- FOICA vs. the decision of the RA Administrative Court's judge,
- FOICA vs. "National Technical Safety Center" SNCO.

One of the most important and core court cases initiated by the FOICA is "FOICA vs. the mayor and the village municipality of Elpin". In this case the court for the first time penalized the official for violating the freedom of information.

On the 6th of July, 2009 the RA Administrative Court, with the presidency of Judge Mr. Arthur Poghosyan, made a decision to penalize an official for violating the right to know. This was the first precedent in Armenia when an administrative sanction was imposed against an official for violating the freedom of information.

It is also worth mentioning that in one of the satisfied cases the FOICA had appealed the illogical decision of the Administrative Court Judge. On April 9, 2008, the FOICA lodged a claim at the RA Administrative Court (seated in Etchmiadzin) against the village municipality of Zartonk, demanding the court to oblige the mayor's office to provide the requested information and impose administrative sanctions against the mayor Paruyr Sargsyan. The RA Administrative Court partially satisfied the claim and refusing to uphold the part where the claimant asked to impose an administrative sanction of AMD 50,000 against the mayor, arguing that, according to the article 254 of the RA Administrative Procedure Code, the FOICA has no right of lodging such claims. In other words, according to the court, a organization NGO has no right to bring charges to the Administrative Court, asking the latter to impose administrative sanctions against someone. Thus, the FOICA appealed the Administrative Court's decision.

The RA Administrative Court satisfied the FOICA's appeal and overturned the RA Administrative Court's decision dated 10.04.2009 in the administrative case VD4/0074/05/09 on the admissibility of the part of the claim for penalizing on the mayor of Zartonk with AMD 50,000.

The court case "FOICA vs. the "National Technical Safety Center" State Non-Commercial Organization" was also interesting. On January 29, 2010 the court decision over the case "FOICA vs. "National Technical Safety Center" SNCO" was issued at the Court of the General Jurisdiction of Center and Nork-Marash administrative districts. The Court fully satisfied the FOICA's claim compelling

"National Technical Safety Center" SNCO provide the requested information within 5 days.

During this case the FOICA tried to get answers to the above mentioned questions by directing them to the Ministry of Emergency Situations. The Ministry refused to give the information saying that the request contain personal data, thus the request is subject to denial. This means that the Ministry of Emergency Situations was unaware that according to the 2nd part of the article 8 of the RA "Law on Freedom of Information", if a part of the requested information contains data that cannot be released, then the rest of the information is to be made available. Thus, the Ministry of Emergency Situations should have made the lists of the SNCO staff positions without stating the amount of salaries (e.g. by covering the parts which include information on the staff salaries). As a result of the court case "FOICA vs. Arabkir Community Administration" the FOICA not only restored its right of access to information, but also made the Community Administration accomplish one of its duties, abolishing its idleness. On the 30th of July 2008 the FOICA sent an information request to Arabkir Community Administration for the following information

1. How many apartments (how many apartments are registered in the balance of the Community?) belong to Arabkir Community Administration by the ownership right, where live people who have not yet privatized these apartments?
2. You are kindly requested to inform the addresses of these apartments.
3. How many lawsuits have been initiated by Arabkir Community Administration with the claim to evict the residents from the above-mentioned apartments belonging to the Community with the right of ownership?
4. Give us, please, information about the outcomes of those court cases (how many of them were satisfied, and how many - dismissed?).

Surprisingly, the response letter No. 25/01-4-1134 of Arabkir Community Administration as of 06.08.2008 was received by the FOICA on 23.08.2008. The indicated fact is affirmed by the copy of the envelope, which has a postal seal dated 22.08.08, after which it was received by “Freedom of Information Center of Armenia” NGO. FOICA considers the decline in providing information with such content ungrounded, believing that it violates the constitutional human rights, since it is not the responsibility of condominiums to provide such information on communal property.

Taking the aforementioned as a basis, the FOICA lodged a claim to the RA Administrative Court to recognize the acts of the self-government authority illegitimate and as a consequence to oblige the latter to provide the required information.

Interlocutory proceedings took place on the 1st of December 2008. During the legal proceedings the FOICA representative Karen Mezhlumyan presented the subject-matter and grounds for the claim, as well as referred to the appropriate legislation. Arabkir Community Council Representative Gegham Karapetyan presented their objections in regard to the FOICA’s claim. G. Karapetyan contended that they had not declined the FOICA’s inquiry for information, adding: “Perhaps, we misunderstood each other in our correspondence, as a result of which we failed responding.”

At the court session dated 30th of December, 2009 the RA Administrative Court fully satisfied the FOICA’s claim vs. Arabkir Community Administration, finding its activities illegitimate. The Court obliged the Community Administration to provide the information within 5 days and compensate AMD 4000 paid as state duty.

Out of 11 cases that had positive outcome 5 were partially satisfied. In two cases out of these five cases the court found that the FOICA’s demand to impose administrative sanctions against the official was not reasonable. However, in these two cases, too, the

FOICA’s main demands were satisfied – the claimed information was made fully available. These cases are “the FOICA vs. the mayor’s office of the city of Hrazdan” and “the FOICA vs. the Nor Nork Community Administration”.

In the rest three cases that were partially satisfied the FOICA received the information before the trial was over, hence, it renounced its claim. These cases are

- FOICA vs. the mayor’s office of the village of Zartonk,
- FOICA vs. the mayor’s office of the village of Talvorik,
- FOICA vs. the mayor’s office of the village of Lenughi.

Dismissed Cases

Five cases were dismissed. These cases are:

- FOICA vs. “Orinats Erkir” political party,
- FOICA vs. the “Armenian National Congress” Union,
- FOICA vs. the mayor’s office of the village of Parakar,
- FOICA vs. the “Yerevan Urban Development and Investment Programs Department” SNCO,
- FOICA’s claim to the RA Constitutional Court.

In the case of “FOICA vs. the “Armenian National Congress” Union” the court had to quash the case because of the legislative gap. In the other three cases the court has found that the claims of the Freedom of Information Centre of Armenia were not reasonable.

One of the negative tendencies is that courts refuse to impose administrative sanctions against those officials who violate the freedom of information, arguing that the right to hear cases about imposing administrative sanctions belongs to the RA Administrative Court. Whereas, RA Administrative Court refuses to

penalize the official arguing that, according to the RA Administrative Procedure Code, the FOICA has no right to claim that administrative sanctions be imposed against an official. Secondly, there is no competent body to make statements about these violations. Whereas, the FOICA has no competence for making such statements. And in the RA Administrative Procedure Code there is no statutory provision that would define the presence of bodies with such a competence. So, it appears that the demand exists but there is no competent body to satisfy the demand. Thus, there is a legislative gap here. As a result, the forensic defense of the right of access to information is dramatically hardened. In fact, out of 16 cases that the FOICA has taken and finished, in 11 cases although the FOICA had claimed that the official be penalized, only in one case – in the case against Elpin – this claim was satisfied.

Out of five cases that were dismissed, two were against political parties with the claim to ensure publicity. So, in April, 2009 the FOICA had asked the 8 parties that participated in the election of the councilors of Yerevan, to give the following information.

1. A copy of the financial report 2008 which should cover information defined by the part 3 of the article 28 of the RA “Law on Parties”
2. Information about those financial sources which made donations that valued more that the centuple of minimal salary defined by the law.

The answer of “Orinats Erkir” party was incomplete and over deadline. And the “Armenian National Congress” Union had not even answered the FOICA’s request. Thus the FOICA had taken proceedings against them. In the first case the Court of General Competence of Center and Nork-Marash administrative districts decided to dismiss FOICA’s claim against “Orinats Erkir” political party, arguing that if the FOICA found the information incomplete, then it could send a written request to the party. And if it did not give the correct information free of charge, only then the RA “Law on Freedom of

Information” would have been violated. And in the case of “Armenian National Congress” Union the court decided to quash the case because, according to the RA Civil Jurisdiction Code, only physical or juridical persons can be defendants. Thus, because the “Armenian National Congress” is a union of political parties, and the Union is neither a physical, nor a juridical person, the “Armenian National Congress” Union cannot be a defendant in court. This means, that in spite of the fact that according to the RA Electoral Code, the Union is a body with certain rights and obligations, the court found the “Armenian National Congress” Union not an appropriate defendant.

In the court case of “FOICA vs. the mayor and the village municipality of Parakar”, too, the FOICA appealed the accuracy of the given information. On December 12, the FOICA sent a request for information to the mayor of Parakar, which included the questions/requests from villagers:

1. There is a 250-260 m2 land plot near the road, on the left bank of the main brook that flows near the #1 building on the Mekenagortsneri street in the village of Parakar. Is this land included in the list of restrictions provided by the article 60 of the RA Land Code?
2. If yes, tell us, please, by what bases and reasons?
3. If no, then please, let us know.

The reply received from the mayor in January 2009 was incomplete. Therefore, the FOICA lodged a court case demanding a complete and full answer from the community leader. On the 30th of July the RA Administrative Court, presided by Judge A. Tsaturyan, heard the case of “FOICA vs. the mayor of Parakar and the village municipality”. In the court the mayor explained that he did not provide a complete answer to the FOICA’s inquiry, because it was practically impossible. He argued that the list of land plots that are not subject to privatization includes areas on which the Government has adopted special decisions. The mayor of

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Parakar must have the relevant Government decisions on the aforementioned plot in order to be able to provide the information requested by the FOICA.

On August 13, the RA Administrative Court decided to dismiss the FOICA's claim, considering the fact that the RA Government has not yet approved the relevant program that would include information about the land plot indicated by the FOICA.

The fourth court case that failed was "FOICA vs. "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization". On February 27, 2009, the FOICA sent an information request to the "Yerevan Urban Development and Investment Programs Department" SNCO asking for the following information:

1. How much money was allocated to the "Yerevan Urban Development and Investment Programs Department" SNCO from the 2006-2008 State Budget?
2. With which organizations did the "Yerevan Urban Development and Investment Programs Department" SNCO sign commission and description contracts in 2006, 2007 and 2008?
3. How much profit did the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization get from those commission and description contracts in 2006, 2007 and 2008?

The SNCO answered that information included in the first question was published in the "State Budget" of the respective years, while the next two questions contained commercial secrets and were not subject to release. In March, 2009, the FOICA appealed the SNCO's answer to the RA Administrative Court. On July 15, 2009, the Administrative Court decided to postpone the hearing of the court case for an indefinite period, because the defendant was being liquidating. However, the court sessions were resumed in November, 2009. During the

November 20th session at the RA Administrative Court (Judge Mr. Argishti Ghazaryan) this trial of the case was completed and the court's decision was published on December 7, 2009, at 14:50 o'clock.

The fifth court case that failed was the FOICA's claim to the RA Constitutional Court (see in the section "A Claim to the RA Constitutional Court").

Appeals

In four cases the FOICA has appealed the court decision. These cases are:

- FOICA vs. the village municipality of Parakar,
- FOICA vs. the village municipality of Zartonk,
- FOICA vs. the Nor Nork Community Administration,
- FOICA vs. the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization and the director of the SNCO.

In one case the FOICA had to appeal the court decision regarding its claim for providing information. This is the court case of "FOICA vs. the village municipality of Parakar" (see in the section "Dismissed Cases"). This decision of the RA Administrative Court was appealed in the Court of Appeal. The RA Court of Appeal has taken the case as a proceeding which will be heard in 2010.

In the frames of the court case of "FOICA vs. the village municipality of Zartonk" the FOICA had to appeal different acts or decisions of the court in different instances. So, in the court case of "the FOICA vs. the village municipality of Zartonk" the RA Administrative Court decided to refuse hearing the FOICA's claim to impose administrative sanctions against the mayor of Zartonk. The FOICA had to appeal this decision in a higher court. The Administrative Court satisfied this appeal deciding that this claim of the FOICA could be

accepted as a proceeding. Because the mayor of Zartonk gave the necessary information during the trial, the FOICA denounced all the claims, except the claim to recognize the mayor's acts as illegal. The RA Administrative Court denied this claim as well, arguing that because the RA Administrative Procedure Code does not include this kind of claims, this part of the trial is subject to being quashed. The FOICA again had to appeal the Administrative Court's decision – this time in the Court of Appeal. The Court of Appeal has not yet heard the case.

In two court cases ("FOICA vs. the "Yerevan Urban Development and Investment Programs Department" and the director of the SNCO", and "FOICA vs. the Nor Nork Community Administration and the district community leader") the FOICA after all had to take the case to the RA Constitutional Court, asking them to solve the issue regarding the possible order of penalizing an official.

A Claim to the RA Constitutional Court

As was already mentioned, in two cases the FOICA had to take the case to the RA Constitutional Court.

So, in the court case of "FOICA vs. the "Yerevan Urban Development and Investment Programs Department" SNCO" the Administrative Court decided to refuse accepting the claim to penalize the director of the SNCO Robert Harutyunyan. First, the FOICA appealed the decision to the president of the Administrative Court. But the appeal was denied. Then the FOICA appealed in the Court of Appeal. It also came up with a petition to the Court of Appeal to apply to the RA Constitutional Court regarding the constitutionality of the article 151 of the RA Administrative Jurisdiction Code, particularly regarding its compliance to the articles 18 and 19 of the RA Constitution. The RA Court of Appeal decided to deny the appeal, as well as the petition to

apply to the RA Constitutional Court.

In the court case of "FOICA vs. the Nor Nork Community Administration and the district community leader Davit Petrosyan", too, the RA Administrative Court decided to uphold the claim partially, regarding the illegality of the idleness of the Nor Nork Community Administration. But the Court dismissed the claims to oblige the Nor Nork Community Administration to give the needed information in five days and to penalize the community leader. The FOICA appealed this verdict in the RA Court of Appeal, but the latter decided to return the appeal, arguing that according to the articles 151 and 152 of the RA Administrative Procedure Code proceedings can be taken for inflicting administrative sanctuaries only based on the claims of the officials of such bodies that according to the law have the competence to write statements about administrative offenses. Whereas, the FOICA is not such a body or official.

So, exhausting the possibility of applying to all the instances for forensic defense, the Freedom of Information Center of Armenia turned to the RA Constitutional Court, since in both cases not the court's illegal decision or verdict was appealed, but the legal norms that hinder the implementation of the right of access to information – the constitutionality of the articles 151 and 152 of the RA Administrative Jurisdiction Code. By applying to the Constitutional Court the FOICA aimed at overcoming the legislative gap and overcoming the incertitude of the judges of other courts in interpreting the laws.

On the 5th of February, 2010 the RA Constitutional Court heard the FOICA's claim to declare the articles 151 and 152 of the RA Administrative Procedure Code as contradicting the RA Constitution. Right on the same day the Constitutional Court announced its decision.

The RA Constitutional Court decided that the articles 151 and 152 of the RA Administrative Procedure Code do not contradict the constitu-

tion. The Constitutional Court stated that the problem lies in the legislative gap in this sphere. It is necessary that the competent body, i.c. the RA National Assembly, implement a proper initiative in order to carry out reforms in the RA Code of RA Administrative Offence and fill the legislative gap of the penalizing institute.

Unfinished Cases

Out of 20 court cases initiated by the FOICA in 2007-2009 at the time of 1st of March, 2010 five are not yet over. These cases are:

- FOICA and “Aravot” daily vs. the regional administration of Lori,
- FOICA and “Aravot” daily vs. the regional administration of Shirak,
- FOICA vs. “#2 Medical Unit” CJSC,
- FOICA vs. the Armenian Labor Socialist Party,
- FOICA's appeals in the RA Constitutional Court

All documents related to the filed court cases in the field of FOI can be found in the FOICA's official website: <http://www.foi.am/en/rcontent/14/>

The FOICA's Requests for Information

The analysis of the court cases that were initiated by the FOICA shows the kinds of information the hiding of which puts officials into trials. So,

- FOICA vs. the “Armenian National Congress” Union, FOICA vs. “Orinats Erkir” political party, FOICA vs. the Armenian Labor Socialist Party”:
 1. A copy of the Union's (party's) 2009 financial report.
 2. Information about those financial sources which made donations that valued more than the centuple of minimal salary defined by the law.

- FOICA vs. the village municipality of Elpin, FOICA vs. the village municipality of Bjni, FOICA vs. the village municipality of Zartonk:
 1. The 2008 community budget,
 2. A copy of the 2008 community budget implementation report.
- FOICA vs. the mayor's office of the village of Lenughi, FOICA vs. the mayor's office of the village of Talvorik:
 1. A copy of the 2008 community budget,
 2. Copies of the decisions made by the community councilors about allotting land in the 2nd semester of 2008.
- FOICA vs. the Nor Nork Community Administration, FOICA vs. the Davtashen Community Administration, FOICA vs. the Arabkir Community Administration:
 1. How many apartments (how many apartments are registered in the balance of the Community?) belong to Arabkir Community Administration by the ownership right, where live people who have not yet privatized these apartments?
 2. You are kindly requested to inform the addresses of these apartments.
 3. How many lawsuits have been initiated by Arabkir Community Administration with the claim to evict the residents from those apartments?
 4. Give us, please, information about the outcomes of those court cases (how many of them were satisfied, and how many - dismissed?).
- In the court cases FOICA and “Aravot” daily vs. the regional administration of Lori, FOICA and “Aravot” daily vs. the regional administration of Shirak the governors of Lori and Shirak were taken to court because they did not give the following information:

“Since 2005 from the RA State Budget, besides the expenses for preserving the

regional administration, the RA regional administrations have been receiving money, under the line "Other Subsidies from the Budget". In 2005, 2006, 2007 each regional administration received AMD 10 million, and in 2008 and 2009 each received AMD 20 million.

Please, answer the following questions:

1. How was that money spent by the years?
 2. Please, specify how many decisions were made each year and how much money was spent by each decision?
- FOICA vs. the "National Technical Safety Center" State Non-Commercial Organization:
 1. By the 1st of August of this year how many private companies conducting expert examining were registered in the SNCO's register and by whose name are those companies registered? State the names of the accredited companies.
 2. Give us, please, the 2008 and 2009 staff lists of the SNCO and the amount of the salaries of the employees for the same time period.
 - FOICA vs. "#2 Medical Unit" CJSC:
 1. The order of providing medicine to children under the age of 7 in the kids' polyclinic of the #2 Medical Unit.
 2. A copy of the current list of free medicine.
 3. Please, also inform us whether there is another way of receiving free medicine for children under the age of 7 if the child is sick and the medicine needed is not included in the abovementioned list.
 4. Also, tell us please, what the parent should do if there is a medicine in the list which is needed for the sick child, but the doctor does not provide it.
 - FOICA vs. the village municipality of Parakar:
 1. There is a 250-260m2 land plot near the

road, on the left bank of the main brook that flows near the #1 building on the Mekenagortsneri street in the village of Parakar. Is this land included in the list of restrictions provided by the article 60 of the RA Land Code?

2. If yes, tell us, please, by what bases and reasons.
 3. If no, please let us know.
- FOICA vs. the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization:
 1. How much money was allocated to the "Yerevan Urban Development and Investment Programs Department" SNCO from the 2006-2008 State Budget?
 2. With which organizations did the "Yerevan Urban Development and Investment Programs Department" SNCO sign commission and description contracts in 2006, 2007 and 2008?
 3. How much profit did the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization get from these commission and description contracts in 2006, 2007 and 2008?
 - FOICA vs. the city municipality of Hrazdan:
 1. The reasons of the decisions adopted by the city mayor's office and councilors of Hrazdan during the second quarter of 2007.
- This statistics is based on the 18 court cases initiated by the FOICA. Two court cases are not included because they do not refer to getting information from an official. These cases are "the FOICA vs. the Administrative Court decision" and the FOICA's appeal to the RA Constitutional Court (see the sections "Cases that were Satisfied" and "A Claim to the RA Constitutional Court").

Bodies that have Violated the Freedom of Information

The FOICA's court cases of 2007-2009 showed which information possessing bodies have violated the freedom of information most often and appeared in courts.

So, according to the court cases, village municipalities have violated the freedom of information the most. In 6 court cases initiated by the FOICA village municipalities have been the defendants:

1. the village municipality of Elpin, Talvorik, Zartonk, Lenughi, Parakar and Bjni.
2. Second place belongs to political parties and Community Councils. For violating the freedom of information the FOICA has lodged court claims against three parties ("Armenian National Congress" Union, "Orinats Erkir" and Armenian Labor Socialist Party),
3. Community Councils (Nor Nork, Davtashen and Arabkir).

In 2007-2009 two regional governors (the governors of Lori and Shirak) and two State Non-Commercial Organizations ("Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization and "National Technical Safety Center" State Non-Commercial Organization) appeared in the court for violating the right of access to information. At the same time, only one city municipality (the city municipality of Hrazdan) and one organization of communal importance ("#2 Medical Unit" CJSC) have left the FOICA's inquiry without an appropriate answer, thus, they, too, were taken to court.

- **Village municipalities** 6 court cases
- **Political parties** 3 court cases
- **Community Councils** 3 court cases
- **Regional administrations** 2 court cases
- **State Non-Commercial Organizations** 2 court cases

- **City municipalities** 1 court case
- **Organizations of communal importance** 1 court case

This statistics is also based on the 18 court cases initiated by the FOICA.

The Claims of the FOICA

During the court cases initiated by the FOICA the Freedom of Information Center of Armenia has lodged specific groups of court claims. First of all the access to information is a common problem. Thus, the FOICA's first group of claim was to oblige officials to give information. Seeing the importance of legal recognition of the right of access to information, the FOICA has also insisted in its claims that the court recognize illegal those actions of idleness of the officials that result in the violation of the freedom of information.

Unlike the 7 cases initiate in the previous years this time the FOICA has compulsorily included the demand to impose administrative sanctions on the officials violating the freedom of information. This fact has dramatically affected the outcomes of the court cases on the freedom of information. Unlike the previous 7 cases, all of which have been satisfied, part of the court cases lodged in 2007-2009 were partially satisfied, and the exact demand to penalize the official has been dismissed.

As was already mentioned, the third group of court claims refers to the penalization of the officials violating the freedom of information. Unfortunately, the reality shows that the courts are not yet ready to penalize officials for violating the right of access to information – this demand is mostly rejected by the court (See in section "Dismissed Cases").

Finally, the fourth group of court claims refers to the expenses incurred by the FOICA for restoring the freedom of information in court, i.c. the demand for compensating the money paid as state fee. This is particularly important for the citizens. The problem is that some avoid forensic proceedings, thinking that it can be expen-

sive and that even if the case is satisfied, it is not worth the extra expense. But it is essential that when the violated right is restored in court and when there is the corresponding claim, the expenses incurred by the claimant be compensated.

The Problems of the Judicial Practice of the Freedom of Information

The court cases initiated by the Freedom of Information Center of Armenia gave an opportunity to carry on a number of analyses around the practice to apply justice in the sphere of the freedom of information and to reveal a number of issues that hinder the implementation of the right of access to information.

1. The dependence of courts on the executive branch of government

The analysis of the court cases initiated by the FOICA showed that courts avoid penalizing officials. One of the core reasons for this phenomenon may be the dependence of courts on the executive power. This dependence virtually hinders the courts when issuing objective and bold verdicts against officials.

2. The none-execution of forensic charges

In some cases the court verdict is not unconditionally executed in the given deadline. Out of 14 finished court cases initiated by the FOICA in two cases the FOICA had to turn to the Service of Forced Execution of the Forensic Charges in order to make the official carry out the charge.

3. The lack of trust towards courts

In 2007-2009 the initiators of court cases in the sphere of the freedom of information are mainly the NGOs and not the citizens. Albeit the fact that several people turn to the Freedom of Information Center asking for help in accessing some information, the citizens avoid asking for forensic defense for the right of access to infor-

mation. This comes to prove that people lack trust towards courts. They do not believe that the court will issue a fair and objective verdict and will protect their right of access to information from being abused by officials.

4. Lack of awareness

Even 6 years after the adoption of the RA "Law on Freedom of Information" there still are officials, who are unaware of this law. There are cases when the FOICA has to explain the law on the deadlines, and bases and reasonable grounds for denying the request for information. The FOICA is compelled to let them know about these things before demanding an appropriate answer to its inquiries in an appropriate deadline, or a reasonably grounded denial.

An example of unawareness of the statutory provisions of the RA "Law on Freedom of Information" is when Ministry of Emergency Situations turned down the FOICA's inquiry for information.

5. Imperfect legislative field

One of the problems present in the sphere of the freedom of information is the imperfect legislative field. The problem is that there are not enough legal acts regulating the sphere of the freedom of information and that some matters in this sphere are not regulated by legal acts. Also, some statutory provisions are missing or are present in other legal acts and hinder the implementation of the right of access to information, rising controversies.

It is already 6 years that the RA "Law on Freedom of Information" is valid. However, two sub-legal acts that are anticipated by this law and are necessary for assuring the freedom of information were never adopted. Today, by the initiative of the FOICA, member of the RA National Assembly Victor Dallakyan, together with the RA Ministry of Justice have developed a reform plan for the RA "Law on Freedom of Information". The FOICA has initiated the organization of some discussions, based of which some amendments were made in the

draft. With these reforms we aim at freeing the RA Government from the responsibility of accepting the sub-legal acts that assure the execution of the right of access to information. Instead, the matters which were to be regulated by sub-legal acts will be included in the law itself. And this will end the dissenting opinions and the disgraceful practice of turning down the inquiries for information with the argument that there are no sub-legal acts.

6. The controversial interpretation of the legal acts by courts

In some cases, because of imperfectness of some legal acts that have nothing to do with the sphere of the freedom of information, a legislative gap appears, as a result to which, strangely, suffers the right of access to information. So, the FOICA tried to forensically protect its right of accessing to information by lodging a court claim against the "Armenian National Congress" Union which had left the FOICA's request for certain information unanswered. During this case the following problem occurred: the "Armenian National Congress" is a union of political parties, and a union, according to the RA legislation, can neither be a physical nor a juridical person. And according to the RA Civil Procedure Code, only physical or juridical persons can be defendants in court. It turns out that the "Armenian National Congress" Union cannot be a defendant in court. Based on this the Court of General Competence of Center and Nork-Marash administrative districts decided to quash the FOICA's claim against the "Armenian National Congress" Union. Besides hindering the implementation of the freedom of information, this legislative gap also created a controversy between the RA Civil Procedure and the RA Electoral Codes, since the RA Electoral Codes anticipates an opportunity of forensically calling the Union to account. Whereas, the RA Civil Procedure Code excludes this opportunity.

In such circumstances the choice of the court becomes of a great importance, i.e. which legal act the court supports and follows. Facing con-

traditions between different legal acts which are of the same legal power the court should be able of correct orientation. It should be able to ensure maximum objectivity and be guided by the legal act the execution of which will restore the violated right. However, the forensic practice of the freedom of information depicts the opposite picture – mostly judges make use of the contradictions between the legal acts for quashing the court cases, avoiding their real solutions.

Conclusion

Albeit the problems in the sphere of implementing the right of access to information the forensic practice of the defense of this right could not remain without positive outcomes. The progress is obvious: the first verdict to penalize an official for not giving information has already been issued. Also, the draft for legal reforms on the Freedom of Information is in the agenda of the RA National Assembly.

Every court case about the freedom of information is already of a great educational importance by itself. Regardless of the final outcome the court cases are broadly covered by the mass media. So, these cases draw the attention of the citizens and officials, growing the awareness about the right of access to information. Besides, these court cases promote to the prevention of violations of the freedom of information. They are a unique warning for the officials that if they hinder the freedom of information they will be made answerable in court. The satisfied cases are also of precedential importance. The judge, respecting his colleagues, takes their verdicts into account, issuing similar verdicts in similar cases.

The practice of court cases regarding the freedom of information, the existence of such cases and their often positive outcomes also brought certain progress in popularizing court cases. Although citizens do not refer directly to courts or advocating organizations, yet, in order to protect their right of access to information, two court cases have already been lodged

where together with the FOICA a media outlet is also a co-claimant – the "Aravot" daily. The court cases regarding the freedom of information become means for protecting the right of access to information for mass media, as well.

The analysis of the court cases before 2007 regarding the freedom of information shows that even after 2007 the problems of forensic practice of the freedom of information have remained the same. However, their contents has changed: if previously the courts avoided insisting the obligation of the officials to provide information, today, stating the fact that the official has violated the freedom of information and that he is obliged to provide information, they avoid penalizing those officials.

The analysis of the forensic practice of the freedom of information helped reveal a number of obstacles. These obstacles hinder the implementation of the right of access to information, the right to seek and receive information. Hence, they hinder the formation of a civil society with a high level of legal consciousness, too. The positive results do not occur spontaneously – it is necessary to overcome the current obstacles to ensure positive outcomes, thus, a more perfect legislative field in the sphere and an appropriate execution of the right. For this reason the active work of the citizens and the NGOs is necessary. One might mark out a number of basic courses of such activities:

A. Appeals to higher authorities

The FOICA had sent a written reference to the regional administration of Ararat asking for some information but receiving none. However, after the FOICA appealed the idleness of the governor of the region of Ararat to the RA Minister of Territorial Administration Armen Gevorgyan, the FOICA was provided with a comprehensive answer. So, appeals to higher authorities can also have positive outcome. The appropriate control of the higher authorities can greatly decrease the law violations and unfair decisions by the inferiors. The courts are not exceptions either. In a number of cases the

FOICA has appealed the decision of the Administrative Court to a higher authority – to the president of the Administrative Court. In one case ("FOICA vs. the "Yerevan Urban Development and Investment Programs Department" and the director of the SNCO) the appeal was dismissed. In another case ("FOICA vs. the village municipality of Zartonk") the appeal was satisfied.

B. Claim to the Constitutional Court

The human right of access to information, of seeking and receiving information is protected by the RA Constitution. However, some statutory provisions of some legal acts allow officials to violate the freedom of information and avoid responsibility. As a rule, in such cases the courts abstain from interpreting the right, preferring to dismiss the court claim. The FOICA has faced such problems during the cases of "FOICA vs. the "Yerevan Urban Development and Investment Programs Department" State None-Commercial Organization and the director of the SNCO", and "FOICA vs. the Nor Nork Community Administration and the community leader". In this case the role of the Constitutional Court is essential. It is the responsibility of the Constitutional Court to define the constitutionality of legal acts or distinct norms of the acts. Thus, it is possible to abolish the legislative gap by applying to the Constitutional Court. In some cases it also allows to overcome the indecisiveness of the judges of other courts.

C. Legislative Reforms

Even if the judges show great will and support, it will be impossible to execute the right of access to information without a sufficient legislative base. There exist gaps and shortcomings in the legislative field on the freedom of information. These shortcomings are to be abolished. As it was already mentioned, by the initiative of the FOICA member of the RA National Assembly Victor Dallakyan, together with the RA Ministry of Justice have developed a reform plan for the RA law about "Freedom of

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Information", the adoption of which will be solve a number of important issues. E.g., electronic inquiries are suggested. Or, it is suggested to omit from the RA "Law on Freedom of Information" the RA Governments responsibility to accept the sub-legal acts that assure the execution of the right of access to information and to regulate these matters according to the RA "Law on Freedom of Information".

D. Training the judges

For the sake of appropriate protection and execution of the right of access to information it is necessary to increase the knowledge and awareness about this sphere and the right. The FOICA organizes trainings and discussions during which the statutory provisions and the logic of the RA "Law on Freedom of Information" are clarified. Also the significance and the importance of the freedom of information are clarified. It is necessary to organize trainings for judges and workers in the judicial system, as well.

E. Encouragement

For the execution of the right of access to information it is of great importance that, on the one hand, the citizens are motivated to protect their rights, on the other hand, the officials are motivated to work publicly and transparently, and the judges are motivated to realize an appropriate protection of the freedom of information. From this point of view the different events on the freedom of information can play a significant role. Every year, on the international 'Right to Know Day' – on the 28th of September – the FOICA organizes an award-giving, during which awards ("Golden Keys") are given to the judge who has issued an important verdict for the protection of the freedom of information, to the official who works most publicly and transparently, to the most active citizen in the sphere of executing the freedom of information, etc. Whereas, the officials, who have violated the freedom of information or have been recognized as the most discreet ones, receive "Rusty Locks". Naturally, the "Golden Key" increases the public trust towards the official or the body. While the "Rusty Lock" is a big minus for the political reputation of the official.

*All documents related to the filed court cases in the field of FOI can be found in the FOICA's official website:
<http://www.foi.am/en/rcontent/14/>*

FOICA's case in the Constitutional Court

On 09 September the Freedom of Information Center applied to the RA Constitutional Court with a demand to consider anti-constitutional Articles 151 and 152 of the RoA Code of Administrative Procedures. On the 5th of February, 2010 in the RA Constitutional Court heard the claim of the Centre of Freedom of Information to declare 151st and 152nd articles of the RA Administrative Procedure Code as contradicting the RA Constitution.

To consider Article 151 of the RoA Code of Administrative Procedures as contradictory with Articles 18 and 19 of the RoA Constitution and invalid on these parts, since it stipulates without an exception that “Cases on subjecting to administrative liability can be filed based on claims from agencies and officials having an authority to prepare protocols on administrative violations per law”, and thus does not provide with an opportunity to file a case on subjecting to administrative liability against officials, having made violations stated in Article 223 of the RoA Code of Administrative Violations, including officials having made violation defined in Article 189.7, based on a claim from the victim.

To consider Article 152 of the RoA Code of Administrative Procedures as contradictory with Articles 18 and 19 of the RoA Constitution and invalid on these parts, since it stipulates in the list of requirements towards preparing a claim for subjecting to administrative liability, the requirement for including information on making a protocol and attaching a protocol on administrative violation, for all violations without an exception, including those stated in Article 223 of the RoA Code of Administrative Violations, particularly the violation defined in Article 189.7.

It should be mentioned as well that in the court practice there are contradictory approaches

concerning the afore-mentioned issue. A part of Administrative Court was not accepting the Freedom of Information Center NGO's lawsuits on subjecting to administrative liability under its proceedings, and the other part was accepting them, by placing on record the fact that there is no agency preparing protocols on such case.

On the 5th of February, 2010 the RA Constitutional Court heard the claim of the Centre of Freedom of Information to declare 151st and 152nd articles of the RA Administrative Procedure Code as contradicting the RA Constitution. Right on the same day the court announced its decision.

The Constitutional Court decided that 151st and 152nd articles of the RA Administrative Procedure Code do not contradict the RA Constitution. The Constitutional Court stated that the problem lies in the legislative gap in this sphere. It is necessary that the competent body, i.c. the RA National Assembly, implement a proper initiative in order to fill the legislative gap by carrying out reforms in the RA Code of RA Administrative Offence and by creating an administrative penalizing system.

In the end the president of the RA Constitutional Court Gagik Harutyunyan thanked the FOICA for touching upon such an important issue.

FOICA vs. National Technical Safety Center SNCO

On September 17, 2009, the Freedom of Information Center sent an information request to the head of the National Technical Center state non commercial organization Mr. Ashot Poghosyan to provide the following information:

1. How many private companies conducting an expert examination are registered in the SNCO's Register by August 1st 2009? To whose name are those companies registered? Please indicate names of the companies which received a license.
2. Please, provide the SNCO staff lists for 2008 and 2009 years, and the list asserting the volume of the staff employees' salaries for the same period.

With a half page answer the National Technical Center SNCO informed, that FOICA had to apply for the requested information to the press

FOICA vs. the mayor and the village municipality of Bjni

The FOICA had referred to the community leader of Talvorik in the region of Armavir asking for the following information:

1. Copies of the 2008 community budget and its implementation report.
2. Copies of the decisions made by the community councilors about allotting land in the 2nd semester of 2008.

The request was left unanswered. On the 31st of March, 2009 the FOICA applied to the RA Administrative Court with the claims to oblige the village municipality of Talvorik to provide the information, as well as to compensate the legal expenses made for the representative of the claimant. On the 23rd of July the RA Administrative Court (Judge A. Tsaturyan) issued a verdict to the claim of the "Freedom of Information Centre of Armenia" NGO against

secretary of the Ministry of Emergency Situation. On September 29, 2009, FOICA appealed the answer in the Court of the General Competence of Center and Nork-Marash administrative districts demanding complete information from SNCO and exposing of the administrative responsibility.

On January 29, 2009 the court fully satisfied the claim of FOICA obliging the respondent to provide the requested information within 5 days time period.

On January 29, 2010 the court decision over the case FOICA vs. National Technical Safety Center SNCO was published at the Court of the General Jurisdiction of Center and Nork-Marash administrative districts. The Court fully satisfied the FOI Center's claim compelling National Technical Safety Center SNCO to provide the requested information within 5 days.

the village municipality of Talvorik. The verdict was to quash the case for obliging the village municipality to provide the information, because during the trial the mayor of Talvorik had provided the FOICA with the information. The court also decided to confiscate AMD 4000 from the "Freedom of Information Center of Armenia" NGO to the State Budget for the unpaid state fee, because according to the part 2 of the article 59 of the RA Administrative Procedure Code, if a case is not proceeded or is quashed, then the claimant has to pay the legal costs.

The FOICA vs. Yerevan Urban Development and Investment Programs Department SNCO

On February 27, 2009, the FOIC sent an information request to the Yerevan Urban Development and Investment Programs Department SNCO asking to provide the following information:

1. How much money was allocated to the Yerevan Urban Development and Investment Programs Department SNCO for 2006-2008 years' State Budget?
2. Which organizations did the Yerevan Urban Development and Investment Programs Department SNCO sign contracts with in 2006, 2007 and 2008?
3. What was the volume of the profit of the Yerevan Urban Development and Investment Programs Department SNCO received from the signed contracts during 2006, 2007 and 2008 years?

The SNCO answered that information included in the first question was published in the "State Budget" Law of the RA of the respective years, while the next two questions contain a commercial secret not a subject to be released.

In March, 2009, the FOICA appealed the SNCO's answer to the RA Administrative Court.

On July 15, 2009, the Administrative Court decided to postpone the hearing of the court case for an indefinite period, because the respondent was in the process of liquidation. However, the court sessions was resumed in November, 2009. On the November 20 session, the phase of trial over the case at the RA Administrative Court (Judge Mr. Argishti Ghazaryan) was completed.

On the 20th of November, 2009 during the court sitting the court examined all the written proofs and heard the two sides. The FOICA representative Karen Medjlumyan fully pursued the claim. Whereas, the representative of the "Yerevan Urban Development and Investment Programs Department" SNCO did not accept the precision of any of the FOICA's claims, by fully objecting the claim.

On the 7th of December, 2009 the RA Administrative Court issued a verdict, dismissing the FOICA's claim. The court had found that the SNCO had actually answered the FOICA's request for information by giving a comprehensive answer to the first part of the inquiry. As for the 2nd and 3rd parts, the answers contained commercial secrets, for even though the SNCO is a non-commercial organization and does not pursue any commercial interests, the organizations that the SNCO has contracts with do pursue commercial interests. So, if the SNCO provided the FOICA with that information, it would mean that it was publishing the commercial secrets of those organizations. In December, 2009 the FOICA appealed the RA Administrative Court's decision in the Court of Appeal.

While Seeking for Information in the State Registry

The first step for launching any business is to create a legal entity, and to do it one needs to be equipped with the appropriate information. And naturally those inquiries lead to the State Registry. However, here one encounters an informational dead-end. No needed information is publicly available in the State Registry – there are no bulletin-boards on the walls.

By Svetlana Stepanyan

According to the 2nd point of the article 11 of the RA law about the “State Registry of Juridical Persons” the body that realizes the registration is expected to give appropriate forms of the needed documents for the registration (e.g. the regulations, the decision to announce somebody a juridical person). However, in the State Registry Agency for Juridical Persons we were told that these appropriate forms are defined by the RA Ministry of Justice. However, it was useless to visit the ministry since the appropriate forms are not yet defined (if they were defined the state registry would have already acquired them). In the department of registering NGOs we were told that the best thing to do for creating a juridical person is to use the appropriate RA Legislation (e.g. the RA laws about the State Registry of Juridical Persons, about NGOs, about Limited Liabilities Companies) and to form and show documents according to those legal acts. In short, the best and the most effective way to get some needed information about the State Registry of juridical persons is to study the corresponding legislation and to rely on the advice of those working in the RA JP State Registry Agency.

Things are the same in the district subdivisions. For example, in the State Registry’s Centre district subdivision one can find only information about registering as a taxpayer, and nothing more. When we asked one of the employees of the State Registry’s Centre district subdivision about getting information on registering an organization she first inquired what organiza-

tion we were talking about. Then she directed us to someone we could turn to. And to the question where or how we could get information about the documents necessary for the registration and the registration regulations, she answered that we should study the law or we could just ask them: they were ready to give information. That day they were really willing to give the necessary information, but what are the chances that tomorrow or the day after tomorrow that same employee will be so willing to answer questions about the State Registry. Isn’t it possible for that employee to be tired, or in a bad mood, or feel nervous?

In the Internet, too, the necessary information about the State Registry is missing; the website of the State Registry is not working, and the corresponding section of the website of the RA Ministry of Justice is empty – here one can only find the photo and the biography of the head of the RA Ministry of Justice Agency for State Registry of Juridical Persons. Formerly there was the www.stateregistry.am website, which gave enough information about the State Registry. Today this website does not work.

Head of the RA Ministry of Justice Agency for State Registry of Juridical Persons Armen Gevorgyan explained that the website of the State Registry does not work for the following reason: “Today the website does not work for technical reasons – the server that bore the website was broken and some time is needed to repair it. Now all possible work is being done to restore the website.” Some months have passed since this answer but the website of the

State Registry is still broken. And to the question “Why?” the answer is that they are working on it.

According to the head of the State Registry Agency “their official website - www.stateregistry.am – has had several shortcomings. Particularly, the connection between the central body and the district subdivisions of the State Registry was realized via modems and telephone lines. The huge volume of the transferred information was not taken into consideration. Also, the only modem in the central body could not serve the 8 subdivisions in Yerevan and 10 in the regions. Today the use of the modem connection is considered too ineffective – low speed, expensive international calls.”

In the State Registry Agency for Juridical Persons a new information system built with modern technology is planned to be created in 2010. This is to contribute to the increase of the effectiveness of the work that is being done and to the creation of an informational environment.

And how to get information on the activities of the State Registry when there is no information pasted on the walls of the district subdivisions, the website does not work, and the corresponding section of the ministry website is empty. In the RA Ministry of Justice they said to us, “Because the State Registry has its own website they put no information in the official website of the RA Ministry of Justice. There is only a link to the website of the State Registry in that section.” Today the website does not work, and to the question how to get information about

the State Registry the ministry employee answered, “Soon the website will again be available for the readers.” They also promised to put some information about the State Registry in the official website of the Ministry of Justice, as well. But this promise wasn't kept, either. Head of the State Registry Agency A. Gevorgyan, in his turn, suggests the following solution to the problem: “Before the www.stateregistry.am website is restored people should visit to a district subdivision of the State Registry or use the RA law about ‘The State Registry of Juridical Persons’ where the list of the documents necessary for the registration of the juridical persons is clearly defined.”

However, in the district subdivisions of the State Registry, as was already mentioned, only oral information is given which makes citizens dependant on the mood and subjective attitude of the employees. We were just lucky in our trip to the Centre district subdivision of the State registry – the employee was willing and had spare time. However, should she had been busy we would have to get in line and unnecessarily waste time to get some information.

Whereas, in reality the publicity of information is not too time consuming – at least the appropriate information can be printed and pasted on the walls of the subdivisions of the State Registry. This information can also be disseminated online. Because information publicity is also a demand of the law defined in the RA laws about “The State Registry of Juridical Persons” and “Freedom of Information”.

“Condominium seems to be blind...?”

Every morning many of us have to bare dirty porches in our buildings and quite naturally a question is raised “why do I need to pay monthly to the condominium? Why don’t they clean the porch, the yard? Why doesn’t the lift run?” We’re informed that the payment list of obligatory implemented norms defines the condominium’s obligations. By the decision of the Government, the condominiums are obliged to take garbage away at least every three days, to take measures against insects and rodents every three month, to carry out sanitary cleaning once in two days, etc.

By Mariam Karapetyan

People from 7 Agatangeghos of “Center” condominium complaint that their garbage is taken away late and that they suffer its smell. It’s good the rats have disappeared as a few years ago one of the residents said “the building was a sport hall for rats.” To our request whether they have applied to the condominium to solve their problem, one of the residents said “do I really need to alarm? Don’t they see that? ” Resident Tsoghik Khachatryan of 25 Tigran Metsi told that the cleaner sweeps partially and finishes her job. But Mrs. Khachatryan is most alarmed with the broken porch door, which disturbs her living on the ground floor as the door makes much noise. She has applied to the condominium asking to repair the noisy door but their promise is still uncompleted.

To conclude, there are both many residents and stories, even more. Building- condominium relations are much written about and many complaints submitted as people say the condominiums just collect money and do little service to people. But the condominium also complaints as the citizens don’t make their payments on time. Suren Nersisyan, the head of “Center 1” condominium said their condominium is working rather transparently. He said it happens people request them to get information how they spent each coin collected by their payments. The condominium is ready to provide information. And the reason of having dirty porches Nersisyan says is repairing and reconstruction made by citizens in their buildings.

The head of the condominium stated that there are reconstruction activities almost in every building, and in this case it’s impossible to guarantee perfect accuracy. Sedrak Hovhannisyan, the deputy head of “Center” condominium said once in three days the buildings are cleaned. Besides it’s being checked out whether the work is done diligently. To the question whether those controls are properly made, it was said, it’s better to have more cleaners. Nevertheless, there are buildings which are not clean, but the official said the residents should be blamed. A condominium member should have diligent attitude towards condominium owning, they shouldn’t destroy or damage them.

It’s quite obvious that it’s the resident’s obligations. But the residents are also authorized to ask how their payments are spent. They are granted that right by Constitution, law on Freedom of Information and condominium legislation. Citizens have right to get information about condominium activities. And the condominium should answer how the payments have been spent and what service was provided. For example, 11/3 Argishti residents say their lift has been repaired and the yard swept after they requested the Center condominium to provide them information how 400.000 AMD collected from them during the third quarter of the current year was spent. It turns out that the residents are provided correspondent service after they have requested information.

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