



Combating Gender Discrimination and Gender Disinformation, and the Boundaries of Freedom of Speech

Compliance of the RA
Legislative Framework with
International Legal
Regulations

Summary

The study was conducted by the OxYGen Foundation within the framework of the “Combating Gendered Disinformation: Reclaiming Narratives 2.0” Project, funded by the “Artemis” Alliance Project.

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Introduction

Freedom of speech, as a fundamental human right, is protected by international legal documents, as well as by Armenia's highest legal framework – the Constitution, and the domestic laws. It is of paramount importance for the expression of personal identity and human diversity, the reduction of inequalities, the free exchange of ideas, and the realization of other human rights.

At the same time, freedom of speech is not an absolute right; its abuse and manipulation can bring the opposite effect, harming the expression of identity of individuals, fostering discrimination and obstructing the realization and protection of other rights, leading to the worst and severe forms of violence.

Disinformation, discrimination-based speech and hate speech are developing their content year by year, gaining new opportunities for dissemination, including through the Internet. Hate speech and harmful and discriminatory disinformation based on gender, sexual orientation and gender identity have also become tools for serving the interests of individual groups, while promoting and justifying discriminatory practices in a patriarchal society.

The current research addresses the spread of harmful disinformation and discriminatory speech based on gender, sexual orientation and gender identity, examining the alignment of the RA legislation with international legal standards.

Methodology

The aim of the research was to analyze the extent to which the legislative regulations of the RA regarding speech that incites discrimination and reinforces stereotypes based on sex, sexual orientation, and gender identity, as well as dangerous and harmful disinformation, align with international legal frameworks, standards, and trends in the development of law concerning the fight against discrimination on the grounds and freedom of speech.

To reach the aim, the following objectives were identified:

1. Identify the domestic legal provisions of the RA regulating the prohibition of disinformation and discrimination on the basis of gender identity within the context of freedom of speech.
2. Identify international standards related to the limits of freedom of speech and the prevention of disinformation and discrimination based on gender identity.
3. Formulate an analytical framework through which the comparison of domestic legislation regulations with international standards will be conducted.
4. Assess the compliance of domestic legal regulations with international standards, and, if necessary, develop recommendations for improving the legislation.

As a result, the experiences of the United Nations Organization, the Council of Europe, the European Union and several other countries in the field of protection of freedom of speech and combating discrimination were studied.

The RA legislative regulations, as well as soft law regulations, were identified. The self-regulation mechanisms of private organizations were also examined. Thematic reports were analyzed, expert interviews were conducted with media expert Ms Sara Khojayan, hybrid threats expert Mr Samvel Martirosyan, Media.am website editor of the Center for Media Initiatives Mr Gegham Vardanyan, and media expert Mr Artur Papyan. Information requests were sent to the National Commission on Television and Radio, and the Public Television.

The domestic regulations were assessed in light of international regulations and expert evaluations. The experiences of individual countries were also taken into consideration.

The evaluation was conducted in two main directions:

- Legal regulations on the protection of freedom of speech and restriction of freedom of speech, including:
 - ⇒ Regulations on the freedom of online and offline media, and the restrictions on freedom of speech;
 - ⇒ Regulations regarding freedom of speech on the Internet.
- Regulations on the right to equality and protection from discrimination, in particular:
 - ⇒ Legislative regulations on the right to be free from discrimination based on sex, sexual orientation and gender identity.

The study was conducted within the context of two dimensions of the application of freedom of speech: individual expression and the freedom of the media.

Based on the analysis, two categories of recommendations were developed: legislative amendments, and practical, action-based changes.

The study focuses exclusively on speech regulations that incite discrimination and reinforce stereotypes (hereinafter, discriminatory speech) and disseminate harmful, dangerous disinformation. These types of speech may often intersect and overlap in content, but may differ in their impact, purpose, and intent. In the context of the current research, disinformation is considered as the deliberate dissemination of false or misleading information, often aimed at undermining credibility, reinforcing harmful stereotypes, and perpetuate violence. It is usually used to manipulate public perceptions and reinforce gender bias. Within the context of the research, gender discrimination is defined as any distinction, exclusion, restriction or preference, as a result of which a person or a group of persons appears in a less favorable position compared to others in similar situations, or disproportionately influences a specific group. It does not always involve intent.

It is important to note that the research does not address issues related to the regulation of non-lawful speech that reaches the level of hate speech. These issues have previously been thoroughly studied¹.

¹ Chara Bakalis, Ara Ghazaryan (2020). <https://rm.coe.int/final-report-on-reforming-armenian-hate-speech-laws-arm/pdf/1680a0b84d>

However, to some extent, we have addressed issues related to the regulation of hate speech based on sex, gender, sexual orientation, and gender identity. This is because, on the one hand, legal regulations still lack sufficient clarity and precision regarding the definitions of hate speech, sexist speech, and discriminatory and stereotypical speech, while the assessment of harmfulness often depends on the context, trends, and potential consequences. On the other hand, hate speech regulations sometimes overlap with, and can be identified or linked to other types of harmful speech regulations.

Analysis and Summary

Freedom of speech is a fundamental and yet sensitive right, the excessive regulation of which it can endanger and undermine the foundations of a democratic society. Exercising this right may sometimes infringe upon other individual rights, such as the right to be free from discrimination or violence, or even the right to free speech itself. At the same time, in this context, achieving gender equality cannot be realized without adequate guarantees that protect both rights in public discourse. The development and reinforcement of gender discrimination and stereotypes through speech is both a reflection of existing biases and a means of deepening them. Therefore, efforts to promote gender equality should not begin or end with regulating freedom of speech. Moreover, such efforts should involve the least necessary interference with this fundamental right.

The fight against disinformation and harmful speech must avoid being too intrusive, as one of the fundamental principles of freedom of speech is to enable and promote open discussions on a wide range of societal issues and to support the existence and dissemination of diverse, often opposing, perspectives and viewpoints. A balanced regulatory system is needed; a system that protects individual rights without unnecessarily restricting or endangering freedom of speech. Those regulations should form a comprehensive approach, be flexible, and develop within time, incorporating effective legal provisions on freedom of speech, the fight against discrimination, and freedom of the media.

Regulations can and should take various forms, for example, internal ethical regulations or guidelines, civil and administrative laws, as well as criminal law restrictions, which will complement one another and will be applied according to the nature of the speech, and the degree of harm and the intent behind it.

Thus, stereotypical and discriminatory speech, depending on its nature, shall be regulated through internal policies, administrative measures, and even by criminal law. Hate speech may also be addressed by soft regulations, though these often function along with criminal provisions. In the case of disinformation, if it does not rise to the level of discrimination or hate speech, it is generally risky to address it through criminal or administrative measures. In all cases, the most crucial component of regulation is promoting information education, literacy, and public awareness, which are the primary tools for combating disinformation and stereotypes. When speech infringes upon other rights to the extent that it violates them, legal regulatory mechanisms are applied.

A key prerequisite for regulating harmful stereotypical and discriminatory speech based on sex, sexual orientation, and gender identity in Armenia is the proper regulation of the right to equality, particularly the right to be free from discrimination on these grounds. Armenia has yet to adopt comprehensive legislation addressing the right to equality, resulting in a lack of clear definitions for core concepts related to equality. Additionally, the necessary systems of obligations and responsibilities required for the protection and realization of this right are still absent.

Sectional regulations consist of individual legal acts.

The RA Criminal Code presupposes liability for public speech that incites or promotes discrimination, intolerance, or enmity, as well as for public calls for violence. While these provisions can serve as a deterrent and play a preventive role, criminal law restrictions on free speech are reserved for extreme cases, meaning they may not be applicable in most of the situations. In such cases, administrative and civil legal measures would be more relevant, though these are also strictly limited by the RA legislation. Civil law applies in cases involving harmful and discriminatory speech that includes elements of insult, defamation, or torture. Administrative and legal measures can be initiated in cases where discriminatory content is disseminated through violations of labour rights, advertising, or audiovisual media, as prohibited by the Law on “Audiovisual Media”. However, civil and administrative legislation does not contain comprehensive or universal regulations for harmful or discriminatory speech.

At the same time both the Criminal Code and the Laws on Audiovisual Media and Advertising provide several protected grounds and categories, including sex, but do not explicitly mention sexual orientation or gender identity. In the case of the Criminal Code, these categories can be interpreted under “other personal circumstances,” while the Laws on Audiovisual Media and Advertising refer to “other grounds.” However, it is important to recognize that, in the presence of existing stereotypes, the omission of these specific grounds and categories negatively impacts the protection of these groups.

The regulation of freedom of speech, including media freedom, in the online environment shall be approached with caution and foresight. The same principles that apply to regulating freedom of speech in the offline world must guide its regulation online. In this context, the development of media literacy, public resilience against harmful content, and the effective implementation of self-regulation mechanisms are all crucial.

Recommendations

Recommendations at the Legislative Level:

1. In accordance with Article 77 of the Constitution of the Republic of Armenia, all grounds protected from discrimination shall be clearly defined, provide a non-exhaustive list which yet explicitly will include sexual orientation and gender identity.
2. Adopt comprehensive legislative regulations on equality and the prohibition of discrimination, including:

- 1) Adopting a separate law on “Equality”, which will define the key concepts within the framework of equality law, such as discrimination, its types, and hate speech.
- 2) Recognizing sex, sexual orientation, and gender identity as protected characteristics against discrimination.
- 3) Establishing a system of administrative and civil liability for discriminatory and stereotypical public speech.
3. Amend Articles 329 and 330 of the RA Criminal Code to explicitly include sexual orientation and gender identity as protected grounds.
4. Establish “sexual orientation” and “gender identity” as protected categories under Article 9, Part 7, and Article 22, Part 6 of the Law “On Audiovisual Media”.
5. Reformulate the list of prohibited grounds in Article 8 of the RA Law “On Advertising” to be non-exhaustive, and add “sexual orientation” and “gender identity” to the list.
6. Consider defining a prohibition on the dissemination of discriminatory information on any protected grounds in the RA Law on “Mass Media”. Additionally, designate the Television and Radio Commission as the body responsible for investigating and addressing complaints regarding violations of this prohibition based on the submitted applications.
7. Anti-disinformation strategies shall incorporate targeted measures to fight against disinformation based on sex, sexual orientation, and gender identity, and to mitigate the risks of using discrimination on these grounds for political or other purposes.

Practical Recommendations:

8. The Council of Public Broadcasters shall include information regarding the implementation of the provisions outlined in Article 22, Part 6 of the Law on “Audiovisual Media” in its annual report to the National Assembly on the previous year’s activities.
9. Incorporate a school subject focused on developing literacy in information, media, and the internet content into secondary education curricula (programs).
10. Organize public awareness (informative) campaigns on the negative impacts of gender disinformation, discriminatory, and stereotypical speech in audiovisual media and public spaces, in collaboration with news service providers, the Television and Radio Commission, CSOs, and other relevant stakeholders and parties.
11. Provide regular, in-depth, advanced training for media community representatives on the prohibition and risks of discrimination based on sex, sexual orientation, and gender identity. These training sessions should be conducted by organizations and experts with sufficient knowledge and experience in the field.
12. Work toward achieving gender parity in media leadership roles and positions, ensuring equal representation of women and men. Create a non-discriminatory environment for the appointment and promotion of women, LGBT individuals, and others at risk of discrimination in the media management positions.

13. Increase the visibility of the media monitoring body through an awareness campaign. Ensure that the system for submitting complaints to this body is accessible to persons with disabilities and children.
14. Conduct research on the prevalence of harmful disinformation based on sex, sexual orientation, gender identity, stereotypes, discriminatory speech, and hate speech within the Armenian-language online public domain.