Strasbourg, 17 March 2009

CDL-AD(2009)016

Opinion no. 511/2009

Or.Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION

ON THE DRAFT LAWS

ON FREEDOM TO RECEIVE INFORMATION AND ON MAKING AMENDMENTS TO THE CODE OF ADMINISTRATIVE VIOLATIONS

OF THE REPUBLIC OF ARMENIA

Adopted by the Venice Commission
at its 78th Plenary Session
(Venice, 13-14 March 2009)

On the basis of comments by:

Mr Viktor GUMI (Member, Albania)
Ms Helena JÄDERBLOM (Expert, Sweden)

I. Introduction

1. By letter dated 24 November 2008, the Armenian authorities requested the opinion of the Venice Commission on the draft law on Freedom to Receive Information (CDL(2009)002), hereafter "the draw law on FRI", and on the related law on Making Amendments to the Code of Administrative Violations (CDL(2009)003).

2. Ms Helena Jäderblom, Chief Judge at the Administrative Court of Appeal in Stockholm, and Mr Victor Gumi, member of the Venice Commission in respect of Albania, were appointed as rapporteurs and presented their comments.

3. The present opinion was drawn up on the basis of the rapporteurs' comments and was adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009).

II. Background information

A. International treaties applicable for Armenia

4. The draft law on FRI is intended to replace the law of 2003 on Freedom of Information[1]. The expert assisting the Venice Commission, Ms Helena Jäderblom, has previously had the opportunity to examine this law. In her view, the 2003 law lacks, in particular, a clear and detailed definition of the scope of exemption of the obligation for the authorities to grant citizens access to information.

5. The draft law on FRI originated from the Minister of Justice, who intends to submit it for discussions to the Government and then send it on to the National Assembly. The reasons for amending the law of 2003 have not been given to the Venice Commission.

III. Applicable standards

6. Armenia is a member state of many international organizations, a signatory to the key international human rights documents and as such is bound by the commitments to respect human rights, including the right to information.

7. As a member state to the United Nations since 1992 it has also joint the Universal Declaration on Human Rights, which declares in its Article 19 that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

8. Armenia acceded to the International Covenant on Civil and Political Rights (ICCPR) (entered into force on 23 June 1993), which sets out in article 19 "freedom to hold opinions" and freedom to "seek, receive and impart information and ideas through any media and regardless of frontiers";

9. Armenia signed on 25 June 1998 and ratified on 1 August 2001 the Aarhus Convention (Convention on access to information, public participation in decision making and access to justice in environmental matters).

10. Armenia ratified on 26 April 2002 the European Convention on Human Rights, Article 10 of which protects freedom of expression and information.

[1] The Law of the Republic of Armenia On Freedom Of Information was adopted by the National Parliament on September 23, 2003. For the text see: http://www.freedominfo.org/documents/Armenia%20FOI.pdf

B. The right of access to official documents

11. The first political recognition of a right of access to official documents was Recommendation No. R (81) 19 of the Committee of Ministers to member States on access to information held by public authorities. One year later, this recommendation was followed by the Declaration of the Committee of Ministers on freedom of expression and information, adopted on 29 April 1982. Other legal instruments were elaborated[2]. In 2002 the Committee of Ministers adopted its Recommendation Rec (2002)2 on access to public documents.

12. The Convention on Access to Official Documents is based on recommendation Rec(2002)2 and contains a set of provisions aiming at setting a minimum standard for legislation and practice in the Member States. This instrument refers in particular to Article 19 of the Universal Declaration of Human Rights[3], The United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981.[4]

13. The Convention on Access to Official Documents has been adopted by the Committee of Ministers on 27 November 2008 at the 1042bis meeting of the Ministers' Deputies. It will most likely be open for signatures in May 2009. When it enters into force, it will become the first international binding instrument recognising a general right of access to official documents held by public authorities. It can therefore be considered that the above instrument is, at this point in time, the most advanced one at the international level. For this reason, this opinion will refer to the fundamental principles contained in this Convention and outlined below.

14. Articles 1 and 2 of the Convention on Access to Official Documents state that everyone shall have access, on request and without discrimination on any ground, to official documents held by public authorities. The term *"Public authorities"* covers government and administration at the national, regional and local level, legislative and judicial bodies insofar as they perform administrative functions and natural or legal persons insofar as they exercise administrative authority. Furthermore, the member states are invited to include legislators and courts of law in their entirety. The parties may also opt to include natural or legal persons insofar as they perform public functions or operate with public funds. The term *"Official documents"* means all information recorded in any form, drawn up or received, and held by public authorities.

15. Article 3 states that possible limitations may be described, which shall be set precisely and only for the protection of certain enumerated interests such as national security, international relations, prevention and investigation of criminal activities, inspection by public authorities, privacy, commercial interests, equalities of parties to court proceedings, environment and internal deliberations of authorities. A harm test shall apply, which means that access shall only be refused if release of information would or would be likely to harm a protected interest. However, even so, release shall take place if there is an overriding public interest in the disclosure. Time limits for secrecy are recommended.

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[2] Recommendations of the Committee of Ministers to member States No. R (81) 19 on the access to information held by public authorities, No. R (91) 10 on the communication to third parties of personal data held by public bodies, No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes, No. R (2000) 13 on a European policy on access to archives.

[3] Article 19 of the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948 reads: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[4] *ETS No. 108.*

16. Article 4 states that formalities shall be kept to a minimum and the applicant shall not be obliged to give reasons for the request. Parties may give the applicant the right to remain anonymous, unless it is essential that the identity be revealed in order to process the request.

17. Article 5 states that the authority shall help the applicant, as far as reasonably possible, to identify the requested document. Applications shall be dealt with promptly by the authority that holds the requested documents. Decisions shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand. Refusals, in whole or in part, shall contain the reasons for refusal. Manifestly unreasonable requests and requests that are too vague may be refused.

18. Articles 6 and 7 states that where access is granted to the document as a whole or parts of it the applicant shall be able to choose whether to inspect an original or copy of the document or receive a copy in any available format. Access can also be granted by referring the applicant to other easily accessible sources. Fees may be charged for copies, based on the self-cost of reproduction and delivery.

19. Article 8 states that an applicant, whose request has been refused, in part or full, shall have access to a review procedure before a court of law or another independent and impartial body established by law.

20. Article 9 states that certain complementary measures are prescribed, such as the duty to inform the public of its right of access to official documents, an undertaking to educate public officials about their obligations and to manage documents efficiently as well as to apply clear rules for storage and destruction of documents.

21. Article 10 states that the authorities shall, when appropriate, proactively make such official documents that they hold public at their own initiative in order to promote administrative transparency and efficiency and to encourage informed participation by the public in matters of general interest.

22. As concerns the European Convention on Human Rights (ECHR), it recognises under the fundamental right to freedom of expression under the right to receive and impart information without interference by public authorities. The European Court of Human Rights (ECHR) has distinguished two components: a) public and media access and b) individual access to information, including the right of access to documents by those individuals who have a particular interest in obtaining the information.

23. The ECtHR has recognized on several occasions "the right of the public to be properly informed" and "the right to receive information", but until recently the ECtHR has been very reluctant to derive from Article 10 of the ECHR a right to have access to public or administrative documents. In the cases of *Leander v. Sweden*[5], *Gaskin v. United Kingdom*[6] and *Sîrbu v. Moldova*[7], the ECtHR recognized "*that the public has a right to receive information as a corollary of the specific function of journalists, which is to impart information and ideas on matters of public interest*". The ECtHR however was of the opinion that the freedom to receive information basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him. It was decided in these cases that the freedom to receive information as guaranteed by Article 10 could not be constructed as imposing on a State positive obligations to disseminate information or to disclose information to the public.

[5] *Leander v. Sweden*, Judgment of 26 March 1987, § 74.
[6] *Gaskin v. United Kingdom*, Judgment of 7 July 1989, § 52.
[7] *Sîrbu and others v. Moldova*, Judgment of 15 June 2004, § 17

24. In 2006[8] the ECtHR applied for the first time Article 10 of the ECHR to a case where a request of access to administrative documents was refused by the authorities. The case concerned a refusal to give an environmental protection NGO access to documents and plans regarding a nuclear power station in Temelin, Czech Republic. Although the ECtHR found no breach of Article 10, it explicitly recognised that the refusal by the authorities to grant access to certain documents represents an interference with the right to receive information guaranteed by Article 10 ECHR, which means that the refusal has to meet the conditions set forth in Article 10 § 2: it must be prescribed by law, have a legitimate aim and must be necessary in a democratic society [9].

25. In addition, the ECtHR has recognised a positive obligation to provide, both proactively and upon request, information related to the enjoyment and protection of other ECtHR rights such as the right to respect private and family life[10]. The right to a fair trial guaranteed by Article 6 of the ECHR gives the parties to court proceedings a right to have access to documents relevant to their case held by the court. However, the right for an individual to obtain information that is not personally related to him or her is unlikely to give rise to a "civil right or obligation" so as to engage Article 6. On the other hand, the denial of access to information that could assist an individual in establishing a claim for damages can potentially infringe Article 6[11].

IV. Specific comments on the draft law on Freedom to Receive Information (CDL(2009)002)

Article 1

26. This Article defines the scope of application of the draft law on FRI. Article 1.1**.** states that it "shall govern the relationships related to freedom to receive information, define the responsibilities of holders of information in the field of providing information as well as the procedure and conditions for receiving information from holders of information".

27. Article 1.2 covers administrative authorities at national, regional and local level. In particular they represent the "state and local self-governance authorities, state institutions and their officials, as well as organisations providing public services" [12].

28. The Venice Commission recommends that, in compliance with the best legislation practices in this field, "bodies substantially financed, owned or controlled by governmental state funds" be included.

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[8] Decision by the ECtHR (Fifth Section), *Sdruženi Jihočeské Matky v. Czech Republic*, Application no. 19101/03.

[9] Actually pending before the ECtHR is application No. 11721/04, in *Geraguyn Khorhurd Patgamavorakan Akumb* v. *Armenia*. The applicant organization, a recognized election monitoring group, requested certain information from the Armenian Central Electoral Commission (CEC) ahead of the country's May 2003 general election. The requested information included copies of CEC decisions, minutes of CEC meetings, and records of campaign contributions to various political parties. The CEC failed to provide timely access to the requested records, even though the applicant was entitled to receive them under domestic law. The applicant's appeals to the domestic courts were rejected on procedural grounds, without ever reaching a decision on the merits. The applicant claims a violation of its right to receive and impart information under Article 10 of the Convention, as well as breaches of fair trial (Article 6 § 1) and free election (Article 3 Protocol 1) guarantees.

[10] See in particular judgments in the case of *Gaskin v. the United Kingdom*, 7 July 1989, and in the case *Guerra and Others v. Italy*, 19 February 1998.

[11] See *McGinley and Egan v. United Kingdom*, 9 June 1998, §§ 85-86, Reports of Judgments and Decisions 1998-III

[12] Unlike the law on Freedom of Information (FOI law) of 2003, the current draft law on FRI does not cover the "organisations financed from the state budget, as well as private organisations of public importance and their state officials".

Article 2

29. This Article states that the draft law on FRI is not exclusive in this field. Further rules can be found in the Constitution (a general provision on the principle of freedom to receive information is laid down in Articles 27, 27.1 and 33[13]) and in other legislative acts and international treaties. The draft law on FRI does not refer explicitly to the other laws or treaties that may apply. It would instead be appropriate to do so, as it is impossible for the citizens to have an overview of the scope of their rights in this field.

Article 3

30. This Article identifies the main definitions used in this draft law.

31. The concept of "freedom to receive information" is defined as "the right to receive information freely in accordance with the law" (Article 3.1).

32. Article 3.2 of the draft law on FRI defines what is meant by "information" and from the definition it is clear that the FRI covers information recorded in different forms. This is line with the CoE Convention on Access to Official Documents where the definition of documents encompasses all information recorded in any form (Article 1.2 b).

33. Article 3.2 of the draft law on FRI lays down that the information or data must be "final". There is no further explanation of what is meant by this. According to Article 1.2 b of the Convention on Access to Official Documents, the term "official documents" means all information recorded in any form, drawn up or received and held by public authorities. This notion covers all existing documents, regardless whether they are finalised or not, that have been produced by the authorities or handed in to them. The scope of the draft law on FRI is narrower. On the other hand Article 3.1.k of the Convention on Access to Official Documents allows for restrictions as regards access on grounds of protecting "the deliberations within or between public authorities concerning the examination of a matter". It thereby allows limitations as regards documents in the process of being drafted. It should be noted that the Convention on Access to Official Documents attaches a harm-test and public interest-test principle to such documents.

34. The draft law on FRI does not correspond to the Convention on Access to Official Documents in this respect.

35. Furthermore the draft law on FRI ought to state explicitly that it covers both information produced by the authorities and information handed in to them.

[13] Article 27 "Everyone shall have the right to freely express his/her opinion. No one shall be forced to recede or change his/her opinion.
Everyone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers.
Freedom of mass media and other means of mass information shall be guaranteed.
The state shall guarantee the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertaining programs".
Article 27.1 "Everyone shall have the right to submit letters and recommendations to the authorized public and local self-government bodies for the protection of his/her private and public interests and the right to receive appropriate answers to them in a reasonable time".
Article 33.2 "Everyone shall have the right to live in an environment favourable to his/her health and well-being and shall be obliged to protect and improve it in person or jointly with others.
The public officials shall be held responsible for hiding information on environmental issues and denying access to it".

36. The bodies that are covered by the duty to provide information are defined as "state or local self-governance authorities, state institutions or the officials thereof" and "organisations providing public services" (Article 3.4). They are defined as organisations "the peculiarities of the activity of which is regulated by the Public Services Regulatory Commission of the Republic of Armenia" (Article 3.3). It is unclear what kind of bodies fall within the list of that Commission.

37. According to the Convention on Access to Official Documents, some natural or legal persons outside the government administration fall within the scope of public authorities covered by the Convention, namely insofar as they exercise administrative authority (Article 1.2 a i). A non-mandatory provision invites states to cover other natural or legal persons that perform public functions or operate with public funds, according to national law (Article 1.2 a ii). The Convention on Access to Official Documents gives states latitude in the definition of "administrative authority" and "public functions"; however, if the organisations perform administrative authority according to national law, they must be covered.

38. The Convention on Access to Official Documents defines very broadly what shall be covered by public authorities at central, regional and local level. Furthermore, legislative and judicial bodies are covered by the mandatory scope of the Convention on Access to Official Documents, insofar as they perform administrative functions (Article 1.2 a i), *inter alia* employment of staff and handling of budgets and monetary resources. Moreover States are invited to cover these institutions in their entirety as they are vital key for access to official information.

39. The draft law on FRI covers state authorities and institutions (Article 3.4). However, the distinction between these types of bodies is not clear.

40. The inclusion of officials in the definition of "information holders" in the draft law on FRI is questionable. If the information they are obliged to provide is held by the institution they work for, this should be enough to include the institution in the scope. As said in Paragraph 13 in the Explanatory report to the Convention on Access to Official Documents, a clear distinction should be made between documents received by public officials in the course of their duties and documents received as private persons and unrelated to their duties. The latter category falls outside the scope of Convention on Access to Official Documents. The latter should be interpreted as follows: Documents addressed to an authority but containing information about an official's private life or information of any other kind that falls outside the authority's activities, is an official and thereby accessible document as long as it does not contain secret information. Documents addressed directly and personally to an official inside or outside his or her office is not an official document if it contains information that falls outside of the activities of the authority. On the other hand, if such a document contains information pertaining to the fulfilment of the official's duties, it falls within the scope of accessible official documents.

Article 4

41. Article 4 states that "the main principle of ensuring the freedom to receive information" is "guaranteeing the right to freedom to receive information by the state".

42. This is misleading as it is clear that the accessible information is not only information held by the state. It is also superfluous, and if maintained should be placed among the introductory provisions in Article 1. This is where also the rest of Article 4 should be moved.

Article 5

43. Article 5 of the draft law on FRI states that the right of access to information pertains to "everyone". This can be interpreted as meaning that there are no limitations on grounds of citizenship or nationality. This is in line with Article 2.1 of the Convention on Access to Official Documents, which stipulates that everyone, without discrimination on any ground, shall have the right of access on request to official documents.

Article 6

44. The draft law on FRI deals with the authorities' duties both to publish information and to release it on request. Article 6 enumerates the types of information that shall be published. As regards information on officials holding prominent posts, it is questionable whether all the information listed can be published without an infringement of their right to protection of privacy provided by Article 8 ECHR. According to the FRI, an exemption prohibiting publication of personal data is made as regards information containing a state or official secret. However, it is not clear what that may be as it is not regulated in the draft law on FRI.

Article 7

45. Article 7.2 of the draft law on FRI obliges the authorities to provide certain information about officials; this appears to be limited only to requests to do so and it does not go as far as the information to be published under Article 6. Still, it may in some cases be an infringement on privacy and here there is no reference made to any possible exemptions. The draft law on FRI should clarify the relationship between this positive obligation to give information and the exemptions in Article 8.

Article 8

46. Article 8 of the draft law on FRI deals with the possible restrictions of the right of access to information. It starts by explaining that information "may not be requested or provided" if it falls under any of the exemptions. There is noreason for stating that information may not be requested. Surely the intention must be that all kind of information may be requested, and the authorities refuse it if it is exempted. The word "may" is misleading; this provision could be interpreted as forbidding the authorities to release secret information, not giving them any discretion in this respect.

47. A general problem with Article 8 is that it does not contain any harm-test or public interest-test. This is in conflict with Article 3.2 of the Convention on Access to Official Documents and one of the most serious flaws of the draft law on FRI.

48. Article 8 lists a mixture of exemptions of various types. In some cases, specific kinds of information are listed (inter alia "information on other natural or legal persons", "relates to a particular natural or legal person", "pre-trial data",). Sometimes the law instead refers to what seems to have been determined as secret through provisions in other laws (inter alia "state, official, bank, commercial, tax, medical secret", "the provision or publication thereof is prohibited by law"). Sometimes reference is made to when the information can be harmful to release regardless of its contents ("it endangers the foreign policy", "it endangers the state budget or the stability of the currency").

49. Most of the interests that can be foreseen to be protected by Article 8 are in line with the list of possible exemptions in Article 3.1 of the Convention on Access to Official Documents, but they are far too wide in application. It is not possible to understand the extent of the restrictions as many of them obviously build upon secrecy provisions in other laws, but it is

unclear which ones. Another flaw is the restriction to information drawn up together with other persons; why there has to be consent from this co-producer is not clear, especially as it should be possible to maintain enough protection through exemptions protecting legitimate interests, such as international relations.

50. According to Article 8.1.11, a ground for refusal is non-compliance with certain formal requirements for the request. This kind of exemption should be placed separately from those based on the contents of the information.

51. As it is mentioned above under 3.2.2, it is confusing to have provisions limiting the scope of the information that is covered by the drat law on FRI under the exemptions. It is not clear what is meant by information being "another person's property though it is under the disposal of the information holder", unless it is a matter of copyright.

52. The exemption as regards protection of physically sensitive information in Article 8.1.13 does not belong here. It is possible not to be able to copy information, but this should not restrict the possibility of releasing the information through other means, for example by allowing the requester to inspect it on the premises of the authority. Such a provision belongs to the rules on forms for releasing the information under Article 10.

53. The provision on partial release in Article 8.2 of the draft law on FRI is in compliance with the basic principle in Article 6.6 of the Convention on Access to Official Documents. However, the Convention has an additional requirement, which is not contained in the draft law on FRI, that any deletions of information should be clearly indicated. Furthermore, partial release is a mandatory obligation according to the Convention on Access to Official Documents. The wording in the draft law on FRI ("may be provided") indicates that it is up to the authority to decide whether or not to release the non-exempted parts of a document: it should instead be formulated in a way that makes the partial release obligatory.

Article 9

54. Article 9 of the draft law on FRI regulates the formalities surrounding requests for information. Article 9.1 implies that there are different procedures prescribed in other laws or legal acts, but it is not clear which other laws and acts and why these alternative procedures exist. If it is a question of requesting access invoking the draft law on FRI, the procedures should be laid down exhaustively in the draft law on FRI.

55. Article 9.2 requires that applicants making oral requests shall notify their names in advance. It is not clear what "in advance" means. If it means in advance of requesting the information, it does not make any sense. Verbal responses shall be given as regards to certain types of information (Article 9.3). However, the provisions does not explain if this means that only this type of information can be handed out on verbal request or if it is the release in verbal form that is limited to such information. In either case, this is confusing.

56. According to Article 4.3 of the Convention on Access to Official Documents formalities for request shall not exceed what is deemed necessary in order to process the request. States may opt to give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.

57. According to Article 9.5 and 9.8 of the draft law on FRI, applicants making written requests must give their names, addresses, date for submission of the request and sign the request. To uphold all these requirements seems superfluous in many instances and therefore in conflict with the Convention on Access to Official Documents.

58. According to Article 9.11 of the draft law on FRI, the applicant is not obliged to justify his or her request. This is in compliance with the corresponding right in Article 4.1 of the Convention on Access to Official Documents.

59. The information holder is obliged to inform the applicant on which authority holds the information if the information holder does not hold all the requested information (Article 9.13 of the draft law on FRI). This provision appears to be intended to cover also situations when the first authority does not hold any of the information requested. If so, it is in line with Article 5.2 of the Convention on Access to Official Documents.

60. The applicant is obliged to state the "essence of the required information" (Article 9.5.4 of the draft law on FRI). The wording implies that it is not necessary to specify a requested document in detail and that the authority must do some research in order to identify it. Article 5.1 of the Convention on Access to Official Documents requires that the authority help the applicant, as far as reasonably possible, to identify the requested document. This positive obligation should be laid down in the Article 9 of the draft law on FRI.

61. Written requests shall be dismissed under certain circumstances mentioned in Article 9.14 of the draft law on FRI. One of these is if "the second request by the same person with regard to the same information in the course of the preceding six months". The corresponding provision in the Convention allows for refusals only when a request is "manifestly unreasonable" (Article 5.5 ii). In the Explanatory report to the Convention examples of this is where a request is clearly vexatious because it is one of many requests intended to hinder the authority's work or because it is a question of repeated requests by one applicant for the same document within a very short period of time (Paragraph 52). The draft law on FRI is too restrictive in allowing dismissals on this ground and therefore in conflict with the Convention on Access to Official Documents.

62. Verbal requests shall be dealt with immediately (Article 9.4 of the FRI). This provision appears to set out a duty to give an answer during the course of the conversation between the applicant and the information holder or in immediate connection to the conversation. Written requests have fixed time limits that are reasonably short (Article 9.12 of the draft law on FRI). This is in compliance with Article 5.4 of the ConventioN ON Access to Official Documents.

63. According to Article 9.6 of the draft law on FRI, the basic rule as regards forms for releasing information is that it should be presented in the form or format requested, whenever possible. The applicant has the alternative possibility to inspect the information on the premises of the authority (Article 9.7). These provisions are in line with Article 6.1 of the Convention on Access to Official Documents.

64. Special consideration should be given to information in data bases. The draft law on FRI makes no distinction between such information and information recorded in traditional ways, such as paper documents. To properly cover information from data bases, the draft law on FRI should provide guidance on the rules to be applied by information holders when they extract and compile information from data bases.

Article 10

65. Charging of costs is regulated in Article 10 of the draft law on FRI. Certain type of information is obtained free of charge. The list of such exemptions is good. The self cost-principle laid down in Article 10.3 should clearly explain that costs can only be charged for actual copying costs, not for the work put down by the staff of the information holder (see. Article 7.2 of the Convention on Access to Official Documents).

Article 11

66. Refusals to provide information may be appealed to court and shall be motivated and indicate the appeals procedure (Article 11 of the draft law on FRI). This is in compliance with Articles 5.6 and 8 of the Convention on Access to Official Documents. Furthermore, the Convention on Access to Official Documents demands that the review procedure shall be expeditious and inexpensive. It is not clear how these requirements are fulfilled as regards to appeals against refusals under the draft law on FRI.

Articles 12 and 13

67. Article 12 deals with the responsibilities of information holders. They are obliged to ensure the accessibility and publicity of receiving the information and to provide the person seeking information with accurate and complete information. On the other hand, Article 13 lays out the liability in case of breach of obligations mentioned in Article 12. These dispositions do not add anything of particular value to the draft law on FRI

Article 14

68. This article is a closing disposition concerning the entry into force of the law on FRI.

V. Specific comments on the draft law on Making Amendments to the Code of Administrative Violations (CDL(2009)003)

69. According to the draft article in the Code of Administrative Violations of the Republic of Armenia, an administrative violation will be the “unlawful failure of the information holder to provide information provided by law”.

70. The formulation is extremely general and could cover a number of actions and omissions, such as not releasing information at all on grounds of misinterpreting an exemption, delaying past the time limits to release information or not publishing information on websites in accordance with Article 6 of the FRI. This provision should be amended.

VI. Conclusions

A. About the draft law on FRI

71. The Venice Commission finds that the draft law of Armenia on FRI complies in several respects with the general principles codified in the Convention on Access to Official Documents. The draft law however raises certain issues which require reconsideration or redrafting of certain provisions .

72. The references to “final information” in Articles 3.2), 7.1.2) and 8.1.2) should be deleted because they narrow down the right to access on information. Furthermore the draft law on FRI should state explicitly that it covers both information produced by the authorities and information handed in to them.

73. Article 3 of the draft law on FRI defines the bodies that are affected by the duty to provide information, but the distinction between them is not clear. The term “public authorities” should be redefined to cover administrative authorities at national, regional and local levels, legislatives bodies and judicial authorities, insofar as they perform administrative functions, and natural or legal persons, insofar as they exercise administrative authority.

74. Article 6 of draft law on FRI defines information subject to publication. Release of certain information concerning notably the employees' private sphere, such as information on national origin, marital status or incentive measures or sanctions imposed on them, may however infringe Article 8 ECHR. The same remark applies to Article 7.

75. Article 6 of the draft law on FRI prohibits publication of information containing state or official secret.Reference should be made to the fact that any restriction on access to official documents must be justified in order to protect national security, defence and international relations. It must be stressed in this respect that national security should not be misused in order to protect information that might reveal breach of human rights, corruption within public authorities, administrative errors, or information which is simply embarrassing for public officials or public authorities.

76. In respect of Article 8.1 of the draft law on FRI, the Venice Commission recalls that limitations on the right to access to official documents shall be permitted only when they are prescribed by law, necessary in a democratic society and proportionate to the aim of protecting other legitimate rights and interests. Limitations should be laid down in a list consistent with the one indicated in Article 3 of the Convention on Access to Official Documents.

77. The list in Article 8 should be made more consistent, and should not unduly narrow down access to official documents.

78. Article 8 should contain a harm-test or public interest-test, in line with Article 3.2 of the Convention on Access to Official Documents.

79. The restriction to information that is related to other persons (article 8.1.12) should be removed.

80. Article 8.2 on partial release of documents should specify that access may be refused by the authorities if the document, after the deletions, would be misleading, meaningless, or manifestly unreasonable.

81. Article 9 should include a comprehensive description of the procedures prescribed for obtaining information, avoiding to impose superfluous requirements.

82. Article 9.14.3) should set out explicitly the criteria that would lead to a request to be considered "manifestly unfounded". A non-exhaustive list of examples may be useful in this case.

83. Article 11 of the draft law on FRI should set out the requirement that the appeal procedures be expeditious and inexpensive.

B. About the amendment to the Code of Administrative Violations

84. The Venice Commission considers that the above amendment is too general and could cover a number of actions and omissions, such as not releasing information at all on grounds of misinterpreting an exemption, delaying past the time-limits to release information or not publishing information on web sites in accordance with Article 6 of the draft law on FRI. It follows that the amendment requires redrafting in this terms. A list of examples may be useful in this case.