MEDIA LEGISLATION IN ALBANIA: STANDARDS AND PRACTICES

Albanian Media Institute
Instituti Shqiptar i Medias

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An assessment of media regulation in Albania necessitates, first of all, the identification of benchmark criteria, which in this case are the European standards on the media. These standards are selected as points of reference due to their importance in recognizing and guaranteeing the freedom of media, as well as their universal characteristics, which presently reflect the best practices in regulating the fourth estate, the media. The Council of Europe has adopted *Indicators for Media in Democracy* which includes 27 parameters, or indicators, on the freedom of the media, which lay out ideal standards on the freedom of the media. These indicators are selected in order to analyze the media situation in Council of Europe member countries. The list of indicators includes fundamental elements in guaranteeing media freedom in a democratic society. This list focuses primarily on the traditional media, devoting more attention to fundamental values which guarantee the freedom of the media and professionalism, but it does not extensively cover recent developments of the online media.

Where does Albanian legislation on media stand in relation to European standards, and how are these standards reflected on the freedom of the media in real life? This paper attempts at analyzing the present media legislation in Albania, by focusing on special media legislation, as well as other regulations that indirectly affect media activities to some extent. When we refer to media legislation in Albania, it would primarily include policies and regulations on

broadcasting, media financing, and media ownership. On the other hand, when we refer to supplementary legislation, which may have an effect on the media, it would include any other regulations, policies or decrees which do not focus on media matters, such as articles of the criminal and civil codes on hate speech, articles on libel and slander, etc.

Freedom of speech and information in Albania – guaranteeing and protecting those rights in real life

The media could not be conceived and could not exist unless the rights of freedom of speech and information are recognized and guaranteed. In fact, the first indicator in the Council of Europe list is the protection of the freedom of the speech and information, which should be guaranteed by law and applicable in practice.

In Albania, the freedom of the speech is guaranteed by the Constitution, and article 22 says that "the freedom of the speech is guaranteed; the freedom of the press, radio and television is guaranteed; prior censorship of means of communication is prohibited"[1]. The following article in the Constitution guarantees the right to information. These two rights are intrinsically related to one another, and could not be conceived or exercised in practice without the preexistence of the other. Regulations that enshrine these rights, include the Law on Press, the Law on Audiovisual Media, as well as the Law on the Right to Information, which was passed in 2014. Besides domestic legislation, the freedom of the speech is also guaranteed by the European Convention on

[1] The Constitution of the Republic of Albania, 1998

Human Rights, which was ratified by Albania in 1994, and it represents a binding obligation on signatories.

Regardless of the wealth of domestic and international legislation on these topics, the media in Albania do not yet fully enjoy the freedom of speech and information. This issue has been assessed by a number of international institutions working on the freedom of speech, such as Freedom House, Reporters Without Borders, or IREX, and based of their considerations Albania continues to be listed as a country were the media is only partially free. Similarly, Albanian journalists do not have a positive opinion on the perspective of applying into practice the freedom of speech and media. According to a study[2] conducted in 2018, some 39 percent of editors and journalists said that the freedom of the speech and media encounters into serious obstacles in real life, while 31 percent of them said that the right conditions do not yet exist in our country to guarantee the freedom of the media. On the other hand, 22 percent of them said that the freedom of the media is only violated in sporadic cases.

In theory, the legal framework should regulate many aspects of media freedom, but it does not provide a comprehensive protection, as a series of shortcomings continue to jeopardize the right to the freedom of speech and information. For example, defamation is not yet fully decriminalized, and the penal code still includes libel and slander as potentially criminal offences, regardless of continuous objections by civil society organizations, and recommendations by international institutions on necessary changes in legislation. Changes in the Albanian legislation regarding defamation in criminal and civil law, which were approved around the end of 2012, were

[2] The Albanian Media and European Standards (2018) Albanian Media Institute, page 12.

the end result of a seven-year lobbying effort by the Albanian Media Institute, and the Open Society Justice Initiative, while these legal amendments updated and improved significantly the Albanian regulation on defamation.

Between defamation and the freedom to criticize public officials - boundaries

The freedom of the speech is not a license to defame, distribute fake stories, or to cause injuries to the reputation of other individuals, including normal citizens, as well as people vested with political power or public officials. However, due to limited access to information, journalists often fall short of meeting the standards of their profession and publish inaccurate stories, while in a best-case scenario they lack facts or evidence to support claims they've published. Faced with such a situation, journalists could be accused of defamation, particularly when government officials are involved. But, what is the difference between defamation and the freedom to criticize government officials, and how does the law guarantee protection from malicious exploitation of both concepts? Based on indicator number two of the Council of Europe on free media standards, the domestic legislation of a country should not afford special protection from criticism to public officials, such as the approval of harsher criminal sanctions against reporters in similar cases. Journalists should not be sent to jail just for doing their jobs, and similarly media outlets should not be forced to shut down as a result of commentaries and criticism.

The 2012 changes to the criminal code related to legal dispositions on defamation, echo the principles of this indicator. Jail sentences for defamation and insults were

abrogated as a result of those changes. The present legislation, unlike the previous one, does not afford special protection to public officials, which means that the courts will not apply any special dispensation and treat any proceedings as any other defamation cases against regular citizens. Besides the removal of articles on the special protection for public officials, several dispositions were also scrapped on insults and attacks on the reputation of particular state officials, such as the president, as well as foreign dignitaries. The legislation appears to allow journalists to be critical towards the powers that be. However, the fact that defamation is not completely decriminalized it is still an obstacle that the journalists should be aware of. The present legislation asks for proportional damages, but this is not always taken into consideration by the courts, which tend to award enormous and inadequate damages. Journalists are increasingly worried of potential civil lawsuits.

During last year (2019), the government attempted to introduce legislation to regulate defamation and fake news. These attempts were presented as an 'anti-defamation package,' and according to its authors it aimed at "regulating the rights, obligations and responsibilities of physical and legal persons, providing audio and audiovisual services, electronic publication services, through networks of electronic communications, as well as the promotion of media pluralism and other important aspects of media services, in accordance with international conventions and standards." This package aimed at extending its scope over linear audiovisual broadcasts, non-linear audiovisual broadcasts, their supporting services, as well as electronic publication services, but not on the press media.

Even though the 'anti-defamation package' clearly states that its provisions "can not be interpreted in such a way as

to allow censorship or to limit the right to freedom of speech and expression," the Albanian media and the international community has expressed concerns that this type of legislation may increase the risk of censorship and self-censorship in the local media, and could contribute to further setbacks on media freedom and freedom of expression in Albania." The president also vetoed this law, calling on MPs to change several articles in this law, claiming that at present form, the law violates the right to freedom of expression, press, and the right to information.

Measures and penalties prescribed by this law vary, from the publication of corrections and pop-up notifications, to fines, temporary suspension of license/authorization of audio and video service providers, a reduction in the validity period of license/authorization of audio and video service providers, to a suspension of license/authorization of audio and video service providers. The wide range of competences vested upon AMA, its ability to impose heavy fines and block internet news sites without any prior court decisions "may produce a chilling effect on the freedom of expression and media".[3] Such a law is considered as unnecessary while at the present, cases of defamation are regulated by criminal and civil code articles.

The Venice Commission has reacted [4] regarding this law, and according to them, first of all, the notion of "electronic publications" is too nebulously and broadly defined, therefore jeopardizing clarity and foreseeability of the scope

[3] Retrieved from https://www.reuters.com/article/us-albania-media-law/albania-passes-anti-slander-law-despite-media-protest-calling-it-censorship-idUSKBN1YM2HS. Accessed on June 6, 2020, at 14.30

[4] European Commission for Democracy through law (Venice Commission). Opinion on the law no.97/2013 on the audiovisual media service with draft amendments adopted on December 18, 2019.

of application of the law. In particular, it is unclear whether individual bloggers, or people having personal pages on social network platforms (Facebook, Instagram, Twitter etc.) publishing information from the media will be covered by this definition.

Secondly, the commission states that the area of application of the law extends beyond professional media outlets and nothing prevents this law from applying not only to the online publication of the printed press but also to everyone interested in imparting information, ideas, views to entertain, inform or educate the general public by online publications. This may produce a chilling effect on ordinary individuals that would be deterred from expressing any view online, for fear of possible sanctions left at the discretion of the AMA. In a country where pluralism in the current media environment is, to an important extent, stemming from individual bloggers and journalists, this raises serious concerns.

Thirdly, the commissions were concerned about the professional qualification of the members of the AMA and the Complaints Committee. Their qualification should be sufficient to perform the tasks they will be entrusted with, namely assessing facts and legal concepts which, in principle, fall within the competence of a judge and require a fair balancing exercise between freedom of expression and information, and the individual rights of others and the interests of the society as a whole. According to the Venice Commission, clear eligibility criteria as regards the skills and experience needed for those who wanted to be members of the Complaints Committee should be applied. In summary, the Venice Commission considers that the law would have a chilling effect on free speech and political speech, and that this law suffers from vagueness, which further complicates it application.

The freedom of the speech, just like any other freedom, should have its limitations imposed on the basis of principles of necessity and proportionality. Indicator number 3 of CoE clearly states that criminal dispositions against inciting hate, or articles on the protection of public order and national security should respect the right to enjoy the freedom of expression. Penalties and sanctions against the media should respect principles of necessity and proportionality. Whenever there are concerns regarding the politicized application of the legislation, considering the frequency and severity of damages against the media, the legislation on media and court practices must change accordingly.

Limitations to the freedom of the speech are prescribed by the constitution, and article 17 points out that limits "may be established only by law for a public interest or for the protection of the rights of others," but a limitation shall be in proportion with the situation that has dictated it. However, "limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights." This means that the freedom of the speech and the media may be subject to limitations when it is in the interest of the public.

Principles of necessity and proportionality are at the core of criminal code dispositions setting limitations on media freedom regarding criminal offenses against public order and security. This includes public calls to carry out acts of violence against the constitutional order, which is punishable by fine, or up to three years' imprisonment; the distribution of fake information or announcements, by text, writing, or any other method, in an effort to cause insecurity and panic amongst the public, is punishable by fine, or up to five years' imprisonment. The criminal code also includes legal stipulations against hate speech and public calls to incite hatred against other portions of the population. The endangerment of public

peace, by calling on violence against other portions of the population is punishable by imprisonment of two to eight years. The criminal code also forbids the incitement of hatred and conflict, because of race, ethnicity, religion, or sexual orientation. The production, dissemination, or the storage, with intent to publish and distribute media content of such nature, carried out by any means or methods, is punishable by imprisonment of two to ten years.

Similarly, the Law 10221, On the Protection from discrimination, provides protection from various forms of discrimination, including an article on the publication of discriminatory advertising. This law also provided for the establishment of the institution of the Commissioner for the Protection from Discrimination, whose scope extends to cases related to discrimination and violations over the course of the performance of one's duties, as well as taking decisions on cases that are identified by complaints filed by the public. The main complaints filed with the commissioner's office are related to discrimination in the workplace or in schools, but complaints against the media are rare.

Regulating access to information and the right to information

The right to information, a fundamental right in a democratic society, is rooted on the principle that citizens have the right to request materials and information that are produced or stored by public authorities. In Albania, this right was enshrined in law since 1999, but it encountered numerous challenges with regards to its implementation in practice. Because of these issues, the civil society pushed for several years for improvements in legislation, until the parliament

approved the Law 119/2014 "On the right to information." The law set new standards of providing access to information to citizens, and it is considered as one of the best laws in the region. These changes in the legislation are in accordance with indicator 24 of CoE recommendations, which specifies that the government, the parliament, and the courts should be equally accessible to all media in a free and fair fashion. However, the law applies equally to all citizens, and it was not drafted especially to facilitate media access on information.

The main principle of this law is maximum access to what is considered public information. However, it should be pointed out that the application of the right to information is subject to a series of restrictions and limitations. The law prescribes that such limitations should be necessary, proportional, and only imposed in cases when the request for information may be a threat to interests related to national security, the prevention, investigation, and proceedings against criminal offenses, equality between parties in court proceedings, patents, copyright, the right to privacy, trade secret, etc. However, in each case, limitations to the right to information, must pass the test of higher public interest. In these cases, the public authority must set a balance and take decisions based on public interest: which serves better the public interest, the release of the information, or is it more important to protect other interests safeguarded by law?

Even though it is considered a very good piece of legislation, its enforcement in real life has proven problematic, as access to information is not guaranteed by all public authorities, and not to all the media. Journalists and editors claim that the law is enforced selectively in favor of one or a few particular media outlets, and even when information is released, some media organizations receive it sooner than others. On the other hand, the legislative branch appears to be the most

transparent and forthcoming of all three estates. Parliament hearing sessions are broadcasted live by the Albanian public broadcaster by radio and television, as well as the majority of all-news TV stations, while the internal regulation of the parliament allows for public access to meeting or hearings, by applying for a temporary entry permit, or request accreditation. Accredited journalists follow regularly meetings of parliamentary committees and plenary sessions. Press statements on parliament activities, the agenda of activities, and any other events of the parliament are regularly published in a timely fashion. Documents, such as draft-laws, minutes of meetings and plenary sessions, as well as reports on other activities are accessible on the internet.

On the other side of the spectrum, the judicial system is the least opened of all, and its level of transparency suffered another blow in 2016, when the minister of justice issued guidelines on the enforcement of two recommendations issued in 2011 and 2012, by the Commissioner for the Protection of Personal Data, on the protection of the privacy of persons involved in court proceedings. As a result of these changes, access to the justice system online database was dramatically reduced, as personal information was stripped from these data. Public and media access on court decisions or other data is limited and has slowed down considerably. Similarly, there are recurring problems with the transparency of prosecution offices, which have prompted the Commissioner on Information to take a series of decisions requesting prosecution offices to allow access to information. During the last two years, the commissioner has received more than 500 complaints regarding access to information. The rate of complaints filed by ordinary citizens has increased by comparison to complaints lodged by the civil society, which shows an increase in public awareness regarding their right to information.

Proportionality in freedom of information, privacy, and state secrets

One of the limitations to the access to information is related to the protection of privacy, which is always taken into consideration and weighed against the protection of the right to speech and information. However, the principle of proportionality is not always clearly or appropriately applied, as there is a tendency to use state secret laws, various regulations and recommendations on the protection of privacy as a means to conceal information from the public.

The criminal code protects the right to privacy and lists a series of cases when the violation of this rights constitutes a criminal offence, such as the recording and filming of personal aspects of other people's lives without their consent, dissemination of a personal secret without prior authorization because of their position or for profit, as well as the violation of the secrecy of correspondence. On the other hand, the Law on the Protection of Personal Data sets rules and guidelines on the protection of personal data, such as obligation to prior notification and the consent of individuals in the processing of their personal data, the right of citizens to have access to their personal data, as well as the right to refuse the processing of their data. In cases of violations related to the processing of personal data each individual reserves the right to file an administrative complaint, as well as file a lawsuit for damages.

As regards the media, the law says that limitations and exceptions to data processing are tolerated up to the level where the respect and limitations of both rights strike a balance between the protection of personal data and the right of access to information. The right to information and the protection of personal data are administered by the institution of the

Commissioner on the Right to Information and the Protection of Personal Data. This office caries both functions, and in the case of publicizing data, it strikes a balance between these two main interests supporting the abovementioned rights. In an indirect way, the office of the commissioner also addresses cases of the right to information regarding documents classified as state secrets, which is regulated by a special law. Solutions provided by the Law 119/2014 "On the Right to Information" are theoretically acceptable by democratic society standards, as the right to information extends all the way to a boundary established by the application of the principle of proportionality, which is the task of the commissioner's office. This institution is vested with quasi judicial powers, while its decisions can be challenged in courts.

Besides the law on the protection of personal data, the law on broadcast media mentions the importance of respecting and guaranteeing the right to the protection of privacy, as one of the fundamental principles in the functioning of broadcast media companies. One of the rules established by the Law on Audiovisual Media is the obligation to refrain from violating the privacy of individuals in media broadcasts, as well as to avoid using means and methods which violate this right over the course of media content production. The right to privacy is also addressed by the Audiovisual Media Authority, following the approval and changes made to the Code of Broadcaster, and one chapter of the code deals exclusively with matters of privacy. According to this code, the publication of private information or images could be justified only when the protection of public interest overrides the right to privacy. The media Code of Ethics also points out the obligation on the part of journalists to respect the right of privacy, the obligation to respect the dignity of individuals, finding a balance between the right of public officials to privacy and

the public interest, it also sets rules and guidelines on ethical reporting on accidents and disasters, as well as a balanced and careful coverage of marginalized groups.

Even though in theory laws and regulations oversee the relationship between media and privacy, a different situation presents itself in real life, as the mushrooming of news websites has deteriorated the situation regarding the respect of ethical rules and the right to privacy.

On the other hand, the Law on Classified Information "State Secret" was adopted in 1999, and it was later amended in 2006 and 2012. This law defines as state secret any classified information, whose unauthorized exposure and dissemination could endanger national security. Information is classified when it relates to military plans, armaments or operations, information on national security, activities of intelligence services, relations to foreign governments, etc. The law that was adopted in 1999 identified three levels of classification of information: restricted, confidential, and secret. This classification was based on the amount of harm that could be caused by the publication of such information to national security. In 2006, the law was amended, and another layer of classification was added: top secret information, whose unauthorized publication could seriously endanger national security. At the time, these amendments were justified by the need to add another level of security in the framework of Albania's membership into NATO. However, this additional layer of secrecy raised concerns that public institutions could take advantage of this law to further restrict access to information.

The regulation of broadcasting operations: The Law on Audiovisual Media

In order to start functioning as broadcasting media outlets, media companies should fulfill certain criteria to receive a broadcasting license or authorization from a regulating body. The first institution of this kind was the National Council of Radio and Television (KKRT), which was established following the approval of the Law on Radio and Television in 1998. It was replaced in 2013 by the Audiovisual Media Authority (AMA), following the adoption of the Law on Audiovisual Media. According to the Law on Audiovisual Media, the institution in charge of allocating broadcasting licenses is the Audiovisual Media Authority, an independent regulating body and a public legal person. Recently, with the switch to digital broadcasts and the approval of the Law on Audiovisual Media, the number of available licenses issued by the regulating body has increased accordingly, depending on services on offer and area of coverage of broadcasting licenses.

The Law on Audiovisual Media set a ceiling of no more than 40 percent of share ownership on a national broadcasting license. It also allowed for the same individual to own 20 percent of shares in a second national broadcasting license, while that same individual could also own 10 percent of shares in a third venture that received a national broadcasting license. An individual that owned 100 percent of shares in local or regional broadcasting company, could only own an additional local or regional radio station. On the other hand, a person could be the owner of two local or regional radio or TV stations, but that individual was not allowed to own more than 40 percent of shares in each company. Besides setting limitations on the share ownership, this

law also imposed restrictions on the percentage of ads and commercial revenues in relation to the advertising market, setting a ceiling of 30 percent of the advertising market for the broadcasting media (Law 97/2013, article 62.).

The most recent changes in the legislation were recorded following a decision of the Constitutional Court which rescinded paragraph 3 of article 62, focusing primarily on limitations and restrictions on national broadcasting licenses. The Association of Electronic Media appealed to the Constitutional Court in April 2016 to lift restrictions on the ownership of national broadcasting licenses, arguing that these limitations were unconstitutional, and they violated the principle of equality before law, and the right to property. This process also involved the Audiovisual Media Authority (AMA), which supported the appeal of private broadcasters; while, on the other side, parliament representatives objected to this request, arguing that restrictions on ownership were set by law to safeguard the freedom of the speech, which should enjoy priority protection. Economic arguments and demands from private companies were valued more than the need to guarantee pluralism in the media. These changes opened the path to monopolies in the broadcasting media market.

These changes were preceded by an effort sponsored by socialist MP Taulant Balla, which requested the lifting of all limitations on the ownership of media outlets, in other words, to invalidate article 62 of the Law on Audiovisual Media. Following strong objections by international institutions, including the EU, OSCE, the Council of Europe, the parliamentary committee on media did not approve these draft-amendments. However, the following year restrictions on ownership were scrapped by the decision of the Constitutional Court.

The allocation of frequencies is based on principles of objectivity, transparency, nondiscrimination, the availability of free frequencies, and in accordance with the guidelines of the National Plan on Frequencies, only on those frequency ranges which are administered by AMA. This article echoes the principle enshrined in indicator number 15 of CoE standards which expressly states that "regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licenses. Print media and Internet-based media should not be required to hold a state license which goes beyond a mere business or tax registration."

The legislation also provides for open competition procedures in allocating broadcasting licenses to digital networks, guaranteeing equal, objective, and non-discriminatory treatment (article 70). Similarly, the law and regulations adopted by AMA guarantee local broadcasters with equal, reasonable, and non-discriminatory access to these networks. However, the dynamic of the development of the broadcast media in the country created a situation, in which not all the companies could enter the competition for the allocation of certain licenses, but only a few of them were eligible. However, the first private digital platform started functioning in 2004, while the Strategy on the Transition to Digital Broadcasting, an official document coordinating the transition to digital broadcasting, was approved only in 2012. Considering these developments, and faced with pressure by companies operating digital platforms, that wanted to protect their own interests, the Strategy decided that licenses on national digital networks would be assigned in beauty contest procedures, which meant that the competition would take place between existing digital platforms and those broadcast media companies which were deemed sufficiently

experienced to take this job on. Even though the companies that entered the licensing process were probably the only commercial entities interested, and capable, to operate these networks, the application of beauty contest principle violated the rules of fair competition.

On the other hand, the print media has no obligations to register with any media regulatory body, but they function as business ventures, or non-profit organizations, but they should abide by respective legislations. There are no special licenses on print media outlets, and no obligations to register with state authorities. Same thing goes for the online media, which are totally unregulated by law, and they do not even need to register as business ventures, as there is no legislation on this field.

In practice, the main problem throughout the history of regulatory bodies has been their inability to function in an effective way, independently from other institutions or factors, in regulating the broadcasting market, as well as the failure to strengthen the independence of this institution. With regards to independence, the very procedure of selection of AMA members depends largely on the political situation in the country, and that causes the regulatory body to be affected by politics. The formula of the election of the members of the steering council does not allow for independent choices, and this creates deep chasms between council members, as they are supposed to show they loyalty to the political parties that selected them for the job, at least on some of the important topics that are voted by the AMA council, and behave a little less politically on inconsequential matters. However, an important aspect regarding the guaranteeing of AMA's independence is related to the profile and background of its members, as their work experiences and their professions should be assets in improving the level of independence of this regulatory body. Even though criteria have been adopted

on the incompatibility with the position of AMA members, there have been cases when these criteria have been ignored and some of its members had close affiliations to politics. This situation has made it more difficult for AMA to assert its independence, and has resulted in politically-motivated decisions in favor of particular media companies.

Regulating media coverage: The Electoral Code

An important aspect of regulated media activities is the coverage of electoral campaigns. Indicator number 5 of the Council of Europe points out that political parties and candidates in electoral campaigns should be afforded equal access to the media. During electoral campaigns, media outlets should further facilitate the communication between political parties and the public.

As regards this indicator, the electoral code includes a series of guidelines on media reporting during an electoral campaign, for a period of 30 days before the opening of polls, including a day of electoral silence, the day before election date. The code regulates reporting on political parties by public and private broadcasters, as well as the allocation of airtime to parliamentary parties and those that are not represented in parliament.

For example, parliamentary parties with more than 20 percent of seats in parliament should receive cumulative coverage of no less than 30 minutes by the public broadcaster, while other parliamentary parties are assigned no less than 15 minutes. Any non-parliamentary party running in the elections should receive 10 minutes of TV coverage in the public broadcaster, and 10 minutes of airtime on public

radio. The law does not differentiate between public and private broadcasters regarding airtime allocated to reporting on the electoral campaign during newscasts, or professional standards in electoral reporting. This coverage should be carried out with objectivity, by guaranteeing full disclosure of information and pluralism in information. Radio and TV stations are bound by law to allocate the same amount of airtime to all political parties that won more than 20 percent of seats during the last elections, while parties with less than 20 percent of seats are allocated only half of that amount of airtime. Propaganda and political commentaries by journalists are prohibited, and constitute serious violations of the electoral code, that could be fined by the Central Election Commission. In the case of public broadcaster these fines could amount to Lek20,000 (Euro160) for journalists; Lek30,000 (Euro250) for editors; and Lek60,000 (Euro500) for the general manager. Heavier fines are levied on private broadcasters for violating airtime allocation rules on political parties: Lek1.5million on local broadcasters, and Lek3million on national coverage broadcasters (Euro12,000 – Euro24,000). In case these violations persist, the Commission may order a 48-hour shutdown of a TV station. Radio and TV stations reserve the right to produce and broadcast political shows and debates, but they should guarantee equal representation between parties. The Code also sets rules and guidelines on political advertising during campaigns. The enforcement of these rules is monitored by the Media Monitoring Board (BMM), which presents daily reports and advises the Central Election Commission on necessary measures (article 85).

The Audiovisual Media Authority regularly monitors the coverage on political parties and their allocated airtime throughout the electoral campaigns. As a result of these clearly-defined rules and fines that could be levied in cases of violations, there have no noticeable lack of balance on

media's part in the coverage of various parties. However, the application by the book of these regulations still remains a serious challenge in practice, due to unbalanced and asymmetric political activities of various parties, as well as obligations imposed on the media organizations to accept media content shot and edited by political parties. These two elements compromise professional standards and the quality of information that is being provided to the public. Even though this practice had been going on for years, the Central Election Commission reached a decision in 2013, which practically compelled private TV stations to broadcast in newscasts and electoral special programming media content shot and edited by "electoral subjects".

Even though this decision was met with objections, all media outlets accepted the new guidelines and adopted those practices, as TV stations faced pressure from their competitors and political parties. Reports of OSCE/ODIHR have repeatedly pointed out that this practice violates the principle of editorial independence, and such a statement was also included in the report on the last elections: "Despite previous OSCE/ODIHR recommendations, Article 84.1 of the Electoral Code still permits pre-recorded party-produced footage to be broadcast during news editions, which results in blurring the separation between editorial content and political advertising. This is contrary to OSCE commitments and to Council of Europe standards."

Besides issues with the quality of reporting and the fading of the role of journalists, no observable cases of discrimination have been identified during electoral campaigns. In a recent trend, political parties are taking over the coverage of their electoral campaigns, by rendering journalists surplus to requirements, and even preventing them from attending public meetings or events.

Regulating access to internet and foreign media

The Albanian media legislation also had to address the need to adapt to Audiovisual Media Services Directive of the European Union, in the framework of Albania's efforts to join EU. The country ratified in 1999 the European Convention on Transfrontier Television, and its additional protocols. The ratification of this convention, calls on Albania to respect and implement the criteria and norms listed under the article 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms, including the freedom to receive a signal, and to have access to programs that respect the principles of this convention. With regards to indicator number 17, on the freedom of access to media (newspapers or broadcast media) and access to internet, the Albanian citizens fully enjoy these freedoms.

At the present, the Albanian legislation allows access to foreign media and it makes no efforts to deny access to them or their programs, including their publications on the internet. This is regulated by the Law on Press, and the Law on Audiovisual Media. The latter, also regulates foreign media broadcasts on satellite and other similar technologies from Albania, which means that they enjoy the same legal protection regardless of the media origin and the country where they operate from.

The law allows for limitations and restrictions on foreign media broadcasts, only in cases prescribed by international agreements, or based on specific articles of the law on broadcast media. For example, this includes the broadcasting of special programs, particularly sporting events, when a local TV station owns broadcasting rights of a sporting event,

or other special events and shows. The law also recognizes the right of any media outlet from European Union countries to have "equal access to events of high public interest, which are exclusively broadcasted by an audiovisual service provider under Albanian jurisdiction," and the same goes for the Albanian media. The relations between the foreign media and the Albanian media regarding news-in-brief reports are based on other criteria, which are regulated by the Audiovisual Media Authority, and the law on commercial exchanges, but, however, equal treatment by the authorities continues to be the overriding principle in the relations between local and foreign media.

Ever since the transition to democracy, there have been no cases of foreign media restrictions or blackouts in Albania. Foreign newspapers and magazines can be purchased in the country, while foreign TV stations are easily accessible. Similarly, there have been no obstructions on internet access or other foreign media platforms. Internet is widely available in the country, and according to INSTAT, 68.6 percent of the population (ages 16-74) used the internet over the course of 2019.[5]

Regulating hate speech

Hate speech is regulated by the criminal code and its provisions are applicable to all citizens. Article 265 of the criminal code points out that "inciting hate or disputes on grounds of race, ethnicity, religion or sexual orientation, as well as intentional preparation, dissemination or preservation

[5] INSTAT (2019). *Survey on the Use of Information and Communication Technology (ICT) by Households and Individuals 2018-2019.* INSTAT, page 1.

for purposes of distributing writings with such content, by any means or forms, shall be punishable by imprisonment of from two to ten years." The following article 266 specifies that calls for national hatred "endangering public peace by calling for hatred against other parts of the population, by insulting or defaming them, or by requesting the use of force or arbitrary actions against them, is punishable by two to eight years' imprisonment."

Even though the Constitution of the Republic of Albania does not expressly mention the term "hate speech," it includes in its fundamental principles the obligation to respect human rights, religious cohabitation, and respect for minorities. Article 3 of the constitution states that "the independence of the state and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them."

Law 9970 On Gender Equality in Society includes a chapter which seeks to regulate gender equality in the media, as well as addressing issues of hate speech. The media plays a very important role in raising awareness on gender equality, and it fulfills this role by engaging in non-discriminatory reporting, though the use of neutral terminology, and avoidance of gender stereotypes. This law prohibits broadcasting, printing and publication of information and media materials of insulting and denigrating content.[6]

Law 10221, approved on Feb 04, 2010, On the Protection from Discrimination, also contributes with regards to

[6] Albanian Media Institute (2014). *Hate Speech in Online Media in South East Europe.* AMI, Tirana, page 23.

regulating hate speech. The law also provided for the establishment of a regulatory institution, which acts as an administrative body vested with quasi judicial powers, namely the Commissioner for Protection from Discrimination. The Commissioner has taken several decisions based on the aforementioned law, and the jurisprudence of the European Court of Human Rights.

Hate speech cases are processed by the Commissioner on the Protection from Discrimination, and over recent years there have been some landmark cases, initiated by complaints from injured parties. Punitive measures and fines levied by the Commissioner are appealed in courts. In general, the main source on cases of discrimination is the office of the Commissioner on the Protection from Discrimination, which publishes data in yearly reports. According to the 2018 report, the commissioner deliberated on 49 instances of discrimination, but only three of them involved hate speech in web portals, print and broadcast media.[7]

A study conducted by the Albanian Media Institute[8] regarding hate speech in online media in Albania, revealed that the problem exists, but it does not dominate the media landscape. In particular, elements of hate speech can be usually found in the discourse of public figures, editorials, or interviews, rather than on stories reported by journalists. These findings are also supported by previous research studies[9]. The political speech, in parliament and elsewhere, appears to display extreme cases of aggressive attitudes

[7] The Commissioner on the Protection from Discrimination (2019). Yearly Report, 2018, page, 43.

[8] AMI (2014) Hate Speech in online media in South-East Europe.

[9] Çipuri, R. (2018) *Hate speech: Trends and exposure in Albanian TV broadcasts.*

towards political opponents, privacy violations, personal attacks, etc, and even though the media try to refrain from using such language themselves, they are still stuck with the job of disseminating information within the context of hate speech rhetoric used by politicians. Besides politics, other instances of hate speech in the media are mainly related to crime reporting, reporting on minorities and marginalized groups, reports on religious communities, as well as reports on historical events.

Even though journalists are not actively involved in promoting hate speech, they play a very important role and have a special responsibility in preventing hate speech, due to their job of disseminating information, and the shaping of the public opinion.

Economic regulations

The Albanian legislation makes no mention of direct government subsidies to the media. The main source of state financing of the media are funds provided for the publication of government advertisements or announcements, as well as the financing of public events, or awareness campaigns.

There are no accurate data on the size of the advertising market and state funds for advertising. However, studies have shown that practices of allocating government advertising funds are not always fair, transparent, and non-discriminatory. This situation is complicated even further by unclear and obscure regulations on the distribution of state advertising, and it is exacerbated by the lack of credible data on audiences or the number of readers. As a matter of fact, expenditures on advertising are not regulated by the legislation on public procurement. The Law on Procurements

lists a series of categories that are exempted from this law, including "the acquisition, development, production or co-production of program material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time."

Decisions of the Council of Ministers are the only administrative acts dealing with state advertisement. A 2007 decision by the Council of Ministers regarding state advertising included the number of viewers and readers among the criteria to determine which publications should run the ads. However, it was not easy to follow on that criteria, for as long as there were no public data on media audiences, but at least it was an attempt to establish filters for selection. The following two other decisions by the Council of Ministers have adopted much wider and ambiguous terms and criteria, including terms such as "media outlet" (without any other clarification), the offer, time or duration of broadcasts, as well as previous experiences in organizing similar events. These two decisions do not mention at all the criteria of popular media in wining the contract, even though that is usually one of the main criteria.

According to a legal analysis of present regulations on the allocation of government advertising, certain rules and guidelines have made it easier for state authorities to distribute advertising funds in less transparent and more selective ways. For example, besides media outlets, another category of recipients was added to the list of beneficiaries of state advertising funds: "specialized agencies," which would allow advertising agencies to profit from state advertising. Furthermore, this new practice would distribute state funds to media organizations without any public transparency or technical criteria. Because of these changes, a major portion of funds are allocated to agencies, which use public funds to

subcontract private media companies of their choosing, in a selective and nontransparent way.

Other issues regarding the regulation of state advertising are related to the composition of evaluation committees, which select offers on public tenders in state institutions, as it is no longer required that heads of legal and economic departments of respective institutions sit on these committees, thus "excluding" them from these procedures. Another problem is the transparency in the process of distributing state advertising. Present regulations have not only failed to resolve this problem, they have also removed some of the conditions and requirements that should guarantee transparency. These changes included the removal of the requirement to publish the list of candidates online, along with the suspension of online publication of the public tender files by the Public Procurement Agency. This creates even more room for selective distribution of state advertising.

Present regulations on the allocation of state funds allow advertising agencies to receive public funds. This relationship extends beyond advertising, as it concerns the organizing of fairs, public awareness campaigns, and government promotional events. However, in most cases these activities depend largely on media support on raising public awareness, and in this context it should be considered as one of the facets of the state-media financial relationship. There have been allegations on the preferential treatment of advertising agencies thanks to their political affiliations. On the other hand, due to a lack of transparency on the part of advertising agencies on the criteria of transferring funds to media outlets, it is difficult to complete a proper analysis on this aspect.

Regulating state ownership on the media

"Private media outlets should not be managed and owned by the state or state companies," is stated in the indicator 22 of standards recommended by the Council of Europe. At the present, there are no special regulations addressing this issue, as state ownership over private media is an almost completely unknown phenomenon for the Albanian media market. Following the collapse of the communist regime, the media that were owned and managed by the state could not adapt to the social-economic changes, and disappeared without ever being privatized.

As the old newspapers and magazines went away and new media organizations were established over the course of a few years, there was no need to privatize state-owned media, organizations that managed their publication, and not even their own staff attempted to privatize them. As a result, the issue of state media privatization was never a topic of discussions in Albanian media circles, unlike other countries in the region where debate on this topic played a significant role in the development of the media market.

In the context of the development of the Albanian media, the issue of state ownership over the media has never been considered a question of consequence, but however this element has been included in the Law on Radio and Television, and the present legislation on broadcast media. The Law on Radio and Television, which was adopted in 1998, prohibited allocation of broadcasting licenses to state institutions of all levels, including local government bodies. Political parties, political and religious organizations, public institutions in the field of economy, including banks and credit institutions, were barred from owning a broadcasting license. Around

that same time, the Albanian broadcasting company changed its status from a state broadcaster to a public institution of radio and television.

The Law on Audiovisual Media does not deal directly with the incompatibility of state institutions owning a broadcasting license, but that is implied. The law only says that national radio broadcasting licenses and national audiovisual broadcasting licenses are allocated to shareholding companies registered in Albania, which focus exclusively on broadcasting activities. It is not clear why the new legislation only specifies the fact that licenses are allocated to physical or legal persons engaged in audiovisual broadcasts, while the previous law provided much more data on the criteria that should be fulfilled in order to be eligible for a broadcasting license. However, in Albania there have never been any problems regarding covert state ownership on private media.

Conclusions

The Albanian legislation on the media has adapted considerably to the European legal framework, but only a portion of the indicators of the Council of Europe are enforced in practice. The gap in the implementation of these indicators in practice comes as a result of shortcomings and problems with the legislation, weak law-enforcement institutions, the impact of external political and economical factors, as well as the difficult economic situation of journalists and their social status.

With regards to the freedom of the speech, the present legal framework is capable, in theory, to regulate many of its aspects, but it is still seeming to be found wanting in securing a sound basis for guaranteeing the freedom of the speech. Libel and slander continued to be considered criminal offences, even though they are no longer prison sentences attached to them. Another lingering problem is the climate of confusion and the lack of consistency in awarding damages for harm to honor and reputation.

The law on access to information is considered as a very good piece of legislation, but its enforcement in real life is problematic. Access to information is not equally guaranteed by all public authorities, and not to all the media. Law enforcement is selective, favoring one or several particular media organizations, and even when information is disclosed, it is not disseminated to all the media simultaneously.

Proportionality between privacy and the right to information is an issue which is often taken into consideration. The establishment of the institution of the Commissioner on the Freedom of Information and the Protection of Personal Data is an attempt to strike a satisfactory balance between

these two fundamental rights. However, in practice there is a tendency to call into effect state secrecy laws, old regulations and recommendations on the protection of privacy to avoid any disclosure of information. Such a situation creates room and opportunity for curtailing freedom of information on grounds of state secrecy and the protection of privacy.

The media coverage of political parties does not represent a problem. This is partly due to the large number of political shows and current affairs programs in the main TV stations, which are broadcasted almost on a daily basis. However, the enforcement of strict laws on media coverage during electoral campaigns has also contributed to a large extent to this situation. A lingering problem is the limited access of the media to political events. At times, journalists are not allowed to report on certain events, as political parties want to produce their own stories from the campaign trail. This situation has become a serious source of concern for the media, it has established a climate of demotivation amongst journalists, and has drawn criticism from the media regarding the coverage of political events.

Covert state ownership over media organizations has never been a problem for the Albanian media. However, this does not mean that the relationship between the state and media ownership has not affected the media landscape, it just means that the state is not involved in direct or indirect ownership of shares in media companies.

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