

European Union Audiovisual Media Services and its impact on freedom of speech

Country Report: *Albania*

Ilda Londo

The Albanian media has come a long way since the end of the Communist era, expanding the then-existing landscape of the party media to a swelling market of print publications, televisions and radio. Compared to print media, electronic media had a later start, but its progress was rapid. Accordingly, legislation regulating commercial and public electronic media, has followed its development, rather than precede it. Similarly, for the same reasons, the regulatory authority has adapted to the development of the market, rather than overseeing its development or devising a strategy in this regard. A similar fortune has been that of online media and the Internet in general, with the market setting its own trend, followed by legal measures and regulatory authorities. In order to examine the potential impact that the adoption of EU AVMS Directive could have on Albanian media services and free speech, a brief description of media legislation and media development would be helpful.

1. Media legislation and freedom of speech

Since 1990, following the decades of government tutelage on the press, the Albanian media has faced new horizons of freedom. The advent of independent media, quite naturally, was duly characterized by mounting political pressure on them and a severe lack of professionalism among the journalists. These phenomena, to a considerable extent, were to be ascribed to the absence of a proper regulatory framework.

In the area of broadcasting, this problem was addressed by a fairly detailed law, Law No.8410 “On Public and Private Radio and Television”. The law, which has been amended six times since its adoption in 1998, purports to regulate in detail the activity of the electronic media, including the public broadcaster, commercial television, cable, and satellite television. In 2007 the Parliament also passed the Law on Digital Broadcasting, which preserves several of the basic requirements that the Law on Public and Private Radio and Television poses, mainly related to ownership and

content. The Law on Radio and Television established the National Council of Radio and Television as the main regulatory body and the Steering Council of Albanian Radio and Television as the highest ruling body of the public broadcaster.

In addition to the Law on Radio and Television, two other telecommunications laws are important for the television sector. These are the Law on Telecommunications in the Republic of Albania,¹ and the Law on the Regulatory Entity of Telecommunications,² which established the second regulatory body, the Regulatory Entity for Telecommunications. However, it must be noted that none of these laws deals with content in any manner: they are concerned only with setting criteria with technical aspects of telecommunications. So, at this moment, content of communication through the Internet is not addressed in any manner by any law in the country: content in this area is totally unregulated and not monitored, by legal or other means.

On the other hand, freedom of press and freedom of expression are legally protected in Albania, starting from the constitution to other relevant laws. The Constitution of the Republic of Albania guarantees, in its articles 22 and 23 respectively, the freedom of expression and of information. These two general provisions are further elaborated in specific laws. Another set of laws relevant to freedom of expression in Albania are the so-called freedom of information laws. In Albania, this field is ruled by three laws, the Law on the Freedom of Information of Official Documents; the Law on State Secrets and the Law on Personal Data.

Last, but not least, other regulations affecting media concern the provisions on libel and defamation, contained both in the Penal and Civil Codes. Since November 2004, two draft laws (prepared by Justice Initiative and Albanian Media Institute) comprising respectively proposed amendments to the Criminal Code and the Civil Code have been awaiting consideration at the Albanian Parliament. Even though both government and Members of Parliament have expressed their support for these changes, the bill has yet to pass in the Parliament.

2. Media landscape

The electronic media in Albania is the most important sector of the media scene, in terms of numbers and influence. Until 1994, Radio Tirana,

¹ Law no. 8038 "On Telecommunications", (November 23, 1995), as amended by Law no. 8287, (February 18, 1998).

² Law no. 8288, "On the Regulatory Entity of Telecommunications," (February 18, 1998).

the state-owned radio, was the only source of radio information for Albanians. However, the new commercial radio stations started to boom, amounting to 46 local stations currently registered by the regulatory authority, in addition to two national commercial radios and the public radio with its four regional radio branches.³ Although radios had a quick start when they first emerged, they were soon overshadowed by the development of commercial television.

The present television market scene in Albania, and its evolution in recent years, is remarkable. The State radio and television network, Radio Televizioni Shqiptar (RTSH), was Albania's only broadcaster until 1995, when the first private television station, TV Shijak, started operating from a residential address. Private broadcasters multiplied over the next few years.

Today, according to official data, the list of individuals/companies that have a television license is extensive: 68 local TV stations, 44 cable TV stations, 2 commercial national televisions and a satellite commercial one, apart from the public television, broadcasting in one national channel.⁴ Most of the electronic media outlets are centered in western Albania, especially in the capital, which is home to 72% of all radio stations and 75% of all television stations.⁵

The commercial television sector has experienced a late, but speedy, growth, characterized by lawlessness and chaos at its start, when regulation was absent. Even after regulation was established, the regulatory body has not always been able to fully establish its authority over the electronic media, though it has achieved some significant successes. Although the television market, like every other media market in the country, is almost deformed by a glut of television stations that the small market can hardly sustain, only a few stations have shut down.

The importance of commercial television has grown overall, thanks, in part, to the poor performance of the public service broadcaster, which has failed to reform itself as a truly public broadcaster. Another reason for the high profile of commercial television, especially in the capital, Tirana, is that some commercial stations have benefited from huge investments, particularly in equipment. These investments have made the stations popular and important in the eyes of the public. However, even those more popular outlets have not yet managed to become self-sustaining, and advertising revenue accounts for just half of their total annual income,⁶ a

³ List of licensed operators, National Council of Radio and Television (KKRT,) available at www.kkrt.gov.al.

⁴ List of licensed operators, National Council of Radio and Television (KKRT,) available at www.kkrt.gov.al.

⁵ KKRT, 2006 Annual Report to the Parliament, available at www.kkrt.gov.al

⁶ KKRT 2006 Annual Report to the Parliament, available at www.kkrt.gov.al

situation that indicates Albania's television market is still far from being viable and independent.

The first and, so far only digital terrestrial and satellite platform, Digitalb, started broadcasting on July 15, 2004, amidst strong opposition from both the regulatory authority and the other TV stations. Digital television came to the Albanian media scene as a guest that neither the law, nor the regulatory authority had invited, or at least planned for. However, Digitalb has proceeded with its activity for almost four years now, boasting an increasingly high number of subscribers: 120,000 as of early 2006.⁷

The terrestrial digital platform offers 38 channels, carrying both thematic channels and broadcasting other analogue TV stations. In 2007, Digitalb also started to experiment broadcasting their programming via mobile telephony. Overall, this company has invested significantly in terrestrial, satellite, and handheld broadcasting in these four years, while regulation on digital broadcasting was only finalized in summer 2007.

On the other hand, cable channels started broadcasting relatively late, and they remained marginal until the passage of the anti-piracy law in 2003.⁸ In recent years cable television has experienced an evident development, amounting to 44 stations in the whole country in 2007, as compared to 31 cable television stations in 2005.⁹ Interestingly, only a few of them are located in the capital. Although Tirana reigns supreme in print media and terrestrial radio and television, cable television is less popular in the capital.

Cable television operators now cover almost all urban areas in the country.¹⁰ These operators have proven increasingly attractive to viewers, because they re-broadcast from several popular foreign channels. These channels feature interesting and entertaining programs for viewers, in exchange for a reasonable monthly subscription price, which is significantly lower than digital operators.

When it comes to online media, its development is yet in its infancy. An impeding factor in its growth is certainly the slow spread of the Internet in the country. The Internet was introduced to the country by international organizations that established offices in Albania in the 1990s. Access became easier towards the end of the decade. Technical inadequacy, a lack of familiarity with the technology, a lack of public policy and high costs

⁷ Digitalb website, available at <http://www.digitalb.tv/kompania/> (accessed July 31, 2007).

⁸ Law no. 9124, "On amending Law no.8410", (July 29, 2003).

⁹ KKRT 2006 Annual Report to the Parliament, available at www.kkrt.gov.al

¹⁰ KKRT, 2004 Annual Report, Annex 2, p. 5.

delayed the wider spread of Internet access. Recent years have witnessed the gradual expansion of Internet access outside of Tirana, although the penetration rate is still rather low. The number of Internet providers is currently 25, including AlbTelekom, the public operator of fixed phone lines.¹¹

In general, data show that Internet spread and information and communication technology in general has improved over the years. So, the number of Internet users per 1,000 persons has increased from 1 in 2000 to 60 in 2005.¹² Similarly, personal computers increased in the same period from 8 to 12 per 1,000 inhabitants.¹³ However, this growth can hardly be translated into development of online media. All important media outlets have their own webpages, but their content is not permeated by the concept of online publishing: it is usually limited to conveying content as broadcast or published in traditional media into another form. In this context, online media is a novelty that has yet to take root in the Albanian media landscape

3. Harmonization of Albanian media legislation with EU *acquis*

Albania is a member of the Council of Europe and signed the Stabilization Association Agreement in June 2006. Consequently, the ongoing legal reform's priorities include harmonizing local legislation with EU regulation, including media legislation. Albania has partly incorporated European media law and standards. In 1999, Albania signed and ratified the Council of Europe Convention on Transfrontier Television and its Additional Protocol. In this context, many provisions of the Law on Radio and Television derive from this agreement and in a way also fulfil some of the requirements in the Television Without Frontiers Directive (TVWF), too. This is the case with the provisions on sponsorship, advertising, the right to reply, and the protection of minors.

More specifically, Albanian law determines a limit of 15% of total daily broadcasting time for advertising, or 12 minutes within an hour. The law also states that news and religious programs cannot be interrupted by advertisements, and advertisement cannot be broadcast in programs that last less than 45 minutes. Tobacco advertisements are prohibited, while alcohol and medicine ads are limited in broadcasting time and the messages they convey. In addition, ads have to carefully consider protection of minors and should not depict any behavior that can be harmful to a child's health or

¹¹ Regulatory Entity of Telecommunications, available at www.ert.gov.al

¹² World Bank, "ICT at a glance: Albania", available at http://devdata.worldbank.org/ict/alb_ict.pdf.

¹³ *Ibid.*

mental development. Detailed provisions for the right to reply are also present in the current law on broadcasting.

In general, Albanian law has incorporated EU TVWF requirements, with the exception of the provisions on teleshopping and on broadcasting of European works. The recent amendments on digital broadcasting introduced the requirement that programs be constituted of 50% European works, to be achieved progressively. However, the achievement of these standards has yet to be monitored, as this amendment is in its infancy.

In addition, a workgroup made of several media experts and regulatory bodies' representatives has the task to harmonize the Albanian law with the EU *acquis* in the broadcasting area. The revision process is part of an action plan drafted in cooperation with the Council of Europe, which includes the consultation of the revised law with relevant stakeholders in roundtables and other discussions. This plan intended for the first set of revisions to be ready by the end of 2007. These revisions would bear in mind the TVWF Directive, as the law only dealt with traditional radio and television.

However, the lengthy debates on the changed formula of regulatory authorities, the approval of the law on broadcasting, and the recent priority to defamation and libel amendments have caused significant delays in this regard. The process of revising the whole law on radio and television has stagnated. In addition, now that Albania already has a law on digital broadcasting, it is yet unclear whether the revision of the law on radio and television will be made, bearing in mind the TVWF Directive or the AVMS Directive.

Parallel to the planned revision of the law on broadcasting, experts at the Regulatory Entity of Telecommunications have started their own effort to amend the existing law on telecommunications in accordance with the Access Directive. The amendments to the law on radio and television and the law on telecommunications will be essential to the future development of the media services in the country. However, it is too soon to make any conclusions on the impact of these amendments or the process that will lead to the final laws, since this process has just started and has yet to become part of the public discussion.

4. Impact of implementation of the AVMS Directive and relevant legislation

Bearing in mind the implementation of the existing legislation, several issues emerge when trying to estimate the impact of the AVMS Directive on freedom of speech and media development in general. First, the Albanian media sector, and especially the regulatory authority, might experience difficulties in terms of respecting and monitoring the content quota as set in the Directive. This provision would prove extremely difficult to monitor: although the current law on radio and television states that TV stations should turn in their program quotas every year to the regulatory authority, this has never happened. In this context, if KKRT's authority is not asserted in this regard or if it does not develop monitoring tools and abilities of its own, the monitoring of the quota's implementation would be left to the will of TV stations themselves.

Second, when talking about danger of censorship on Internet, the provisions in this aspect might prove difficult to implement. The main reason for this is related to the total absence of monitoring mechanisms or any legal stipulation regarding content on the Internet. Although comparable to the overall lack of monitoring for traditional media in Albania, given the peculiar nature of the Internet, posing rules on Internet media services and overseeing their implementation is almost impossible when there is not any existing monitoring effort at all.

However, it must be noted that although monitoring of Internet communication is non-existent in the country, there have been no Government attempts to curb freedom of speech in this area. As the US State Department Report for 2006 confirms: "There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms."¹⁴ Such cases have in fact been altogether absent in the freedom of expression record in the country.

This optimistic analysis of Internet communication is also set against a background of relatively underdeveloped Internet communication and online media. The question of censorship or threats to freedom of speech when this medium becomes more powerful still remains. In this regard, the ideal solution would be self-regulation of Internet content providers and of media in general. Hopefully, this self-regulation process will start and consolidate once the strengthening of these media services begins.

At the moment, there is a Code of Ethics, drafted in 2006, but it only addresses traditional media and does not extend to Internet or other services. In addition, its implementation is already difficult, given the lack of a self-

¹⁴ US State Department 2006 Report on Human Rights in Albania, available at <http://www.institutemedia.org/documenta/Report%20of%20the%20Department%20of%20State%20of%20United%20States%20on%20Human%20Rights%202006.pdf>.

regulating mechanism to uphold it. Although the main media outlets have recognized the importance of having a Code of Ethics, there have been no further efforts to establish a body that would oversee general ethical conduct. Once again, the implementation of the Code of Ethics has been left to the free will of media owners, directors, and reporters.

It must be noted that the weak profile of journalism associations has its own role in this failure to develop an efficient self-regulation. In fact, these other associations seem to exist only on paper. In the words of one of the chairmen of these organizations:

“Even though we have 15 years of free press in Albania, there are only a few cases when colleagues of one media raise their voice or protest about the fate of other colleagues that are unjustly fired, censored, or threatened. Such topics are a topic only in the cafés where journalists gather and are never revealed to the public, leading to a situation where nobody talks of a phenomenon that affects everybody.”¹⁵

Although the current hot topic among journalists is labor relations and their lawful implementation, the role of journalism associations should also be viewed as spokespersons for freedom of speech, presently and in the future. In this context, if there is no strengthening of associations, it would be difficult to successfully counteract any government attempt to censorship.

However, although journalism associations in particular have not been exceptionally successful in discussions on media freedom and media development, successful cases have not been absent altogether. For example, in February 2006, the government initiated a bill on the change of formula of representation of regulatory authorities, without previous warning or public discussion. This move was strongly opposed by journalists, media owners, and civil society in general, who demanded that there was a public hearing on this matter. All stakeholders were able to participate and have their say on this matter. The law on digital broadcasting also followed a similar pattern, turning into a lengthy and heated debate. These two cases reveal an increasing awareness among the media community for the need to demand public debates on issues that are relevant to the whole community. Consequently, a further strengthening of the public profile of the media in this case is visible, although personal and economic interests of the media still prevail in the overall discussion.¹⁶

¹⁵ Interview with Armand Shkullaku, “Media, transparency for its own news”, *Shqip*, (May 10, 2006) p.12.

¹⁶ US State Department 2006 Report on Human Rights in Albania, available at <http://www.institutemedia.org/documenta/Report%20of%20the%20Department%20of%20State%20of%20United%20States%20on%20Human%20Rights%202006.pdf>.

Unfortunately, the same cannot be said for the independence of the court system. The case law involving media so far is insufficient to reach a conclusion in this regard. However, the reform on judicial system is among the top priorities in the country, revealing its unsatisfactory level of conduct so far. As the 2007 EU progress report on enlargement notes: “judicial procedures generally remain slow and lack transparency” and “further legislation is needed to strengthen the independence constitutional protection and accountability of judges”.¹⁷ In this regard, it becomes even more important for self-regulation to take root and consolidate among traditional and new media alike.

Overall, Albanian lawmakers need to rapidly catch up with the development of the media sector in harmonizing it with the relevant EU and Council of Europe regulation. However, this regulation should also be easily applicable and surmount implementation difficulties experienced so far in the country. A thorough and constant engagement in public discussions with relevant stakeholders would be an essential ingredient in successful regulation and development of the media sector in the future. Finally, the two-tier approach in implementing legislation would be in a way also dictated by the development of the media sector itself, where traditional media is far more advanced and numerous compared to new media.

¹⁷ EU 2007 Progress Report on Albania, available at http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/albania_progress_reports_en.pdf.