

# **ALBANIAN MEDIA SCENE VS EUROPEAN STANDARDS**

**Report based on Council of Europe's Indicators  
for Media in a Democracy**



**Albanian Media Institute  
Instituti Shqiptar i Medias**

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Kingdom of the Netherlands

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## Foreword

What is the meaning of freedom of expression in a democracy? The role of the press is crucial in any country, because it contributes to a healthy society with active citizens who can make informed decisions. The Netherlands, for that reason, has freedom of expression, both online and offline, as a central priority of our human rights policy. We advocate for the independence of journalists and ask attention for their safety. Journalists should be able to speak their minds freely and have time and space to investigate into stories that are important to the public. The Dutch embassy in Tirana tries to amplify the voice of civil society by offering support in the field of rule of law and human rights with empowered citizens and reliable independent institutions as its main aims.

It is my great pleasure to introduce this report on the state of the media in Albania. It is published by the Albanian Media Institute and follows the Council of Europe's list of 'Indicators for Media in a Democracy'. The report provides a methodological analysis of the media situation in Albania, based on a specific set of standards. It can serve as a model for a regular analysis of the media here, to monitor progress in the future.

The ultimate aim of the report is to raise awareness of the state of media freedom and freedom of expression in Albania to its main actors, such as government policy makers, media institutions, media professionals, professional associations, media experts, and civil society. All EU member states are members of the Council of Europe and are therefore under an obligation to comply with the norms agreed there. This is also the case for candidate member states like Albania.

Do you think that the Albanian media is free and independent? Do the current regulations guarantee such freedom and are they being implemented? How do the Albanian media standards measure up to the European standards? You will find the answers in this report which offers also useful recommendations to improve. Because, as Ms. Dunja Mijatovic, currently the Commissioner for Human Rights of the Council of Europe once said: 'Restrict access to information and your chances to develop will become restricted. Open up the channels of free communication, and your society will find ways to prosper.'

Dewi van de Weerd

Ambassador of the Kingdom of the Netherlands



## Introduction

The concept of media freedom and its importance in a democratic society is widely accepted and recognized, but it is also difficult to measure and evaluate. Even though different methods, indicators, and indexes have been established and are used regularly, it is hard to find a universally accepted way of adequately measuring media freedom and its role in society for all countries.

At the same time, while each method of measuring freedom of expression has its pros and cons, and should always be contextualized with the specifics of the country it is being used in, there is no doubt that such exercises, while not necessarily of mathematic precision, are useful in testing the pulse of media freedom and independence, and, at a broader level, the democratic readiness of a society. A wide range of media freedom indicators and assessment have been drawn up and used, such as IREX (Media Sustainability Index, MSI), UNESCO, Freedom House, Reporters Without Borders, World Bank, Committee to Protect Journalists, European Federation of Journalists, etc. In spite of the method used to probe media freedom, all of these lists of indicators share the principle of freedom of expression as an indisputable foundation for a democracy.

The list used in this report in order to assess media freedom, along with freedom of information and freedom of expression, is the “Indicators for Media in a Democracy,” developed under the auspices of Council of Europe. The list was adopted in 2008 by the Parliamentary Assembly of the Council of Europe, as well as Recommendation 1848/2008, which suggested member countries, and especially parliaments, to draw up periodic reports of media freedom in their own countries, following this list. The recommendation also suggested that the Committee of Ministers of the Council of Europe could consider this list in their overall assessment of media freedom situation in their member countries.

Council of Europe’s “Indicators for Media in a Democracy” lists 27 principles, or indicators, of media freedom, which make up the desirable standards of Council of Europe. They are supposed to cover the wide range of member countries of Council of Europe. In this respect, the list includes what are considered basic values that should offer the minimum scenario conducive to media freedom in a democratic society. The approach of the list of indicators is a rather traditional one, focusing on basic values of guarantees of media freedom and professionalism, rather than on latest developments in online media.

### ***Application of “Indicator for Media in a Democracy”***

This report, which follows the Council of Europe’s list of “Indicators for Media in a Democracy”, intends to provide an analysis of the current media situation based on the standards upheld by this list. The aim of this report is to raise awareness on the status of affairs in the media scene for an array of actors, such as policy-makers, government representatives, media professionals, professional associations, media experts, and civil society.

The report is based on methodology that uses varied instruments and feedback from different relevant actors that affect legal, political, economic, and professional environment for media operation. Apart from collecting and classifying statistical data from publicly available sources, existing research, and surveys, the primary research consisted also in legal analysis conducted for the purpose of comparing Council of Europe standards to domestic legislation, carrying out of surveys with stakeholders, and in-depth interviews with key players in the media field, judges, government representatives, parliament, and public institutions. Using a specially designed questionnaire, a survey was conducted on a sample of 110 editors-in-chief, media owners, and journalists of different media outlets across the country, including representatives from minorities. In-depth



interviews were conducted with media owners, media managers, and editors of mainstream media outlets, as well as with other actors with direct input and knowledge on media scene, such as the Audiovisual Media Authority, public broadcaster RTSH, journalist trade union, professional associations, the Media Council, journalists from various media, etc.

The study was conducted with the support of the Embassy of the Netherlands in Albania, by Albanian Media Institute, with the cooperation of its partners Balkan Investigative Reporting Network, Respublica, Union of Albanian Journalists, the Department of Journalism at the University of Tirana, and the Media Council.

## Albanian media in facts and figures

Indicator	Data	Source	Note
Number of print media	About 200 19 daily newspapers	IDRA, qtd. in Media Ownership Monitor, Albania	There is no official list or registration of print media outlets.
Number of TV broadcasters	Five national digital licenses 56 local television stations 98 cable	Audiovisual Media Authority	2018 data
Number of Radios	51 local stations Four community radios	Audiovisual Media Authority	2018 data
Number of online media outlets	>650 news portals	Union of Albanian Journalists	2017 data
Number of news agencies	1	Albanian Telegraphic Agency	Definition of news agencies has changed with the advent of new technologies, but Albanian Telegraphic Agency is the only news agency in the traditional sense.
Number of public radio broadcasters	5 national programs 4 local programs	RTSH	
Number of public TV broadcasters	8 national programs of RTSH 4 local programs	RTSH	
Number of employees in media sectors	6,200	Union of Albanian Journalists	No official data. 2018 data from trade union
Number of journalists	2,700	Union of Albanian Journalists	No official data. 2018 data from trade union
Number of employees in public broadcaster	960	RTSH	March 2018
Number of trade union members	786	Union of Albanian Journalists	2018 data
Sources of information used by population	TV: 97% Social networks: 56% Online media: 44% Print: 25% Radio:9%	IDRA Survey on Impunity.	2017 survey, includes ranking of preferences for sources of information, the figure is the total sum of rankings.

Percentage of individuals using internet	66.36	International Telecommunications Union (ITU)	The data is for 2016.
Percentage of households with TV	99.2	ITU	The data is for 2015.
Percentage of households with Internet access	37%	ITU	2017 data
Total advertising market	38,4 million Euro	IDRA, qtd. in Revista Monitor	2017 estimate, including outdoor advertising
Print advertising market	2 million Euro	IDRA, qtd. in Revista Monitor	2017 estimate
Internet media advertising market	2.4 million Euro	IDRA, qtd. in Revista Monitor	2017 estimate
TV advertising market	30.4 million Euro	IDRA, qtd. in Revista Monitor	2017 estimate
Radio advertising market	0.7 million Euro	IDRA, qtd. in Revista Monitor	2017 estimate
TV annual balances	36% of TV stations: profit of 0- 500,000 ALL 10% of TV stations: profit of 500,000 -1 million ALL 12% of TV stations: profit of 1-5 million ALL 5% of TV stations: 5-15 million ALL 5% of TV stations: 20-30 million ALL 3% of TV stations: profit (200-300 million ALL) 28% of TV stations: losses	AMA, Periodic Bulletin No.2	2016 data
Radio annual balances	47% of radio stations: profit of 0- 500,000 ALL 10% of radio stations: profit of 500,000 -1 million ALL 15% of radio stations: profit of 1-5 million ALL 7% of radio stations: 5-15 million ALL 2% of radio stations: 20-30 million ALL 20% of radio stations: losses	AMA, Periodic Bulletin No.2	2016 data
Percentage of journalists in staff of radio and TV	TV: 27% Radio: 29%	AMA, Periodic Bulletin No.2	2016 data

# Protection of the Right to Freedom of Expression and Information

**Indicator I – The right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable; a high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice.**

International indexes on press freedom rank Albania as a partially free country. Freedom House classified Albania in 2017 as a partially free country, while Reporters without Borders ranked Albania 76<sup>th</sup> out of 180 countries. According to IREX, freedom of speech score dropped from 2.82 to 2.63 in 2017.

Albanian journalists also have a gloomy perspective on the implementation of media rights and freedom in practice: in the survey<sup>1</sup> with editors and journalists 39% of them said that there are serious hindrances to media rights and freedom in practice, whereas 31% of them said that there are no conditions for establishing free media. Only 4% of editors and journalists said that media freedoms are fully enjoyed, and another 22% said that media freedom is damaged only by sporadic incidents.

## ***Legal regulations***

In Albania freedom of expression and media freedom are guaranteed by law. First of all they are protected by the Constitution, and then further specified in the Law on Press and the Law on Audiovisual Media. Albania has also ratified important international treaties that guarantee freedom of expression and media freedom, such as the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. While recognizing that fundamental rights, including freedom of media and freedom of information, might be limited in particular occasions, the Constitution makes a point that any limitation cannot “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.” (Article 17) In addition, the Constitution guarantees the rights vis-a-vis any potential limitation by stating that any limitation should be lawful, in the name of public interest or protection of others, and the limitation cannot exceed the situation that prompted it. (Article 17)

The Constitution specifically guarantees freedom of expression, as well as freedom of the press, radio, and television, prohibiting censorship (Article 22.) In addition the Constitution protects the right to information, stating that everyone has the right to receive information on the activity of state bodies or persons that exercise state functions (Article 23.) The right to media freedom is further guaranteed in the Law on Press and the Law on Audiovisual Media, whereas the right to information is significantly strengthened by the Law on Right to Information, adopted in 2014.

However, legal guarantees to freedom of expression and freedom of the media are not comprehensive. Insult and defamation are still not fully decriminalized, despite lobbying from civil society and recommendations expressed in the international reports to amend these laws. An attempt to recriminalize defamation failed due to prompt pressure of journalists and civil society, but such episodes show that legal achievements in freedom of expression regulation are not set in stone. The tendency of courts to anonymize data on court processes in the name of the right to privacy is a setback compared to the high standards set by the Law on Right to Information.

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<sup>1</sup> Data from the survey conducted for the purpose of this study.

A particular problem and current point of debate regarding legal regulations on freedom of expression and information is that they have not yet addressed technological developments. Current regulation on media applies only to traditional media, (with the exception of online distribution platforms in the Law on Audiovisual Media, treated only by technical terms of licensing). Initiatives to introduce regulation to online media, even though failed or postponed, have tended to be difficult to implement or favour stricter rules for media conduct, especially related to User-Generated Content.

### ***Institutional Protection***

The institutional protection of freedom of expression and media freedom is not sufficiently effective: the bodies that are supposed to bolster the guarantees for media freedom have scored lowest in the survey with editors and journalists. The judiciary is the least helpful in protecting media freedom (0.9% ,) followed by political parties and the executive bodies (1.7% each,) regulatory agencies (4.3%), and current legal framework (7.8%.) As the most effective the respondents pointed at media and journalists themselves (42%), the trade union and independent state bodies such as the People's Advocate and the Commissioner for Right to Information (at 24% each,) followed by professional associations of journalists (19%) and international organizations (17%.) The police and civil society organizations were in the middle with 11% and 10% respectively.

Journalists' low trust in the judiciary reflects the overall weak perception that the population has on this power, currently swept by a comprehensive reform aiming to limit corruption and increase its efficiency. In practice court processes against media representatives have been rare, including defamation cases, reflecting also the lack of willingness of people to go to courts, partly affected by the duration of the processes, but also by the low trust in the objectivity and efficacy of the court.

Out of 110 editors and journalists surveyed, only 4% thought that the courts efficiently protect media freedom in the country<sup>2</sup>. 40% of them said that the courts were not offering such protection because they are not efficient, and another 28.7% because they are corrupted and under different influences, whereas 13% thought that the judges do not have sufficient knowledge on freedom of expression issues.

A constant recommendation of EU progress reports has been the need to provide training in cases related to freedom of expression practice, especially regarding defamation. There have not been many cases against journalists on defamation, and most of them have been dropped along the process by the plaintiffs. However, the number of defamation cases involving politicians is more abundant. A study<sup>3</sup> on the decisions of the courts in these cases relating to practice of the European Court of Human Rights revealed that judges in general tended to prioritize freedom of expression. Nonetheless, the courts' citing of the practice of the ECHR does not seem to be always consistent or in line with the original ECHR decision.<sup>4</sup>

In court practice civil judgements seem to be fewer compared to criminal judgements. The amendments introduced to the Civil Code in 2012 established a long list of criteria to consider when assessing civil liability for harming one's honor and reputation. "The new provision sets out eleven specific, non-exhaustive factors to be taken into account by the courts in determining liability. These include: whether the allegations constitute fact or opinion; whether they are true or false, or constitute accurate references to third-party statements; whether they relate to 'matters of public interest, or persons in government functions or running for election'; and whether the author has complied with any relevant rules of professional ethics (e.g. in the case of media and information professionals)."<sup>5</sup> However, there is concern from freedom of expression

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<sup>2</sup> Ibid.

<sup>3</sup> ISPL, "Praktika gjyqësore në çështjet e shpifjes," [Court practice in defamation issues ] 2015.

<sup>4</sup> Ibid.

<sup>5</sup> D. Pavli, qtd. in Irion, K., Cavaliere, P., and Pavli, D. 2015. Comparative study of best European practices of online content regulation. Law and policy of online content regulation, in particular defamation online, in the light of Albanian legislative proposals. Study commissioned by the Council of Europe, Amsterdam/ Edinburgh/ Tirana, August 2015.

organizations that in spite of the detailed list that serves to guide judges, civil judgements carry the risk of higher penalties that might be imposed arbitrarily.

The long duration of especially civil lawsuits is another factor to consider in terms of the effect of the judiciary on the media. According to the statistics of the District Court of Tirana, civil processes for damages last on average 240 days only in the first court instance, while the second court instance can last another 12-24 months<sup>6</sup>. These relatively long processes might also be an incentive for dropping many cases, but also might serve to create a climate of insecurity among the media involved.

There are no statistics on defamation cases specifically against media outlets or journalists. In view of the decisions of many courts in the country to render their decisions and cases anonymous to the public, determining the number of these cases becomes even more difficult. The Ministry of Justice provides annual data on overall number and convictions on defamation cases, not only on those relating journalists. According to these data, in 2016 there were rulings on a total of 27 cases on criminal defamation charges, out of which only two were found guilty of the offence, 11 were found not guilty, and the rest were dropped<sup>7</sup>. The number of cases involving insult is higher: 63 cases in total, with 16 found guilty, 11 not-guilty, and 34 were dropped<sup>8</sup>. Although the statistics are not specific to media cases, it helps to understand that criminal cases affecting media freedom tend to be few, in view of the generally low number of convictions related to defamation cases. The number of cases involving journalists is not believed to be higher than 10 per year in the capital, and even lower for the rest of Albania<sup>9</sup>.

Contrary to courts, journalists view the trade union, independent state organizations, and professional associations as the main institutions supporting media freedom in the country. However, it is to be noted that according to the survey with editors, journalists view themselves as the institution doing the greatest work to defend media freedom, at 42% of respondents<sup>10</sup>. Although there are many registered media and journalism associations, only a few of them are vocal. Usually the Union of Albanian Journalists reacts more regularly in the form of statements, declarations, and also in organizing protests occasionally, as well as following some court processes against media, especially involving labour relations cases. Recently the Association of Professional Journalists has tried to be more active in reactions to media freedom. There are other organizations, such as Respublica, which offers legal assistance and follows media-related cases in court, representing journalists. Other organizations, such as Albanian Media Institute and Balkan Investigative Reporting Network monitor media freedom violations and try to raise awareness on them. There have also been coalitions of civil society organizations demanding, and eventually succeeding, for legal amendments, as in the case of defamation and the right to information.

Recently, with the passing of the new law on right to information in 2014, the role of the Information and Data Protection Commissioner has also become more important, in view of the request from journalists and citizens to access public information. The Commissioner's competences include examination of complaints from citizens or organizations in cases when information that is accessible by law is denied by public authorities, and intervening through mediation between the actors involved or through a decision, which might also involve sanctions. In 2017, the Commissioner's office examined 560 complaints, 395 of which were solved through mediation<sup>11</sup>. His activities and decisions have been particularly important in the framework of investigative journalism.

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<sup>6</sup> Legal analysis by Respublica.

<sup>7</sup> Ministry of Justice, Annual Report 2016, [http://www.drejtesia.gov.al/files/userfiles/statistika/Vjetari\\_2016.pdf](http://www.drejtesia.gov.al/files/userfiles/statistika/Vjetari_2016.pdf)

<sup>8</sup> Ibid.

<sup>9</sup> Legal analysis by Respublica.

<sup>10</sup> Data from survey conducted for the purpose of this study.

<sup>11</sup> Data from Commissioner's 2017 Annual Report: [http://www.idp.al/wp-content/uploads/2018/02/RAPORTI\\_VJETOR\\_2017.pdf](http://www.idp.al/wp-content/uploads/2018/02/RAPORTI_VJETOR_2017.pdf)

## ***Violations of Media Freedom and Journalist Rights in Practice***

In their everyday work journalists find their rights limited in various forms, such as verbal threats and assaults, newsroom reductions of staff, cancellations of advertising contracts, and problems in the area of labour relations. The circumstances under which journalists work are greatly influenced by financial dependence (on owners' economic interest vis-a-vis politics and commercial and state advertisers), making self-censorship a permanent state of affairs. The ongoing economic crisis and the dynamics of development of the media market have put greater pressure on the work of journalists and their self-censoring tendencies.

In the survey<sup>12</sup> conducted with editors and journalists, 36% of them denied that there had been violations of media freedom in their own medium. Among those that admitted there had been such violations, the most frequent one was interference in editorial policy, 18.3%, including preventing publication of information, imposition of topics and assigning desired and undesired persons in the media coverage, as well as publishing commissioned news. Another major violation involved unequal access to information and differentiation between media (15.7%), as well as preventing journalists from participating in public events (12.2%) followed by violations of rights of journalists (9.6%). The fact that local media owners, serving also as editors, were also part of the survey might have influenced the ranking of this violation as fourth biggest, given that other reports state that violation of labour conditions is a widespread phenomenon.

As the sources of greatest pressure exerted on their media, the editors and journalists named the political parties (39%) central and local organs of executive power (27.8%) and the media owners (21.7%) followed by private advertisers (14.8%) and equal pressure of the judiciary and criminal circles (at 7.8% each.) It is interesting to note that 24.3%, the third biggest group, preferred not to answer or claimed to not be able to make an assessment on this issue.

In 2017, according to Union of Journalists data and documented cases of media violations there has been the beating of journalist Elvi Fundo, a physical confrontation of a journalist from investigative program Stop with a private person during reporting, and some documented verbal threats, both from public authorities and private persons.

The exacerbation of political rhetoric against media reached its climax with the Prime Minister offending and insulting journalists in live TV, a tendency that has been well-documented in the last years. There have been also instances when particular MPs have reacted against legitimate questions of journalists in an unjustified manner, claiming that only the prosecution was entitled to such questions. A mayor of a small city was also documented as threatening a journalist.

Threats coming from private persons seem to be less documented, but it does not mean that they are rare, especially with the increased intensity of communication in online forums and social media. Such a denounced case was the verbal threats coming from a religious fundamentalist to journalist Rudina Xhunga in relation to her program focusing on national hero Scanderbeg. Journalist Klodiana Lala was also verbally assaulted by Socialist Party militants when trying to ask questions to the former Minister of Internal Affairs in their presence.

In addition, a journalist reported she was not allowed to enter the premises of an archaeological park by the officials in order to report on the situation, whereas incidents of journalists not being allowed to attend some events were also reported during elections in a few cases.

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<sup>12</sup> Data from the survey conducted for the purpose of this study.

Apparently unjustified firings of editors and journalists continued to be a problem. Tedi Blushi, editor of Balkanweb portal, reported he was fired out of the blue after working for many years in that media, without any explanation and threatened with police action if he did not leave. In addition, journalists Simon Shkreli and his wife were suddenly fired from the local TV they worked in. The director of the television claimed that there would be structural changes in the newsroom, but Shkreli claimed this was related to his political affiliation and the statements he had made in his personal Facebook profile.



## Freedom to Criticise State Officials

**Indicator 2 – State officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment.**

The principles of this indicator are already incorporated in the national legislation through the reform of the defamation provisions of 2012. In theory, though, the courts can still impose high fines on journalists and media, putting them under financial pressure. There are no journalists in prison and no media has been closed for critical comments. The amendments to the Criminal Code made in 2012 abolished prison sentences for defamation and insult, even though these provisions were rarely used in practice.

Until 2012 Albanian legislation did offer special protection (through specific provisions in the Criminal Code) to public officials, because of their duty. In addition, in case there was insult or libel against public officials, the legislation provided the prosecution with the competence to start a case instead of the public official in question. When it came to court practice, only the civil provisions were being used against media most of the time. Nonetheless, the mere fact that the defamation and offence were crimes punishable by prison terms could potentially produce a “chilling” effect. In 2012 the Criminal and Civil Codes were amended after a seven-year concerted effort of the Justice Initiative and Albanian Media Institute. The existing legislation no longer offers special protection to public officials, meaning that the defamation provisions apply the same as for every other citizen. Apart from the special protection offered to public officials, the articles on insulting or defaming specific figures were abolished, such as the President of the Republic, and foreign dignitaries.

However, in 2015 it seemed that special protection clause could be reinstated again. On February 2015 Prime Minister Edi Rama mentioned in parliament that he was examining the possibility of reverting to criminal regulation of defamation, specifying that he was referring to defamation because of duty. Faced with reactions, he specified that he was only referring to mutual charges made by MPs in parliament. In October 2015, the Council of Ministers suddenly proposed new amendments to the Penal Code, aiming to criminalize again defamation, and grant specific protection against defamation to high public officials. The bill proposed to consider defamation against a high or elected state official as a penal offence, sanctioned by fine or imprisonment up to three years. The introduction of this bill without warning and without any previous consultation led to an energetic reaction of the media community and calls for protests from journalism associations. As a result, the government withdrew the proposal, but the Prime Minister insisted in clarifying that this was aimed only at regulating speech between MPs and was not directed in any way at freedom of the media or freedom of expression.

The major trend of defamation lawsuits seems to be among politicians, rather than against media and journalists. However, due to the tendency of courts to anonymize the data on trials and the trial decisions, it is not possible to have accurate statistics on overall number of lawsuits against media. The study made use of some data from court districts, which are not fully anonymized yet. The Court of Tirana responded that they did not make the distinction between journalists and other persons in court cases involving defamation and insult.<sup>13</sup>

The online data on lawsuits involving criminal defamation<sup>14</sup> and insult in the Court of Tirana indicate that there were 48 lawsuits filed in 2017, 23 of which were on insult, and 25 on defamation, and 30 of them

<sup>13</sup> Court of Tirana response to request for information, April 2018.

<sup>14</sup> Due to anonymity of data and decisions of courts, it is impossible to determine the number or cases of journalists involved in lawsuits seeking damages, as this is a broad category that includes different kinds of damages, not just ones to honor and reputation.

proceeded to trial sessions, whereas 18 were dropped in the preparatory phase<sup>15</sup>. These figures seem to mark a decrease compared to 2016, when 64 lawsuits were filed, 33 of which involved defamation, and 31 insult, but only 25 of them made it to trial<sup>16</sup>. However, without official court confirmation it is not possible to know how many of these trials involved journalists and media.

A previous monitoring report for court rulings on defamation lawsuits indicated that a total of 42 decisions were issued in the period 2013-June 2015 by the District Court of Tirana involving a media outlet or journalist<sup>17</sup>. In these rulings the tendency of the court has been to favour media in their decisions and ruling against media in only three cases, while partially accepting the charges against media in 11 cases<sup>18</sup>. The main tendency though is to close the cases early on, mainly due to decision of plaintiffs to withdraw from the case.

Data from the courts of other districts also indicate that defamation lawsuits against media are rather low: in the period 2012-2018, a total of 15 court decisions in cities other than Tirana involved journalists<sup>19</sup>. However, similarly to the data received from Tirana Court in the period 2013-2015, the dynamics of these cases do not allow for a sound judgement on the practice of courts in defamation cases, since usually they are closed for technical purposes, rather than after deliberation of the court on defamation and insult charges. Most of the cases were archived either because the plaintiffs were not present and withdrew from the charges, or due to an amnesty law involving a category of penal cases, including the charges on defamation and insult. A few other cases, as in Gjirokastra and Korca were archived for other reasons<sup>20</sup>: it was impossible to find the address of an online media and inform them on the lawsuit, or the jurisdiction of the court did not cover the location of the media.

Out of the cases coming from district courts<sup>21</sup>, the criminal defamation lawsuits of politicians against journalists are rare. In the district courts one such case is that of the head of Berat county, Petrit Sinaj, against Namir Lapardhaja, journalist of Rilindja Demokratike, newspaper of Democratic Party, following an article published in this newspaper. The court ruled that the offence of defamation had not happened in this case, concluding that the journalist could not be convicted with defamation. Another case pitting local government vis-a-vis journalist was that of Elbasan mayor Qazim Sejдини against the daily newspaper Telegraf, but the court ruled it did not have competences to judge on this case since the newspaper belonged to a location not in its jurisdiction. The same scenario took place in Korca, where the brother of a local MP sued news portal Citynews, operating in Tirana, a case dropped by the court. Both of these cases were later taken to Tirana court, but the one involving mayor of Elbasan was dropped by the plaintiff, whereas the court ruled it was incompetent on the Korça case, sending it back to Korça court<sup>22</sup>.

In this context, it would not be fair to conclude that the court practice is sound and offers good protection in cases involving media criticism against state officials. First of all, the data from Tirana Court, which is also the biggest and where most media operate, cannot be analyzed, since they are anonymous. Second, since most of these cases were dropped for technical reasons or the plaintiffs withdrew before going to trial, it cannot be said that the guarantees in place are followed to the letter by Albanian courts to protect media and freedom of speech, although in the end result the media do not seem to suffer from any harmful court decisions. An

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<sup>15</sup> Data from Tirana District Court: [www.gjykatatirana.gov.al](http://www.gjykatatirana.gov.al)

<sup>16</sup> Ibid.

<sup>17</sup> AMI, Monitoring implementation of Defamation and Insult Provisions, 2015.

<sup>18</sup> Ibid.

<sup>19</sup> Data from Courts of Districts, [www.gjykata.gov.al](http://www.gjykata.gov.al)

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Data from Tirana District Court: [www.gjykatatirana.gov.al](http://www.gjykatatirana.gov.al)

analysis of court practice in defamation issues in 2015 concluded that in general the court decisions tend to favour freedom of speech, especially when politicians and journalists are involved<sup>23</sup>.

An encouraging example of court practice is the outcome of the trial of construction company Edil Al, owned by the owners of Vizion + TV, against investigative program producer Artan Rama. The company sued in 2016 Rama after a post in his Facebook profile, claiming that the tender won by this company from the Minister of Culture violated conflict of interest rules, as the husband of the Minister was one of the top journalists of Vizion + TV and the company did not have previous experience on this field. The company sought compensation in the amount of ALL 150 million for damage of reputation. A year later, after the court examined in depth the tender procedures, the court ruled in favour of the journalist and dropped the lawsuit, making the case for an encouraging practice for all investigative journalists aiming to inform the public on sensitive issues related to (mis)use of public funds<sup>24</sup>. Even though the court case was not filed by politicians, it establishes a good standard that the courts can follow in cases of defamation and insult involving journalists, but also any citizen.

Currently the most high profile case at court involves Gjin Gjoni, Judge at the Court of Appeals and member of the Supreme Council of Justice in Tirana, along with his wife, the businesswoman Elona Caushi. In 2017 they filed lawsuits against the Balkan Investigative Reporting in Albania and reporters Besar Likmeta and Aleksandra Bogdani, as well as the daily newspaper and portal Shqiptarja.com and reporters Adriatik Doçi and Elton Qyno. The plaintiffs claimed that the articles published conveyed inaccurate information, with a negative impact to their reputation, dignity, and honor. As a result, they claimed for compensation from both media outlets and reporters separately, amounting to a total claim of approximately 83,000 Euro. The Union of Albanian Journalists issued a statement fully supporting the journalists and their media and called on Gjin Gjoni to resign from his post, in order to avoid influencing the court decision and allow for a process where both sides would be equal. In March 2018 the plaintiffs did not further pursue the lawsuit against Shqiptarja.com and its two journalists, while the other case is ongoing.

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<sup>23</sup> ISPL, "Praktika gjyqësorë në çështjet e shpifjes," [Court practice in defamation issues] 2015.

<sup>24</sup> Respublica, <http://www.respublica.org.al/fitorja-e-gazetarit-artan-rama-triumf-i-guximit-ndaj-frikes/>

## Necessity and Proportionality of Restrictions to Freedom of Expression

**Indicator 3 – Penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed.**

Albanian Constitution does not foresee the possibility of limiting the freedom of the press, with the exception of the required authorizations for radios and televisions. However, Article 17 of the Constitution considers the possibility of limiting rights and freedoms that are guaranteed in the Constitution only “by law for a public interest or for the protection of the rights of others,” providing that the limitation should be proportional to the situation that dictated it. In addition, the same article states that “these 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.” In this context, it derives that even the right to freedom of expression and freedom of press can be limited if there is a public interest involved.

The principles of necessity and proportionality are thus protected with regard to punishments stipulated in the Criminal Code for a series of criminal offences against public order and security. These include the public calls for violence against the constitutional order, which are punishable by a fine or up to three years of imprisonment (Article 223); the spreading of false information or news in order to cause panic, punishable by a fine or up to five years (Article 267.) The Criminal Code also considers provisions related to hate speech and public calls that incite national hatred. The calls that endanger public peace by calling for national hatred is punishable by imprisonment from two to eight years (Article 266.) The Criminal Code also punishes the incitement of hate or disputes on the grounds of race, ethnicity, religion or sexual orientation, as well as intentional preparation, dissemination or preservation for purposes of distributing writings with such content, by imprisonment from two to ten years. (Article 265)

Meanwhile, the Law no. 10221 On Protection from Discrimination addresses protection from different kinds of discrimination, including also an article on publication of discriminatory advertising (Article 8.) The Law also establishes the Commissioner Against Discrimination, whose competencies include monitoring violations *ex officio*, as well acting on complaints from the public. The main complaints the Commissioner received are related to discrimination in work or school environments and complaints against media are rare. Such a case was a complaint<sup>25</sup> filed in 2016 against three websites and Facebook pages (Anna Media Group, Jeta osh qef, and Lapsi.al), which, after publishing an article taken from another website (story.al) with an interview of a person from LGBT community, had not taken measures to filter the comments, which were hateful against this person and caused distress. The Commissioner ruled that there was discrimination and comments should be removed, citing the case of *Delfi vs. Estonia*, but the media seemed to not react to this decision<sup>26</sup>.

The regulation of online media environment and especially the user-generated content has been a recent topic in the field of media legislation. An amendment proposed by a member of parliament was later withdrawn from her, after being judged that it did not properly define media responsibilities and overburdened newsrooms with work they could not complete. The government also drafted a bill to amend the existing law on e-commerce precisely to address the issue of online comments and liability, but at the moment its discussion and approval has been postponed.

<sup>25</sup> Commissioner against Discrimination, Decision 207, 2016, <http://kmd.al/skedaret/1502717168-Vendim%20207%2030.12.2016.pdf>

<sup>26</sup> *Ibid.*

In practice the above-mentioned provisions have not been enforced vis-a-vis journalists. The only case that falls into this category is that of editorialist Kastriot Myftaraj. In May 2017 he was escorted to the police station after publishing an article on his Facebook page against the Ambassador of the European Union to Albania. She was referred to in vulgar and offensive language. In addition, the article closed by saying that her murder would not be considered a terrorist act, but rather as an anti-terrorist one. The escorting of Myftaraj by the police was based on the offence of the public calls for violence (Art.223.) Some hours later the prosecution ordered his release, concluding that his act was not considered a criminal offence and this case has not been taken to court. Myftaraj is a controversial figure, often accused of hate speech and even this act divided the community of journalists. The Union of Albanian Journalists called the measure of escorting him to the police station an unnecessary one<sup>27</sup>, stating that speech could not be punished by prison. On the other hand, other journalists<sup>28</sup> were less lenient and called for a professional reflection that would stop the use of this kind of language and protect correct and able journalists.

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<sup>27</sup> Balkanweb, <http://www.balkanweb.com/site/unioni-i-gazetareve-reagon-per-arrestimin-e-kastriot-myftarajt-burgosja-per-fjalene-e-lire-i-perket-te-shkuares/>

<sup>28</sup> Enkel Demi, <http://27.al/zdromsi-qe-na-cenuan-lirine-e-shprehjes/>

## Freedom to Practice Journalism

### Indicator 4 – Journalists must not be subjected to undue requirements by the state before they can work.

Journalism in Albania is an open profession and not a heavily regulated one, as is the case of lawyers, doctors, pharmacists, etc. Neither legislation, nor the media community itself have defined so far who is a journalist or imposed rules for entering and practising the profession.

Journalistic work is regulated by general legislation on labour, mainly the Labour Code, which applies to all labour relations, including unregulated professions.

Apart from the Labour Code, the professional portion of the work of journalists can also be self-regulated by the codes of conduct. Such a Code has been drafted and endorsed by professional associations first in 1996 and later in 2006 and 2018, but its implementation has been left to the will of journalists. In addition, other codes of conduct covering mainly ethical considerations have been drafted for specific topics, such as investigative reporting, reporting on children and minors, victims of trafficking, crime reporting, etc.

When speaking of media community or employees, it is commonly used to denote not strictly journalists, but also cameramen, photographers, anchors, etc. The Union of Albanian Journalists and other associations, while focusing mainly on journalists, also consider other professions as part of the community and react when there are violations involving cameramen or other persons, as it has been the case. In addition, they also do not make any distinction between freelancers and full-time or part-time employees, or occasional contributors.

The number of journalists in Albania is not known and official statistics are missing. The only data come from the Union of Albanian Journalists, who estimates there are about 6,200 media employees in the country, approximately 2,700 of whom are journalists<sup>29</sup>.

There are two main forms of education available in Albania for journalists: formal education and continuous learning. Formal education is offered in public university branches in Tirana, Elbasan, and Shkodra. The first journalism school was the one established within the Department of Political-Judicial sciences, fashioned after the Soviet model, which remained open for ten years, until the early 70s. The current school opened as part of the Department of History and Philology in 1992. Until 2010, it was estimated that a total of 1,116 students had graduated from this department, however, it is difficult to track and to estimate how many of these students that graduated journalism have worked in the media<sup>30</sup>.

The journalism department at the public university has undergone significant change in the curricula. From the classical 4-year degree, it has adopted the two-tier system, in accordance with the Bologna process. The bachelor degree offers three profiles of journalism where students can choose from: social/culture journalism, political journalism, and economic journalism<sup>31</sup>.

The second level degrees also offer opportunities to become more specialized in the profile of journalism desired. The profiles offered are Public relations, Media marketing, Media management, European and international journalism, and Intercultural communication.

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<sup>29</sup> Data from Union of Albanian Journalists.

<sup>30</sup> Albanian Media Institute, "Journalism Education in Albania," 2010.

<sup>31</sup> Department of Journalism Teaching Plan 2013-2016.

The student's quota are fixed according to the capacities of the university and usually – in Tirana one, in the year 2017-2018 the government-fixed quota was 120 students for the bachelor degree, while for the University of Shkodra and that of Elbasan the quotas were 73 and 58, respectively<sup>32</sup>. The University of Tirana Department of Journalism also offers master's and Ph.D. degrees in journalism and communication. Other private universities also have offered journalism degrees for a few years; however, such programs have either been closed, or have been turned into communication and public relations programs, rather than strictly journalism ones<sup>33</sup>. The only private university which has journalism program is Bedër University, which offers a Bachelor's degree in communication and a Master's Degree which can be focused either on Communication or on Journalism. In addition to formal education, continuous professional training is also available from different organizations and associations. Albanian Media Institute is the main centre offering such training possibilities, but other local and international organizations also offer training for journalists, mainly in short programs and courses.

The state and legislation have imposed no requirements for practising journalism. Paradoxically, there are members of the media community that would like to have a law that defines who is a journalist and establishing a modality for entering the profession. The media community is divided on this matter, with a part who believes that the freedom that the current situation offers is ideal, while another group advocates for imposing order on the profession as one of the ways to save and improve professionalism. Such a discussion first emerged in 2001, when there was also a law on press drafted that would impose an order of journalist, following to some degree the Italian model. After heated debate, the bill was not sent to vote and the more liberal part of the community prevailed. However, in view of failure to self-regulate and the worsening quality of journalism in most media, for part of the media community the idea of imposing rules on their profession is not off the table. They argue that such a process would serve to distinguish true professionals and protect the dignity of persons that work seriously and with dedication in journalism<sup>34</sup>. From the failed attempt to pass the law on press with the order of journalist model, this issue has been a matter of internal debate and has not materialized in any specific initiative.

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<sup>32</sup> Government decision on public university quotas for year 2017-2018: <https://maturashteterore2016.wordpress.com/kuotat-per-universitetet-publike-2017-2018/>

<sup>33</sup> Peace Institute, „Media Integrity Matters,“ Albania, 2014.

<sup>34</sup> In-depth interviews conducted for the purpose of this study.

## Openness of Media to Political Parties

**Indicator 5 – Political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaign.**

Media conduct during electoral campaigns is heavily regulated. While no visible discrimination during electoral campaigns has been visible, in recent years the media have reported that the political parties are increasingly reporting the campaign, rather than journalists, who sometimes have also been denied access.

The Electoral Code provides a set of rules for media to cover the electoral campaign, meaning the 30-day period before Election Day, minus electoral silence day before the election day. The Code makes a distinction in regulating coverage of parties in public broadcaster vis-a-vis commercial broadcasters, as well as differentiating in time allotted to parliamentary parties and non-parliamentary ones.

The public broadcaster has to devote 30 minutes in public radio and television to parliamentary parties with more than 20% of seats in the parliament, and no less than 15 minutes to other parties, in order to give their messages<sup>35</sup>. Non-parliamentary parties should be given 10 minutes in public television and another 10 in public radio. The requirements in terms of time allocated in news editions and professionalism are the same for both public and private broadcasters. News coverage of the electoral campaign should be guided by objectivity, completeness of information, and pluralism of information. When it comes to news editions, broadcasters should allow equal time to all parliamentary parties that obtained more than 20% of seats in the parliament in last elections, while those that obtained less than 20% of seats are allocated half the time of the other parties<sup>36</sup>. Propaganda and political comments of journalists are not allowed and any violation of requirements imposed is subject to fines by Central Elections Commission. For the public broadcaster these fines can be in the amount of ALL 20,000 for the reporter, 30,000 for the editor, and 60,000 for the General Director. If private operators violate rules for the time allocated to political parties the fines are higher: ALL 1,5 million for a local operator, and ALL 3 million for a national one<sup>37</sup>. If violations are repeated, the Commission can also order shutting down the television for 48 hours. The radios and televisions are free to hold political debates, but the balance between parties should be observed. The Code also draws rules on political advertising during campaign. The compliance by rules is monitored by the Media Monitoring Board, which draws up reports and proposes measures and recommendations to the Central Elections Commission. (Article 85.)

Treatment of political parties in periods other than the campaign is not regulated, but the news editions of main radios and televisions are monitored regularly by AMA, who publishes the results on its website<sup>38</sup>.

In view of these strict and detailed rules, as well as the fines permitted in cases of violations, the media coverage of electoral campaigns has been generally balanced<sup>39</sup>.

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<sup>35</sup> Electoral Code, Article 80.

<sup>36</sup> Ibid, Article 81.

<sup>37</sup> Ibid, Article 84.

<sup>38</sup> <http://ama.gov.al/preview/monitorimi-i-permbajtjeve/>

<sup>39</sup> The ODIHR observation report for June 25, 2017 general elections states that RTSH was mainly balanced and used a neutral tone with respect to the three main parties. While a similarly balanced coverage was observed in Vizion Plus (where the DP received 34 per cent, the SP 36 per cent, and the SMI 17 per cent), ABC News allocated 37 per cent of its coverage to the DP, 28 per cent to the SP, and 21 per cent to the SMI; the tone was also generally neutral or positive. Marginally more critical coverage was noted in TV Klan (for all main parties), which committed 42 per cent of its coverage to the SP, 24 per cent to the DP, and 17 per cent to the SMI. A comparable pattern was observed in Top Channel, which allocated 42, 33, and 16 per cent of the coverage to the SP, DP, and SMI respectively; but the tone of the coverage of the DP was partly negative.



While these strict guidelines might seem helpful for the media to follow a balanced coverage, in practice they are not easy to follow, for reasons that depend on the political parties, rather than on journalists. Editors pointed out that at a time when the law demands a maniacal precision in terms of balanced time allotted to political parties, in reality not all parties have the same rhythm of activities. According to the editor of a main TV station, the need to respect the legal requirement of balanced time “lead to ridiculous requirements, where we find ourselves rebroadcasting a past activity of a party, just to balance the time with the party that just had a rally.”<sup>40</sup> In the words of a media manager, “this counting up to the seconds might be fair, but it does not make sense, as freedom of information is not a matter of minutes, it is a matter of quality.”<sup>41</sup> The ODIHR Report for the last June 2017 general elections also recognizes this difficulty in media for respecting the Code: “In practice, media outlets had difficulty in ensuring proportional coverage of contestants due to the differing intensity of campaign activities by smaller parties, and this was acknowledged by the MMB.”<sup>42</sup> The authority also seems to be more tolerant in this regard, as in the last elections the Central Elections Commission “voted against all proposals for fines, while it was always in favour of compensating airtime to parties by asking operators to remedy the undercoverage within 48 hours and the media largely complied with these requests<sup>43</sup>. The survey conducted with journalists and editors indicated that almost 74% of them said that political parties have all the time, or most of the time, equal access to their own media<sup>44</sup>.

While the problem of measuring time allotted to the seconds is more of a technical problem, the obligation imposed on media to accept party-prepared footage is a more professional problem. Although this practice has existed for a few years, in 2013 the Central Elections Commission (CEC) passed a decision that made it almost mandatory for commercial television operators to include in their news editions and special electoral campaign coverage footage prepared and supplied by the electoral subjects. A group of main media outlets had already complained against this practice and the People’s Advocate issued a recommendation against this practice. Nonetheless, in practice all media had succumbed to this practice, also due to peer pressure and pressure from the parties. OSCE/ODIHR reports also have recommended that this practice weakens editorial independence and the last election report reiterated the same recommendation: “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.”<sup>45</sup>

Editors of the main media outlets also concluded that this is a ridiculous situation, where coverage of election “enters into robot mode and there is not a minimum of journalism involved.”<sup>46</sup> Another editor said that “the last electoral campaigns have annihilated the media role, as the campaigns are covered by the parties and the materials they prepare on their own.”<sup>47</sup> Although in principle journalists can do their own reporting apart from the footage of the party, in practice in a few cases there have been reports of political parties not allowing access to the election rallies. As another editor pointed out: “Parties do have equal access to the media during the campaign. What worries me most is the media’s access to the parties, which is controlled and selective. The coverage of the campaign is conducted by the propaganda offices of each party and it is difficult for the public to make sense of the programs and ideas and the distinctions between parties.”<sup>48</sup>

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<sup>40</sup> In-depth interviews with editors and managers with mainstream media, conducted for the purpose of this study.

<sup>41</sup> Ibid.

<sup>42</sup> OSCE/ODIHR Final Report for June 25, 2017 general elections.

<sup>43</sup> Ibid.

<sup>44</sup> Data from survey conducted for the purposes of this study.

<sup>45</sup> Ibid.

<sup>46</sup> In-depth interviews with editors and managers with mainstream media, conducted for the purpose of this study.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

Another complaint and self-criticism of media professionals in covering the campaign is related to the quality of the coverage, emphasizing that in most cases the media just convey political messages and speeches, without verifying the truthfulness of statements made by politicians. This is related also to legal requirements that limit comments, but also due to the role of politics themselves. "Reporting of campaigns often is transformed into a political monologue, and politicians sometimes exclude debates and avoid facing journalists that are critical."<sup>49</sup>

The complaint on frequent failure to provide critical coverage of politics was not only limited to electoral campaign, but is a constant shortcoming of the media, according to interviews with editors. Apart from quality, the general opinion of media professionals was that there are no worries about censoring any party in the media, even though some media may be biased in their coverage. Rather, the saturation of the audience with politics, politicians, and political debates is also a reality that media and politics have produced, leading to an exaggerated access of politicians to the audience.<sup>50</sup>

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

## Non-discrimination of Foreign Journalists

### **Indicator 6 – Foreign journalists should not be refused entry or work visas because of the potentially critical reports.**

The regulation that determines the entry and work permits for foreign citizens in Albania is set out in Law No. 108/2013 “On foreigners.” The law defines a series of circumstances when entry and work visas can be denied, but it does not have any rules related to any profession in particular, including journalists. The law only mentions accredited foreign journalists and correspondents when listing the categories of professions and people that are entitled to obtain a labor registration certificate without a time limit.

The more specific rules for accreditation of foreign journalists in Albania date back from year 1995, when the Council of Ministers passed Decision no.231 “On foreign journalists and correspondents accredited to the Republic of Albania.” This decision leaves the competency for the process of accreditation to the Ministry of Foreign Affairs, a competency it still retains more than two decades later. The decision allows for two types of accreditation, permanent or temporary, depending on whether the journalists will stay and work in Albania for a period of more or less than three months.

According to this decision, foreign correspondents whose media do not have their headquarters in Albania cannot be accredited. This rule is quite limiting in theory, since it imposes the obligation for major media to establish an office in Tirana. While this might have sounded acceptable and normal in 1995, when the decision on accreditation of journalists was passed, it certainly needs to be updated now to a context where major foreign media have shut down their offices in Tirana or have visibly reduced the personnel. However, in practice there is no evidence of this rule being a problem for accreditation of both short-term and long-term foreign correspondent in the country.

Another provision of the decision regulating the accreditation of foreign journalists and correspondents is the competence of Ministry of Foreign Affairs to terminate or deny accreditation of foreign journalists in cases when the work of the correspondent “goes against the law on press and when he/she repeatedly misinforms and abuses with the accreditation card.” In these cases the journalist can receive a warning from the respective directorate at the Ministry of Foreign Affairs and then the accreditation is removed, while the journalist can take the complaint to the Minister of Foreign Affairs, whose decision is final.

This provision is clearly both vague and outdated. It is vague because it does not define an exhaustive list of criteria when accreditation of foreign journalists can be denied, which can possibly lead to situations of abuse and arbitrary decisions on accrediting foreign journalists. At the same time, the vague reference to the need to respect press regulation is outdated, since this decision refers to the Law on Press in Albania at the time, approved in 1993, which was considered a highly restrictive one and the community of journalists vehemently opposed the law, until its final repeal in 1997, when the law, currently in force, retained only two articles that stated that the press is free. However, the decision that regulates accreditation of foreign journalists has not been amended to reflect this change. Even though the current press regulation in Albania is very liberal, the decision can be amended to reflect the current situation, when it seems that accreditation of foreign journalists is just a formal process.

There have been no problems registered in practice with registration or reporting process of foreign journalists from the part of the Ministry of Foreign Affairs or any other state body. Currently in Albania there are mostly permanent correspondents of foreign media, usually of Albanian nationality, while foreign

journalists are usually not permanently accredited or working from Albania, but come only for specific events or reports. According to Ministry of Foreign Affairs data, in 2017 there has been only one request from an ORF journalist for accreditation, whereas until 2017 two journalists, one from Russia and the other from China, had applied regularly for accreditation, but they did not file such request for the next year.<sup>51</sup>

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<sup>51</sup> Ministry of Foreign Affairs reply to request for information.

## Freedom to Choose Language of Communication

### Indicator 7 – Media must be free to disseminate their content in the language of their choice

The aspect of language is treated in two aspects in media legislation: the need for media to protect and promote Albanian language and the need to prevent media discrimination based on language, on one hand, and the freedom of minorities to be able to publicly express themselves in their own language.

Albania has ratified the Council of Europe Framework Convention for Protection of National Minorities and its implementation is routinely monitored by Council of Europe. In addition, the Albanian Constitution points out that co-existence and understanding of Albanians with minorities is a fundamental pillar of the state, and the state has the duty to respect and protect them (Article 3.) Furthermore, the Constitution recognizes the rights of national minorities as equal citizens, as well as their right to learn, further develop, and express their native language (Article 20.) In principle minorities are protected from discrimination and are awarded the same rights as Albanian majority in terms of learning, protecting, and expressing in their native language.

In order to bring the legislation in line with the Council of Europe Framework Convention for Protection of National Minorities, the Albanian parliament approved in 2017 the Law on Protection of National Minorities<sup>52</sup>. This law recognizes as national minorities Greek, Macedonian, Aromanian, Roma, Egyptian, Montenegrin, Bosnian, Serb, and Bulgarian minorities (Article 3.) The data on ethnic minorities have been object of uncertainty and speculation in the country and have been treated as a delicate issue. The last census took place in 2011 and was especially contested from minorities and religious authorities. According to this census, 82% of the population declared themselves to be Albanian, but almost 14% preferred not to answer regarding their ethnic affiliation, and another 1.58% did not define it<sup>53</sup>.

The Law on Protection of National Minorities also addresses the right of minorities to use print and electronic media in their own language, following the rules stipulated in media regulation, free of any discrimination due to their language, or ethnic and cultural affiliation. In addition, the public radio and television have to broadcast in one of their channels news and cultural programs in the language of minorities (Article 20.) Even though legislation on minorities was updated in autumn 2017, media legislation does not yet reflect all requirements imposed by the law on ethnic minorities. While print media is not regulated in terms of content, audiovisual media has considered the need to guarantee fair access and coverage of minorities. The law allows for special licenses dedicated to community audio services, which can be used from ethnic minorities, as well as other groups, “reflecting cultural, linguistic, demographic and religious needs of a community” (Article 57.) The regulation on licensing of community media, developed by the regulator, also ranks among the content requirements for community media the need to promote the culture of national minorities<sup>54</sup>. In addition, one of the criteria that the regulator of audiovisual media must consider when examining applications for license also includes “the willingness to offer a diversity of services and coverage for different social categories, including the interests of minorities” (Article 61.) In a similar way, the mission statement of the public broadcaster also highlights that this broadcaster should serve all groups in the society, including national minorities (Article 91.) This requirement is also reinforced in the statute of the public broadcaster, which

<sup>52</sup> Law 96/2017 “On Protection of National Minorities”.

<sup>53</sup> INSTAT, Census 2011 results, <http://instat.gov.al/al/temat/censuset/censusi-i-popullsis%C3%AB-dhe-banesave/>.

<sup>54</sup> AMA, “Kriteret dhe procedurat për dhënien e licencës kombëtare të transmetimit audioviziv dhe licencës kombëtare të shërbimit të programit audioviziv,” <http://ama.gov.al/preview/wp-content/uploads/2015/03/RREGULLORE-PER-KRITERET-DHE-PROCEDURAT-P%C3%8BR-DH%C3%8BNIEN-E-LICENC%C3%8BS-KOMB%C3%8BTARE-T%C3%8B-TRANSMETIMIT-AUDIOVIZIV-DHE-LICENC%C3%8BS-KOMB%C3%8BTARE-T%C3%8B-SHC%C3%8BRBIMIT-T%C3%8B-PROGRAMIT-AUDIOVIZIV.pdf>

states that the programs of Albanian Radio and Television should respect constitutional rights of all Albanian citizens and those of national minorities (Article 37.)

In this context, media for minorities is briefly addressed in audiovisual media law, but in reality there have been no state policies developed and implemented regarding minorities all these years. According to the current law on national minorities each year the state budget assigns a special fund for national minorities, to be managed by the Committee for National Minorities. At this point it is too soon to see what the effects of this fund will be on development of media for national minorities.

So far there are four radios that have a community license, all of them belonging to different religious communities, but there have been no applications for media in foreign languages<sup>55</sup>.

Public broadcaster RTSH is currently broadcasting programs in its second channel in five languages of minorities in the country: Greek, Montenegrin, Macedonian, Roma, and Vlach<sup>56</sup>. The programs are 30-minute programs per each language per day. However, a few representatives of minorities expressed their reserve on the quality of programs, stating that the programs are not done professionally or contain only five minutes of news and then continue with music<sup>57</sup>. Public broadcaster also admitted that there is a long way ahead in improving these programs, given that the programs have just started and lack newsroom staff, since the programs were not yet accounted for in the budget<sup>58</sup>. At the same time, three regional studios of public broadcaster also produce programs in the languages of the minority that is dominant in the area: Macedonian, Roma, and Aromanian for Radio and TV Korça<sup>59</sup>, Montenegrin/Serbian for Radio Shkodra, and Greek, Vlach, and Aromanian for RTV Gjirokastra<sup>60</sup>. Private TV Alpo in Gjirokastra seems to be the only commercial TV broadcasting a weekly one-hour programme in Greek<sup>61</sup>. Private initiatives of minorities to establish their own media have been volatile projects, dependent on donations and sponsorship, given their low possibility of marketing such products. Minority media has not been registered by the state or authorities. Other monitoring reports indicate the unstable nature of minority media outlets through the years: 11 minority media outlets were reported in 2005, whereas in 2009 they were reported to be 6<sup>62</sup>. According to trade union data, currently there is an increase in minority media and there are 17 such private media, also encouraged by the relatively low costs of production that online media offers<sup>63</sup>.

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<sup>55</sup> Interview with Gentian Sala, chair of AMA Board.

<sup>56</sup> Interview with Thoma Gëllçi, RTSH General Director.

<sup>57</sup> Interviews with representatives of Roma, Macedonian, and Vlach minorities.

<sup>58</sup> Interview with Thoma Gëllçi, RTSH General Director.

<sup>59</sup> Interview with editor-in-chief of RTV Korça.

<sup>60</sup> Interview with editor-in-chief of RTV Gjirokastra.

<sup>61</sup> Interview with representatives of Greek minority in Gjirokastra.

<sup>62</sup> AMI, "Minority media in Albania," 2005 and AMI "Minority media in Albania" 2009.

<sup>63</sup> Data from Union of Albanian Journalists.

## Protection of Confidentiality of Information Sources

### Indicator 8 – Confidentiality of journalists' sources of information must be respected.

National legislation does recognize the need to respect confidentiality of sources of information for journalists, but in practice sometimes there are obstacles to guaranteeing that this right is observed.

The principle of the right to secrecy of sources is protected by the Criminal Procedure Code, which addresses the protection of professional secret in Article 159. This article lists a series of professions that are not obliged to testify on information they know because of their profession, including also journalists. According to this article, journalists are not obliged to reveal the names of persons they have received information from as a result of exercising their profession. However, the law also acknowledges exceptions to the rule: if the information on the source is essential to prove the criminal offence and the truthfulness of such information can only be ascertained through the identification of the source, the court can order the journalist to disclose the source of his/her information. In addition, one of the fundamental principles that audiovisual media must respect during their work is also the protection of confidentiality of sources of information, according to the Law on Audiovisual Media (article 4).

Although at first sight these two laws seem to guarantee a reasonable protection of information sources for journalists, the protection in the Criminal Procedure Code depends on the will and common sense of the judge, while the law limits protection only in relation to truthfulness of the offence in court, and does not relate such protection to a more exhaustive list guided by public interest principles.

In practice court proceedings against journalists for failure to disclose their sources of information are extremely rare. The survey with editors and journalists conducted in the framework of this study revealed that 14.8% of respondents had had problems with confidentiality of sources of information, but not at court<sup>64</sup>. Journalists reported that sometimes their editors and directors have asked for the sources, although there is not great insistence on their part. The best known case in this respect is that of investigative journalist Artan Hoxha. Invited in a political TV show, after the information he revealed, representatives of the prosecution office went directly to the TV, in an attempt to know his sources of information. In the process they decided to confiscate the journalist's two mobile phones, which he has not received back even almost two years later. In general the interviews with editors confirmed that there is only slight pressure from the editors or the management, and sometimes also by spokespersons, but in general confidentiality is protected<sup>65</sup>. An editor mentioned that sometimes they decide not to publish some news only because they fear they will be forced to reveal the source afterwards and lose credibility, which might be a deterrent in conveying important information to the public.<sup>66</sup>

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<sup>64</sup> Data from survey conducted for the purpose of this study.

<sup>65</sup> In-depth interviews with editors and media owners.

<sup>66</sup> Ibid.

## Limitation of Exclusive Reporting Rights

### **Indicator 9 – Exclusive reporting rights concerning major events of public interest must not interfere with the public’s right to freedom of information.**

In the long process of drafting the Law on Audiovisual Media in the parliament the main guidance was the need to approximate legislation to EU regulation, while having an adequate law to the national context. In this respect, the law takes into account the requirements and standards set by the European Convention on Transfrontier Television, which Albania has ratified, as well as the European Union’s Audiovisual Media Services Directive. In this respect, the law regulates the broadcasting of major events, with the aim of offering access to the public in a wide and indiscriminate manner, even when an operator holds exclusive rights to broadcasting an event (Chapter XIII of Law on Audiovisual Media.) The law designs the regulator AMA as the arbiter to draft the list of major events and to regulate the way they will broadcast. In making decisions in this field the regulator also has to consult with the Minister of Culture and the Council of Complaints. The decision must also be presented to the Parliamentary Commission on Media and Public Information means.

In designing such a list of major events the regulator has to keep account of all circumstances and the importance such events have on culture for the population of Albania (Art.127.) Although not specified explicitly, the list seems intended primarily to cover broadcasting of sport events, citing the participation in an event of the national team or of an Albanian individual as a criterion the regulator must consider.

The regulator has not drafted this list so far, but the list’s composition is included in AMA’s Strategic Action Plan 2017-2019<sup>67</sup>. The list is expected to be completed in summer 2018, after counselling with ministries that are relevant, especially Ministry of Culture and Ministry of Education and Sports<sup>68</sup>. The list is supposed to be updated each year by AMA afterwards.

It remains to be seen what the list of events of major importance will include, although the legal provision implies the list will include mainly sport events. In fact, the main debate and interest in past years has focused on which television or platform will broadcast especially sport events, mainly football, and particularly matches of the Albanian national team, and whether it will be free. Since the rights of broadcasting these events are auctioned off, it has often happened that the public broadcaster has not been able to afford such an expense. In fact, the public broadcaster claims that sometimes they have not even been notified of the auction by the federation<sup>69</sup>. This has led to expressions of public disapproval, expecting that national football team matches are broadcast for free. While most national team matches have been broadcast free eventually, even by commercial channels and platforms, the general expectation has been that one way the public broadcaster can justify the license fee is to broadcast these matches.

With the digital switchover under way, the addition of other programs of public broadcaster, and improvement of quality, the public broadcaster has also become more active in obtaining broadcasting rights, demanding also greater guarantees that the copyright will be protected. To this effect, the regulator issued a statement on February 2018 indicating that RTSH owned the exclusive rights both to Winter Olympic Games and to the FIFA World Cup 2018<sup>70</sup>.

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<sup>67</sup> AMA, Strategic Action Plan 2017-2019.

<sup>68</sup> Interview with Gentian Sala, AMA chair.

<sup>69</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>70</sup> AMA, <http://ama.gov.al/preview/njoftim-e-drejta-e-transmetimit-audioviziv-te-dy-eventeve-sportive-nderkombetare-per-vitin-2018/>



## Proportionality of Privacy Protection and State Secret

### Indicator 10 – Privacy and state secrecy laws must not unduly restrict information.

Legal protection of privacy is generally balanced against the protection of the right to expression and information. However, there is a trend to use secrecy laws and regulations, even privacy recommendations, to shield information from public eye.

#### **Privacy Protection**

The Criminal Code protects the right to privacy and lists a series of circumstances when such a violation constitutes a misdemeanour, such as taping and recording someone's private life (Article 121,) spreading personal secrets without prior authorization because of duty or for embezzlement purposes (Article 123,) or violating the privacy of correspondence (Article 123.) In addition, the Law on Protection of Personal Data addresses the guarantees needed to protect personal data, such as the obligatory notification and consent of an individual to the processing of personal data, as well as the right to access one's own personal data (Article 12) and the right to object to the processing of such data. In cases of claimed wrongdoing in data processing, one can file both administrative complaint and a lawsuit, claiming for compensation of damage (Article 16, 17).

The law also addresses the media's role in this regard, stating that exceptions to processing of personal data are allowed to the degree that the exceptions balance protection of personal data to access to information. In addition, the law assigns the Commissioner the task of drawing guidelines for use of personal data for journalism, literary, and artistic purposes. The then-Commissioner for Data Protection drafted guidelines for this purpose in 2010, which were then amended in 2012. The instructions try to balance access to information with the right to privacy, tackling different aspects of a journalist's work, such as protection of minors, protection of persons in penal proceedings, taping of persons, protection of health records and other data, publication of photos, and the right of public persons to privacy against the backdrop of public interest. The guidelines also state that violations of these rules are punishable by fine and so far there has been only one decision against *Gazeta Shqiptare* in 2011, which was fined for failing to publish personal data in an anonymous form<sup>71</sup>.

In addition to specific data protection law, the audiovisual media law determines as one of the guiding principles of media operators the respect and guarantees on the right to protection of private life (Article 4.) One of the obligations imposed by the law on audiovisual media is the obligation to refrain from violating the right to privacy of individuals in the programs they broadcast, and also to refrain from using tools that would cause such a violation when making the programs (Article 34, 46.)

The right to privacy has been further regulated with the drafting and amendment of the Broadcasting Code by the regulator, the Audiovisual Media Authority, with a whole detailed chapter dedicated to this aspect. According to this code, public dissemination of information or images of private life is allowed only if there is a legitimate public interest that overcomes the right to privacy. While recognizing also the right of public officials to privacy, the Code does allow the publication of information on private life of public officials when this information is shown to affect their functions in the public office they hold. The Code assigns a greater priority to the right to privacy especially when it comes to vulnerable groups or cases of accidents or misfortunes.

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<sup>71</sup> Decision no.2 of Commission on Data Protection, 2011.

Code of Ethics of journalists also stipulates journalists' obligations to respect privacy. Several sections of the code focus on aspects of violation of privacy, including the need to respect dignity of a person, balancing the right to privacy of public officials with the public interest, rules for reporting of accidents and disasters in an ethical manner, and observing a greater care towards more vulnerable groups, such as children and persons with limited liabilities.

In spite of these legal and self-regulatory measures imposed in letter, the general opinion of editors interviewed for this research revealed a high degree of self-criticism regarding ethical level in journalism. The boom of news portals that are not regulated and rarely impose any self-regulation has further exacerbated the violation of ethics and privacy in the media, according to editors of mainstream media in the country. "Journalism of news portals has destroyed every structure of reporting, identity, and rule of journalism,"<sup>72</sup> said the publisher of a daily newspaper. According to almost all editors, ethics in the media is in one of its darkest moments<sup>73</sup>.

### **Protection of State Secret**

The protection of state secret is regulated by the Law on Information Classified as State Secret, approved in 1999, and amended in 2006 and 2012. This law defines state secret as any classified information that, if revealed in an unauthorized manner, would endanger national security<sup>74</sup>. Such information is classified in the law in content related to military plans, arms, operations, information on national security, intelligence service, relations with foreign governments, etc. The law determined three levels of classified information in 1999: limited, confidential, and secret, depending on how harmful its revelation would be to national security.

In 2006 the law was amended to add a fourth level of security: top secret information, whose unauthorized disclosure can cause exceptionally serious harm to national security. At the time the change was justified in the name of security requirements in the framework of Albania's NATO membership. Nonetheless, adding another layer of classification sparked concerns regarding the potential of the institutions to use the law in order to further restrict information.

A case that illustrates problems media encounter in this field might be that of BIRN Albania investigating the practices of communist spying apparatus, and demanding documents that the head of the secret service considered classified. The Commissioner ruled that the secret service should provide the documents requested, but after the secret service refused to do so, the matter was taken to administrative court, which upheld the Commissioner's decision. Darian Pavli, a well-known lawyer working on freedom of expression, said that "national security cannot be used as a blanket to keep away from public eyes any document produced by the national security institutions. It is time that the institutions pave the way for access to studies of history on the past and responsibility for the present."<sup>75</sup> However, a series of trials that can spiral might discourage media and citizens to insist on their requests for information. Editors interviewed in the framework of this report also identified cases when their journalists were denied access to information from authorities, based on the claim that the information was protected by state secret, although this was not a dominant practice and it mainly depended on the nature of information requested<sup>76</sup>.

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<sup>72</sup> In-depth interviews with editors and media owners.

<sup>73</sup> In-depth interviews with editors and media owners.

<sup>74</sup> Law no. 8457 on Information Classified as State Secret, 11.02.1999.

<sup>75</sup> D. Pavli, qtd. in BIRN, "Gjykata urdhëron SHISH të deklasifikojë dokumente të arkivës së ish-Sigurimit," <https://www.reporter.al/gjykata-urdheron-shish-te-deklasifikoje-dokumente-te-arkives-se-ish-sigurimit/>

<sup>76</sup> In-depth interviews with editors and media owners.

## Protection of Journalist Labour and Social Rights

**Indicator 11 – Journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence.**

There are no official statistics on the economic and social position of journalists. Based on partial available data and reports of journalists themselves, it is clear that journalists are in a less than favourable position in the media industry. Often they lack even the most minimal social protection to perform successfully their role in the society. The profession of journalist is considered to be very stressful, labour intensive, prone to compromises, and poorly paid. However, this perception cannot be generalized, as it also depends on the media outlet, its economic position, and its geographical location. In addition, top journalists and journalism personalities are reported to do fairly well in this aspect, even though they might not be necessarily immune to professional compromises.

When asked to rank the three biggest problems in the profession of journalists, the survey conducted with journalists and editors revealed that 61.7% of them indicated the unfavourable work conditions and the economic insecurity they experience<sup>77</sup>. At the same time, 28.7% of them also indicate direct or indirect corruption in the media and among journalists from financial sources, followed by 21.7% who think that self-censorship is one of the biggest problems. Journalism associations, freedom of media organizations, and especially the trade union have continuously warned that the situation of journalists in the country has been in continuous deterioration and that without this precondition media freedom has important deficits.

Labour rights of media professionals are not protected by any special law other than the Code of Labour, which protects labour relations for all citizens. Lacking any special protection regarding their profession, journalists are not immune to the social difficulties that the whole working population faces in the country. In late 2017, unemployment rate was at 13.6% for the age group 15-64, according to official statistics<sup>78</sup>. The minimal approved wage is ALL 24,000, whereas the average wage in the state sector at the end of 2017 was ALL 61,600<sup>79</sup>. Informality of the economy has been a constant transition trend, inevitably affecting labor relations, even though attempts have been made to have at least the minimum protection in place for employees and to formalize labor relations. Failure to pay social contributions, delays in salaries, extended working hours, not paying overtime work or failure to respect vacation periods are some of the most common problems in labor relations.

In this context, the problems affecting the social and economic position of journalists are similar to those of the rest of the population and have cemented into a constant trend in the last decade: informal labor relations, job insecurity, small salaries, social contributions received only for minimum wage or failure to pay them altogether, frequent delays in disbursement of salaries, etc. According to the reports of the trade union of journalists, most of the journalists work without contracts or have contracts but these can be terminated in an arbitrary way<sup>80</sup>. A survey the trade union carried out in 2012 showed that 42 percent of surveyed journalists had a regular contract during the whole period of employment, 26 percent had a contract for part of this employment period, while 32 percent had never had a work contract<sup>81</sup>.

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<sup>77</sup> Data from the survey conducted for the purpose of this study.

<sup>78</sup> INSTAT, data on unemployment rate, <http://www.instat.gov.al/al/temat/tregu-i-pun%C3%ABs-dhe-arsimi/pun%C3%ABsimi-dhe-papun%C3%ABsia/#tab2>

<sup>79</sup> INSTAT, data on average wage, <http://www.instat.gov.al/al/temat/tregu-i-pun%C3%ABs-dhe-arsimi/pagat/#tab2>

<sup>80</sup> Peace Institute, „Media Integrity Matters,“ Albania, 2014.

<sup>81</sup> Union of Albanian Journalists, *Informal Labour Practices in Albanian media*, 2012, p. 38.

Even in cases when there are contracts, they are often purely formal documents, for the companies to be in order with the state requirements, rather than a result of negotiation and agreement between journalists and media company. The contracts are drafted unilaterally by the media management<sup>82</sup> and interviews with journalists also confirm that there are problems in the drafting and implementation of contracts. “In 20 years I work in the media I never held a copy of my contract in my hands,”<sup>83</sup> said an editor of a daily newspaper. Most journalists and editors agree that the contracts are fictive, sometimes journalists are handed contracts without the signature of the media company, and they can be interrupted at any moment. “Contracts are a formality, a way of being in order with papers that the state requires, but they do not guarantee safety of the job position and this is a status quo that remains unchanged for years.”<sup>84</sup>

A major plague in media labor relations that has become even more pronounced in the last years is the delay in salaries for media employees, mainly due to the difficult economic conditions of media outlets. According to statistics of the trade union, there are delays in over 85% of the media outlets, and the delays range from one to four months<sup>85</sup>. More importantly, it seems to be a worsening trend. For example, on September 2013, the union stated that “in the last six months the salaries of journalists were delayed in 75 percent of media outlets in the country for a period of two to six months.”<sup>86</sup> Five years later, the percentage of media committing this violation has increased to over 85% and important media are part of the trend, too<sup>87</sup>.

Regarding level of salaries, again, official statistics are missing. The union estimates that there are three levels of salaries for journalists, depending on their position, media, and location. The best paid journalists have an average wage of 550-600 USD, the second level reaches 450-500 USD, while the lower level media pay their journalists an average of 300 USD per month<sup>88</sup>. At the same time, there is a huge gap between Tirana-based media and the ones in the districts. The average wage of local journalists is 150-220 USD, usually working for more than one media, in total informality<sup>89</sup>. The union estimates that journalists in the districts make up 45% of the total number of journalists, indicating the urgent need to intervene in this area<sup>90</sup>.

In the survey conducted with editors and journalists, 47% of them thought that the salary is low compared to the work done, whereas 26% thought it was insufficient. Only 17% of respondents thought that the salary was reasonable compared to the work done.

Interviews with journalists and the practice of the union so far points to another disturbing trend: the missing years of social contribution payments. A 2012 survey of the union showed that 65 percent of journalists reported that the years they worked with a contract did not match the years they actually worked in the media<sup>91</sup>. Media employees have also suffered cases of fraud, where the contributions either have not been paid at all or have been paid for only part of the years<sup>92</sup>. In addition, both the union and the journalists interviewed indicated a widespread trend: even when the social insurance is paid, it is based on the minimum wage, and not on the real wage, pointing again to the informality problem. According to the union, 98 % of media outlets do not declare the real wages of their employees.<sup>93</sup>

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<sup>82</sup> Ibid.

<sup>83</sup> In-depth interviews with editors and media owners.

<sup>84</sup> Interviews with journalist of daily newspaper.

<sup>85</sup> Data from Union of Albanian Journalists, 2018.

<sup>86</sup> Union of Albanian Journalists statement, 21 September 2013.

<sup>87</sup> Data from Union of Albanian Journalists, 2018.

<sup>88</sup> Interview with Aleksander Cipa.

<sup>89</sup> Interview with Aleksander Cipa.

<sup>90</sup> Ibid.

<sup>91</sup> Union of Albanian Journalists, *Informal Labour Practices in Albanian media*, 2012, p. 21.

<sup>92</sup> Interview with Aleksandër Cipa.

<sup>93</sup> Ibid.

## Journalist Freedom of Trade Union Organising

### Indicator 12 – Journalists must not be restricted in creating associations such as trade unions for collective bargaining.

Albanian legislation protects the freedom of trade union organising. The Constitution guarantees the right of employees to unite without any obstacles in trade union organizations in order to protect their labour rights (Article 50.) In addition, Albania has ratified 54 conventions of the International Labour Organization, including the Freedom of Association and Protection of the Right to Organise Convention. The spirit of these conventions is reflected in greater detail in the Code of Labour<sup>94</sup>. The protection of freedom of trade union organising is reinforced in this Code, which states that this freedom is protected by law and no one has the right to condition, terminate, or affect employment relations based on membership in trade unions (Article 10.) The principles of trade union freedom as laid out in the Code include freedom from discrimination against trade union members, and the need of trade union to approve and negotiate labour contracts, their changes, and dismissals, while the employers should allow for a normal functioning of trade unions in the premises of their companies (Article 181). Media legislation does not specifically address trade union freedom in media outlets, which are covered by the labour legislation in any case. The only exception is the document of the Editorial Principles of public broadcaster RTSH, which states that RTSH employees are free to join political organizations or trade unions, as long as this activity is not incompatible with their editorial or administrative role within the RTSH<sup>95</sup>. In addition, employees that are part of trade unions cannot be punished or discriminated for this aspect, unless it interferes with the work they have been hired for.

Even though the law seems to offer adequate protection and rights for trade union organising, at the moment there is not even one trade union within any medium in the country. In 27 years of transitioning from a dictatorship to a democratic system, the only trade union within the media outlets has been that of the employees of public broadcaster RTSH, which also was very feeble and is no longer active at the moment<sup>96</sup>. There are many reasons for weakness of trade union organising in the country, but the fact that almost none of the media outlets that existed before the 90s is still alive (see Indicator 22) also changed the whole organization foundations of media outlets, where social protection has clearly not been a priority, as viewed in the overall problems of labour relations in the country.

The only organisation that is constantly vocal in matters related to labour relations in the media is the Union of Albanian Journalists. It is worthwhile to note that even though improvement of labour relations in the media has been identified as a priority all along the previous two decades, the push for establishing a trade union has rarely come from within the community, but rather from donors. The first attempt to establish a trade union of journalists took place in 1999, supported by IREX, but the attempt failed to become an active organization with a commanding membership, apparently due to fear of journalists of being fired if they joined the union<sup>97</sup>. The second attempt to establish such an organization, again initiated and supported by IREX, came in 2005, establishing the trade union which is active still today.

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<sup>94</sup> Code of Labor, Law no.7961, dated 12.07.1995, amended by Law no.8085, dated 13.03.2006, Law no.9125, dated 29.07.2003, Law no.10 053, dated 29.12.2008, Law no. 136/2015, dated 5.12.2015, available at <http://www.qbz.gov.al/botime/Kodi%20i%20Punes-2016%20i%20azhurnuar.pdf>

<sup>95</sup> Editorial Principles of RTSH.

<sup>96</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>97</sup> International Research and Exchanges Board (IREX), "Albania," in *Media Sustainability Index 2003: Development of Sustainable Independent Media in Europe and Eurasia* (Washington: IREX, 2003), p. 10.

The Union is registered as a non-profit organization and it has currently 786 members, marking a decrease of almost 400 members that were inactive from the data of early 2017<sup>98</sup>. The Union has established branches in 11 main cities, such as Tirana, Durrës, Elbasan, Fier, Vlorë, Gjirokastër, Sarandë, Korçë, Shkodër, Berat, and Lezhë, as well as 4 sub-branches in Pogradec, Kurbin, Burrel, and Lushnjë. Out of total membership, almost 650, or 82% of them are journalists, while the rest are cameramen, photographers, or freelancers<sup>99</sup>. There are no official statistics on overall number of journalists and persons employed in the media industry. Most journalists seem to not be Union members. According to Union estimates, there are about 2,700 journalists working in the media at the moment, while the number of overall employees, including technical and administration staff is closer to 6,200<sup>100</sup>.

The Union is quite active in issuing public statements in cases of violations of labour rights, as well as media freedom. They also periodically try to issue data on main trends and problems in implementing the Code of Labour in the media, in order to raise awareness on problematic aspects of labour rights, such as delays in disbursement of salaries, layoffs from newsrooms, failure to pay social contributions to media employees, etc. At the same time, the Union itself is limited in its capacities, both technical, and financial. Although it has a satisfactory membership, the members do not pay a regular quota to support the work of the union, but only a small initial membership fee<sup>101</sup>.

The biggest challenge in terms of labour relations, as well as in Union's work, continues to be the establishment and representation of trade union units in the media outlets. At the moment the Union is working to raise such a unit within the public broadcaster, but it remains to be seen whether they will be successful<sup>102</sup>. Private media owners have also greatly resisted the establishment of trade unions and in this context journalists that fear sacking are reluctant to join trade union initiatives without any secure benefit for them<sup>103</sup>. The poor monitoring of implementation of Code of Labour from state institutions has not assisted any effort of journalists to organize for the interest of their labour rights.

Another factor that affects the success of trade union movement in the media is the overall lack of trust in trade unions and the poor performance they have had in many areas of life in the last twenty years. A 2016 public opinion poll showed that 49% of surveyed citizens believed that Unions do not hold the government accountable.<sup>104</sup> In fact, in another 2014 poll<sup>105</sup>, 86% of respondents said they were not able to respond on efficacy of trade unions as they were not even aware that they existed.

The situation is not different with the media community. The survey conducted with editors and journalists in media across the country revealed that only 24% of respondents ranked the Union as one of the efficient institutions in protecting freedom of media in 2017<sup>106</sup>. An even lower trust rests with professional media associations, which are mentioned by 19% of respondents, and civil society, with 10%. Majority of respondents, almost 43% of them, believe that the media and journalists themselves are the most active ones when it comes to protecting freedom of media.

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<sup>98</sup> Union of Albanian Journalists data.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Interview with Aleksander Cipa, chairman of Union of Albanian Journalists.

<sup>103</sup> Ibid.

<sup>104</sup> IDM, "Trust in Governance 2017 opinion poll," 2018.

<sup>105</sup> <http://library.fes.de/pdf-files/bueros/albanien/11314.pdf>

<sup>106</sup> Data from the survey conducted for this study.

## Protection of Editorial Policy Independence

**Indicator 13 – Media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism.**

The notion of editorial independence is loosely guaranteed by legislation, but no further steps have been made to protect it during everyday media practice. During their work journalists routinely find themselves completely at lack of any mechanism or tools that would protect them from owners. Autonomy and independence of journalists is perhaps one of the most neglected issues in terms of regulation, and to some degree in the public debate. Media is commonly identified with the owners and their interests, while the absence of professional autonomy of journalists is commonly implied, but addressed only when there are new developments, and not as a key problem in protecting media independence.

Legislation addresses editorial independence vaguely and briefly. Constitution guarantees the general principle of media freedom and forbids any prior censorship of means of communication (Article 22.) Similarly, the law on press guarantees its freedom. Article 4 of the Law on Audiovisual Media ranks freedom of expression and freedom of audiovisual media operators among the fundamental principles of audiovisual broadcasting<sup>107</sup>. Public broadcaster has adopted a very detailed document of Editorial Principles, which addresses and highlights the need of RTSH employees to maintain and strengthen their independence<sup>108</sup>. However, independence is emphasized as a value and a goal, but it is also viewed vis-a-vis external, rather than internal influence, and there is no provision on any mechanism or instrument that would help secure independence in practice.

In fact, even the few existing legal stipulations on editorial independence stop short, as they are not translated into further newsroom mechanisms that protect editorial independence. Media are guaranteed the right to editorial independence, but the legislation does not further detail or regulate the way this editorial independence would be protected, e.g. through sanctions, establishment of protective mechanisms for journalists, or implementation of a conscience clause in contracts, etc.

Codes of conduct or any form of contract in writing that would formalise the relationship between the owner and journalists and contribute to guaranteeing editorial independence in practice do not exist. Labour contracts are routinely prepared as a way for media owners to respect Code of Labour and avoid problems with any possible state inspections, but these are purely administrative and do not address any aspect of journalism content<sup>109</sup>. In addition, in the current set-up of Albanian media ownership, it would be counter-productive for media owners to limit themselves from defining and influencing editorial policy.

The main bulk of media owners have economic interests other than the media, and more often than not come from business environment and actively use media to promote these interests<sup>110</sup>. Interviews with editors revealed that the relationship and interests of the media ownership towards political actors, motivated by economic gain, is the bible that guides newsrooms.

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<sup>107</sup> Law on Audiovisual Media 97/2013.

<sup>108</sup> RTSH, Editorial Principles.

<sup>109</sup> In-depth interviews with journalists and editors for the purpose of this study.

<sup>110</sup> Londo, "Albania," in *Media Integrity Matters*, 2014.

In the words of an experienced journalist: “Editorial freedom and independence in the media in Albania is always dependent on the financial sources that fill the media deposit. If the owner thinks a political subject or even a business has affected its interests, he is targeted by his media. If the opposite is true, this subject is ‘off limits’ to the newsroom.”<sup>111</sup> This has effectively undermined the concept of editorial policy, transforming it into a purely financial interest, but it has also further restricted the room of journalist for manoeuvring in this climate. “Today media are captured in the name of media owners that have other businesses, and today journalists have no possibility to choose a camp that is more critical towards the government, and Facebook remains the only means. But there is pressure from employers on journalists even about their critical Facebook posts,”<sup>112</sup> said an editor. Another editor interviewed said that “the main disease in journalism is self-censorship of journalists and the capture of media owners. They are consequences of one another. Political and criminal power has captured the owners, who feel comfortable being their ‘hostage.’ In turn, journalists censor themselves in order to keep their job.”<sup>113</sup> The absolute unanimity of editors interviewed on this point makes it clear that the underlying financial interests and links of media owners make the current climate far from conducive for media in the country to even establishing an independent editorial policy, let alone protect it. It was no coincidence that some interviewees mentioned the case of Balkan Investigative Reporting Network as a success story in reporting, linking it strongly to their financial independence.<sup>114</sup>

Various studies of media freedom and professionalism also confirm the entrenched trend towards self-censorship among Albanian media, which are more concerned to protect the business or political interests of the owners, rather than public interest. A survey investigating trends towards self-censorship revealed that 73 percent of respondents believed that Albanian journalists would avoid covering news that was not in line with the interests of their media outlet, while the personal experience of media employees participating in the survey was that 48 percent of them had avoided covering certain news events frequently or several times<sup>115</sup>. When asked about the internal newsroom structure that contributed most to self-censorship, the survey indicated that 56 percent was the result of signals or direct orders from the editor and owner.<sup>116</sup>

Interviews with editors and media managers confirmed that the findings of this study are still relevant and that self-censorship has become an integral part of the DNA of journalists. A news editor said: “I think we suffer more from self-censorship, rather than lack of freedom. We don’t have any phone calls from the owner to guide us, but we have become increasingly careful when faced with certain people and try to guess the relation they have with the owner.”<sup>117</sup> Another editor concluded that factors that enable good journalism “either do not exist or are degrading continuously, and the quest for survival has led journalists to self-censorship as the antidote that would allow them to survive in this media market. In addition, even for journalists the interests of the owner become increasingly important, as they see these interests as existential for the media where they work, and, eventually for their own survival.”<sup>118</sup>

Apart from internal business interests of media owners, important sources of funding, but also of potential pressure, are private advertisers (for state advertising see indicator 19.) Cases when advertisers have withdrawn ads or have boycotted particular media in tune with their editorial policy are not unknown to practicing journalists and editors; they are rather the norm. Considering that advertising market is dominated by telecoms and big corporations, their direct or indirect influence is visible in media practices and content.

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<sup>111</sup> In-depth interviews with journalists and editors for the purpose of this study.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> BIRN Albania, *A blind eye on news: Self-censorship in the Albanian media*, 2015.

<sup>116</sup> Ibid.

<sup>117</sup> In-depth interviews with journalists and editors for the purpose of this study.

<sup>118</sup> Ibid.



“Sources of financing for the media are not sufficiently diversified and big commercial sponsors, such as mobile companies, continue to be very significant for the survival of the media. Consequently, they are able to affect the media’s editorial policy, and that is why we do not see any criticism of these companies in the media. If there is any criticism, the media are aiming to obtain some financing.”<sup>119</sup> This practice has been more visible in the controversial cases involving the biggest advertisers, mainly telecom companies and banks. For example, when the competition regulatory body fined the country’s two biggest mobile operators, Vodafone and AMC, for uncompetitive behaviour in 2007, the story was reported only by a few media outlets.<sup>120</sup> Similarly, when the same regulator started an investigation against Vodafone, it took many months for this story to be published in a few media, even though it is a story of public interest. “Instead, it was the Competition Authority that found itself battling tabloid media criticism of the probe.”<sup>121</sup> The same situation was repeated in 2017, when the Competition Authority started an investigation on the potential oligopoly of mobile operators regarding the packets they offer, and it was reported only in a few media, showing again the direct link between advertisers and media freedom and independence. According to a media owner, the pressure of advertisers that threaten to withdraw their advertising the moment you state a universal truth that damages them is tangible every day. “There have been some tragic cases reported and we have been threatened advertisers would take away their money from our media, damaging our editorial and financial independence. In these cases there is no solidarity among media and powerful businesses can easily manage to remove negative news from other media and in an equally easy way they can penalize media that has refused to remove published news that damages the advertiser.”<sup>122</sup>

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<sup>119</sup> IREX, Media Sustainability Index 2012.

<sup>120</sup> Besar Likmeta, “Big advertisers subvert Albanian media freedom,” <http://www.balkaninsight.com/en/article/big-advertisers-subvert-albanian-media-freedom>

<sup>121</sup> Ibid.

<sup>122</sup> In-depth interviews with journalists and editors for the purpose of this study.

## Protection of Journalist Safety

**Indicator 14 – Journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked.**

No journalists have been murdered in Albania and cases of physical assaults are rare. There are no special legal provisions in place to protect journalists and no particular penalties for persons that attack journalists. The Criminal Code has stipulations for assaults and threats against someone because of his duty (Articles 237 & 238,) but these are meant to protect public officials on duty or someone doing a public service.

The police authorities usually react promptly, but perpetrators are rarely found out. In 2017 a grave case of attack was that against Elvi Fundo, owner of Citynews portal and administrator of Radio Best. He was beaten on the street by two persons, on March 8, in Tirana and was briefly hospitalized. Later, Fundo declared on his Facebook page that the assault was “not a political act, but a crime by corrupt media clans, with ties to the drug mafia”. After police investigations, one of the assailants was caught and is currently in prison, but the ones that commissioned the crime still remain unknown.

In another case, in 2014, Artur Çani, an investigative journalist of News 24 TV at the time, escaped unharmed from an attempt at his life. The views from the security cameras of the building where he lived revealed that a masked mad had attempted to shoot at him, but the gun was blocked and the journalist remained safe. Despite prompt support from the police and the Minister of Internal Affairs, the reasons and the persons involved in this attempt at journalist’s life did not come to light.

Another category of assaults against journalists are those of persons that journalists encounter during their duty and in some cases these encounters have degenerated into a verbal or physical assault. In 2017, one such case was documented by investigative program Stop at national TV Klan. Genci Angjellari, reporter, was trying to interview the administrator of a company that was suspected of dumping dangerous hospital garbage to a river nearby. She first verbally assaulted and threatened the journalist, who insisted with his questions, and then tried to hit him and slap him several times.

In another similar case, Eduard Ilnica, a sport journalist working for Telesport, was harshly beaten by the president of a football club, due to comments made on the football match, and was hospitalized. The Minister of Justice called on authorities to seriously consider this crime. The president of the football club was taken to court and he admitted to taking part in the beating of journalist, but then the case was dropped after an agreement was reached and the journalist withdrew from the case.

Fortunately physical attacks against journalists are rare, but verbal threats are also part of the difficulties journalists have to deal with in Albania. The anonymity offered by social networks and online media seems to further exacerbate this phenomenon. On September 2017, Rudina Xhunga, a well-known journalist hosting the program Dritare at Vizion Plus TV, received threats in her Facebook page. The threats seemed to come from extremist persons after a program focused on the controversy that involved the celebrations of Muslim holiday of Ramadan and the statue of national hero Scanderbeg in the main square of the capital Tirana.

In very rare occasions, which have been viewed as particularly serious, the police has also offered permanent police protection. For example, in 2015 Artan Hoxha, investigative journalist, received threatening messages in

his mobile for him and his family after an investigative story he had done on planting and cultivation of cannabis sativa. The police did take him under protection for a few days, but there were no other developments on the case.

The survey conducted with journalists and editors from several cities in the country revealed that 6% of respondents had identified threats with physical violence against journalist as one of the violations of media freedom. Such cases are usually followed with statements and reactions from the union of journalists, other associations, or even individual journalists. The police tends to react and be supportive, but in the most serious cases the truth has rarely been discovered. As a result, court processes against perpetrators of crimes against journalists are extremely rare.

## Impartiality and Efficiency of Regulatory Authorities

**Indicator 15 – 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 Law on Radio and Television, in force from 1999 to 2013, specified that the public broadcaster RTSH is a legal person and does not need a license (Article 21.) The current Law on Audiovisual Media mentions only that RTSH is the public broadcaster with the status of a legal person, but does not specifically state that RTSH does not need a license. Even though this is not expressly stated in the law, in practice nothing has changed with the approval of this law and RTSH has its license *a priori*, in virtue of being the public broadcaster. On the other hand, print media has no obligation to register with any media-related authority, but they have to observe respective regulation, depending on whether they function as a business or as a non-profit activity. No print-specific license is needed in this regard and there are no obligations of registrations. The same is true for online media, which are completely unregulated. They do not even have the obligation to register as a business, in the absence of legislation in this regard<sup>123</sup>.

On the other hand, audiovisual media has to meet several requirements and criteria and obtain the license or authorization from the regulator, the Audiovisual Media Authority, if they wish to operate. With the onset of digital switchover process and the approval of the Law on Audiovisual Media, the types of licenses granted by the regulator have expanded, depending on the service provided and on the coverage of the license. The types of licenses issued by AMA include license for audio or audiovisual program service; License for audio or audiovisual broadcasting (composed of license for program service and license for the establishment and operation of the network, which may be analogue or digital.) The licenses can be national, regional, or local according to the category of terrestrial network in which they will be supported. AMA also grants licenses for the establishment of digital networks (multiplex licenses). The other category of licenses includes audio program service authorisations and audiovisual program service authorisations, in the event the service is supported in the networks mentioned above. The authorization varies according to the type of system supporting the programme: satellite, cable, on-line, technical service for conditional access systems, and service provider. (Article 55) As a general principle, when assigning frequencies “the allocation of frequencies shall be made on the basis of objectivity, transparency, non-discrimination, availability of free frequencies, and in compliance with the specifications of the National Frequency Plan only in the frequency bands assigned for administration to AMA.” (Article 54.)

The first regulator was the National Council of Radio and Television (NCRT), established by the Law on Radio and Television of 1998. In 2013 it was replaced by the Audiovisual Media Authority (AMA,) upon approval of the Law on Audiovisual Media. In 18 years of developing the institution of the regulator, two of the main challenges have been the establishment and strengthening of the independent nature of the institution, as well as its efficacy as the authority responsible for regulating the audiovisual media landscape.

The authority for issuing licenses for audiovisual services under the Law on Audiovisual Media is the Audiovisual Media Authority, the regulator, defined as a legal, independent person (Article 6.) The main challenge in the history of establishment of the regulator as KKRT first, and as AMA now has been its

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<sup>123</sup> The only requirement for them to register is through web hosting platforms only if they want to have the .al domain, but this requirement pertains to all websites that want this ending, not just to online media.

establishment as a functioning authority, independent of any other actors, mainly political ones. The ways in which the formula of election of members of the regulator has changed several times, with the proposal and the involvement of politicians is a sign that it has now worked, but also shows the latter's interest and investment at this point<sup>124</sup>.

The smooth functioning of AMA has been affected by political dynamics. First of all, the appointment procedure for AMA members is affected by the political situation. In periods when political consensus could not be reached, culminating in the boycott of the parliament by the opposition, political parties refused to nominate members, or members could not be elected because of the lack of quorum. This had a direct impact on the work of the regulator, rendering it incapable of achieving political balance and even of reaching a quorum needed to make important decisions. For example, the term in office of one of the AMA members expired in September 2012, but the Parliament failed to appoint new members until 2013, due to the change of law and other priorities. In more recent events, the issuing of digital licenses was blocked for some time because of lack of quorum, due to the absence of AMA Board members appointed by the opposition. Furthermore, the opposition took to court AMA regulation on digital licenses, further delaying the process. For some editors and media experts, the very formula used to elect Board members does not allow for independence and creates deep divisions within the Board, as they owe loyalty to the main political parties, at least in the important issue; less so in smaller decisions<sup>125</sup>. According to the current chair of AMA, there are no problems for AMA functioning caused by legal regulations, especially considering that the law was discussed at length in parliament and was consulted with international assistance<sup>126</sup>.

The profile of members that have served and still serve as members of the regulator have been a key matter of contention and public scrutiny, as their profile and experience was viewed as greatly affecting the degree of independence that the regulator would have. Legislation establishes a series of incompatibilities, for AMA members, who cannot be: a) members of executive bodies of political parties and associations; persons who run for members of parliament or who have been elected as such during the last two legislatures; persons who have run for mayors in the most recent local election or who have exercised the duty of the mayor, members of the Council of Ministers, or persons who have had the duty of prefect in the last three years, as well as those who are members of the Council for Complaints and of Postal and Electronic Communications Authority, or who are employees of the latter (Article 7.) In a few cases, the chairs of AMA have been suspected as close to political parties. The fact that a former chair became MP after her mandate finished, and the following chair also holds a post in the opposition party in a way does not help to alleviate these suspicions. By contrast, the opposition greatly fought the election of the current AMA chair, who they claimed was close to the main digital operator in the market, having worked for a company related to digital broadcaster Digitalb previously.

Whereas previous regulators were criticized for their decisions that sometimes were considered politically biased, the crucial challenge of the current regulator was that of showing that the decisions they made were not favoring any operators. The current regulator inherited a complex situation and issue to solve: the licensing of broadcasters in the framework of digital switchover, at a time when private broadcasters were already ahead of the game, having more than 10 years of experience in the market. The Strategy on Digital

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<sup>124</sup> Until 2006, based on professional merit and qualifications, the President proposed one candidate, while the other six were proposed by the Parliamentary Media Commission, and then elected through simple majority. In 2006 the Government proposed a legal amendment to cut the KKRT to five members and involve civil society, media associations, academia, etc., in the nomination process. The proposal created a climate of suspicion that the Government wanted to control the KKRT. The law was approved without opposition votes. Later the majority and opposition agreed that the two extra members would be appointed by opposition MPs from civil society candidates; Ilda Londo, "Albania," in *Television across Europe: More Channels, Less Independence: Follow-up Reports 2008*, ed. Mark Thompson (Budapest: Open Society Institute (OSI); EU Monitoring and Advocacy Program (EUMAP), 2008).

<sup>125</sup> In-depth interviews conducted for the purpose of this study.

<sup>126</sup> Interview with Gentian Sala, AMA Board chair.

Switchover, while in principle guaranteed licensing in transparent, fair, and non-discriminatory way, at the same time also favored the use of “beauty contest” procedure of licensing, which virtually narrowed the circle of applicants to the few players already in the market. In this respect, the licensing process preserved the status quo for four of the five available licenses, even though opposition members tried to question and refute parts of the process. In what seemed a questionable move, the regulator granted the fifth and last license to ADTN, an operator which was recently established, had no experience, and was owned 100% by Digitalb. This decision was seen by part of the media as a dependency of the AMA Board on powerful commercial operator.

This decision was preceded by a one-year long effort of the commercial operators, with the support of politics, to change the ownership limitations for national media (see indicator 18.) The rules imposed on ownership by the law as a measure to promote pluralism limited the possibilities for licenses of the main players in the field of digital broadcasting. As a result, with the assistance of Socialist MP, they introduced a bill to abolish ownership limitations, which was rejected by the opposition and criticized by international organizations as undermining pluralism guarantees of the law. After failing in the parliament, the operators, in the name of the Association of Electronic Media, petitioned the Constitutional Court with the same request, claiming that these limitations undermined the right to free enterprise, a request that the court granted, opening the way to one actor having more than one license. In all this effort AMA participated as an interested actor, but in its opinion supported the claims of the operators, which raised again questions on their independence.

After the impasse on digital licensing, the regulator has been rather efficient in other fields of work, such as pushing forward for the delayed process of digital switchover and issuing acts and regulations in accordance with the legal requirements. Its stable financial situation has been reached thanks to more energetic gathering of license fee payments and decisions to act against operators that refused to pay their dues by removing their licenses.<sup>127</sup> The realization of the annual planned budget in terms of revenue has gone from 46% in 2011 to 87% in 2016<sup>128</sup> and has increased even more in 2017<sup>129</sup>. Given the fact that the state does not provide funds to the regulator for many years, having a good financial situation is important for the normal functioning of the regulator.

In addition to collection of fees from the operators, the regulator has also revised the fees for radio licenses and increased them, as, according to the current AMA chair, the fees were not proportionate to the economic opportunities they offered for operators. “We revised the fees, as it made no economic sense that a local radio in Tirana would pay only a 1,000 Euro license fee, while selling advertisement for the richest market area in the country.”<sup>130</sup> Furthermore, great attention has been paid to lawsuits, given that the regulator has ongoing cases on labor relations, inherited from previous administration that they have to pay the dues for.<sup>131</sup>

A historical problem of the regulator has been that of establishing its authority over operators, both in terms of illegal licenses and in exceeding the limits of the area they were licensed for. This was due to the way that the regulator was established, after unlicensed operators were already in place, but also due to the culture of informality that exists in the country. AMA claims that at the moment this problem no longer exists. “After careful communication, but also after decisions we have made, at the moment there are no unauthorized broadcasters, and no operators that exceed their licensed area.”<sup>132</sup>

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<sup>127</sup> Interview with Gentian Sala, AMA chair.

<sup>128</sup> AMA Annual Report 2017.

<sup>129</sup> Interview with Gentian Sala, AMA chair.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

## Equal Access to Distribution Channels

**Indicator 16 – Media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services).**

Law on Audiovisual Media in principle protects against discrimination in licensing, assigning the regulator the task of issuing licenses based on “objectivity, transparency, non-discrimination, and availability of free frequencies.” (Article 54) In addition, the regulation states that licenses for a digital network are assigned through open competition, guaranteeing equal, objective, and non-discriminatory treatment. (Article 70) The law and regulations issued by AMA also guarantee that local operators, which can be hosted in 40% of each national digital platform, have to be guaranteed access in fair, reasonable and non-discriminatory terms<sup>133</sup>, a principle also previously upheld in the Strategy of Transitioning from Analogue to Digital Broadcasting<sup>134</sup>.

In spite of the principles laid out in the law, the dynamics of development of electronic media in the country dictated a situation where for part of the licenses the competition was not open to all existing operators, but only to a few. Whereas the first commercial digital platform started operating without a license in 2004, the Strategy for Digital Switchover, the official document that would guide the digital switchover process, was approved in 2012. In the meantime, another digital platform had started and closed, and two other commercial platforms were operational. Having in mind this context, but also under pressure from the existing platforms that wanted to protect their investment, the Strategy stated that the licenses for national digital networks would be assigned following the “beauty contest” procedure, meaning that the competition would be directed to the existing platforms and to the ones considered historical operators. Even though in practice perhaps the operators that participated in the procedure of licensing might be the only ones interested and able to run the networks, the very application of the “beauty contest” procedure limits the open race from the very beginning.

Press distribution system has been for a long time one of the weakest links in the chain of the national media. A 2012 study commissioned to study the prospects for press concluded that the newspapers reach only the capital and other important cities or areas that are closer to the capital, while the rural areas, accounting for almost half of the population, never receive the newspapers<sup>135</sup>. Although the rural population might have decreased in the meantime, the problem persists and there have been no significant improvements of the distribution network.

Although the law does not in any way limit activity of press distribution networks, the activity in this field is not particularly pluralist. Among the existing press distribution services, two agencies are the main ones. Both of them are owned by daily newspapers, which might be cause for conflict of interest and unfair treatment of other newspapers. One is owned by the publishing group of daily Panorama, whereas the other by the publishing group of daily Shekulli, respectively owned by Irbani Hysenbelliu and Koco Kokedhima, two important media owners in the history of Albanian media. A third important agency is also the official post service, but it provides a smaller part of this service<sup>136</sup>. Since the distribution agency of daily Panorama

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<sup>133</sup> AMA, Rregullore per licensimin e rrjeteve numerike dhe programeve te tyre, nepermjet procedures se beauty contest, [http://ama.gov.al/preview/wp-content/uploads/2015/03/Rregullore\\_BC.pdf](http://ama.gov.al/preview/wp-content/uploads/2015/03/Rregullore_BC.pdf)

<sup>134</sup> Strategy of Transitioning from Analogue to Digital Broadcasting, [http://ama.gov.al/preview/wp-content/uploads/2015/03/9STRATEGJIA\\_E\\_KALIMIT\\_NGA\\_TRANSMETIMET\\_ANALOGE\\_NE\\_TRANSMETIMET\\_NUMERIKE.pdf](http://ama.gov.al/preview/wp-content/uploads/2015/03/9STRATEGJIA_E_KALIMIT_NGA_TRANSMETIMET_ANALOGE_NE_TRANSMETIMET_NUMERIKE.pdf)

<sup>135</sup> OSCE Consultancy, “Perspectives of business of print media in Albania,” by Vibjorn Madsen, April, 2012.

<sup>136</sup> Union of Albanian Journalists data.

has a bigger network, other agencies must cooperate with this distributor, which makes them dependent on the conditions dictated by the biggest agency. Despite the concentration of these services, there have been no reports of newspapers not having access to distribution services, but there seems to be favourable treatment in the manner of distribution to newspapers owned by the distribution agency, which sometimes are distributed earlier in big cities than their competitors<sup>137</sup>.

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<sup>137</sup> In-depth interviews with editors and journalists.



## Freedom of Access to the Internet and Foreign Media

### **Indicator 17 – The state must not restrict access to foreign print media or electronic media, including the Internet.**

Access of Albanian citizens to the internet and to foreign media is free.

Albania has ratified the European Convention on Transfrontier Television in 1999, and its Additional Protocol. This means that Albania has the obligation to respect and implement the requirements imposed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, including freedom of reception and guaranteeing the rebroadcasting in Albania of programmes that are in line with the Convention. In addition, Albanian media legislation has been guided by the need to harmonize with the European Union Audiovisual Media Services Directive, in the context of the country's efforts to become EU member.

Albanian Constitution guarantees in Article 22 the freedom of press, radio, and television, forbidding censorship, although recognizing that prior authorization for radio and television broadcasting is normal. The law on the press and the law on audiovisual media, which are the main laws regulating media activity in the country, do not make any distinction between national and foreign media. Moreover, the Law on Audiovisual Media in Article 5 specifically protects and guarantees freedom of reception and rebroadcasting programmes of European Union member states and other European countries that are signatories of the European Convention on Transfrontier Television. The regulation on audiovisual media applies also to foreign broadcasters that use satellite broadcasting or other similar resources from Albania, which implies an equal legal treatment regardless of the origin of the media or the country it operates.

The law allows for limitation of broadcasting services from foreign media only based on international agreements or as foreseen by audiovisual media law. Such an example includes the broadcasting rights for special events, mainly sport ones, when domestic broadcasters hold the rights to broadcast live a sport event. In addition, the law recognizes the right of EU-based media to “access under equal conditions to events of high interest for the public and which are broadcast on exclusive basis by a media service provider under the Albanian jurisdiction,” and vice versa for Albanian media. The relation between foreign and Albanian media in regard to short news reports is subject to other criteria regulated by AMA and commercial relations, but clearly the underlying principle between foreign and domestic media is one of equal treatment.

In practice there have been no cases of banning foreign media or blocking programs or websites coming from foreign countries since transitioning from a dictatorial regime to a democratic one in the early 90s. Foreign press is available in the country, and a few foreign radio stations have been authorized by the regulator to rebroadcast in the country, including BBC. Other foreign televisions are also widely accessible through terrestrial and cable program bouquets offered by several operators. In practice there are no obstacles to accessing internet or foreign media in any platform. One of the problems identified in media practice is in fact Albanian media frequently using materials, images, and news from foreign media without having the right to use it, and sometimes not even identifying the source of foreign media that reported on it.

There have been no instances of blocking or banning foreign media websites. Internet is widely used in the country. According to International Telecommunications Union data<sup>138</sup> percentage of internet users amounted

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<sup>138</sup> ITU, “Percentage of Individuals using the Internet,” 2016, <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

to 66% of the population. According to Authority on Electronic and Postal Communication (AKEO), the official authority regulating electronic communications, at the end of 2017 about 2 million users in the country had access to broadband internet<sup>139</sup>. A 2017 survey<sup>140</sup> revealed that internet is increasingly being used to receive information, with 44% of respondents saying they do use news agencies to receive information, and 56% of them using social networks, even though television remains the main source of information.

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<sup>139</sup> AKEP Data on fourth trimester on 2017.

<sup>140</sup> IDRA, "Impunity, Perceptions and experience of Albanian Citizens," 2017.

## Prevention of Monopolies and Development of Pluralism

**Indicator 18 – Media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism.**

When it comes to media pluralism and measures to promote it, a clear distinction should be made between the different kinds of media. While audiovisual media is quite regulated, print media is totally free of regulation, with the law on press only stating that the press is free. Whereas online media is booming in terms of numbers, its activity is not regulated in terms of licensing at all. At the time of the approval of the first regulation on electronic media, the Law on Radio and Television, in 1998, the media landscape was invariably rich and concentration was not an issue, although all of the electronic media were still unlicensed. The law at the time took the approach of guaranteeing pluralism through limitations of ownership on licensed radios and televisions.

According to this law, a broadcaster could only hold two local licenses for the same territory, without the need to establish a company or be a legal person, unless the license covered an area of more than 200,000 inhabitants. On the other hand, the limit on ownership stake in a national radio or TV station was 40 percent and the media should be owned by a joint stock company. The owners of a national radio or television were forbidden to possess shares in another national radio or television enterprise, in whatever amount. They were also prevented from the right to obtain a local broadcast license. The law did not make any distinction on rights of ownership based on nationality, the same rules applied to all citizens, Albanian or foreign ones. (Law 8410, Article 20.)

A similar approach was adopted also by the Law on Audiovisual Media, which replaced the Law on Radio and Television in 2013. The limitation of 40% of shares per shareholder in a national license was preserved, while allowing the same person to own 20% of shares in a second national audiovisual license. In addition, the same person could own 10% of a third audio national license. With regard to local licenses, a person holding 100% of shares in a local or regional audiovisual company can own only a second audio local or regional license. A person could own two audio or audiovisual local or regional companies at the same time, but no more than 40% of shares in each company. In addition to ownership shares, the law also imposed a limitation on advertising percentage of the total market, fixing a ceiling of 30% of the total audiovisual advertising spending. (Law 97/2013, Article 62.)

The most recent change in the law came after a decision of the Constitutional Court to abrogate paragraph 3 of the above-mentioned Article 62, focusing on limitations of ownership for national licenses. The Association of Electronic Media filed a request to the Constitutional Court on April 2016, arguing that the limitation imposed on ownership of national licenses was not constitutional, as it affected equality before law and the right to property. Two interested parties were also part of the session: the Audiovisual Media Authority (AMA,) which supported the request, and the representatives of the Parliament, who were against the request, claiming that the ownership limitation was in place to protect freedom of expression, which must prevail. This case showed that the economic arguments and requests by private companies have prevailed over the need to guarantee media plurality, pointing to the insecurity surrounding court decisions related to media freedom and pluralism and to their weak grasp of concepts related to mechanisms for safeguarding media pluralism in Albanian courts. This development followed a former attempt made by ruling majority MP Taulant Balla, seeking to repeal the entire limitations on ownership of media shares, namely Article 62 of the Law on Audiovisual Media. After clear opposition from international bodies, including EU, OSCE, and CoE,

the Parliamentary Commission on Media rejected the proposed amendment. However, a year later, after the court decision, the ownership limitations for national licenses were removed. Through the decision of the Constitutional Court, it was no longer forbidden for a natural or legal person to own more than 40 percent of shares in a company that owns a national audio or audiovisual license. The survey conducted with editors and journalists revealed that 61.7% of respondents did not think that government supported media pluralism and took measures to encourage it<sup>141</sup>.

The law does not impose a transparency obligation on media outlets or the regulator regarding public revealing of shares. The regulator publishes a list of media operators and their contact information, but not their ownership structure. The regulator's first edition of the periodical bulletin did contain information on trends and dynamics of ownership of audiovisual media and is available online. No media company has made a particular effort on its own to improve transparency regarding their own ownership structure. In a survey with editors and journalists of various news media, 49.6% of them said that the ownership structure of their media is clear to the public, while 23.5% thought the opposite, and 26.9% said they did not have information on this<sup>142</sup>. In-depth interviews with editors and media managers also indicated that while there are no active attempts towards transparency on ownership, at the same time there are no attempts to hide it and the public is more or less familiar with who owns what, at least in the mainstream media<sup>143</sup>. The only media section where ownership structure is totally opaque is the online media and news portals, where, aside from the main cases when the owners are known, there is no possibility to know who operates the overwhelming part of these portals.

On the other hand, all companies, audiovisual media included, have to be registered at the National Business Centre and the database of companies is available online, for free. The database is easily searchable through several keys, such as name of the subject, name of shareholder, VAT number, address, etc. The database provides historical extracts of each company or individual registered, which allow for a better study of the dynamics of ownership of certain companies. In addition, the Centre gives the possibility of accessing documents the registered subjects have submitted, such as acts of transfer of ownership, lists of general assemblies, particular decisions, etc. In the last few years it has also become mandatory for all companies to submit their annual financial reports, and they are available for download. All of these steps have greatly improved the possibility to access data on ownership, dynamics of change within media companies' structure, as well as some data on their finances, even though a dedicated register of media outlets is not available.

Albanian legislation has never addressed the issue of promoting pluralism in the media through concrete positive action. The laws have paid lip service to the need to guarantee pluralism and it is guaranteed as a principle, be it in terms of language, ethnic minorities, social position, race, etc. However, specific actions, such as subsidies for particular media serving minorities or public interest have not been part of the approach taken by legislation, in the same way that state subsidies for the media has not been a policy applied in the last 27 years through any law or decision. The only exception that can be mentioned here is the possibility of obtaining an audio community license, which are non-profit subjects and are exempted from the license fee. However, rather than for the sake of pluralism, this is intended to relieve costs on the market for non-profit communities. Currently there are four community radios licensed by the regulator<sup>144</sup>.

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<sup>141</sup> Data of survey conducted for the purpose of this study.

<sup>142</sup> Ibid.

<sup>143</sup> Data from in-depth interviews with editors and managers of mainstream media.

<sup>144</sup> AMA, List of audio operators, <http://ama.gov.al/preview/mediat/radio/>

## **Media pluralism**

There are several studies on the trends of media ownership structure in the country and its dynamics through the years, focusing mainly on the major media owners and on their other businesses, trying to analyze how the ownership structure is related to the content produced. A 2016 study published by the regulator AMA reveals that about 62% of televisions are owned by only one shareholder, whereas 76% of them have a shareholder who owns more than 50% of shares of the company<sup>145</sup>. In cases when the owner was a group, in 69% of televisions the group owned 100% of shares, while in 84% of them a shareholder owned more than 50% of shares. Similar percentages also hold true for radio ownership structure<sup>146</sup>.

The number of media outlets in the country is significant, given the small population and market size. Currently there are 56 local television stations, five national licenses awarded for digital networks, two national radio stations, 51 local stations, and four community radios, representing the recognized religious communities in the country<sup>147</sup>. In addition there are 98 cable stations<sup>148</sup>, and 13 service providers through cable or online platforms licensed by AMA<sup>149</sup>. The public television is currently broadcasting in 8 programs in its digital network, while the public radio broadcasts in five programs, and in addition the public broadcaster operates four regional studios in four cities other than the capital. The number of print media is impossible to know, since they are not required to register and no organization, including the National Library, has a complete and frequently updated list. The number of daily newspapers is about 19, including sports newspapers. The number of online media is still a mystery, in view of total lack of requirements to register with any authority. The Union of Albanian Journalists claims that the number of news portals has now reached 650<sup>150</sup>.

Even though the numbers of the media landscape are impressive, the sheer quantity of the media does not necessarily guarantee their pluralism. In fact, in view of the Constitutional Court decision to abrogate the limitation on ownership of national licenses, the prevailing perception is that this decision paved the way for de facto monopolization or at least high concentration of the media market. In the current scene, four national digital network licenses out of five are owned by two main groups in the commercial media sector, which raises concerns on the future of pluralism in the media landscape. An interview with an editor stated that “digitalization has brought about concentration, at least in the subscription digital platforms, including Digitalb and Supersport, and if we consider also Top Channel and TV Klan [who also have a national digital network license,] all of these operators constitute a very sizable share of the market, which is effectively led by 2-3 people and in this context the market cannot be considered neither highly competitive, nor pluralist.”<sup>151</sup> Other interviews also maintained that monopoly of the media market is now a fact. On the other hand, other editors and managers were not so concerned about the concentration of the media, maintaining that the previous legal ownership limitations had not been respected in practice and that these requirements led to fictive shareholders and families splitting up at court only to retain their shares, failing to produce a good solution<sup>152</sup>. Another group of respondents, while recognizing the existing concentration, also stated that

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<sup>145</sup> AMA, Buletini periodik I.

<sup>146</sup> Respectively radios owned by one shareholder: 60% are owned by one shareholder, whereas in 73% of them a shareholder owns more than 50% of shares. For groups in 63% of radios the group owned 100% of shares, while in 78% of them a shareholder owned more than 50% of shares.

<sup>147</sup> AMA, List of audio operators, <http://ama.gov.al/preview/mediat/radio/>

<sup>148</sup> AMA, List of cable stations, <http://ama.gov.al/preview/category/subjekte-te-autorizuar-per-perseritjen-e-programit-audioviziv/>

<sup>149</sup> AMA, List of service providers, <http://ama.gov.al/preview/category/subjekte-te-autorizuar-per-ofrimin-e-sherbimit-te-programit-audioviziv/>

<sup>150</sup> Data from Union of Albanian Journalists.

<sup>151</sup> In-depth interviews with editors and managers of mainstream media.

<sup>152</sup> Ibid.

pluralism was not in danger after all, as practice showed that anyone who wanted to establish a medium, could do so<sup>153</sup>. The chair of the AMA echoed the same sentiment, claiming that whoever wanted to get a license and fulfilled the requirements, did get a license, and adding that ownership is not the only way to define pluralism, but other methods, such as advertising revenue, market shares, etc., were also options to see if pluralism was endangered.<sup>154</sup>

In fact, the absence or lack of reliable data on the market dynamics makes this discussion a difficult one, although the abrogation of limitations of ownership is clearly a step back in terms of overall guarantees on media pluralism. After 27 years of liberalization of the media market, there is not much progress in having public, systematic, and reliable data on media market and media finances. Two major companies conduct audience research, but given the widely different results, their methodology and results have been put into question. At the same time, the circulation and sales figures are not made public by the newspapers or tax authorities, and the same is true for online media, whose following is even more obscure.

In 2018, a study of Reporters without Borders and BIRN Albania revealed that there is a very high concentration in the media landscape: according to data from one research audience company, the study calculated that in the TV market there is a medium concentration with four major owners reaching an audience of 48.93%, whereas based on the data from the other company, there is a high concentration with four major owners reaching an audience of 58.60%<sup>155</sup>. The calculations for radio and newspaper market audience concentration indicate similar trends: a high concentration of 63.96% for four radio owners, and 43.29% for four print media owners<sup>156</sup>. Concentration measured in terms of market share yielded even more alarming figures: two main families owning TV stations have over 70% of the television market, while all four owners combined have a market share of 89,6%<sup>157</sup>.

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<sup>153</sup> Ibid.

<sup>154</sup> Interview with Gentian Sala, chair of the Audiovisual Media Authority.

<sup>155</sup> Media ownership monitor Albania, 2018, <https://albania.mom-rsf.org/en/findings/findings/#!9fed61067e34232006ff7dcd0ed479d0>

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

## Neutrality of State Subsidies

### **Indicator 19 – If media receive direct or indirect subsidies, states must treat those media fairly and with neutrality.**

When we speak of state subsidies for the media, this term refers almost exclusively to spending of public money on advertising or publicity campaigns and events, be it from state bodies or public institutions. Although media owners from mainstream media or niche publications, including minority media, have called on government from time to time to support them, Albanian legislation has never stipulated the possibility of direct state subsidies for the media. In this respect, the main source of state financing for the media is through funds disbursed for advertising or for public events and campaigns.

There are no accurate data on advertising market and on the share of state advertising in the overall spending for advertising. Compared to other countries in the region, the percentage of state advertising in Albania is supposed to be low. According to a monitoring report<sup>158</sup> on advertising market for 2017, none of the state institutions was listed in the top ten advertisers in the media market, a list dominated by telecom companies, followed by banks. The only exception was the Ministry of Justice, which was ranked the tenth biggest advertiser for the online media advertising only.

In spite of the lack of data on amount of state advertising, studies have shown that the practices used to distribute state advertising are not always fair, transparent, and non-discriminatory. This is a situation also aided by unclear legal rules on the distribution of state advertising, combined with the absence of commonly accepted reliable data on audience or readership. More specifically, the spending on advertising is not governed by the public procurement legislation. The Law on Procurement lists some categories that are excluded from being object of this law, including “purchase, development, production, and co-production of programs or broadcasting advertising from radios and televisions or publication in print media and for broadcasting time contracts.”<sup>159</sup>

As a result, the only acts regulating state advertising are decisions of the Council of Ministers. A 2007 decision by the Council of Ministers related to state advertising mentions the number of viewers or readers as one of the criteria to be used in reaching a decision.<sup>160</sup> This criterion was clearly difficult to observe when data on media ranking are lacking, but it at least attempts to impose some selection filters. The two latter Council of Ministers’ decisions seem to have very broad and vague definitions of the criteria, including “the media outlet” (without any specification), the offer made, and the broadcasting duration,<sup>161</sup> as well as the experience in organizing similar events.<sup>162</sup> These two decisions omit the criterion of the outlet’s audience reach.

In fact, although the latter decision “has marked some technical improvement, in essence it has moved backwards, paving the way for abuses and obscuring transparency.”<sup>163</sup> According to a legal analysis of the

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<sup>158</sup> Revista Monitor, <http://www.monitor.al/cilet-jane-reklamuesit-te-medhenj-ne-vend-si-po-ulin-buxhetet-qe-cojne-ne-media/>

<sup>159</sup> Respublica, “Përdorimi i fondeve publike për reklama dhe forma të tjera publiciteti,” 2015.

<sup>160</sup> VKM No. 6223, “On procurement of productions/broadcasting of advertising and spots from state administration bodies in the media,” 29 September 2007.

<sup>161</sup> VKM No. 1195, 05 August 2008.

<sup>162</sup> VKM No. 1173, 06 November 2009

<sup>163</sup> D. Matlija for Council of Europe, Tirana, “Public procurement of advertisement and publicity campaigns in Albania, European practices,” 2014.

current regulation on the distribution of state advertising, there are certain rules that have made it easier for state authorities to distribute advertising in a less transparent and more selective way. For example, apart from media outlets, a new category has been added to the list of bodies that can obtain state funds: “specialized agencies,” enabling advertising agencies also to benefit from state advertising, and allowing them to redistribute the sums to media outlets, without any further transparency or technical criteria requirements. “In practice this has led to a substantial part of the funds to go to agencies, which then manage public funds by subcontracting specific private broadcasters, in a selective and non-transparent manner.”<sup>164</sup>

Another problem posed by the current decision that regulates state advertisement is that, in the composition of commissions to evaluate the offers for each tender pertaining to state bodies, it is no longer obligatory to have the heads of the legal and financial directorates of that body, allowing directors of the body to circumvent two of the most important members of the institution, who often enjoy the status of civil employees, meaning that they are supposed to be independent of rotations of power or party-appointed officials.<sup>165</sup>

In addition, a major problem has been that of transparency in the process of distributing state advertising. The current rules have not only failed to solve this problem, but have even removed some of the previous transparency requirements. More specifically, the obligation to publish online the candidates’ offers has been removed, along with the practice of sending the dossier to be published online at the Agency of Public Procurement. “This change has lowered significantly the transparency of procedures, leading to absence of public information on the use of public funds from state advertisement.”<sup>166</sup> This leads to greater potential for selective distribution of state advertising. In fact, over the years “media outlets have claimed that the invitations were sent only to selected media but were not published on the website, or had been published only one day before the deadline.”<sup>167</sup>

With the rotation of power in 2013, the new government, led by the Socialist Party, included among its objectives the termination of practices that led to unfair and non-transparent allocation of state advertising to media. However, in its second term in power, the government has made no attempt to amend the existing rules on state advertising, nor to issue new legislation; meanwhile, public funds for state advertising are being distributed using the same regulation. A 2014 research further confirms the tendency to heavily favour certain media groups more than others.<sup>168</sup>

Public money for the media is not channelled only through advertising, but also in other forms. In 2009 the Government issued a new decision relating not only dealt with state advertising in the media, but also expanded regulations for distributing funds for the organization of campaigns and public events. This has also become a convenient method for media outlets to obtain public funds, as they set up the companies that organize such public events and campaigns. So, if we refer to the 2013 investigative report on distribution of public funds to companies owned by or close to Aleksander Frangaj, it is clear that these media companies have obtained only a small percentage of funds: 55,800 Euro out of a total of 780,000 Euro given to all companies owned or controlled by Frangaj, meaning that most funds were not handed out as advertising, but rather for other activities.<sup>169</sup> Similar allegations have also extended to other media companies<sup>170</sup>, involving the companies close to Carlo Bollino, the EAG company owned by the brother of then-Minister of Social Affairs, or the use of foundations or institutions to channel advertising or other public spending.

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<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Peace Institute, “Media Integrity Matters,” Albania chapter.

<sup>168</sup> AMI, State and private advertisement in Albanian media, 2014.

<sup>169</sup> Likmeta, “Big advertisers subvert Albanian media freedom,” *Balkan Insight*, 20 December 2013. Available at: <http://www.balkaninsight.com/en/article/big-advertisers-subvert-albanian-media-freedom>.

<sup>170</sup> Londo, I, “Nurturing client-based media practices, 2016.



Another source of concern involving potential client relations between the media and their financial supporters lies especially in advertising distributed by municipalities to the media in the districts. This is of even more worrying considering the poverty of the advertising market for local media. A 2014 survey<sup>171</sup> revealed that local municipalities preferred to have an almost exclusive relationship with one particular local media outlet to disburse their advertising funds. “Data from the state treasury indicate that in most cases the advertising funds are spent in only one TV or radio station, even if there might be at least five media outlets in that municipality.”<sup>172</sup> The support might come in the form of advertising or notifications from the municipality or other local state institutions, and rarely as subscription payment.<sup>173</sup> This trend is also confirmed by different stakeholders, stating that political affiliations and whether you are in good relations with the mayor or other staff from the municipality are the key factors in receiving these funds.”<sup>174</sup>

Finally, the current rules on advertising distribution allow advertising agencies to obtain public funds, as it was mentioned above. This is not just in the form of advertising, but also for the organization of fairs, public awareness campaigns, and specific promotions for the government. Nonetheless, most of the time these other events rely heavily on media support for raising public awareness, and in this respect should reasonably be considered as part of the whole package vis-à-vis the relation of state funding to media. There have also been constant allegations of preferential treatment of advertising agencies in relation to their political affiliations<sup>175</sup>. However, in view of the lack of transparency requirements from these agencies on their criteria for allocating public funds to media, it is difficult to gain a more concise view in this respect.

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<sup>171</sup> AMI, State and private advertisement in Albanian media, 2014.

<sup>172</sup> Ibid.

<sup>173</sup> The most visible case here is the weekly *Gazeta Korca*, which through subscription by many local institutions in the district of Korca obtained 914 Euro in 2015, 2932 Euro in 2014, and 4,643 Euro in 2012-2013.

<sup>174</sup> Interview with Shkëlqim Bylykbashi, head of the Albanian Media Club, January 2015, qtd. in SEE Media Observatory, Flash report on local media, Albania, 2015

<sup>175</sup> Londo, I, “Nurturing client-based media practices, 2016.

## Independence of Public Service Broadcasters

**Indicator 20 – Public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations.**

The approval of the Law on Public and Private Radio and Television in 1998 marked the formal transformation of RTSH from a State-owned institution into a public broadcaster. Ever since, the public broadcaster has struggled to establish its independence and improve the public perception on its objectivity, as well as attractiveness of programs to the public. The empowerment of private operators and the relative neglect of RTSH by politics have not helped in improving status of RTSH.

Apart from vague legal requirements posed in the Law and in the Statute of RTSH, there are no other mechanisms that control independence of RTSH. AMA, the regulator, signs and monitors the public service contract with RTSH, but this does not specifically address independence of public service broadcaster.

Shielding of political service broadcasters from political and economic interference is guaranteed by financial independence, independent management, and securing independent editorial policy.

### ***Financial independence***

Law on Audiovisual Media lists a series of financing sources for public broadcaster, which are supposed to secure financial independence from the state budget, including license fee, advertising, and other sources, such as contracts with third parties, sale of programs, public shows and performances, advertisements, sponsorship and donations, and state budget.<sup>176</sup> Nonetheless, financial stability of public broadcaster is still a goal that needs to be attained and the ongoing digital switchover process is putting increased financial pressure on RTSH.

There is no obligation in the law on audiovisual media to publish online data on finances or annual reports, although the law on right to information instructs all public institutions to make available their data online to the public as much as possible. RTSH Statute includes the obligation of the institution to improve transparency by publishing annual reports online. Current online publications include the annual reports for 2014 and 2015, mainly the financial part, but the data for 2016 is missing<sup>177</sup>.

In the last three years the RTSH budget has been more or less stable. The state budget portion is intended to cover the audio and audiovisual broadcasting services for Albanians abroad, the audio broadcasting service in foreign languages, the symphonic orchestra of RTSH, and investment projects for new technologies for production and broadcasting, or projects of movie productions<sup>178</sup>. The amount coming from the state budget is determined each year by the state budget law. For 2017 the amount collected from the license fee accounted for 52% of the total budget, while 38% has come from the state budget, marking the highest percentage of state budget in the last years<sup>179</sup>. This increase in the state budget percentage has served mainly to cover the orchestra, invest in technology and contribute to the payment of maintenance contract for the

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<sup>176</sup> Law No. 97/2013, Art. 113.

<sup>177</sup> RTSH website, <https://www.rtsh.al/raporti-vjetor-ekonomiko-financiar/>

<sup>178</sup> Law no. 97/2013, Art. 116.

<sup>179</sup> Interview with Thoma Gëllçi, General Director of RTSH.

digital network that RTSH has built<sup>180</sup>. By comparison, the percentage of state budget in the overall budget has been 15% in 2014, 14% in 2015, and 21% in 2016<sup>181</sup>. The financial outlook of RTSH is less secure for 2018, as, although RTSH has asked financing for particular projects, the state budget seems to not have included its requests in the overall planning.<sup>182</sup>

The main bulk of financing for RTSH comes from license fee, collected through the electricity bill. Thanks to improvement in payment of electricity by the population, the financial situation of RTSH has improved greatly. For 2016, the realization in collection of license fee was 106%<sup>183</sup>. However, the license fee remains the lowest in Europe, at ALL 1,200 (app. 8.5 €) per year, per household, and second lowest in the European Broadcasting Union member countries, higher only to Algeria<sup>184</sup>. The General Director of RTSH sees the increase of the license fee as the only way for RTSH to become independent from the state budget and improve its financial situation and better guarantee the editorial independence<sup>185</sup>. The RTSH has completed its five-year Strategy, which aims to make RTSH totally independent of the state budget in five years<sup>186</sup>. At the same time, it might be difficult to achieve this goal according to RTSH management, if the loss of the state budget revenue is not compensated with the increase of the license fee. However, the RTSH has hesitated to demand an increase of the fee, as it would increase tax burden for Albanians, and would also add to resistance of population, part of which is reluctant already to pay the existing tax, claiming they do not watch RTSH<sup>187</sup>. On the other hand, the RTSH Director also indicates that even though the government has not meddled with editorial independence so far, if RTSH dependency on state budget continues or even increases, in theory it would become more vulnerable to government influence<sup>188</sup>.

Digital switchover process in Albania is under way and the Strategy on Digital Switchover has assigned the public broadcaster the duty to build two national digital platforms, part of which would host local operators. However, the financial calculations in the Strategy seem to have been too optimistic at the time, failing to include a series of expenses in the contract with the German firm that would build the networks, and also by not addressing the need to budget for investment in content production of RTSH, needed to fill the new thematic channels in the platforms<sup>189</sup>. More specifically, the process of building and maintaining networks revealed that there were additional costs that the initial contract did not foresee, such as the maintenance contract for the networks, which translate into an extra 2.2 million Euro per year until 2020 that RTSH has to pay. While the state budget has pledged to contribute by 1.5 million Euro per year to this cost, RTSH has to come up with the rest<sup>190</sup>. Another contractual ambivalence that has arisen with the German firm Rohde & Schwarz has been regarding the transcoders, which it seems that RTSH has to cover, adding another 1.6 million Euro to total burden<sup>191</sup>. Furthermore, the Strategy planned for the fees of local operators that would use RTSH network as an amount that would help RTSH cover maintenance costs of the networks. After complaints of the local operators and upon AMA's insistence to guarantee an affordable fee for operators, the fee was greatly reduced, leaving another hole to patch in the RTSH costs towards digitalization<sup>192</sup>. Finally,

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<sup>180</sup> Ibid.

<sup>181</sup> RTSH Annual Reports 2014, 2015, 2016.

<sup>182</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>183</sup> RTSH Annual Report 2016.

<sup>184</sup> D. Pavli, "RTSH në epokën dixhitale," OSCE, 2017.

<sup>185</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid.

<sup>189</sup> D. Pavli, "RTSH në epokën dixhitale," OSCE, 2017.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

the delays in the process of digitalization has resulted in the prolongation of the period where both analogue and digital broadcasting are available, further adding to the expenses of RTSH and to uncertainty on the total costs of the process in view of the absence of a final deadline for analogue switch-off<sup>193</sup>.

Low productivity and wasteful management of the work force of RTSH seems to be another problem that does not contribute to improvement of financial situation. More importantly, the current structure of the work force is not recognized as the optimal way of organizing to invest in improvement of content of RTSH. Currently RTSH has a total staff of 960 persons, out of which 100 work in the local branches<sup>194</sup>. “Another 300 persons are the guards for the antenna stations, plus there is the staff of the orchestra and maintenance, which does not leave sufficient number for reporters and creative staff. This is not a fair and optimal ratio, at all, but our hands are tied in this aspect,”<sup>195</sup> says the General Director of RTSH. Another major problem that the RTSH directors have highlighted through the years is that the average age of RTSH staff is rather high, to a degree that it would not be wise to invest in their training as they are close to retiring age, but it would also create an economic and social problem if they would be replaced with younger staff<sup>196</sup>.

RTSH’s role in the media landscape seems to have weakened through the years, also due to the role of the private operators, which have become more aggressive and prominent. According to RTSH management, there tends also to be preferential treatment given to private broadcasters compared to the public one. This is done mainly through failure of the state to monitor copyright implementation of private broadcasters, at a time when the public broadcaster respects every legal requirement in this respect, which eats up the budget that private operators use instead for their big shows<sup>197</sup>. Another point of contention is the implementation of the Code of Labour, which RTSH has to observe rigorously, while the problems of labour relations are evident in most commercial media, but no action is taken in this regard<sup>198</sup>. Finally, the Government decided to allocate funds for three categories of private operators as an incentive to free up the frequencies that will be used for the Digital Dividend, which will be awarded a minimum of 5 million Euros up to 10 percent of the revenue from the digital dividend<sup>199</sup>. At the same time, the decision did not foresee any contribution to RTSH in this regard.

### ***Management independence***

Law on Audiovisual Media stipulates two-tier protection of public service broadcaster’s management structure from political influence. The General Director of RTSH is elected from a pool of applicants by the Steering Council, which is elected by the parliament. The Steering Council is composed of 10 members and the chairman, and has representatives with experience in media, technology, economy, art, academia, law, vulnerable social groups, etc, aiming to secure a representation of broad and diverse array of experiences. The Steering Council members cannot be members of political parties, should not run for parliament and members of parliament of the last two legislatures are also excluded. Those who have served as Mayors, members of Council of Ministers, prefects in the last three years are also excluded, along with the members or employees of the Council of Complaints and the Authority on Electronic and Postal Communications. They cannot also be persons related to or who have in their ownership capital assets or shares in commercial companies and other rights in the field of audiovisual broadcastings, advertising, audiovisual program content

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<sup>193</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>194</sup> Ibid..

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid..

<sup>199</sup> D. Pavli, “RTSH në epokën dixhitale,” OSCE, 2017.

productions, electronic communications networks or persons employed in or members of management bodies or advisors to such entities, or linked to such entities with a license. (Article 97)

The applicants are proposed by civil society organizations, and then interviewed in the Parliamentary Media Commission and elected in the parliament. Similarly to the election of the Board of the regulator, the aim of involving the civil society in the nomination process has been to favour representation of expertise from different fields and prevent politically influenced members to the Steering Council. However, the way that the applicants are shortlisted for the final vote casts serious doubts on the lack of political bias in their selection. After examining all applicants, the Parliamentary Commission members take turns in excluding the applicants, one by the opposition, and the other by the ruling majority, observing the balance in the end: five members supported by the opposition, and five by the ruling majority (Article 94). The Chair of the Steering Council is elected afterwards by the Parliamentary commission again, which applies a similar procedure: short listing four candidates by voting in the commission, and then the opposition eliminates two applicants, and the Chair is elected in parliament by receiving more than half of the votes (Article 95.) The same incompatibilities also apply to the General Director (Article 104.)

In this overall scheme, the doubts on political influence and affiliation of members of the Steering Council have proved difficult to dissipate. Although the law requires a long experience related to media and other fields, with a wide representation of groups, including various NGOs and interest groups, the allegations that in essence most of the members are politically influenced and affiliated remain. The voting process for the current General Director of RTSH in the Steering Council also proved this. After voting for three consecutive rounds to elect the general Director in the summer of 2015, the votes of the Steering Council were consistently divided into 6 and 5 votes for each of the two candidates, indicating that there were two deeply entrenched preferences, possibly along the preferences of the two political parties. In the words of the current General Director: “the members of the Steering Council were divided into two military groups, facing each other.”<sup>200</sup> Members of the Steering Council also seem to confirm this perception: “The Council is not protected at all from political influence, in spite of the changes in the law and the fact that its members are not militants of political parties. In general they still continue to function as political representatives.”<sup>201</sup> The deadlock in this process led to the initiative of the ruling majority to change the formula of election: if 3/5 of the required votes of the Steering Council are not obtained in the first three voting rounds, the director is elected with a simple majority (Article 102.) This amendment of the formula was voted only by the ruling majority and Thoma Gëllçi was elected the new General Director. The opposition maintained that the election of the new director violated the consensus criterion reached between the opposition and ruling majority and appointed as director a person they claimed was close to the ruling majority, paving the way for political capture of the media. The survey conducted with journalists and editors for this study revealed that 57% of them did not believe that the requirement that politically affiliated persons should not hold top positions in RTSH was respected, and only 9.6% of them believed this was the case; 33% said they did not have enough information on this.<sup>202</sup>

In addition to freedom from political influence, the role of the Steering Council of RTSH is questioned, along with its ability to supervise, influence, and guide RTSH activity in an independent and professional way. The transparency on the work of the Steering Council and on their decisions reaches the public only if there are media reports. The decisions are not made public online and the webpage of RTSH does not even contain the list of Steering Council members, and neither does it contain editorial staff of RTSH. After the prolonged and controversial discussions on their election, and on the voting process of the General Director, the members

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<sup>200</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>201</sup> In-depth interviews conducted for this study.

<sup>202</sup> Data from survey conducted for this study.

of the Steering Council have become almost invisible to the public. The General Director said that they have acted as professionals and have been very cooperative in the meetings and discussions, after the impasse reached by the election of the director<sup>203</sup>. However, a few members of the Council have indicated that the decisions made are mostly related to minor issues and that this body's main duty is to provide support for the management of the RTSH<sup>204</sup>. "As a member of the Steering Council I often find myself powerless to change anything on that institution, other than vote against particular proposals."<sup>205</sup>

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<sup>203</sup> Interview with Thoma Gëllçi, General Director of RTSH.

<sup>204</sup> In-depth interviews conducted for this study.

<sup>205</sup> Ibid.

## Protection of Public Service Broadcasters' Editorial Autonomy

### Indicator 21 – Public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides.

The concept of public broadcaster was first introduced with the passing of Law no.8410 in 1998, specifying public broadcaster Radio Televizioni Shqiptar (RTSH) obligations, duties, and functioning, but the content provisions were limited to general mission of public service, without details in independence on how this would be achieved. The regulation that succeeded it, the Law on Audiovisual Media, even though it was discussed for years in the parliament, it retained almost the identical article on RTSH mission, laying out values that public broadcaster should uphold, such as objective news coverage (Article 91.) The article does not specifically refer to editorial independence of the institution.

The public broadcaster RTSH's Statute adopts a similar approach, highlighting RTSH's commitment to values that all public service broadcasters hold in common, such as inclusiveness, independence, perfection, diversity, accountability, and innovation (Art.2) When defining the working departments of the RTSH structure, the Statute also emphasizes that "members of directorate bodies exert their functions only in the interest of RTSH and are not ordered or instructed by any external person or body." (Art.8) This statement in practice covers all unit directors and governing bodies, but it is an attempt to highlight the need of RTSH to distance from any external influence, in view of the constant perception that RTSH functions as an extension of the government and is under constant influence.

In 2016 the public broadcaster (RTSH) approved its first self-regulatory document, the Editorial Principles of RTSH. This document has been consulted internally and with stakeholders and civil society organizations focusing on media, while OSCE enabled external assistance of EBU. The guidelines were based on BBC rules of conduct and Slovenian public broadcaster editorial rules. The guidelines cover not only radio and television, but also online media and online presence of RTSH. One of the aims purported in the guidelines, of particular importance to editorial independence, is "to offer protection from external pressure."<sup>206</sup>

The editorial guidelines aimed to be as exhausting list of ethical dilemmas as possible, purporting to cover in detail even cases not addressed in the general Code of Ethics. In this respect, the guidelines cover several areas, such as: editorial and professional standards, diversity and balanced reporting, electoral campaigns, reporting on politics and parliament, production standards, relations with state authorities, imitation and anti-social behaviour, investigative reporting, elaboration of information, respecting values of the public, programs for groups with special interest, portraying specific social groups, children and minors in RTSH programs, etc.

The guidelines also attempt to regulate in detail relations and conduct of staff within the newsroom, especially relating to censorship and self-censorship, conflict of interest, and chain of responsibility. In this aspect the guidelines address problems related to interference, the right to reply, the role of Council of Viewers and Listeners, the obligatory references, legal aid to journalists and editors, dress code, conflict of interest and obligations, and feedback from audience and role of social and online media in this respect.

Specifically the Editorial Principles refer to editorial independence by stating that "journalists should in any case respect the principle of autonomy and independence of RTSH."<sup>207</sup> This notion is further extended in the section on coverage of political parties, stating that "RTSH determines which party official will participate in

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<sup>206</sup> RTSH, Editorial Principles, <https://www.rtsh.al/parimet-editoriale-te-rtsh-se/>

<sup>207</sup> Ibid.

its programs, observing the balance,”<sup>208</sup> addressing recurrent media complaints that it is mostly party organs establish who will participate in political talk shows, and not the media itself. The Editorial Principles have also a dedicated section to how RTSH staff should behave towards state authorities, stating that “editors and journalists should keep their professional distance from all instruments of power; otherwise they risk the integrity of the institution they work for.”<sup>209</sup>

Given the sensitivity of the topic, the principles also have a section on interferences, highlighting again that RTSH staff should not expose themselves to the pressure of participants in their programs. The principles absolutely forbid censorship and self-censorship: “RTSH editors and journalists should not succumb to any direct or indirect pressure and censor their programs. They should also refrain from self-censorship, as conformism has nothing in common with independent journalism.”<sup>210</sup>

This rather detailed document covers numerous work areas and dilemmas, emphasizing in various scenarios and dilemmas that editorial independence and professional image of RTSH should be the only priority of RTSH staff. However, the guidelines fall short of explaining how this will be guaranteed. The only provision in the editorial principles that tries to address this issue is regarding the guardian of editorial and professional standards, leaving open the possibility of establishing a Council of Ethics, which would oversee implementation of professional standards and various ethical issues<sup>211</sup>. The Editorial Principles also foresee the establishment of an authority similar that would act as an ombudsman, mediating between the public and RTSH staff. At the moment these mechanisms are still not functional.

The way that the editorial principles will be guaranteed in everyday practice of RTSH staff remains unclear. However, RTSH seems to make attempts at addressing the issue of political bias that has accompanied its story all along. The OSCE/ODIHR report on June 2017 general elections highlighted the fact that public broadcaster had announced that it would not accept any party-produced footage and it also concluded that RTSH news and information programmes clearly showed a balanced approach to campaign reporting, allocating 25 per cent of its coverage to the DP, 24 per cent to the SP, and 19 per cent to the SMI; the tone of the coverage was mostly neutral or positive<sup>212</sup>. The General Director of RTSH claimed that there is not any kind of pressure on RTSH, neither external, nor internal, but recognized that coverage is far from perfect. “It is up to the journalist’s professional conscience. Often there are journalists who serve the spokespersons, or sometimes are just lazy. I have issued an order demanding less politics in the programs, fewer activities of politicians. However, it is true that journalists tend to find shortcuts and not do their job properly all the time.”<sup>213</sup>

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<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> OSCE/ODIHR, Report on June 25, 2017 Elections Albania.

<sup>213</sup> Interview with Thoma Gëllçi, RTSH Director.



## Undesirability of Hidden State Ownership in Media

### Indicator 22 – “Private” media should not be run or held by the state or state-controlled companies.

State ownership of private media in an almost unknown phenomenon to Albanian media market and, as such, it has never constituted a problem in drafting and implementing legislation to regulate this aspect. The dynamics of development of media market after the change from dictatorship to a pluralist political system were such that media privatization did not emerge to be part of the public agenda. Both the state television and the existing print media until 1990 were tightly controlled in content, and were also maintained by state funds. Print media included the newspaper of the only existing party, the Labour Party of Albania, as well as many other newspapers of existing organizations or communities, such as trade unions, youth, artists, teachers, military, and many other niche publications.

The change of regime brought about a considerable wave of emigration, significant social change, and a new economic scenario, along with the dismantlement of many groups or organizations that published these print media. As a result, overwhelming part of existing publications did not survive after the 90s and simply disappeared, rather than being privatized. *Zëri i Popullit* continued its publication as the press organ of the Socialist Party, along with only a few niche publications remaining from the communist regime. Struggling with economic hardship and trying to find a new mission and purpose in the evolving market and context, most media inherited from the dictatorship closed down. State broadcaster continued to exist as the only broadcaster until 1995.

While old newspapers and magazines closed down, new ones readily emerged, leading to a process of replacement of old media, thus eliminating the need to discuss the privatization of existing newspaper, by the state, the organizations that maintained them, or the employees themselves. In this context, the problem of privatizing media owned by state has never been posed in the Albanian media scene, unlike other countries in the region where this issue has majorly shaped the media landscapes.

Although the issue of state ownership of the media was not considered a problem for the context, it was addressed in the Law on Radio and Television briefly, and, in a more limited and subtle way in the current regulation on audiovisual media. The Law on Radio and Television, approved in 1998, banned any state authority from obtaining a broadcasting license (Article 26.) The ban extended to all levels of state institutions, including local government. Parties, political, and religious associations, public entities of an economic nature, as well as banks and crediting institutions were also prohibited from holding a broadcasting license. At the same time, Albanian Radio and Television changed its status from state to public broadcaster.

In the current legislation, the Law on Audiovisual Media does not refer to incompatibility of state authorities with holding a broadcasting license, but it is implied. The law only states that national and local audio and audiovisual license is only given to shareholder companies registered in Albania, whose operations consist exclusively in audiovisual activity. (Article 62) While the law is vague in this definition, it can be inferred that it is implied that only media companies can obtain a national license, a priori excluding state authorities. It is unclear why the new legislation suffices to limit licenses only to the natural or legal persons whose exclusive activity is audiovisual broadcasting, when its predecessor was much more detailed on the compatibility criteria for license holders. Nonetheless, there have not been any problems with hidden state ownership in private media in the country.

## Incompatibility between Public Office-Holding and Pursuit of Professional Media Activities

### **Indicator 23 – Members of government should not pursue professional media activities while in office.**

Legislation forbids members of public administration to hold other offices. The law on prevention of conflict of interest is not limited to government members only, but also covers the persons holding public functions at the central and local level. Regulation covers an array of officials, such as the ones participating in decision-making on administrative acts and contracts, court and notary acts, and normative acts. The legislation also covers commercial companies where the state has the majority of shares, at the central or local level, as well as non-governmental organizations and other legal persons controlled by the above-mentioned public institutions. The regulation on conflict of interest does not specifically address pursuing of media activities by members of government while in office. However, the criteria to be considered in cases of private interest that might conflict with public duty include also engagement in commercial activities, as well as engagement in profit or non-profit organizations. Such cases have to be self-declared on a case-by-case basis, but can also be examined by the institution where the public official works.

Viewing the definition of the conflict of interest for public officials, it can be inferred that working in the media is not allowed for members of government while in office, even though it is not specifically stated. In addition, current Prime Minister Rama adopted in its first government meeting in office in September 2013 the Ministerial Code. The Code allows for members of Council of Ministers to publish comments and editorials, as long as they abide by the principle of reliability and solidarity within the government (Article 16.) According to this Code remuneration for these publications should be transferred to social organizations or institutions covering social assistance or education. At the same time, cabinet members are not allowed to receive any payment for comments, speeches, or articles that are related directly to their official responsibilities or their experience as government members, which are published in different media (Article 17.)

Media regulation does not consider the aspect of government members working in the media. The only reference is in the list of incompatibilities of members of the Steering Council of public broadcaster, general director of the public broadcaster, and members of the Board of the Audiovisual Media Authority. The Law on Audiovisual Media prevents members of political parties, candidates for members of parliament during last two legislatures, candidates for chairperson of commune, mayor, chairperson of a region, prefect during last three years from running for these positions. (Articles 7, 97, and 104.) While this law prevents these categories of politicians from being members of regulatory boards or general director of RTSH, there is not any reference regarding government members and professional media activities.

On the other hand, the Editorial Principles of public broadcaster RTSH, approved in 2016, state that RTSH employees are free to join political organizations or trade unions, unless the legislation or the Statute of RTSH considers this an incompatibility. However, it is also specified that political affiliation should not interfere with the work process at any time. (Article 21.6) In addition, if running for office, RTSH employees should inform their employer and they are not allowed to work as editor, journalist, or presenter during the electoral campaign. In case of election or working for the government, their work position is regulated by other laws, including the law on prevention of conflict of interest, which includes banning of government members from working as media professionals while in office.

There have been no registered examples of government members that have also served as media professionals at the same time. Perhaps the only such case is that of Nikollë Lesi, who has been Member of Parliament for several terms and has also served as deputy minister, while keeping his daily newspaper. At the same time, there are no reports on any potential violation of the rules the Ministerial Code imposes on cabinet members.

## Openness of Authorities to All Media

### Indicator 24 – Government, parliament and the courts must be open to the media in a fair and equal way.

Legal regulations stipulate the openness of state bodies to the public as a fundamental right. The Constitution guarantees the right to information from state organs and state officials for everyone, as well as the right to follow the meetings of elected collegial bodies (Article 23.) More specifically, the Right to Information Law, approved in 2014, regulates the process of accessing information. The law is meant to be applied equally for all citizens and does not specifically address media needs to access information. The main principle applied in the regulation of access to information is the effort to achieve maximum disclosure, assigning the authorities the duty of having a pro-active approach in providing data in their websites, while citizens can file requests for the information they need. The rules for transparency of data that have to be published by all authorities were further detailed in the transparency program model drafted by the Information and Data Protection Commissioner.

The legislation on the right to information was rated in 2017 as the sixth best information law in the world<sup>214</sup>. The law covers all public authorities, meaning central and local administration, legislative and judiciary bodies, institutions and agencies that are dependent on central and local administration, as well as private companies where the state has majority of shares or which exert public functions. In addition, the Law on Public Notification and Consultation determines the procedures that are supposed to guarantee transparency and public participation in approval of draft laws, strategic documents and policies of public interest.

In practice there are problems with the implementation of these laws and access to information is not guaranteed neither by all public authorities, nor to all media. According to survey data about 61% of editors and journalists considered that the public authorities do not offer fair and equal access to all media most of the time, if not at all<sup>215</sup>. In-depth interviews with editors and directors also confirmed that there are many cases when documents, materials, or interviews are provided in a selective manner. One of the most public illustrations of this trend have been that of several media outlets complaining that the footage of police operations was distributed first to specific media, rather than to all media at once.

Out of the three branches of power the parliament seems to be the most transparent and open. Its plenary sessions are broadcast live by the public broadcaster and most TV news channels, and the regulation of the parliament allows for participation of citizens in meetings or sessions, after filing requests or getting accreditation. Accredited journalists routinely follow the proceedings of commissions and plenary sessions. Press releases on parliament events, calendar of activities, and other happenings of parliament life are published regularly and usually without delays. Documents such as draft laws, minutes of meetings and plenary sessions, reports on other events, are accessible online.

On the other hand, the judiciary is regarded as being the most closed power. Transparency of the judiciary further deteriorated in 2016, when the Minister of Justice provided instructions for enacting two recommendations dating from 2011 and 2012 from the Commissioner on Data Protection, aiming to protect privacy of persons involved in court cases. As a result, the usefulness of online databases of courts decreased dramatically, due to anonymization of data. Access of the public and the media to court decisions or other

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<sup>214</sup> <http://www.rti-rating.org/>

<sup>215</sup> Data of the survey conducted for the purpose of this report.

data has been limited and slowed down. In addition, there are persistent problems with the transparency of the prosecution bodies, which has prompted the Information Commissioner to make many decisions that ask the prosecution to allow access to information. In the last two years the Commissioner has received more than 500 complaints regarding access to information, and the percentage of complaints from citizens has increased, compared to complaints filed by civil society, which shows that there is greater awareness on this problem<sup>216</sup>.

The survey conducted with journalists and editors revealed that according to their experience, the process of accessing information had been slow, not so simple, and toilsome for 57% of them, and very slow, complicated and exhaustive for another 25% of respondents<sup>217</sup>. Several tests conducted by civil society also identify various problems in media and citizens accessing information. Many journalists report that while information has become more readily available, information of a sensitive nature, mainly economic contracts and procurement contracts are off-limits.<sup>218</sup> Testing of access to information law from AMI in the last four years in central and local government has resulted in a response rate of 60%, but media was clearly favoured over citizens<sup>219</sup>. A study of transparency indicators of local government in 2017 showed that the 61 municipalities fulfil only 43% of the indicators<sup>220</sup>.

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<sup>216</sup> Commissioner on Information, Annual Report 2017.

<sup>217</sup> Ibid.

<sup>218</sup> In-depth interviews with journalists.

<sup>219</sup> AMI, "Monitoring access to public institutions" 2012 & 2014. AMI, "Testing implementation of the right to information in central government," 2017.

<sup>220</sup> BIRN, "Pushteti vendor nen lenden e te drejtes per informim," 2016.

## Preference for Media Self-Regulation

**Indicator 25 – There should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts.**

Self-regulation of journalistic profession in Albania in practice is lagging behind international standards of protection of media freedoms and journalist rights. Even though there is a Code of Ethics and thematic professional codes or guidelines, their implementation is left to individual conscience of journalists. Attempts to establish self-regulatory mechanisms have routinely failed in the last 25 years. The right to correction and reply is guaranteed by law and is also part of the Code of Ethics, but the frequency of its use in the media appears to be rather low.

Occasional professional reflections on ethical issues and discussions that take place especially in controversial cases of reporting show that there is awareness and concern on ethical conduct of the media. However, the media community, or part of it, so far has not managed to come together and converge in a set of professional ethical rules, commit to their observation, and surrender part of their “sovereignty” to a self-regulatory mechanism. However, this low involvement in self-regulation attempts should also be viewed against a background of difficult economic position of journalists, worries on their job security, and the prevailing of business interests over professional journalism in most media in the country.

The Code of Ethics was first drafted in 1996 by Albanian Media Institute in cooperation with the two main journalists associations at the time, but there was no formal adoption of the Code. In another attempt, in 2006 the Code of Ethics was revised and updated through a joint effort of the Albanian Media Institute, in cooperation with a group of media and legal experts. In addition, the possibility of establishing a self-regulatory mechanism was examined, based on the models used in other countries. The consultation process included the main media owners at the time, the editors, media experts, and journalists. However, while agreeing in principle, the media actors hesitated to initiate the establishment of a self-regulatory mechanism that would oversee implementation of the Code and make decisions those members would accept. The Code of Ethics was again edited and revised in 2018 by a group of experts led by the Albanian Media Institute, along with the drafting of a set of guidelines intended to cover ethical conduct in online media.

The only media group that has a published code at the moment, apart from the editorial principles of the public broadcaster RTSH, is the Free and Fair Media Group, publishing daily newspaper Shqiptarja.com, the website with the same name, and owning the news station Report TV. This group has drafted its own detailed code of ethics, containing general principles of conduct, as well as addressing specific situations, such as dress code, legal aid to journalists, coverage of minors, sexual orientation, aged people, reporting polls, terrorism, rallies, etc. The code is obligatory for all employees of these media outlets, but the code does not stipulate the establishment of any self-regulatory body within the media group or what would happen if a journalist broke the code. Even one of the founding members had doubts on its implementation, which is marred by other problems in Albanian media. “Most journalists are too young and often come from universities of journalism lacking even the basic news reporting skills. They are surprised when you tell them that you have to protect the identity of a minor, of a violated woman, or data that affect privacy.”<sup>221</sup>

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<sup>221</sup> In-depth interviews for the purpose of this study.

The only experience of a self-regulatory body within the newsroom was that of has been that of daily newspaper Shekulli, which, when founded in 1998, also had its Code of Ethics and the Ethics Bureau, “which, rather than working on complaints from readers, did a retrospective weekly review of the journalists’ work from the ethical point of view. However, this novelty, rather than originating from the newsroom, came from the owner of the newspaper<sup>222</sup>. Financial burden and lack of interest led to its closure in a few years. Currently there are no media ombudsman that would serve as intermediary between journalists and the public. At a time when the trend is for newsrooms to work with minimal reporting staff, hiring someone to deal with ethics would be a luxury that cannot be afforded.

A recent development was the establishment in 2015 of the Media Council, a voluntary group of journalists, initially supported by the Council of Europe. Its aim was to increase professional standards of journalism through respecting the Code of Ethics<sup>223</sup>. Currently it has established an office and elected a complaints board, with the support of foreign donors. However, it is too early to see what the effect will be on media self-regulatory trends in the country.

Apart from these initiatives, the Council of Complaints functions as part of the regulator, the Audiovisual Media Authority, examining requests from the public or state institutions on particular media content that might be offensive to human dignity and violate human rights. The Council has been working for two years, composed of three members, elected by AMA Board. In the first half of 2017, the Council received 22 complaints, from public institutions, NGOs, and citizens, involving mainly problems with reporting on minors and violations of human dignity<sup>224</sup>.

In Albania the right of reply and correction is both imposed by law and part of the Code of Ethics. Article 43 of the Criminal Code states that the court may order publication of a court sentence to the convict, who can publish at his own expense in some newspaper and TV stations, as the court decides. In addition, article 617 of the Civil Code addresses fraudulent and inaccurate publications, stating that when a person is held liable for publishing inaccurate, incomplete, or fraudulent data, upon request of the person that has been damaged the court may ask publishing a confutation. Law on Audiovisual Media also regulates the right to reply in detail (Article 53) and AMA has approved the regulation on procedures of implementing the right to reply for audiovisual media<sup>225</sup>. Finally, the right to reply is also part of the Code of Ethics. While there have been court cases when the right to reply and correction has been used to address damage of reputation and honour, there is no information on its use in the media by complaints of the public. Given that the mechanisms enabling a media dialogue with the public in terms of ethics are almost inexistent, these cases are expected to be rare.

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<sup>222</sup> I. Londo in SEENPM “*Labor relations and media: Analyzing patterns of labor relations in the media of SEENPM member countries*,” 2008.

<sup>223</sup> Press release of establishment of Media Council, <http://www.javanews.al/fomohet-keshilli-i-medias/>

<sup>224</sup> AMA, “Bulletin of Council of Complaints” 2017.

<sup>225</sup> AMA, “Regulation on procedures for treating complaints and exerting the right to reply,” <http://ama.gov.al/preview/wp-content/uploads/2015/03/RREGULLORE-MBI-PROCEDURAT-P%C3%8BR-TRAJTIMIN-E-ANKESAVE-DHE-P%C3%8BR-USHTRIMIN-E-S%C3%8B-DREJT%C3%8BS-S%C3%8B-P%C3%8BRGJIGJES.pdf>

## Compliance with Journalist Code of Conduct

**Indicator 26 – Journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism.**

Albania does not have a tradition of self-regulation in journalism, as the press before the 90s lacked the necessary freedom to establish and observe their own ethical rules, in view of the highly controlled social context.

The Code of Ethics was first drafted in 1996 by Albanian Media Institute in cooperation with the two main journalists associations at the time, League of Albanian Journalists and the Association of Professional Journalists. The Code was supposed to act as a self-regulatory instrument for the community of journalism and their ethical dilemmas. The code was disseminated and there were training programs focused on ethics, but a formal adoption of the Code by media outlets did not materialize.

In view of the initiative to decriminalize libel and defamation, a parallel effort started to revise and update the Code of Ethics in 2006. The aim was to establish a set of rules that journalists could follow, which would contribute to a more ethical journalism and compensate the greater freedom obtained by decriminalization of defamation and insult provisions. The initiative was taken by the Albanian Media Institute, in cooperation with a group of media and legal experts, consulting various codes of other countries in the process. Apart from the revision of the Code, this initiative also examined the possibility of creating a self-regulatory mechanism. The whole process went through different consultation meetings with different groups, including journalists, media owners, academia, etc. The Code was jointly adopted in a formal meeting by the main journalist associations at the time, the League of Albanian Journalists, the Association of Professional Journalists, and the Free Media Forum.

The Code of Ethics defines the rights and obligations of journalists in their everyday work and provides its view of the role of free press and journalism in the society. The Code has a similar approach to codes in other country in terms of the issues it addresses, such as accuracy, separation of facts from opinions, respect for minors, victims, and vulnerable persons, protection of editorial independence, upholding the highest public interest, respect for presumption of innocence principle, the right to reply and correction, separation of advertorial from editorial content, respect for privacy, observation of copyright, etc.

The Code of Ethics does mention the conflict of interest, although in a concise manner. The Code states that news should not be used for personal gains, and also that journalists should avoid reporting on topics where they have direct personal gains.

In 2017 the Albanian Media Institute established a group of experts that revised the Code, as well as prepared Ethical Guidelines for Online Journalism, both of which went through the consultation process with the media community. This Code was expanded even more, to address issues that were missing in the previous version and it was finalized and is available for use from March 2018.

In addition to the general Code, other more niche guidelines, codes, or manuals have been produced, such as on investigative journalism, reporting on trafficking victims, reporting on minors, reporting on vulnerable groups, reporting on elections, etc. The application of the ethical rules is again left to the will and conscience of journalists and is not enforced in any way.



The only cases of media adopting their own codes are those of the public broadcaster and private media group Free and Fair Media, whereas this issue has not become part of discussions or expressed intentions of other media. The contract used as a rule are merely administrative, and do not enter into content issues.

Given the enormous problems journalists have with their social and economic position, and the narrow degree of autonomy they have within the media structure, it comes as no surprise that ethics is not a priority. According to interviews with editors and journalists, the media often lack the incentive to start such initiatives focusing on ethics. "Self-regulation assumes you aspire to improve professionally or ethically. Our media have no incentive to self-regulate, as standards and ethics are not viewed as important for their market success."<sup>226</sup> Any assessment of self-regulation efforts should be viewed in the professional and social context it takes place. "There can be no self-regulation among people who have not received their salary, it makes no sense."<sup>227</sup>

According to interviewees the most problematic part with ethical violations in the media is related to crime reporting such as exposing images of killed people, testimonies of abused children. While emphasizing that compared to 20 years ago the ethical coverage has improved, the prospects for successful media self-regulation are very gloomy if the situation with the rights of journalists does not improve first.

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<sup>226</sup> In-depth interviews with editors.

<sup>227</sup> Ibid.

## Parliament's Care for Media Freedom Development

**Indicator 27 – National parliaments should draw periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.**

Parliament of Albania has never undertaken a full analysis of media freedoms in the country. Instead, the Parliamentary Commission on Education and Public Information Means, covering media, has analyzed various cases and phenomena that are related to media freedoms. The commission has also cooperated with or has invited feedback from civil society organizations or journalism associations on various bills on the media or freedom of expression in general.

The competences of the Commission on Education and Public Information Means include examining the bills, draft decisions and other documents that go through parliamentary procedure, following the implementation of laws, monitoring the activity of ministries and other central executive bodies, proposing and drafting bills, resolutions, or statements. The areas covered by the commission are not limited to media, but also include education at each level, culture, youth, and sports. The current composition of this commission (with the legislature starting in September 2017) is composed of 18 members. Competencies of the commission also include carrying out studies for the efficiency of the existing legislation, but there has not been such a study published from the commission.

An important part of the routine work of the Commission is reviewing and discussing the annual reports of the regulator, Audiovisual Media Authority, and the public broadcaster, Albanian Radio and Television. Representatives of these bodies are invited to the commission to present their work for last year, and the commission draws up a resolution with an evaluation of the work of regulator and public broadcaster. Discussion of these annual reports is also done in the plenary session at the parliament. Previous legislation, in force until 2013, provided the Commission with the possibility of approving or rejecting the annual report of the then-National Council of Radio and Television and public broadcaster. If rejected two years in a row, the regulator's board or the Steering Council of public broadcaster could be disbanded. The current law does not stipulate such a competency for the parliamentary commission. In addition, the commission also communicates and discusses publicly with the institutions of their field towards the end of the year on their plans and expectations on the state budget, making the necessary recommendations.

One of the most used instruments of the parliamentary commission is the organization of hearing sessions with individuals or organizations, either upon their request, or with the summoning of the commission. These hearing sessions are usually related to specific events or phenomena on media freedom. In this context, some of the recent cases that fall into this category include the hearing session with public broadcaster on the decision of management to fire a journalist; the hearing session with Alida Tota, who claimed she was fired from the newsroom for reporting on a minor found dead in the capital's landfill, or the hearing session with Telnis Skuqi, who claimed he was threatened for reporting on drug trafficking. There have also been cases of organizations demanding a hearing session with the commission, in order to present findings of a study on media freedom or provide the commission with an overview of particular aspects of media situation. For example, BIRN has presented its study on self-censorship in the media, while the Union of Albanian Journalists requested a session to raise awareness on the situation of labour relations, the problems with implementing Code of Labour, and making requests to the commission in this regard.

While the commission through the years has remained open and willing to hear to relevant stakeholders, it is not uncommon for hearing sessions to turn into political debates between the members of the commission, transferring political struggle also to the issue being discussed.

## Assessment on Media Situation in Albania

Following the assessment of the media situation in Albania, based on the study of the 27 principles of the Council of Europe, it can be concluded that only a few of them have been consistently implemented in Albania. While Albanian legislation has been mostly harmonized to European regulation, the enforcement of the principles does not always measure up to their standards, due to incomplete or inconsistent legal regulation, weakness of institutions that enforce them, as well as the influence of other economic or political actors, along with the economic and social status of journalists.

More specifically, out of 27 principles, there is full legal protection for seven European standards of media freedoms: freedom to practice journalism (4,) openness of media to political parties (5,) non-discrimination of foreign journalists (6,) freedom to choose language of communication (7,) limitation of exclusive reporting rights (9,) undesirability of hidden state ownership in media (22,) and separation between involvement in organs of executive power and pursuing professional media activities (23.)

More specifically, there are no barriers of any kind, posed by the state, or other actors, to receive education on and practice the profession of journalism. Quite the opposite, for a critical part of the media community itself, the profession is considered too liberal in its recruitment and exertion. The accreditation and activity of foreign journalists in the country has not proven to be hindered in any way or form, even though their presence is rare and occasional.

There are no obstacles to media regarding the language they want to use, leading to a situation where media in Albanian and in other languages enjoy the same legal protection and share the same financial difficulties, while there are no particular subsidies stipulated in legislation for neither of them. At the same time, the legal regulation on limitation of exclusive reporting rights offers reasonable protection to the public on access to broadcasting of particular events, but the regulation on its implementation will be approved soon by the regulator and it remains to be seen if there will be any specific effects in this aspect.

Access of political parties to the media does not represent any particular problems, also due to the high number of political programs in all main TV stations in the country, almost on a daily basis, but also thanks to the strict regulation of media coverage during electoral campaign. In addition, general political balance of discussion panels has become an acquired feature of most current affairs shows. On the other hand, media's access to political events and the ability to report on these from the journalist's perspective, rather than from the lenses of political parties, has increasingly become a source for frustration, lack of motivation as well as self-criticism in the media.

While the structure of media ownership in the country has been viewed through the years as particularly defining feature of its development, hidden state ownership in the media has not been part of this problem. This is not to say that state relations with the media ownership do not influence media landscape, but certainly not in the form of direct or indirect ownership of shares in media companies. At the same time, separation between involvement in organs of executive power and simultaneous pursuing of professional media activities is part of the sets of rules on incompatibility of official position, as well as on conflict of interest regulation.

Almost all standards of the principles of the Council of Europe are relatively guaranteed by legislation, but the practice is not always true to these legal guarantees. The explanations for this deviation are complex and are related to the dynamics of media system, as well as to the broader social and political context in the country. For some of the indicators analyzed the main problem is incomplete legislation that has not been fully harmonised with European law, as in the case of balancing act between the protection of state secret

and freedom of information (indicator no.10,) protection of confidentiality of sources of information (8,) enforcement of equal access for media to distribution channels (16.) Sometimes the regulations lack the mechanisms necessary to guarantee their implementation, such as sanctions, as in the case of openness of authorities to all media (24.)

National legislation does recognize the need to respect confidentiality of sources of information for journalists and in practice there have been no reported problematic cases at court. However, protection of confidentiality is not structured according to a more exhaustive list guided by public interest principles, but it is dependent on the will and common sense of the court, which is not necessarily a thorough protection mechanism.

In the same spirit, legal protection of privacy is generally balanced against the protection of the right to expression and information and the establishment of the Commissioner on Information and Personal Data Protection is an effort to balance these two fundamental rights in a satisfactory way. However, as a combination of the resistance of the institutions and the degraded ethical standards visible especially in online media, there is a trend to use secrecy laws, regulations, and even dated recommendations on privacy to shield information from public eye, creating the potential for secrecy and privacy to erode the right to information.

Legislation in principle guarantees fair and equal access to distribution channel through technical infrastructure. In practice, the development of commercial digital platforms before the law was in place and the consecutive dynamics that ensued led to a situation where the call for application of national digital licenses was limited to a group of media, even though the law determines the principles of fair access and non-discrimination to the media that will be hosted in these platforms. At the same time, while two networks dominate the commercial services of print media distribution, there have been no particular problems reported with media accessing their services.

While Albania's regulation on freedom of information has been ranked as one of the best in the world, obstacles to its implementation still persist. There are differences in its implementation across the government, parliament, and the judiciary, whereas access is not always open to the media in a fair and equal way, influenced by their editorial policy, but also based on ability of journalists to cultivate their sources of information. At the same time, the number of complaints on access of media and citizens addressed to the Commissioner on Information has increased, but legislation is not entirely clear on the sanctions imposed on public officials and their execution seems to have still a limited effect.

In the third set of indicators of this study, regulation is not fully implemented, or has been implemented in a selective manner and sometimes also contrary to the original intent of the law. Again, it is difficult to make generalizations for such complex situations, but the main reason seems to be priority of vested interests of particular actors, such as politics or business, over the spirit of implementing legislation to the letter. Part of the problem for this lies with the judiciary, currently enjoying the lowest trust in public, who shows it is not always consistent and not necessarily guided by ECHR standards with regard to the principles of legal protection of the right to freedom of expression (1,) and freedom to criticise state officials (2.) The mix of legal shortcomings, weak institutions, lack of tradition, and also external economic and political influences mainly explain the problems in fulfilling European standards with regard the independence and efficiency of the regulator (15,) as well as public broadcaster's independence (20 and 21.)

Defamation and insult are still criminal misdemeanours in the law, even though imprisonment as a punishment has been removed. However, rather than further amending the law, the biggest insecurity is related to the potentially inconsistent way application of damages for honour and reputation. Although the courts have tended to favour freedom of expression in general and politicians and other persons have tended to drop the cases against media, the practice shows that there are no strong guarantees on the impartiality of courts

and also on their common understanding of the priority of freedom of expression in the spirit of European standards and practice.

The public broadcaster has continuously suffered from poor public perception regarding its independence, objectivity, and quality of programming. This is a result of aggressive competition from commercial operators, but also a consequence of years of stagnation within the institution, as well as sometimes neglect of political factors vis-a-vis the public broadcaster. Financial scheme of public broadcaster RTSH has improved thanks to a more efficient collection of the license fee through the electricity bill. At the same time, its financial burden has also increased in the framework of building the two national public digital networks, and neither the law, nor any other government regulation, seem to protect RTSH sustainability and autonomy in this respect, even though the government so far has partially provided assistance.

On the other hand, the manner in which the governing bodies of the public broadcaster are elected seems to further strengthen public perception that political influence is still visible in this institution. This tendency is also valid for the regulator, AMA, where a similar formula and process is implemented to elect its Board. At the same time, the previous experience of AMA Board members, their political affiliation, especially after leaving AMA, reinforces the perception that even though nominated by civil society, the election of these persons by political parties definitely compromises the process.

AMA has made progress in issuing new regulations and by-laws, pushing forward the digital switchover process, originally set on July 2015, and strengthening its authority over operators and their respecting of obligations. However, its work was hindered for a long time due to divisions within the Board and inability to reach the quorum and legal processes. At the same time, objectivity of its members was put to a test by allocation of national digital licenses, where four of the five commercial licenses are owned by two main media groups.

The media system in Albania is particularly lagging behind compared to European standards when it comes to its economic model and trends, the lack of guarantees for protection of editorial independence in face of economic pressure, and the poor organization capabilities of journalists to protect their rights. The reasons for this are to be found partly in inadequate legislation, as in the case of transparency of ownership and prevention of monopolies (18,) and neutrality of state's financial assistance (19,) as well as in the failure to offer a legal solution and favour market conditions that would contribute to achieving independence of editorial policy (13.) In this context the legislation is incomplete, difficult to implement, or even goes against the spirit of having in place guarantees for media freedom and pluralism. The latest amendment on ownership provisions for audiovisual media was a major setback in the legal guarantees for media pluralism, while regulation of state advertising has stagnated for many years, even though it is widely admitted that regulation is unclear and enables practices of unfair distribution. With regard to securing independence of editorial policy, legislation consists mainly in a declarative guarantee, which hardly facilitates its implementation in real life.

On the other hand, it would be wrong to seek all solutions in legislation, which cannot provide a panacea to other inherited problems, such as transitioning into current media system, a chaotic, dysfunctional, and non-transparent market, economic interests of media players, the weak considerations of ideology of journalism by the people that practice it, and the strong relations and interdependence between media and business, and their mutual influence on one another. The last 25 years of history of Albanian media have indicated that the interplay of political and economic influence has greatly shaped the legal landscape, but also the degree to which the law is implemented or not, also related to the overall struggle of the country to strengthen rule of law.

In this context, editorial independence and protection of profession of journalists are certainly victims of economic and political priorities that are interwoven within the media system. Often sandwiched between business and politics, journalists routinely resort to self-censorship, preferring to keep and advance their job, rather than sacrifice personal interest for public one. The poor or selective implementation of Labour Code and the unfavourable labour conditions in the media section are a major deterring factor. In addition, the weak protection that the few existing organizations are able to offer, due also to poor organizing capabilities of journalists in these structures, lack of solidarity and of tradition, is not a sufficient guarantee to encourage professionalism of journalists.

## Recommendations

The problems of current media situation are the effects of deep-seated problems related to attitude of political actors vis-a-vis media, market trends and dynamics in the media, evolution of the profession of the journalist, proper implementation of regulation, and the problem of establishing reliable, credible, and independent public institutions. Against this complex background, it would be naive to offer recommendations that would hold the key to a magic solution for the current view of the media problems. However, this report aims to raise awareness among stakeholders on these problems, offer a model of monitoring Albanian media landscape, and also draw attention to some of the possible areas that can improve.

### Media policy

- Policymakers should address existing problems with legal standards regarding freedom of expression and their balancing against other rights, and especially the mechanisms that oversee or guarantee their implementation, in a fair, transparent, and equal manner.
- Training of judges on ECHR case law and freedom of expression standards applied in judgment should be a regular part of their trainings.
- Independent institutions such as commissioners on information and data protection, on non-discrimination, on competition, etc. should be further supported through know-how, training, and support on improving their mechanisms of legal monitoring and system of public complaints.
- The independence and authority of regulators should be strengthened by adopting formulas that limit political interference and pressure, while also increasing their transparency and accountability to the public.
- Legal amendments and new media policies should go through a process of genuine consultancy with a diverse group of actors, rather than just be a formality. Furthermore, decisions on media policies should also result from existing studies, research, and data in the respective field.

### Media market and economy

- Joint industry initiatives that improve transparency of media advertising market, and aimed at carrying out audience and readership research studies should be encouraged and promoted.
- Distribution of state funds for the media through advertising or other channels should be legally regulated in a clear and fair manner, enabling also the possibility to monitor the allocation process.
- Initiatives that aim to improve financial transparency of the media should be encouraged.
- The competition authority can consider regularly monitoring media market for purposes of avoiding concentration or unfair competition practices.
- Fair competition practices should be encouraged, to ensure that public commercial broadcaster and commercial media abide by the same regulation.

- Efforts of public broadcaster to orient its programming towards public service interests should be encouraged, while demanding also a greater transparency by the institution.

### **Journalists and professional associations**

- Improvement in implementation of labour rights for journalists and proper monitoring of authorities in this field is an urgent task, which would allow for a better protection of journalists' rights.
- Strengthening professional associations of journalists and trade union activities would contribute to a stronger professional community that is able to improve lobbying for its own rights and interests.
- Continuous improvement of journalism studies curricula, along with a better combination of practical skills for students would also be desirable.
- Professional journalism should be encouraged through competitions, distribution of awards, or other similar initiatives.



