



IMPACT OF ONLINE MEDIA REGULATION

ON ALBANIA'S EU ACCESSION BID

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Introduction

Media regulation is a sensitive legislative and policy topic as it requires balancing on the part of the legislator between freedom of speech and the right to privacy, i.e., between public and private interest.

Two years ago, the Albanian government proposed a set of legal amendments to the Law No. 9918 “On Electronic Communications in the Republic of Albania” and Law No. 97/2013 “On Audio-visual Media in the Republic of Albania” that would empower the Complaints Council inside the Audio-visual Media Authority – an administrative body whose members are elected by Parliament, to regulate the content published by online media outlets.

According to the legislator, the proposed amendments to the law aim to rein in fake news and disinformation campaigns in online media outlets in Albania, whose influence on the public sphere has registered an upward trend compared to legacy media outlets in recent years.

However, the proposed amendments have been fiercely contested by journalists, as well as by local and international rights groups, which fear that the Complaints Council in the Audio-visual Media Authority might transform into an oppressive mechanism toward freedom of the media in Albania and push journalists toward self-censorship.

Freedom of expression and freedom of the media are rights guaranteed under the Albanian constitution. Albania must ensure and uphold European standards of freedom of expression and the media also in the light of its EU accession bid, particularly as it moves further in the negotiations process with Brussels and inches closer to its first inter-governmental conference.

Based on the EU Council recommendations, representatives from the ruling socialist majority have publicly committed to follow up on the guidance provided on media regulation in Albania in an opinion issued by the Venice Commission.

However, the Albanian government insists on regulating online media outlets via the Audio-visual Media Authority and the eventual approval of such legislation will not only impact the media and journalists, but also the process of accession to the European Union.

The purpose of this policy paper is to highlight different policy options of online media regulation and their possible impact on the freedom of the media in Albania and on its EU integration process. Moreover, this paper aims to highlight the importance of the freedom of speech in the light of Albania's EU accession process.

This policy paper was drafted based on the literature review of primary and secondary sources, including the national and international legal framework, guidance issued by international bodies such as the Venice Commission, progress reports from the European Commission on Albania's progress toward the Union, as well as reports and studies on media freedom in Albania.

This paper is organized in four main sections: introduction, background, policy options, and conclusions and recommendations. The introduction provides a brief overview of this policy paper. The second section addresses the socio-political context in which the proposed media legislation is taking shape, the third section presents the various policy options and the fourth section offers the conclusion and recommendations by the authors.

Media freedom in Albania

Freedom of expression and access to information are fundamental rights of every democratic society and they have been established as human rights in several international instruments. They are guaranteed under Article 19 of the Universal Declaration of Human Rights and also defined in the International Covenant on Civil and Political Rights as the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice.”¹

The Albanian media landscape experienced dramatic changes with the fall of the communist regime in 1990, moving from state-owned media, controlled and censored with an iron fist by the Stalinist-styled regime of the late dictator Enver Hoxha, to the introduction of the freedom of expression guaranteed by law and a plurality of views expressed in hundreds of outlets.²

Although freedom of expression and media freedom in Albania are guaranteed by the Constitution and the relevant legal framework, in practice, the journalists' ability to report the news with accuracy, fairness, balance and objectivity is undermined by the political and economic interests of media owners, big corporate advertisers and other factors that often push reporters to avoid sensitive topics and practice self-censorship.³

According to the World Press Freedom Index published by Reporters Without Borders, Albania is ranked 84th among 180 countries in the world in 2020, dropping by two places compared to 2019. The country's media sector suffers from a series of chronic issues, including high polarization and politicization, self-censorship, undue influence on editorial output of political and business elites, as well as verbal and physical attacks on journalists.⁴

¹ United Nations. 1948. Universal Declaration of Human Rights, Article 19, General Assembly Resolution 217 A (III). Available at: [http://www.ohchr.org/ EN/UDHR/Pages/Introduction.aspx](http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx). <https://globalfreedomofexpression.columbia.edu/law-standards/united-nations-human-rights-system/>

² Balkan Investigative Reporting Network, Albania. (2015). A Blind Eye on News: Self-Censorship in the Albanian Media. Available at: <https://birn.eu.com/wp-content/uploads/2017/05/Report-on-self-censorship-in-the-Albanian-media.pdf>

³ Albania Media Ownership, Context. Available at: <https://albania.mom-rsf.org/en/context/>

⁴ Reporters Without Borders, World Press Freedom Index 2020. Available at: <https://rsf.org/en/ranking>

Surveys show that “bias, partisanship, and political clientelism, as well as dependence on the business interests of owners have direct influence on the decrease of public trust in the media”.⁵ In the last few years, the media industry has registered an explosion in the number of online media outlets, part of which do not operate in an open, transparent or professional manner. Legacy media outlets remain the main source of information and are still considered as more credible by the public, while online media outlets and social media enjoy lower trust in surveys.⁶

In response to the growing influence of online media on the public sphere, the Albanian government has introduced a series of amendments to the country's Audio-visual Media Law, in order to expand its scope and the regulatory authority on online media outlets. The proposed amendments that were originally unveiled in December 2019 were later approved by the Parliament, despite the protests by journalists and civil society activists and opposition from the Council of Europe and the European Commission.⁷

After the President vetoed the amended law the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on the adherence of the proposed regulatory framework with the international standards on media freedom and freedom of expression. Following the opinion issued by the Venice Commission in June 2020, the EU Council called on Albania to ensure that any regulation on online media outlets by the Parliament be in line with the opinion issued by the Venice Commission.⁸

Media freedom and the EU accession process

Media freedom and the right of information are fundamental freedoms in Europe and an essential part of the Copenhagen criteria for EU membership. Media freedom and pluralism are part of the rights and principles enshrined in the European Charter on Fundamental Rights and in the European Convention on Human Rights (ECHR), Article 10, in particular, on freedom of expression.⁹

Regarding the enlargement process, media freedom is enshrined in the Stabilization and Association Process, particularly through the implementation of Chapter 10 (Information Society and Media), Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) of the accession process.

The Council of Europe, OSCE, as well as the Albanian and international media and civil society organizations have voiced strong objections against the proposed draft amendments to the Audio-visual Media Law, arguing that they violated freedom of expression and were not compatible with international and European human rights standards. They argue that a member state of the Council of Europe and a candidate country for accession to the European Union, must guarantee and safeguard freedom of expression and press freedom as required under Albanian law and international instruments including the European Convention on Human Rights.¹⁰

Stefan Schennach, General Rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) on media freedom and the protection of journalists, voiced his concern regarding the ambiguity and the risk that the media law might impose restrictions on media freedom and freedom of expression due to its broad scope. The Rapporteur advised the Albanian government to drop the current draft proposal and start over the whole process in consultation with civil society and the media community.¹¹ Also, the CoE Human Rights Commissioner, Dunja Mijatović, underlined the importance of reviewing the current drafts and bringing them in line with the case law of the European Court of Human Rights and the Council of Europe standards, which protect the freedom of expression and freedom of the media.¹²

According to the progress report drafted by the EU Commission in 2020, the proposed amendments to the Audio-visual Media Law did not comply with international standards and principles of media freedom and raised concerns regarding censorship and self-censorship, and if passed, could create possible setbacks to freedom of expression in the country. The EU Commission underlined that the so-called anti-defamation package imposed the burden of disproportionate administrative fines on journalists and the media in comparison to the living standards of the country.¹³

Free, vibrant, independent and uncensored media are a key pillar of a democratic society where a plurality of views is expressed and debated. The media and journalists play an important role in a democratic society and the Albanian government must take into consideration various policy options before it moves ahead and passes a new regulatory framework on online media, which could have an adverse effect on the freedom of the media and the country's progress toward further European integration – a strategic policy goal in Tirana's long and tumultuous transition to democracy.

5 Albanian Media Institute. (2019). Media image among the public and media trust in Albania. Available at: <http://www.institutemedia.org/2020/01/27/media-image-among-the-public-and-media-trust-in-albania/>

6 Institute for Development, Research and Alternatives, Zajmi.L, Petrak.L & Dervishi.L. (2019). Study on Media Professionals. Albanian Media Landscape. Available at: <https://www.idrainstitute.org/files/Albanian%20Media%20Landscape.pdf>

7 Council of Europe. 2020. Hands off Press Freedom: Attacks on Media in Europe Must Not Become a New Normal. Annual Report by the partner organizations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists. Available at: <https://www.coe.int/en/web/media-freedom/-/annual-report>

8 EU Council 2020, Council conclusions on enlargement and stabilisation and association process - Albania and the Republic of North Macedonia. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/03/25/council-conclusions-on-enlargement-and-stabilisation-and-association-process/>

9 European Parliamentary Research Service. (2015). Briefing. Press freedom in the EU - Legal framework and challenges. Author: Eva-Maria Poptcheva. Available at: <https://www.europarl.europa.eu/EPRS/EPRS-Briefing-554214-Press-freedom-in-the-EU-FINAL.pdf>

10 European Commission. (2020). Albania 2020 Report. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

11 PACE 2020, PACE General Rapporteur on media freedom urges Albanian parliament to drop changes to media law. Available at: <https://pace.coe.int/en/news/8010/pace-general-rapporteur-on-media-freedom-urges-albanian-parliament-to-drop-changes-to-media-law>

12 Council of Europe. (2020) Commissioner urges Albania's Parliament to review bills which restrict freedom of expression. Available at: <https://www.coe.int/en/web/commissioner/-/commissioner-urges-albania-s-parliament-to-review-bills-which-restrict-freedom-of-expression>

13 European Commission. (2020). Albania 2020 Report. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

The status quo

Although there is no specific law that regulates online media in the Republic of Albania, this does not mean that regulatory and self-regulatory mechanisms do not already exist. Both the criminal and civil code hold provisions that have been used in case law to regulate the content of online media outlets, while the Journalistic Code of Ethics was also updated in 2016 to cover the activity of online media.

The Criminal Code of the Republic of Albania in some of its provisions defines as a criminal offense the publication of pornographic materials (Article 17), distribution of racist or xenophobic materials through a computer system (Article 119/a), insult with motives of racism or xenophobia through a computer system (Article 119/b), defamation (Article 120), unfair interference with private life (Article 121) as well as incitement, public calls and propaganda for the commission of acts with terrorist intent (Article 232/a).¹⁴

According to case law, these articles have also been applied to online media, such as decision No. 924 where the Tirana Judicial District Court ruled that the accused was guilty of committing the criminal offense of defamation to the detriment of the victim by posting on social media (Facebook) false content unfounded in facts, thus damaging the victim's image.

The Civil Code of the Republic of Albania also allows plaintiffs to seek damages from online media outlets in case of defamation, based on Article 608, and case law provides many examples of online media outlets that have been sued in civil courts.¹⁵

The Journalistic Code of Ethics was drafted in 1996 and revised in 2006 as a self-regulating instrument which aims to guide, strengthen and improve the quality of journalism and the sense of responsibility of journalists in Albania. The Code states that its principles are in line with the universal ethical values of journalism, which are widely recognized and accepted by the media organizations and journalism unions in democratic countries and are applicable equally to all media and journalistic platforms, offline and online, including journalism disseminated through social media and web portals.¹⁶

Journalists who knowingly violate the principles of this code betray the trust of the public and may not expect the support and solidarity of their colleagues, media organizations or journalism trade unions. Controversies arising from alleged violations of the Code are dealt with through transparent systems of voluntary self-regulation developed by journalists and news media organizations that may operate at the level of an enterprise and across different platforms of the news media industry. The Code also provides the rules on liability after publication, hate speech, intrusion into private life, protection of children and persons with disabilities, presumption of innocence in reporting court proceedings, reporting accidents and disasters, etc.

¹⁴ Criminal Code of the Republic of Albania. Available at: https://www.drejtesia.gov.al/wp-content/uploads/2017/11/Kodi_Penal-1.pdf

¹⁵ Civil Code of the Republic of Albania. Available at: https://drejtesia.gov.al/wp-content/uploads/2017/11/Kodi_Civill-2014_i_azhornuar-1.pdf

¹⁶ Albania Media Council 2020. Journalistic Code of Ethics. Available at: <https://kshm.al/en/code-of-ethics-for-journalists/>

Regulation by an administrative body

On top of the provisions provided by the Civil and Criminal Code that regulate the behaviour of online media outlets in Albania, the government has proposed that the scope of the Audio-visual Media Law be extended to regulate also the bustling start-up scene of news portals and blogs through the so-called 'anti-defamation package'.

The ruling socialist majority has underlined that the 'anti-defamation package' aims to protect the dignity and reputation of individuals, minors, and all citizens from misinformation, incitement to hatred, etc. The legislator also maintains that the bill does not infringe the freedom of expression and pluralism of the audio-visual and electronic media market, because it only aims to establish certain rules and ethical standards to respect these rights and values.¹⁷

The amendments to the legal framework on media are considered by the government to be necessary in order to properly protect the principles of proportionality and necessity such as: guaranteeing the right to information and freedom of expression; protection of dignity and fundamental human rights and freedoms; the right to privacy and copyright, prohibiting publications that promote violence, hate speech, fake news, etc.

The proposed amendments aim to regulate the content published by online media through the Complaints Council, by forcing online media providers to issue retractions based on a correction formula or face stiff fines. According to critics, the bill tightens the control of the government over online media as the Complaints Council, which is part of the Audio-visual Media Authority, increases the risk of censorship by ordering the removal of online content on grounds of protecting the citizens' dignity and privacy.¹⁸

The proposed amendments also create a specific regime only for the content distributed electronically and not for the print media, thus creating a different legal treatment for the same content. The law is also unclear on the manner and scope of its implementation as it does not state whether individual bloggers or personal sites will be included in its provisions. Such broad definitions expose journalists to situations of pressure and arbitrary actions thus forcing them to resort to self-censorship.

In its opinion on the government's regulatory proposal, the Venice Commission underlines that, in Albania, there is a widespread perception that the Audio-visual Media Authority and its Complaints Council are neither independent of political and corporate pressure nor professional.¹⁹

¹⁷ Reporter.al 2020, Rama i vendosur për ligjin e medias që rrezikon negociatat me BE. Available at: <https://www.reporter.al/rama-i-vendosur-per-ligjin-e-medias-qe-rrezikon-negociatat-me-be/>

¹⁸ Albania Parliament 2020, Projektligji "për disa ndryshime dhe shtesa në ligjin nr.97/2013, "Për mediat audiovizive në Republikën e Shqipërisë", Të ndryshuar. Available at: <https://www.parlament.al/ProjektLigje/ProjektLigjeDetails/51247>

¹⁹ European Commission for Democracy through Law (Venice Commission). (2020). Albania - Opinion on Draft Amendments to Law N°97/2013 On the Audiovisual Media Service. Available at: <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>

According to the draft law, AMA and the Complaints Council are given a lot of authority and wide discretion in decision-making and they can issue punitive fines to online media outlets, administrative measures that can be executed immediately without the need to wait for court review.

The proposed amendments to the media law as part of the so-called 'anti-defamation package' have been opposed by local and international media organizations, including the European Centre for Press and Media Freedom (ECPMF), European Federation of Journalists (EFJ), South East Europe Media Organization (SEEMO), International Press Institute (IPI), Reporters Without Borders (RSF) and Committee to Protect Journalists (CPJ), which have expressed the view that state regulation of online media is contrary to international best practice and guidelines which call for self-regulation of online media outlets.²⁰

Online media self-regulation

In response to the government pressure to regulate online media outlets through the Audio-visual Media Authority, in February 2020 a group of media outlets signed an agreement to create a joint self-regulatory body.

The Alliance for Ethical Media was established with the support of the Albanian Media Council, the European Union, the Council of Europe, UNESCO and the Embassy of the Netherlands, including a total of 19 media outlets that signed the Memorandum of Understanding.²¹

The main goal of the signatories and key members is to encourage online media outlets to report in compliance with the Albanian Journalistic Code of Ethics. Each member of the Alliance displays a banner on their website and if a citizen has a complaint about an article, clicking on the banner takes them directly to the complaints' platform. The Alliance has elected the Board of Ethics, which is the body that reviews complaints from the public about online media ethics violations. Members of the Alliance are required to accept the Board's decisions and if a citizen is still not satisfied with the outcome, or the online media outlet refuses to cooperate, they can proceed to court.

In its 2020 Progress Report, the European Commission, states that Albania should strengthen its media self-regulation mechanisms. The Venice Commission also encourages the Albanian authorities to support the setting-up of an effectively functioning and independent self-regulatory body, involving all relevant stakeholders of the media community, and capable of ensuring an effective and respected system of media accountability in the online media field through self-regulation.²²

²⁰ ECPMF. (2019). "Albania: Preliminary Findings of the Joint Freedom of Expression Mission" by the European Centre for Press and Media Freedom. Available at: <https://www.ecpmf.eu/albanian-authorities-pursue-highly-problematic-media-laws-despite-public-outcry/>

²¹ Albanian Alliance for Ethical Media Establishes Self-Regulation Mechanisms, Council of Europe. Available at: <https://www.coe.int/en/web/tirana/-/albanian-alliance-for-ethical-media-establishes-self-regulation-mechanisms>

²² European Commission. (2020). Albania 2020 Report.

Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

Nowadays, when digitalization has become a part of daily life, increasing and enabling the dissemination of information on a large scale and in record time, and when government intervention has become complicated, self-regulation seems to be a solution that provides improvement and accountability regarding the materials distributed on the Internet and offers more flexibility than state regulation, thus preventing abuse or arbitrary restriction of the right to speech. Self-regulation can help preserve media independence and protect it from government interference.

Conclusions and Recommendations

After carefully reviewing the various policy options, context, opinions and best practices related to the strengthening of ethical reporting and professionalism in Albania's online media outlets, the authors of this policy paper came to the following conclusions and recommendations.

- Based on the obligations laid down in the Albanian Constitution and the European Convention of Human Rights, the Albanian government should act carefully in introducing legislation that restricts media freedom and freedom of expression.
- Any new legislation that Albania drafts on online media regulation should be in line with the opinion of the Venice Commission on the draft amendments to the Law on Audio-visual Media.
- Any efforts to pass regulations on online media outlets that are not in line with the opinion of the Venice Commission will have a negative impact in terms of delaying or blocking the accession negotiations between Albania and the European Union.
- Any efforts to pass regulations on online media should be done in consultation with the civil society, media associations and all relevant stakeholders in an open and transparent legislative process.
- In line with international best practices and recommendations from professional associations, Albanian authorities should opt to strengthen self-regulatory mechanisms as the best path forward in advancing professionalism and ethics in online media outlets.
- Journalists and media associations ought to do more to improve the standards of reporting and journalistic ethics in online media outlets in Albania.

