

MONITORING EU GUIDELINES IN ALBANIA

REGULATOR AND PSB EXPOSED TO POLITICAL POWER RELATIONS

by ILDA LONDO

This report briefly assesses independence and transparency of the media regulator and public service media in Albania in 2014 and early 2015 taking into account the indicators in the Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020.

THIS REPORT WAS PRODUCED IN MAY 2015 by the SEE Media Observatory as a contribution to the 2015 assessment of two results – independent and professional regulators, and public service media – elaborated in the Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020. The content of the assessment follows the indicators included in the EU Guidelines.

INDEPENDENCE AND PROFESSIONAL CONDUCT OF THE REGULATOR

INDEPENDENCE AND TRANSPARENCY IN LEGISLATION AND IN PRACTICE

The regulatory authority of the broadcasting sector in Albania is the Audiovisual Media Authority (AMA) (until April 2013 it was known as the National Council of Radio and Television - NCRT).

The Law on Audiovisual Media (2013) describes AMA as “a public independent legal entity” (Article 6). There are detailed provisions on conflict of interest for AMA members (Article 7): members of the regulator cannot be members of political parties and associations, candidates for MP or MP in the last two parliamentary terms, candidates for local government units in last elections, members of Council of Ministers or prefects for the last three years, or members of the Council of Complaint or Electronic and Postal Communications Authority (AKEP) (including employees). They also cannot own shares or be members of directing or advisory bodies in commercial associations related to audiovisual media, advertisement, content production, or electronic communication networks. AMA members must not make public political statements that would affect their objectivity. Although the law states AMA members should be free from political or financial influence (Article 7), it does not further specify how this is achieved and the election of the members is done by the MPs eventually.



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With regards to transparency, AMA is obligated to publish part or all of its expenses and revenues (Law on Audiovisual media, Article 102) on its website, and should submit annual report to the parliament (Article 28.) Until April 2013, the regulator was obliged to publish its decisions online and in the Official Gazette, but the current legislation no longer specifies this requirement. With the new law on access to information (2014), each public institution has to draft a transparency program, assign an information coordinator and keep a register of FOIA requests and make it available online. AMA has complied so far with these requirements, but it is early to speak of transparency record, given the novelty of the law.

The regulator's tasks include proposing and drafting new legislation. AMA has been a part of the working group for the new law on audiovisual media which went into force in April 2013. There have been no new legal initiatives in 2014, but the regulator is generally consulted when there are such legal initiatives. Furthermore, AMA is consulted as a relevant stakeholder in topics of media regulation changes. In recent years, consultations with relevant stakeholders (representatives of media industry, civil society and foreign actors) have preceded approval of laws - although the degree to which stakeholders' opinions eventually find their way in the final draft of the law is debatable, at least everyone is given a chance to participate in the discussion. However, professional organizations are significantly weaker and have lower access to policy making as compared to the more powerful business and political players. AMA has restarted the digital licensing process with a consultation meeting of five main contestants in April 2015, but one of the players complained that the consultation process was hasty and insufficient.

Although imagined as an entity free of political pressure, it is considered that the work of the regulator has been under direct or indirect influence of the political actors in the country. Firstly, the mechanism for election of the members of the regulator reflects the power-relation of political parties in the Parliament. Furthermore, political dynamics in the Parliament appear to have a direct influence on ability of the regulator to function: for most of 2014, AMA was unable to function because it lacked the quorum and new members due to political deadlock. In addition, in 2014 there were several attempts and legal disputes started from the ruling majority, which claimed that the term of the then chair of AMA had in fact expired. The opposition rejected these claims, but the chairwoman was eventually suspended, after the start of a criminal investigation. This led to a renewed crisis between the two political factions. Currently, even though AMA has six of the seven members it should have, it still cannot meet the quorum - two representatives of the opposition refuse to participate in meetings, claiming that the current chair and new members of AMA, elected only by the ruling majority, lack legitimacy. A trial is ongoing in this respect, started by the opposition. Hence, political fight and inability to agree on election procedure has a direct impact on AMA operations.

ALTHOUGH IMAGINED AS AN ENTITY FREE OF POLITICAL PRESSURE, IT IS CONSIDERED THAT THE WORK OF THE REGULATOR IN ALBANIA (AUDIOVISUAL MEDIA AUTHORITY, AMA) HAS BEEN UNDER DIRECT OR INDIRECT INFLUENCE OF THE POLITICAL ACTORS IN THE COUNTRY. THE MECHANISM FOR ELECTION OF THE MEMBERS OF THE REGULATOR REFLECTS THE POWER-RELATION OF POLITICAL PARTIES IN THE PARLIAMENT. FOR MOST OF 2014, AMA WAS UNABLE TO FUNCTION BECAUSE IT LACKED THE QUORUM AND NEW MEMBERS DUE TO POLITICAL DEADLOCK.

FINANCIAL AUTONOMY OF THE REGULATOR

Since 2006 the regulator does not receive funding from state budget, most of its revenue comes from license issuing and fines collection. AMA can request state funding “in cases it evaluates that some expenditures are necessary for the discharge of its functions and they are of a special type and for which there is no other means of funding.” However, there is no guarantee that it will receive such funding. AMA has currently asked for state funding regarding digital switchover process, and the first two attempts have been denied. Overall AMA budget in the last years has been relatively stable, but its realization is highly dependent on fees that operators pay, and their payment is not always timely, which makes the budget uncertain to some extent. In addition, AMA receives 20 percent of the fines placed on audiovisual media, but AMA reports indicate that collection rate of fines is low and that the collection process is lengthy. All these factors create a sense of financial insecurity and instability for the regulator.

Media outlets have to submit annual financial reports to the tax office and to the Audiovisual Media Authority, but they are not required to make ownership or finances public in a more general sense. The media outlets do not always respect this obligation: in 2014 AMA reported that 122 operators out of 258 active ones submitted financial reports to AMA. The regulator provides general data on financial reports of media outlets, but does not publish them separately. The Law on Competition Protection (2003) applies to all commercial organizations, including media companies. The Competition Authority is in charge of all cases related to competition, and no special rules are envisaged for media. In practice the Authority has never intervened in media sector, therefore no fines have been imposed thus far.

REGULATION OF MEDIA OWNERSHIP AND STATE ADVERTISING

The 2013 Law on Audiovisual Media (Article 62) specifies restrictions for media concentration and cross-ownership. One natural or legal person cannot own more than 40 percent of a media company with a national license, and the owner of a national license cannot own more than 20 percent of another company that owns a local or national license. Not more than two local licenses (one audio and one audiovisual) are allowed per owner while the overall ownership must not exceed 30 percent of advertising market. However, there is no official information about the size of the advertising market in general, though there are private companies that provide that information. Most of these rules are formally enforced; however, there are constant speculations about the hidden ownership or abuse of the limitations of ownership shares.

On 24 April 2015, an MP from the ruling majority submitted a proposal to completely repeal Article 62 of the Law on Audiovisual Media, and just leave media ownership regulation to the Competition Authority. The proposal was

just submitted and has not been discussed yet, but this is a dangerous development regarding media pluralism and prevention of monopolies.

Print and audiovisual media cross-ownership is allowed. “State advertising” is poorly regulated – the regulations are unclear or cannot be enforced. Media analysts evaluate that State advertising in the past has been preferential to media that support Government and that the state advertising has not been guided by economic, but rather political criteria. State advertising is non-transparent: volume and share per media is not publicly available. In addition, there is no official information about the size of the advertising market in general.

Certain policies, such as price subsidy for newspapers, affect all media without discrimination. In 2014, there have been several cases when it was alleged that media close to the government, through other companies they owned, benefited from public funds. The concept and practice of media subsidies are not applied at all, so there is no regulation and no public body that could monitor this field (including the Competition Authority). The information on funds given to each media is not published in a transparent manner. There are ways of tracking the expenditure of state treasury to different actors, but it is not published in a transparent and pro-active way for the sake of transparency as such.

The new Government (that came to power in September 2013) made it one of its campaign and program priorities to stop state advertising and clientelistic relations with the media outlets. However, there have been several cases when media analysts have alleged that public funds were channeled as advertising to media close to the government, or for other activities to companies owned by or related to media owners. There is no transparency in advertising expenditures of big state-owned companies. Payments made from the state treasury can be accessed online for main state institutions, but they are not always clearly labelled as advertising and they can go to other companies, instead of the media company, hence not easily tracked. The volume and share of this kind of advertising per media outlet is not made public. Policy makers generally do not conduct sector analysis. The audience measurement is conducted by commercial companies, it is not public information (available only upon payment), and it is not used as a factor in policy-making.

POLICY AND PRACTICE

There is a tendency to copy-paste media laws from other countries, sometimes making the laws inapplicable and clashing with reality on the ground. There is no specific legislation pertinent to informal economic pressure on media, thus there are no legal checks for such pressure. The Law on Audiovisual Media enables the Audiovisual Media Authority for electronic media (no such regulator exists for the press) to conduct analysis related to development of electronic media, which may include market situation as well, but so far they have not done it yet. There is no such regulator for print media.

Media analysts claim that business interests significantly curb independent reporting in Albania. The process of privatization has not been problematic since there has been no privatization - the old media have disappeared and new media have been established.

PUBLIC SERVICE MEDIA

PUBLIC SERVICE REMIT

The Law on Audiovisual Media (Article 91) defines the statement of purpose of the public service media – Albanian Radio-television (RTSH) – as follows:

“As a media service provider devoted to the most noble ideals of national public broadcasting service, the [RTSH] shall deliver qualitative radio and television services to inform, educate and entertain the public, serving the nation, all the society groups, including the minority groups.

The [RTSH] is committed to an impartial coverage of the local and international news.

The [RTSH] shall deliver programs that reflect the listeners and viewers of all ages, the diversity of Albanian life. The [RTSH] shall prepare qualitative programs of value, in order to enrich the mental and spiritual world of the people.”

The main aims of the RTSH are, summed up: to respond to the interests, demands, and concerns of the entire population and to pay a special attention to diverse elements of the Albanian culture and language; to support values of the Constitution, including freedom of expression and right to information; to provide a wide range of programs in the Albanian language that reflect cultural diversity, entertain, inform, and educate the public, to ensure coverage of sports, religious, and cultural events, and to meet the expectation of the public in general and minorities, in particular; to provide domestic and foreign news and current affairs programs and coverage of the parliamentary activities, and to help and facilitate the expression of modern culture and encourage innovation and experimenting in the field of broadcasting.

In order to fulfil the main aims, particular objectives put before the RTSH are: to set up, maintain, and put into operation a national audio and audiovisual broadcasting service, which should be as free and accessible as possible for all citizens; to set up, maintain and put into operation transmission stations; to provide a teletext service and web page; to set up and maintain an orchestra; to help and cooperate with relevant public institutions in the distribution of information in case of a state of emergency; to set up, maintain, and put into operation a broadcasting service accessible as much as possible to the Albanians outside Albania; to set up, maintain, and put into operation, upon approval from the AMA, local and regional broadcasting services and services for different

STEERING COUNCIL HAS FAILED TO TAKE AN ACTIVE ROLE IN MONITORING AND GUIDING RTSH PERFORMANCE. NORMAL FUNCTIONING OF THE STEERING COUNCIL HAS BEEN HINDERED FROM DYNAMICS IN THE PARLIAMENT. POLITICAL DEADLOCK BETWEEN THE RULING MAJORITY AND THE OPPOSITION RESULTED WITH MORE THAN A YEAR DELAY WITH ELECTION OF ALL MEMBERS OF THE NEW STEERING COUNCIL.

social groups; to set up, maintain, and put into operation on-demand nonlinear audiovisual broadcasting services; and to set up, maintain, and put into operation national multiplexes.

Representatives of PSB were part of the working group that drafted the 2013 Law on Audiovisual Media, along with representatives from other groups. However, it is not clear to what extent the feedback from groups and associations was reflected in the current law. Other than hearings before the Parliamentary Commission, there have been no broader public consultations. The law stipulates that PBS will refrain from bias in the coverage of news events (Article 91). However, media analysts find that editorial independence is weak. Generally, RTSH, to varying degrees, is a permanent client of each ruling majority, especially in its news programmes. The opposition, parts of civil society, and commercial media outlets constantly criticise the TVSH news programme for open support to the Government or for failure to be an ally to public interest.

Supervisory board (called Steering Council) has 11 members, which should come from professional associations (relating to media and other relevant fields), and are elected in a manner that reflects political balance between ruling majority and opposition in the Parliament (Law on Audiovisual Media, Article 94). There is a merit system for selecting members of the Steering Council: no less than 10 years' experience in the areas of media, broadcasting, content, media technology, competition, Albanian language development, art, vulnerable groups, law, technological development, and consumer protection (Law on Audiovisual Media, Article 93). However, though appointed members usually fulfil these merit requirements, the way they are elected in the Parliament makes it easy to favour political alignment instead of professional merit.

A wide array of groups/associations are invited to propose individuals (for membership in the Steering Council) to the Parliamentary Commission for Education and Means of Public Information (Article 94), such as the electronic media associations and print media associations, or the senates of public universities. However, the short-listing is then done by the MPs in the Commission and then voted in the Parliament, so there is no guarantee that all groups will be represented.

Over the years, it seems that the Steering Council has failed to take an active role in monitoring and guiding RTSH performance (both management- and programme-wise), as it is supposed to do. Furthermore, normal functioning of the Steering Council has been hindered from dynamics in the Parliament. Political deadlock between the ruling majority and the opposition has led to a situation where the mandate of all members of the Steering Council was expired for more than a year and the political parties in the Parliament did not agree to proceed with the election of new members. The election of final five members finally took place in April 2015, where the opposition agreed to elect five members, while the ruling majority had previously elected the other five members on its own in December 2014.

FINANCIAL AUTONOMY AND SUSTAINABILITY

PSB financing is relatively autonomous, but its sustainability depends on various factors and structures. The legislation lists a wide range of funding possibilities: subscription (licence) fees, advertising, services to third parties, state budget, selling its programs, public shows and performances, sponsorship and donations (Law on Audiovisual Media, Article 113). The subscription fee is very low – approx. 8.5 EUR per household for a whole year, payable in monthly rates. Though the fee is issued as a part of electricity bill, the collection rate has been lower than it could be due to problems in transmission of funds from electric company to RTSH. In 2014–2015 the government started an action that aimed to collect unpaid bills and as a result the collection of the license fee for RTSH also substantially improved. The improvement resulted with the increased revenue of the RTSH in 2014.

On one hand, RTSH gets revenue from the license fee. On the other, RTSH does not seem to have the upper hand when competing for advertising with commercial television stations. Having in mind also the funds needed for digital switchover, the funds at RTSH disposal are not sufficient for fulfilling public service remit.

State funding or state guarantees for taking bank loans is currently crucial, in the wake of a digital switchover. In March 2015, RTSH signed a contract with a foreign company that will build its two transmission networks. The needed budget for these platforms was estimated to be approximately 26 million EUR (according to the 2012 Strategy for Digital Switchover). It is expected that the government will provide the necessary guarantees for RTSH to receive the loan to cover the building of these platforms, but this is still under review and the contract has not been made public.

Public broadcaster signed the contract for building its two digital networks with a foreign company following a long legal dispute of the tender for this purpose, which was first announced in spring 2013 and then annulled by the then-Minister of Innovation. The legal dispute was concluded and the firm was announced the winner in September 2014. The final contract was signed in March 2015, after negotiations among the firm, the PBS, and the Ministry. Neither the negotiations, nor the final contract are public. According to the Ministry the contract will not be made public, as it is considered a secret contract, under the Law on Public Procurement.

The PSB is required to send an annual report (including a financial one) to the Parliament (Law on Audiovisual Media, Article 102). However, although the public can request such pieces of information, there is no pro-active approach in offering them (for instance, at the time when we are writing this report in April 2015, the 2014 financial report is not available on the RTSH web-site).

The current Law on Audio-visual Media states that a Council of Viewers and Listeners should be set up to address viewers' complaints (Article 111). Since April 2013 when the law was enacted, the body has not been established

yet, due to the problems with elections of the Steering Council and Director. There is no code of ethics at the RTSH. There are no public polls and surveys on public's trust in the public broadcaster in Albania. Also, there are no audience measurement data.

AUTHOR

ILDA LONDO holds a degree in Journalism/Political Sciences. She is currently employed as a Research Coordinator at the Albanian Media Institute.



This report has been produced with the financial assistance of the European Union. The contents of the report are the sole responsibility of the Peace Institute and the authors, and can under no circumstances be regarded as reflecting the position of the European Union.

The report has been produced within the project South East European Media Observatory, <http://www.mediaobservatory.net>.

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AUTHOR Ilda Londo EDITOR Brankica Petković
PUBLISHER Peace Institute, Institute for
Contemporary Social and Political Studies, Metelkova 6,
SI-1000 Ljubljana, Slovenia, <<http://www.mirovni-institut.si>>
DESIGN DAK, Ljubljana, May 2015