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GATEKEEPERS AND INTERMEDIARIES ALBANIA



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GATEKEEPERS AND INTERMEDIARIES

ALBANIA

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The report provides an overview of the legislation affecting freedom of expression, rather than media and information freedom laws, as well as the potential mechanisms used to limit freedom of expression. In this respect, the project analyzes the current trends in legislation and potential “attacks” to freedom of expression from the debate on media ethics, privacy, state secrets, and other rights that might limit freedom of information and freedom of expression.

Freedom of expression vs. other rights

The Albanian legislation guarantees freedom of expression in principle and in detail in other laws, such as the law on press, audiovisual media, etc. In terms of the very relevant debate now on freedom of expression vs. the right to faith, the legislation has adopted a generally neutral stance, highlighting the secularity of the state. “The state is neutral in issues related to faith and guarantees the freedom of their expression in public life. The state recognizes the equality of religious communities.”¹ So far no complaints involving freedom of the press and expression and the discrimination based on religion have been brought against the Commissioner for Protection against Discrimination.

Albania does not have a blasphemy law and does not specifically address the balance between the respect for religion and the freedom of expression in any particular regulation. Perhaps the regulation that can be mentioned here is that on hate speech in general, regulated in the Penal Code, which means that it is applicable to all citizens, and it is not media-specific. Article 265 states: “Incitement of hatred or conflicts between nationalities, races, and religions, as well as the preparation and dissemination of articles with such content is punishable through fine or imprisonment, up to 10 years.” In addition, article 266 further details the prohibition of hate speech: “Endangering public order by calling for hate against parts of population, insulting and slandering them, demanding the use of violence and arbitrary actions against them, is punishable through fine or imprisonment, up to five years.” So far there have been no public cases concerning the use of these articles in the media.

Clearly, Albania could not be immune to the ongoing developments in the war against terrorism. From the legal point of view the Albanian government adopted specific legislation and a tougher stance after the concerning reports that an increasing number of Albanians had fled to Syria to join ISIS. In 2014 the Parliament approved amendments to the Penal Code, outlawing the practice of Albanian citizens that went to fight in another state, including engaging in calls for such a fight: “Public calls of any form, tool, or way to engage in the penal offense [call for participation in violent military action in a foreign state] are punishable by three years in prison.”² However, no further security measures or close monitoring of the attempts to limit the freedom of expression - by the government or the official representatives of the religious communities - accompanied these amendments and the public debate in general. In the two debates on the media coverage of religious extremism that the Albanian Media Institute organized in 2016 and 2017, representatives of all religious communities highlighted the need to educate people on religion, with media help, in order to preserve the current religious co-existence in the country. However, concerns regarding the online content, especially user

¹ Constitution of Albania, Art.10.

² Penal Code.

comments, which incite religious division, or hate speech in general, are obvious, even though for the moment they have not translated into particular initiatives to take action on this matter.

In terms of other regulations, such as pornography, or gambling, there are no indications that link these specific regulations to any particular limitation of freedom of expression, based on “morality” or similar clauses.

Overall the legislation guarantees the freedom of expression, including media freedom, in a satisfactory way and so far there has been no friction between freedom to believe and freedom to express oneself in the media, at least not in the realm of legislation and case law.

Limiting transparency and access to information through regulation

Albania’s new access to information law was approved in September 2014 and is considered a very good and progressive law, allowing for maximum disclosure of information. However, this does not necessarily mean that journalists and citizens will receive the information they ask for, especially if the information is sensitive. The main excuses used to limit the access to information seem to be related to classified information, commercial secret, and the right to anonymity and private life. There are several organizations that work on enabling access to the documents considered classified, such as Respublica, and BIRN Albania, in view of their reports based on official documents. Furthermore, the law on access to information assigns to the Commissioner on the Right to Information the competence to examine complaints, conduct hearing sessions between the sides involved, and order that transparency is secured, if necessary. In this context, in the last two years the number of complaints the Commissioner has received has increased significantly: from 24 complaints in 2014, to 274 in 2015, and up to 684 complaints in 2017³. In most cases the Commissioner has ruled in favor of transparency and access to documents and the cases have involved both commercial secret and state secret claims.

In one of the cases, BIRN Albania reporters asked for the main documents of two projects relating to concessions granted by the government, which were denied from the Ministry of Energy and Industry on claims of commercial secret, while the Commissioner ruled that the information should be made public. “Such a decision, the first of this kind, set an important precedent on the transparency requested from public institutions in the cases of concession procedures, a transparency that so far has been denied by institutions on different arguments, such as commercial secret, ‘internal use documents’, ‘intellectual property,’ etc., arguments which the Commissioner considered as invalid considering the Law on the Right to Information and the law on concessions.”⁴

Similarly, another case is 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 the administrative court, which upheld the Commissioner’s decision. In this regard, Darian Pavli, a well-known lawyer working

³ Commissioner’s website: www.idp.al

⁴ Gjergj Erebara, “Komisioneri per te drejten e informimit urdheron transparence per koncesionet,” reporter.al, <https://www.reporter.al/komisioneri-per-te-drejte-informimi-urdheron-transparence-per-koncesionet/>

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 paved the way for access to studies of history on the past and responsibility for the present.”⁵

In addition, court decisions and transparency are another problem area for journalists when it comes to getting information. Up until 2016 the courts that had a website contained statistics and searchable online databases on the ongoing, past, and recent court cases and respective documents and decisions. After the Commissioner on Data Protection had made two recommendations dating from 2011 and 2012 with the aim to protect the privacy of persons involved in court cases, in 2016 the Minister of Justice provided instructions for enacting these recommendations, making online databases obsolete due to anonymization of court cases. In practice, in order to receive a court decision or other information on a court case, one has to apply with the court secretariat and receive a decryption code, which has slowed down the work of journalists significantly. “Receiving information now is completely different, as in order to obtain a court decision now you need at least a week,”⁶ said Elton Qyno, journalist. Apart from the time factor, it becomes increasingly difficult for journalists to write on trends, statistics, phenomena, and very sensitive issues, such as the double standards of judges. Another journalist that reports on courts, Flamur Vezaj, said that “the anonymization of the data has helped a particular category of judges, who hide from the public opinion or the commissions that will be established (as in the process of vetting), which would enable to see what standard a particular judge has had in the different court cases.”⁷

Online media regulation

The Albanian legislation approach to online media regulation has been rather liberal, regulating some technical aspects, but not intervening in terms of content. More specifically, legislation states that any legal or physical person is free to offer services of information society without any preliminary authorization or any other similar requirement. In fact, there is no obligation for online media to register with any authorities. The only request they have to make is to the regulatory authority on electronic communication, if they want to obtain a domain ending in .al, but even this is a formal requirement, which applies to all websites, not just to media, and which does not meddle with the content of the websites.

The main law that aims to regulate information service providers is the Law on Electronic Commerce, setting up basic guidelines on information society services, based on EU e-commerce regulation. More specifically, the law regulates the mere conduit of information, stating that the service provider carrying information is not responsible for the information, if the provider does not initiate the conveying of information, does not choose or modify the content of the information the provider carries, or does not choose the provider of information⁸.

⁵ D. Pavli, qtd. in BIRN, “Gjykata urdheron SHISH te deklasifikoje dokumente te arkives se ish-Sigurimit,” <https://www.reporter.al/gjykata-urdheron-shish-te-deklasifikoje-dokumente-te-arkives-se-ish-sigurimit/>

⁶ E. Qyno, qtd. in Aleksandra Bogdani, “Beteja e gazetareve kundër anonimizimit: Minon transparencën në gjyqësor,” <https://www.reporter.al/beteja-e-gazetareve-kunder-anonimizimit-minon-transparencen-ne-gjyqesor/>

⁷ Ibid.

⁸ Law no. 10 128, “On Electronic Commerce”.

According to e-commerce regulation service providers that offer access to information for third parties are not liable for the information in case they are unaware of the illegal nature of the information, but once they become aware of such nature, they should remove the information⁹. Furthermore, the law states that the service providers do not have the obligation to monitor the information and prevent illegal use of information. At the same time, the service providers of information society should notify immediately the responsible authorities if they suspect that the users of their services are involved in illegal activity or have submitted illegal information.

Starting from 2015, the Ministry of Innovation and Public Administration has initiated a process of amending current regulation, in order to “clarify the services covered in this area and the legal definition of information society services, as well as to determine deadlines related to implementing the existing rules, in order to better implement the current legal regulation on information society services.”¹⁰ The main novelty, and the most disputed one in the case of this amendment¹¹, is related to the responsibility that the amendment imposes regarding hosting. The amendment specifies that the service providers do not bear responsibility for the content if they are not aware of any illegal action or content. In addition, the amendment stipulates that the portals do not bear responsibility if, when notified or informed of illegal action or content, they act quickly to remove the access to the information, namely the “notice and take down” clause. The proposed procedure in this case is the following: within 24 hours from the court decision or the request from the responsible authority, the information is removed from the portal. Also, if an affected actor informs the service provider of the nature of information, the service provider notifies the responsible authorities and removes the information from the portal, until the official authority makes a decision. The current legislation (Art.22) also stipulates sanctions of ALL200,000 (approx. 1500 Euro) or ALL100,000 (approx. 750 Euro) (when violation is done by a natural person) if the service provider violates the rules provided by this law, meaning that the failure to respect the “notice and take down” clause would result in financial sanctions, too.

The amendments have gone through several drafts and consultation meetings with different actors. A joint written comment¹² of the Open Society Foundation Albania and Albanian Media Institute identified three main problems with the proposed amendment:

⁹ Law no. 10128, “On E-commerce.”

¹⁰ Ministry of Innovation and Public Administration, <http://www.inovacioni.gov.al/al/legjislacioni/konsultim-publik/konsultim-publik-per-projektligjin-per-disa-shtesa-dhe-ndryshime-ne-ligjin-nr-10-128-date-11-5-2009-per-tregtine-elektronike-te-ndryshuar-versioni-i>

¹¹ The first draft of the amendment is available here: <http://www.inovacioni.gov.al/al/legjislacioni/konsultim-publik/konsultim-publik-per-projektligjin-per-disa-shtesa-dhe-ndryshime-ne-ligjin-nr-10-128-date-11-5-2009-per-tregtine-elektronike-te-ndryshuar-versioni-i>

¹² OSFA/AMI, “Comments on draft amendments to E-commerce regulation,” March 2016: <http://www.institutemedia.org/Documents/PDF/Comments%20on%20amendments%20to%20Ecommerce%20regulation.pdf>

- The impossibility of adopting a unique “notice and take down” model. In the Albanian context it would be very difficult to adopt a unique scheme that would fit all, hence sector specific solutions would be more adaptable and desirable.
- The risk of private censorship. The proposed amendment, according to the comments on the draft, created a scheme that transforms the “safe harbor” of the EU E-commerce directive in a punishing regime, weakening the editorial autonomy of portals, forcing them to remove information only based on private complaints. In addition, the scheme is hardly applicable, given that it assumes that for every field there is a competent authority to address in case of complaints, which is not the case, and which leads to deficits in democratic practice.
- The risk of administrative censorship. Only a few administrative authorities have clear legal competences and institutional autonomy to make decisions on some of the potential conflicts in the online environment, such as commissioners against discrimination, for personal data protection, for consumer protection, etc. However, the amendment’s definition of responsible authority is much broader, including also police and other agencies directly accountable to the executive power. In this context “they cannot act as arbiters in issues related to fundamental individual rights and especially on the free circulation of ideas and information on the internet.”¹³

The working group on the regulation has further amended the proposed legislation and is still working on a final version to be submitted to the parliament, pending also amendments to EU directives in this area.

However, even though in this case the government has received well the comments made to the amendment and has showed the will to reflect them, in general there is growing discontent and criticism with the practice of leaving free rein to comments in online media forums and in the section of user comments. Against a background when most media outlets either are very relaxed in their rules and moderation of comments, or allow total freedom to the users of their websites, and self-regulation initiatives have not been successful, the persons and organizations calling for restricting this freedom or imposing stronger rules and monitoring, have grown.

In this context, the most significant development in legislative efforts to regulate online media content has been the amendment proposed by MP Majlinda Bregu. This amendment was first discussed in April 2015, aiming to introduce a new article into the Civil Code, establishing the responsibility for the publication of comments that affect a person’s dignity and reputation. The proposed article further specified the civil regulation of defamation, extending to online publication. The proposed amendment would force administrators of electronic portals, including those of the media, to “prevent publication of any comment that infringes on a person's honour, personality or reputation.” If the administrator failed to prevent such publications, he/she would be held liable for the damage caused. The draft amendment also forced the administrator to delete published comments, once the person whose reputation has been harmed claims such harm

¹³ Ibid.

from the administrator. In case the administrator fails to respond to such claims and does not delete the comment, he/she again would be held liable. The draft amendment also stipulated that if the person commenting is identifiable, he/she is also liable, apart from the administrator. If the commentator was not identifiable, the liability rests only with the administrator, who is supposed to delete such comments in due time.

The main justification provided for introducing such a proposal came from the status of derogatory comments by users of online portals and social media, equally encouraged by the ruling on the Delfi vs. Estonia case. Although initially the Parliamentary Commission on Media in principle supported the proposal, they decided to wait until final decision on the Delfi case was made. Furthermore, media representatives considered the proposed bill too restrictive. In 2016 MP Majlinda Bregu clarified that she had withdrawn the amendment, considering that the Ministry of Innovation had already started an amendment of e-commerce regulation.

Online content practice: main problems and phenomena

Even though there are no legal provisions allowing for filtering or blocking a website, a recent article¹⁴ brought to the attention of the public an episode in which the general attorney had intervened to take down stories on his daughter from several portals. According to the article the head prosecutor had demanded that the Authority on Electronic and Postal Communications (AKEP) take measures against some portals that had carried a piece on his daughter's lifestyle, deeming the piece in violation of ethical norms and rules. The piece in question was first written by a media contributor on his Facebook page, based on the social media posts made by prosecutor Lalla's daughter. The piece was republished by several portals and online media in August 2016, focusing on the extravagant and luxurious lifestyle of the prosecutor's daughter. Even though the regulator, AKEP, admitted it is not entitled by law to judge on the content published in online media, and there is no such institution in the country, they said that the prosecution ranks among the authorities entitled to assess whether the content of an article is illegal, and for that reason they felt obliged to pass on the prosecutor's request to the online media to delete the content in question¹⁵. This case displays two phenomena: first the reflection of general and growing public concern regarding the often unethical conduct of especially online media. Second, the case displays a misuse of public position for personal interest and a risky precedent in terms of trying to control and censor unfavorable media content, even though the law does not seem to clearly allow any such influence.

In practice so far there have been no other indications of government or state bodies trying to impose filters or take down specific websites. In fact, sometimes the government websites have been hacked and temporarily out of order due to unidentified interventions. However, a few isolated episodes have shown that there are sometimes attempts to temporarily silence or manipulate a website. For example, immediately before the general elections of June 2017 the website of one of the daily newspapers, Shqip, was cloned and contained clearly anti-government news, contrary to the usual editorial line of the newspaper. Similarly, a few newspapers, most notably Gazeta Tema, have sometimes reported that the website had been hacked or temporarily put out of order.

¹⁴ Klodiana Lala, "Adriatik Llalla keqpërdori autoritetin e prokurorisë për të censuruar mediat", reporter.al, <https://www.reporter.al/adriatik-llalla-keqpërdori-autoritetin-e-prokurorise-per-te-censuruar-mediat/>

¹⁵ Ibid.

A public dispute in this context has been that of Habjon Hasani, from Hashtag website, against Carlo Bollino, director of Shqiptarja.com. In October 2016, the news portal Hashtag.al, led by Habjon Hasani, was temporarily taken down, after complaints from Carlo Bollino, a well-known Italian journalist that has founded several media in Albania in the last 20 years. Bollino's claims were that Hashtag was using his photos without permission and the website was spreading false information¹⁶. According to Hasani the block stemmed from a series of articles published on the "arbitrary firing of journalist Alida Tota and the motives or truth on what was happening in the landfill of Sharra."¹⁷ The blocking of the website also extended to reports made for Lolita, a Facebook page and community, which is highly popular in Albania, after publishing a comment on the blocking of Hashtag. According to Bollino, Lolita's post contained a vulgar and denigrating message on him and his family, so he asked Facebook to take the post down, which they did, putting Lolita on Facebook's grey list¹⁸. The website was reinstated after changing its address, but the episode illustrated new opportunities for the war within the media itself, a war accentuated by personal relations and political alignments, too, but showing how technology can be used to block or filter information, even temporarily.

Social media and freedom of expression

The use of social media is mostly free and there are no indications of companies imposing policies on their employees regarding the use of social media. However, even though written policies on this matter seem absent, this does not mean that the activity of employees is not monitored or frowned upon in some cases. A recent case was that of Simon Shkreli, and his wife, both fired from a local TV station in Shkodra in April 2017, where they worked as anchors and journalists. Shkreli claims that the management did not provide an explanation, but he linked the decision to fire him and his wife to a strong Facebook status he had posted on the election of the new president, as well as to previous posts highlighting his disagreement with government, and not to professional reasons¹⁹. "I expressed my own opinion on the election of the new president, which I posted on my private page on Facebook. During my professional life I have never gone beyond the frame of editorial policies. I have tried to be correct with my job and workplace. However, monitoring my private life and personal opinions is unacceptable for me."²⁰ The management of the TV later declared that Shkreli had been publicly a member of the opposition party for a few years now, so that could not be possibly the reason for their firing. On the whole, though, there are many journalists that often express their opinions, often anti-government, on the web, which has not brought any repercussions, so social media use and its effect on freedom of expression should rather be viewed case by case.

Another way that Facebook or social media activity can be used against journalists is that of persons suing journalists or other people because of information spread across these networks.

¹⁶ Habjon Hasani, "Gjashte ditet pa HASHTAG-un", <http://www.hashtag.al/index.php/2016/10/20/gjashte-ditet-pa-hashtag-un-ose-nje-rrefim-per-paranojen-pjaten-dhe-fytyren/>

¹⁷ Ibid.

¹⁸ Shqiptarja.com, "Carlo Bollino arrin fitoren e dyte kunder shpifesve profesioniste," <http://shqiptarja.com/analiza/2709/carlo-bollino-arrin-fitoren-e-dyt-kund-r-shpif-sve-profesionist--380292.html>

¹⁹ Dritare.net, "Flet çifti i gazetareve që u pushuan nga puna, për një status FB: Na hoqën "all inclusive"" <http://www.dritare.net/2017/04/30/ekskluzive-flet-cifti-i-gazetareve-qe-u-pushuan-nga-puna-per-nje-status-fb-na-hogen-all-inclusive/1>

²⁰ Ibid.

One such case is that of Artan Rama, producer of the Publicus program, who in November 2016 was sued for his article posted on the Facebook page of the Publicus program, and later republished by several portals. The program was an investigative program shut down after only three episodes by Vizion Plus management. The owners of Vizion Plus are also the owners of Edil-al, a company that had won the tender for the reconstruction of the National theatre, “thanks to non-transparent and dubious practices, containing also a conflict of interest.”²¹ While Rama claimed that the lawsuit is a continuation of pressures against journalists, one of the owners of Vizion Plus, interviewed by BIRN Albania, said that journalists should learn to be responsible about what they write and say, and bear the responsibilities if they are wrong²². In the same way as above, these episodes, luckily, are not frequent within the media landscape in the country, but they are certainly something to keep an eye on and a concerning trend for the future.

Conclusions

Overall Albanian legislation guarantees the freedom of information in a satisfactory and balanced way. However, the calls demanding a stricter media regulation, especially concerning online portals and the UGC content, are becoming more frequent. The argument of these people is also aided by the failure of media to establish self-regulatory mechanisms and apply adequate policies to the users of online comments. The latest amendments introduced to online content regulation and the debate that ensued testify both to the sensitivity of the argument and to generally unprepared or unwilling actors to tackle the problem in a way that would preserve both ethics and freedom of expression.

On the other hand, adopting stricter regulation or often hiding information under the “secret” or “classified” term, is another practice of limiting public information or media’s and citizens’ access to official information, in spite of continuous struggles to access information. At the same time, there have been cases when the use of social media, while generally free, can also be harmful and have a chilling effect on journalists, due to potential lawsuits or even other measures.

²¹ Besar Likmeta, “Regjisori i ‘Publicus’ paditet per shkrimin e botuar ne Facebook,” <https://www.reporter.al/regjisori-i-publicus-paditet-per-shkrimin-e-botuar-ne-facebook/>

²² Ibid.

