



Swedish Helsinki Committee

for Human Rights



European regulation and Albanian media legislation:

A comparative analysis of the main standards

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Introduction of comparative analysis of EU standards and Albanian media legislation

After signing the Stabilization and Association Agreement (SAA) with the European Union (EU) on 12 June 2006, the Albanian government has set EU accession as its highest national priority. The EU gate-keeping role has become a motor of reform, while the SAA serves as a catalyst for concrete changes. In this context, harmonizing Albanian legislation with EU standards and regulation is one of the next immediate areas that need reforming in the country, media legislation included.

In this framework, Albanian Media Institute, with the financial support of Swedish Helsinki Committee, carried out a comparative study of Albanian media legislation vis-à-vis European standards. When talking of media legislation, object of this study were those laws, regulation, standards, etc., which affect media content, and not its technology-related aspects. As a result, this study examines the Law on Electronic Media, the Law on Access to Information, the Law on Protection of Personal Data, the Law on Information Classified as State Secret, the Law on Defamation, and the Law on Copyright.

Although by no means exhaustive, this analysis tries to compare the main standards set by EU Directives and Regulations in these areas to the existing Albanian legislation in the respective areas. Separate analysis of Freedom of Information Act or Defamation Legislation has been carried out before. By building on these previous analyses, and furthering comparison with EU standards in this area, this paper aims at providing a more comprehensive review of existing legislation and identifies potential areas for improvement.

Brief overview on history of media legislation in Albania

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

The first legislative interventions attempting to regulate the conduct of media professionals, took place back in 1993 when the then-People's Assembly (the Assembly), adopted Law no. 7756 "On Press". The Albanian law was modelled after the German state of Westphalia law and there was little effort to adjust it to the Albanian context. The input of the persons most affected by this law, namely the media community, was not considered an option at all while drafting the law. As a result, the media community soon faced what they considered to be repressive legislation.

Law no. 7756 was repealed in its entirety by the new legislature in 1997. At present, print media is regulated by the Law on the Press which comprises only the following vague and quite general statement: "The press is free. Freedom of the press is protected by law." The Parliamentary Commission on Media, the journalistic community, legal advisors, and other interested persons have at certain points since 1997 debated the need for a detailed press law and the potential shape and effect it can have on media development, and thus on the consolidation of democracy. However, the trend of laissez-faire in the field of journalism has triumphed so far and (attempts at) self-regulation rather than too much regulation has prevailed.

By contrast, regulation of electronic media is made through a fairly detailed law, Law No.8410 "On Public and Private Radio and Television." The law, which has been amended five times since its adoption in 1998, purports to regulate in detail the activity of the electronic media, including the public broadcaster, commercial television, cable, and satellite television. In 2007 the Parliament also passed the Law on Digital Television, which preserves several of the basic requirements that the Law on Public and Private Radio and Television poses.

The Law on Radio and Television established the National Council of Radio and Television (Keshilli Kombetar i Radio Televizionit – KKRT) as the main regulatory body and Steering Council of Albanian Radio and Television (Keshilli Drejtues i Radios dhe Televizionit Shqiptar – KDRTSH) as the highest ruling body of the public broadcaster. In addition to the Law on Radio and Television, two other telecommunications laws are important for the television sector. These are the Law on Telecommunications in the Republic of Albania, and the Law on the Regulatory Entity of Telecommunications, which established the second regulatory body, the Regulatory Entity for Telecommunications (Enti Rregullator i Telekomunikacioneve – ERT).

The regulatory authority is one of the areas that is undergoing significant change in the Albanian media scene. Interferences of the political establishment – by getting involved in the election of members of the KKRT, by contesting its decisions or by other means – has often complicated the relationship between the regulator and the various broadcasters. During 2006, important changes were made in the media regulatory framework, which also raised concerns about the vulnerability of the media to politics.

Claiming that the formula of balanced representation of parliamentary parties in the regulatory body had clearly not worked so far, the government’s draft law proposed a greater involvement from civil society, media associations, academia, and other similar stakeholders in proposing a pool of candidates for the regulatory authority. The legal amendments changed the composition formula of the regulatory authorities from balanced political representation to a more professional representation. However, the hasty manner in which changes in the law were carried out—in a majority-only parliamentary session in the National Assembly’s administrative building and without any preceding public debate—raised questions about the ruling majority’s intentions with this law.

Another law that is directly related to the regulation of electronic media includes sections of the Electoral Code, which impose the criteria of accuracy, fairness, and balance upon both public and commercial broadcasters. In general, the monitoring made by KKRT and other bodies have revealed that with a few exceptions, the media in general respect the percentages dedicated to each political subject as indicated by the law.

Last, but not least, other regulations affecting media concern the provisions on libel and defamation, contained both in the Penal and Civil Codes. Albanian criminal defamation features two important characteristics that clearly collide with the jurisprudence of the European Court of Human Rights. Namely, the Criminal Code provides special protection (through specific provisions) to public officials for the mere sake of their official investiture. Moreover, public officials who are defamed against need not litigate their case because the prosecution service will do so in their stead.

In practice, only the civil provisions have been used against media in the recent years. However, the problem with civil defamation law in Albania is that bringing an action in court on grounds of alleged defamation is practically not subject to any limitation period.

Since November 2004, two draft laws (prepared by Justice Initiative and Albanian Media Institute) comprising respectively proposed amendments to the Criminal Code and the Civil Code are awaiting consideration at Albanian Parliament. The initiative to amend the current legislation on defamation has featured parallel attempts of amending both criminal and civil laws. These amendments propose to completely repeal insult and libel from the criminal law, as well as introduce, among others, a mechanism that ensures proportionality of compensation to the damage suffered. Even though both government and Members of Parliament have expressed their support for these changes, the bill has yet to pass in the Parliament.

REGULATION ON ACCESS TO INFORMATION

Access to information is a world-renowned human right. However, as it is the case with every other right, it has to be balanced and limited in several directions, in order to guarantee protection of other rights and avoid conflicts in this regard. In the case of access to information, freedom of information acts are counterbalanced or limited by laws on classified information and those on protection of personal data. The same is true in the Albanian case, so each law will be analyzed separately.

1. Access to information

The fundamental right of access to public information is guaranteed by Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, this cornerstone document provides the basis for the work and case law that is examined by the European Court of Human Rights. This document tries to fully guarantee freedom of expression as a fundamental human right and at the same time also preserves human dignity against slander and other similar offences. More specifically, Article 10 is dedicated to upholding freedom of expression as an essential and inalienable right:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

In this context, the Convention recognizes the freedom to receive information without interference by public authority as a fundamental human rights and one that signatory states of the Convention should respect. Moreover, European Court of Human Rights has passed significant judgements that constitute authoritative interpretations of the Convention’s obligations and as such they are to be applied by the courts of all states parties to the Convention, whenever such questions arise.

Apart from the fundamental right as described in the Convention, EC Regulation No.1049/2001 regulates public access to European Parliament, Council and Commission Documents. The purpose of this Regulation is to facilitate access to the documents of the European institutions. It provides that citizens may access any type of document and it applies to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. Access to documents can be denied only to protect public interest, privacy of the individuals, a person's commercial interests, court proceedings, and purpose of inspections, investigations, and audits.

In this context, it is interesting to note the definition of document as "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility." This broad, but specified definition is important in terms of widening the notion of document and what could constitute a document. In addition, applicants do not need to state a reason for requesting a document, while the deadline for granting or refusing access to documents is 15 working days. In cases of refusal, the decision could be appealed in another 15 working days, while access to documents can take place either on the spot, or by receiving a copy.

In order to facilitate access to documents, each institution must provide access to a register of documents in an electronic form. In addition, the Regulation states that institutions must develop good administrative practices in order to facilitate the exercise of the right of access as guaranteed by this Regulation. Moreover, each institution publishes a report for the preceding year, indicating the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register. All these conditions imposed by the Regulation show EU commitment and respect for right to access public documents, as derived by the Convention and court rulings of ECHR.

Finally, there is another directive that regulates the right to information, Directive 2003/4/EC on Public Access to Environmental Information. Although this is an act specific to information on the environment and application and monitoring of

Community environment law, it is still an act concerning access to official information. As such, it reinforces the principles of the right to receive information, establishing a series of modalities and conditionality in this regard. However, since this directive is theme-specific and in the function of application of Aarhus Convention, it goes beyond the scope of this paper and it will not be treated in detail.

Applicable Albanian Legislation on Access to Information

Albanian legislation guarantees the right to access to public documents. This right is also recognized in Article 23 of the Constitution:

1. The right to information is guaranteed.
2. Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions.
3. Everybody is given the possibility to follow the meetings of collectively elected organs.

This right is more detailed as regulated in Law on Access to Official Documents, Law no.8503, dated 30.06.1999. According to this law “everyone is entitled, upon his request, to get information on an official document without being obliged to explain the motives of such request.”¹ Excluded from availability are those documents that are classified based on other laws (such as the Law on State Secrets or the Law on Protection of Personal Data), but in cases of denial, the public authority should provide a written explanation of the cases of refusal². The supply for information on official documents may be subjected to fees, if this supply causes expenses, but in any case the fees should not exceed the direct costs incurred for supplying the data.³

A sensitive issue on this law has been that of time limits, especially concerning journalists, who are bound by deadlines all the time. According to this law, the public authority decides whether to accept the request for information or not within 15 days’

¹ Law no.8503 on the Right to Information over Official Documents, 30.06.1999, art. 3, hereafter referred to as Law on Access to Information.

² Ibid, art. 4

³ Ibid, art. 13.

time⁴, and in case of admission, the request should be met in 30 (40) days from its admission.⁵ When the bill was being discussed journalists protested on this particular provision, claiming this delay in receiving information would harm good journalism. This timeline has also been in the focus of international organizations' analysis and recommendations. For example, an analysis of the law by Article 19, commissioned by OSCE, states that the 15-day decision-making period is in line with international standards, but "the 40-day deadline for supplying information represents an unacceptably lengthy delay to responding to applications for information and is hard to reconcile with the shorter decision-making period."⁶ In fact, considering that above-mentioned EC Regulation 1049/2001 in this area defines 15 working days as the maximum time limit for either refusing or granting access, the existing timeline is clearly in collision with EU regulation.

In fact, in 2007, the Centre for Development and Democratization of Institutions, in cooperation with Justice Initiative, New York, started a revision of the existing law, aiming to take the final amendments to Parliament, after a process of consultation with relevant stakeholders. The proposals in question⁷ are related to different aspects of this law, regarding definitions, scope, limitations, and modalities. One of the most important proposals for amending the law is related to the expansion of the subjects that are bound by this law. The current law defines "public authority" as each body of state administration and public entities and forces these bodies to grant access to official documents. The new proposal demands that not only public officials, but also physical or legal persons that benefit from public funds grant access to documents related to public money. In addition, physical or legal persons that carry out public or administrative functions (such as private companies that have concessions or monopolies in water supply, energy supply, etc.) should also grant access to their documents in this regard. This amendment is important both in further specifying the vaguely defined "public authorities" and in increasing accountability of these bodies/persons versus the public.

⁴ Ibid, art. 10.

⁵ Ibid, art. 11.

⁶ Article 19, "Memorandum on the Albanian Law on the Right to Information on Official Documents," commissioned by OSCE, September 2004.

⁷ The following section is based on Open Society Justice Initiative, "Proposals for Amendments of Albanian Law on Access to Information," March 6, 2007.

Another major issue in the discussions on amendment of the current law has been the clear definition of cases for refusal to grant information. The current law only states that access is denied in those cases when the information is classified by law, which is a vague definition that leaves room for abuse. So, the proposal in this aspects consists in drafting of an exhaustive list of the criteria when information can be withheld, guided by the application of public interest test, which is absent in the current version of this law.

As it was mentioned above, the issue of timelines has been rather problematic from the very first moment that the law was approved and it clearly collides with EU regulation in this aspect. In this context, considering the progress of administration in the meantime and international standards in this area, the amendment proposed consists in removing the two-step regime (approval or granting of access and then actually acceding the documents) and adjusting the timeline to 10 days for granting or refusing access and allowing for another five days for complex requests.

Other proposals for amending the current law and bringing it in line with international standards consist in the modalities of providing access to documents. For example, the applicant for information can choose the preferred format of documents (hard-copy or electronic). In addition, the proposal demands an active approach of the institutions and public authorities in guiding the citizens to the information they require, considering that the administration is in a better position than citizens in locating the documents.

Establishment of the appropriate structures for granting access to information is another concern addressed by the proposals for amending the law on access to information. One suggestion in this regard is the establishment of a public information office in all public institutions, whose main duties include granting access to information required by citizens. While the current law mentions that public authorities should “structurally facilitate access to official documents by the public,” it does not render it mandatory to have such offices or structures.

Along the same lines, one of the main problems in implementation of the current law is the absence of a swift and efficient system of complaints. Rather than start costly, lengthy and uncertain lawsuits, citizens prefer giving up in front of administration’s

denials of information. While People's Advocate has the role of supervisor of implementation of the law, this vague definition and lack of clear competencies does not allow for a real improvement of the implementation of the law. By contrast, assigning the possibility to bring the case to the People's Advocate would further improve the citizen's chances to receive public information without recurring to the court. In addition, both court proceedings and material or non-material remuneration are very slow and eventually inefficient. A better definition of sanctions and remuneration procedures would also speed up and improve implementation of the law.

2. Classified information

The classification, possession, dissemination, and declassification of state secrets is regulated by the Law on Information Classified as State Secret, approved in February 1999, amended in May 2006. When first passed, the law filled a void after the passing of the Criminal Code in 1995, which punished the dissemination of state secret, but on the other hand did not define what the state secret was and what the procedures for classification of information would be.⁸ This law defines state secret as any classified information that, if revealed in an unauthorized manner, would endanger national security.⁹

Content that can lead to classification of information includes information on¹⁰:

- ❖ military plans, arms, operations;
- ❖ strengths or weaknesses, capabilities' system, installation, projects and plans related to national security;
- ❖ intelligence services actions, forms, methods, encryption systems;
- ❖ foreign governments' information, international relations, confidential sources;
- ❖ scientific, economic, technological issues related to national security;
- ❖ other categories of information classified as state secrets by the authorized persons.

⁸ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.37.

⁹ Law no. 8457 on Information Classified as State Secret, 11.02.1999, hereafter referred to as "Law on Classified Information."

¹⁰ Law on Classified Information, art. 4.

Depending on the kind of information, the amended law outlines four levels of importance to the information¹¹:

- ❖ limited: unauthorized disclosure can harm the activity or efficiency of state bodies in the area of national security;
- ❖ confidential: unauthorized disclosure can harm national security;
- ❖ secret: unauthorized disclosure can seriously harm national security;
- ❖ top secret: unauthorized disclosure can cause exceptionally serious harm to national security.

The amendment of the law, which added a fourth level of classification to the existing ones, provoked a reaction especially from international organizations. “The bill’s definition of ‘restricted information’ is so broad that it can render meaningless the right to information,” said Darian Pavli, an expert on freedom of information law at the Justice Initiative. “This new classification creates a limitless loophole for denying legitimate requests for information.”¹² Government, who initiated the amendments, claimed that the only aim was to satisfy NATO requirements regarding classification of information, and the law was finally passed in the Parliament.

3. Protection of personal data

Directive 95/46/EC is the reference text, at European level, on the protection of personal data. It sets up a regulatory framework which seeks to strike a balance between a high level of protection for the privacy of individuals and the free movement of personal data within the EU. This Directive applies to data processed by automated means (e.g. a computer database of customers) and data contained in or intended to be part of non automated filing systems (traditional paper files).

The main principle of the Directive consists in establishing a framework for the lawful, fair, and legitimate procession of personal data. So, the person has to be

¹¹ Ibid, art. 3.

¹² Open Society Justice Initiative, “Albanian Secrecy Bill Threatens Freedom of Information,” February 10, 2006, available at: http://www.justiceinitiative.org/db/resource2?res_id=103097

notified on the procession of his/her data and procession cannot happen without his/her previous consent. In addition, it is forbidden to process personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life. However, exceptions apply in cases where processing is necessary to protect the vital interests of the data subject or for the purposes of preventive medicine and medical diagnosis.

Also, the controller must provide the data subject from whom data are collected with certain information relating to himself/herself (the identity of the controller, the purposes of the processing, recipients of the data etc.), as well as grant access to one's own personal data, along with the possibility to change them. As a general rule, the data subject should be always notified about the procession of data and has the right to object on legitimate grounds. He/she should also be informed before personal data are disclosed to third parties for the purposes of direct marketing, and be expressly offered the right to object to such disclosures.

As with every other right of granting or denying information, certain exceptions in revealing personal data apply, and, as expected, the exceptions should pass a public interest test. More specifically, reasons for disclosing personal data relate to safeguarding of aspects such as national security, defence, public security, the prosecution of criminal offences, important economic or financial interest of a Member State or of the European Union or the protection of the data subject. Finally, each Member State is to provide one or more independent public authorities responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to the Directive.

Another directive that adds to the protection of personal data is Directive 2002/58/EC on privacy and electronic communications, further amended by Directive 2006/24/EC. This Directive tries to address the problems that technological developments poses in terms of breach of privacy and protection of personal data. The Directive tackles a number of issues of varying degrees of sensitivity, such as the retention of connection data by the Member States for police surveillance purposes (data retention), the sending of unsolicited electronic messages, the use of cookies and the inclusion of personal data in public directories.

More specifically, the Directive reiterates the basic principle that Member States must, through national legislation, ensure the confidentiality of communications made over a public electronic communications network. They must in particular prohibit the listening into, tapping and storage of communications by persons other than users without the consent of the users concerned. In addition, European citizens will have to give prior consent in order for their telephone numbers (landline or mobile), e-mail addresses and postal addresses to appear in public directories. Together with other technology-related problems, this Directive further shields personal data from being unfairly and unlawfully accessed, processed, or destroyed, while allowing for exceptions in cases of major public interests, such as police investigations, court proceedings, etc.

Applicable Albanian Legislation on Protection of Personal Data

Protection of personal data in Albanian legislation is regulated by Law no.8517, “On the protection of personal data,” adopted in 1999. In addition, in 2004 Albania has ratified the Council of Europe’s Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The law in force states that the data subject needs to be notified and consent to the processing and also recognizes the right to access one’s own personal data and the right to object to the processing of personal data. In cases of claimed wrongdoing in data processing, one can file both administrative complaint and a lawsuit, claiming for compensation of damage.

Compared to EU regulation¹³, which states that each Member State is to provide one or more independent public authorities responsible for monitoring the application within its territory of the provisions on protection of personal data, Albanian legislation does not yet provide for the establishment of such an authority. People’s Advocate is assigned by law the competence of creating a registry of complaints on personal data processing. However, so far the law does not provide for real competencies in implementing or monitoring the complaints’ clause of this law by the

¹³ The suggested recommendations for amending this law are based on policy brief of AGENDA Institute, “Albanian experience in harmonizing data protection with European standards: What can we learn from SAA implementation?”, October 2007.

People's Advocate or some other body that could assume the function of monitoring protection of personal data. This has led to a poor implementation of the law, and that is why SAA forces Albania to establish independent supervising bodies for an effective monitoring of the legislation on data protection in Article 79, in addition to harmonizing Albanian legislation with EU regulation in this area.

In addition, the Albanian legislation provides only protection of personal data from procession of public authorities: "The scope of this law is to guarantee protection and legitimate use of personal data, and their treatment by public authorities."¹⁴ This limitation only to public authorities is not in line with EU standards in this regard, which demand a wider protection in this area. In addition, the law's wording seems to extend protection only to natural persons, and not to legal ones. This could render both Albanian and foreign organizations and companies vulnerable to procession of their data in this country. Even more so when considering that the EU Directive explicitly states that transfers of a personal data from a Member State cannot be made to a third country which does not ensure this level of protection.¹⁵ In sum, the harmonization of legislation on protection of personal data with EU standards and the establishment of a supervisory authority are steps that should be made in order to ensure better protection of this right and fulfil the requirements posed by SAA to Albania.

¹⁴ Law No.8517, 22/07/1999, "On Protection of Personal Data," art.1.

¹⁵ Summary of EU legislation, available at <http://europa.eu/scadplus/leg/en/lvb/l14012.htm>

REGULATION ON AUDIOVISUAL POLICIES

The audiovisual policy of the European Union is regulated by the new Audiovisual Media Services Directive (AVMSD) 2007/65/EC, which came into force on December 19, 2007. Currently all Member States are expected to transpose it into their national laws, applying in the meantime the provisions of the Television without Frontiers (TVWF) Directive. TVWF Directive (Council Directive 89/552/EEC), first adopted on 3rd October 1989, and amended on 23 June 1997, has been the main document regulating content in audiovisual policies. The AVMSD has to come into force for all EU members no later than December 19, 2009.

After a period of discussions and consultations among the Member States, the European Union agreed on the necessity for amending the TVWF Directive, in view of the rapid development of audiovisual technology and the emergence of new players on the audiovisual field. As a whole, the new directive restates the fundamental principles of the TVWF Directive in relation to audiovisual services in Europe such as cultural diversity, protection of minors, consumer protection, media pluralism, and the fight against racial and religious hatred. It also redefines “audiovisual services” and provides for the independence of national media regulators.

More specifically, EU audiovisual policies can be viewed in two angles: economic and cultural ones. From the economic point of view, broadcasting media content and recently new media are services, and as such, all conditions should be in place for their free movement, a key principle of EU. In this case, free reception of media services across EU states and markets, embodied in the “country of origin” principle, should be guaranteed by the Member States. On the other hand, recognizing that audiovisual media services fall under a special category, the newly amended Directive states:

Audiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture justifies the application of specific rules to these services.

Until recently, the application of specific rules to these services consisted mainly in negative and positive content regulations. The negative content regulation demands that all the audio-visual services should adhere to respect for the protection of minors, no incitement to hatred, identification of the media service provider, identification of advertising and other forms of commercial content, no use of surreptitious advertising, respect of the rules on product placement and sponsoring as well as respect to some restrictions on advertising (e.g. not to advertise alcoholic beverages in programs for minors).

More specifically, both the old TVWF Directive and recently amended AVMS Directive recognize the need for special protection of minors in broadcasting in both traditional media and new media services. The protection of minors includes the prohibition of children's programs involving pornography or extreme violence. This ban applies to all other programs which are likely to harm minors, unless they are broadcast at a time when they will not normally be seen by minors or protective technical measures are in place. In addition, it is highly recommended that programs are preceded by clear visual or/and hearing signals on whether the program is advisable for children or not. However, in an effort to protect freedom of expression in the environment of new media services, the Directive proposes to encrypt, label or filter material that affects minors.

Another aspect that both TVWF Directive and AVMS Directive tackle is advertisement. While TVWF Directive established some quotas on advertising time, the new directive has relaxed these quotas, in view of increased choice for consumers. So, advertising time under TVWF could not be longer than 15% maximum of daily transmission time and 20% maximum within a given one-hour period. Programs could be interrupted by advertisements, only if the integrity and the value of the program were respected while isolated advertising spots should remain the exception. If these programs were feature films then the interruption should be made once in each 45 minutes. With the passing of the new Directive, the daily limit of three hours of advertising has been abolished, while the limit of 12 minutes per hour remains. However, broadcasters enjoy a greater liberty on which programs and times to place advertising:

“Given the increased possibilities for viewers to avoid advertising through use of new technologies....., detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified.”

On the other hand, the ban on advertising of tobacco products and of certain medicinal products is still on place. The novelty of the new Directive is that it also bans advertising of harmful food and beverages for children during their programmes. The Directive also forbids surreptitious audiovisual commercial communications. By contrast, the new Directive is slightly more relaxed about product placement, defined as “any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trademark thereof, so that it is featured within a programme in return for payment or for similar consideration.” The Directive states that product placement is allowed in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or when there is no payment, but only certain goods or services provided free of charge.

However, the same principles as for advertising, teleshopping and sponsorship apply. More specifically, none of these should influence the content of programmes in such a way that affects editorial independence of media service providers. The viewers should be informed of these processes and the programmes should not encourage the purchase or rental of goods or services. In addition, it is forbidden to apply product placement of tobacco and its products and special medicinal products.

One of the major features of TVWF Directive was the broadcasting quota it imposed on national broadcasters or networks. So, they had to allot 50% of their total broadcasting time to European works, and 10% should be reserved to “independent” European works, in order to preserve European cultural identity and diversity. In this quota, news and sports events do not count, while the quota can be achieved progressively, depending on the strength of the country and its specific language and cultural settings. However, each Member State had to report every two years on the progress of these quotas.

The AVMS Directive also upholds the importance of European works, extending it as a requirement also for on-demand audiovisual media services. However, there are no quotas

imposed in this case: “Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works.” In the implementation of this requirement, Member States should report to the Commission no later than 19 December 2011 and every four years afterwards.

Applicable Legislation on Audiovisual Policies in Albania

Audiovisual policies in Albania are regulated by the Law on Public and Private Radio and Television in the Republic of Albania (hereafter, the Law on Radio and Television) and the Law on Digital Broadcasting, adopted in 2007. The law, which has been amended six times since its adoption in 1998, purports to regulate in detail the activity of the electronic media, including the public broadcaster. Most of the legal obligations on programme content apply to public and private broadcasters alike.

Albania has partly incorporated European media legislation and standards. In 1999, the country signed and ratified the Council of Europe’s Convention on Transfrontier Television and its Additional Protocol. Many provisions of the Law on Radio and Television derive from this agreement and in a way also fulfil some requirements of the TVWF Directive, such as provisions on sponsorship, advertising, the right to reply, and the protection of minors.

More specifically, Article 36 of the law states:

Public and private radio and television programmes shall respect personal dignity and fundamental human rights, the impartiality, thoroughness and pluralism of information, the rights of children and adolescents, public order, and national security, the Albanian language and culture, the constitutional and human rights of citizens, national minorities, in compliance with the international conventions signed by the Republic of Albania, as well as Albanian religious diversity.

The provisions on sponsorship are also important in this regard. Article 59 defines sponsorship as “the direct or indirect financial contribution by a legal or natural person to a

radio and television programme, with a view to promoting the name, manufacturing company, or image of that person”. In no circumstances should sponsors interfere with the content and timing of the sponsored programme. News and information output may not be sponsored. When a programme is sponsored, this information must be broadcast as well. Moreover, natural and legal persons whose main activity consists of the production, sale or offering of goods or services that are prohibited by law may not act as sponsors.

Commercials are also regulated by a separate chapter of the Law on Radio and Television. Commercials should not be deceitful and should be clearly identified as such, while subliminal commercials are prohibited. In addition to these general requirements, the Law on Radio and Television bans:

1. commercials that influence the content of programs;
2. commercials that incite pornography and violence;
3. commercials for tobacco products;
4. commercials for armaments and military equipment;
5. indirect commercials;
6. religious or atheistic commercials;
7. commercials for food products that are not approved by the competent bodies, under Article 19 of Law No. 7941 (31 May 1995), “On food products”;
8. commercials for political parties or associations, with the exception of cases provided by law;
9. other commercials in contravention with applicable laws.

Also banned are advertisements for medical drugs not produced and approved under the laws in force or advertisements that do not reflect the effects of the advertised medicine as established by the competent authorities. Advertising of alcoholic beverages is also restricted, while the Law on Competition prohibits comparative advertisements when the comparison cannot be verified objectively.¹⁶

Commercials may be inserted between programs as well as, in the cases described below, in the body of programs, provided that they do not damage the integrity and value of the

¹⁶ Law on the Protection of Competition.

programs. According to article 52, commercials should be commensurate with the integrity of the programs they interrupt and these interruptions cannot occur more often than once every 20 minutes. This period is not in line with TVWF requirements, given that the minimum period of advertising interruption is 30 minutes. On the other hand, the Directive's requirements are respected regarding feature film broadcasting, which is every 45 minutes. In addition, the law prohibits insertion of commercials in any broadcasting of religious services. Also, newscasts, documentaries, and children's programs that continue for less than half an hour are not interrupted by commercials. Moreover, the law prohibits broadcasting commercials encouraging behaviour that endangers the health and the normal psychic development of children, and commercials for alcoholic beverages of all kinds must not specifically address children, and children are not allowed to appear in commercials holding alcoholic beverages in their hands or in any other way.

Regarding broadcasting quotas of commercial, article 53 limits duration of commercial broadcasting on television at 15 percent of daily broadcast time, and no more than 12 minutes per hour. In this aspect, quotas are in line with TVWF Directive, although Albanian law has imposed stronger limits on radio broadcasters, which should not allot more than 10 percent of the total broadcast time to commercials.

In addition, Article 43 refers both to broadcasting of cinematographic works and films suitable for minors, in line with TVWF requirements:

“Works of cinematography (with the exception of those cases of agreement between the broadcaster and the copyright holder) may be broadcast by television stations only two years after the premiere of the work in the theatres of the country of origin. For works produced in cooperation with television companies, this deadline is reduced to one year, unless otherwise provided in the agreement.

Films and programs that are prohibited in theatres must not be shown on television.

Films prohibited for children under fourteen years of age must not be shown on television, not even in part, from 6:00 am to 2:00 am of the following day.”

Moreover, the regulatory authority has issued guidelines on the use of visual and sound aids that indicate whether a program is recommended to be viewed by children, in line with the amendment made to TVWF Directive in 1997. However, this has yet to be transposed into law, since in the present form it is not legally binding, although main TV stations respect it. On a more positive note, article 6 of the Law on Digital Broadcasting stipulates that network operators and content providers of digital broadcasting should guarantee respect for rules of ethics and encrypt or encode programs that target specific groups. However, this is not a clear definition of which programs should be encoded to protect minors. The practice so far has been that of encoding erotic or pornographic programs, while depiction of violence is broadcast freely.

The current Law on Radio and Television regulates in detail the right to reply, which is another requirement of EU regulation. Article 47 of this law states that rebuttal is aired free of charge in the next edition of the same program or category of programs, after the party demanding the right to rebuttal shall provide evidence that the information broadcast about him is false and his legitimate interests have been harmed. Excluded are those cases when facts have emerged in the parliament sessions or in a court of law, providing protection in these cases in accordance to international standards of defamation. The law also details cases when rebuttal could be refused, leaving the responsibility of mediation with the regulatory authority and if this fails, with the court.

Albanian media legislation has not yet incorporated the TVWF Directive's requirements on teleshopping and broadcasting European works. The Law on Digital Broadcasting introduced the requirement that European works should account for 50 per cent of a station's programming, stipulating that this proportion could be achieved progressively. However, compliance with these standards has yet to be monitored, as this law is still very young. There was an idea of setting up a working group of independent media experts who would review the Law on Radio and Television and propose changes to bring it in line with EU law. However, in view of other priorities that emerged in legal reform and other ensuing events, this phase has come to a halt for the moment

REGULATION ON DEFAMATION

There is no common EU regulation in the area of defamation laws. Instead, the spirit in this area is upheld by the Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, this cornerstone document provides the basis for the work and case law that is examined by the European Court of Human Rights. This document tries to fully guarantee freedom of expression as a fundamental human right and at the same time also preserves human dignity against slander and other similar offences. More specifically, Article 10 is dedicated to upholding freedom of expression as an essential and alienable right:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

As it can be seen, the first paragraph of this article embodies the undeniable right to freedom of expression, emphasizing the need for authorities to impose, affect, or limit on this right. In this context, this fundamental article of the Convention, especially on the media field, guarantees the right to free expression and to free reception of information.

However, as it is always the case, this right comes with its own limitations, so that it cannot infringe upon other rights and a proper balance can be reached in this case. More, specifically, the second paragraph of the same article reads:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in

confidence, or for maintaining the authority and impartiality of the judiciary.”

Hence, the second paragraph clearly establishes certain limitations on the previously cited freedom of expression, in a manner that it cannot interfere with public interest, such as national security, public safety, prevention of crime, or protection of health and morals. Most relevant to defamation law under scrutiny here, this paragraph also limits the exercising of freedom of expression “for the protection of the reputation or rights of others.” Hence, overall, the Convention requires striking a fair balance between freedom of expression and the protection of the reputation or rights of others. Consequently, defamation laws of the countries that are signatories to the Convention, Albania included, should attempt to reach this delicate, but essential balance between these fundamental rights.

Applicable Legislation on Defamation in Albania

In present Albanian legislation defamation is both a criminal and a civil law issue. However, a joint initiative of Open Society Justice Initiative, New York, and Albanian Media Institute has been seeking the support of members of parliament in order to pass amendments that aim at decriminalizing defamation, which are currently pending at Parliament. These amendments’ objective is to repeal the criminal provisions regarding defamation and amend the civil provisions.

Criminal Law provisions

The current Criminal Code contains two main articles that make up the bulk of defamation law: one of them is on insult and the other is on libel. Article 119, on insult, reads the following:

"Intentionally insulting a person constitutes criminal contravention and is punishable by a fine or up to six months of imprisonment. When this act is committed publicly, it constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment."

The alleged victim should start these lawsuits. When it comes to penalties, the ones for insult are slightly lower: a fine or up to six months of imprisonment, as compared to the ones for libel in Article 120:

"Intentionally spreading rumours, and any other knowingly false information, which affect the honour and dignity of a person, constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment. The same act, committed publicly, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment."

According to the same provisions, when these acts are committed publicly which mainly implies media, the sanctions are the same for both contraventions: fine or up to two years' imprisonment. No distinctions are made whether the offender is a journalist or a common citizen; the law applies to all citizens, and hence all journalists, independently from the kind of media they work in.

A special note must be made on the legal approach of alleged defamation versus public officials here. There are specific criminal provisions intended to prevent insulting or defaming public officials on duty, stating that intentional insulting or defamation of an official in his official capacity constitute criminal contraventions and are punishable each with a fine or up to one year of imprisonment. The penalties are higher if the acts are committed publicly, reaching up to two years of imprisonment. (art.239, 240.) So, these provisions raise the sanctions for public officials in cases of insult, whereas defamation sanctions are the same.

In addition to this increased protection, criminal law also favors public officials in another aspect: public officials who are defamed against do not need to litigate their case themselves, because the prosecution service will do so, instead¹⁷. Graver sanctions for defamation against public officials and ex officio prosecution are probably the most problematic when it comes to examining legislation and court cases' impact on freedom of expression. This part of Albanian regulation clearly collides with the important principle

¹⁷ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.159.

articulated by European Court of Human Rights, according to which public officials should tolerate a greater degree of criticism than private persons. In fact, international organizations concerned with freedom of expression campaigns have strongly recommended that instead of providing extended protection for public officials, the standard for defamation in cases brought by public officials should be stricter than the standard for other individuals¹⁸.

Finally, criminal law contains some articles intended to prevent defamation of the representatives of foreign countries, the symbols of national anthem and flag, the President of Republic, the Republic's symbols, and judges, have constituted a source of concern and debate for journalists, freedom of expression activists, and media lawyers recently. "Whereas journalists are increasingly aware of the limits imposed on journalistic freedom for the sake of protection of individuals, they question the appropriateness of having defamation provisions in place for the protection of objects such as the national flag and other symbols."¹⁹ An international review of defamation legislation in Albania also posed the same doubts: "Defamation laws should not be used to protect the 'reputation' of objects, such as State or religious symbols, flags or national insignia; nor can they be used to protect the 'reputation' of the State, or nation, as such."²⁰

Civil Law provisions

Albania's Civil Code contains two articles that relate to defamation, one on libelous and inaccurate publications, and the other on liability concerning non-property damages. More specifically, Article 617 provides for a right of correction for the publication of inaccurate, incomplete, or fraudulent information. In addition, Article 625 states:

The person who suffers damage, other than property damage, has the right to claim compensation if:

- a) he has suffered injury to his health or harm to his honor;

¹⁸ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.30.

¹⁹ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplant Institut, "The stumbling of media in times of transition," 2005, p.157.

²⁰ Article 19, "Memorandum on Albanian Defamation Law," commissioned by OSCE, September 2004, p.11.

- b) the memory of a dead person is desecrated and the spouse he lived with until the day of his death, or his relatives up through the second scale, seek compensation, except when the injury has been done when the dead person was alive and he was given the right of compensation for the desecration done.

The right foreseen in the above-mentioned paragraph is not hereditary.

According to Article 19, an activist in campaign of freedom of expression, these provisions are not appropriate to protect reputation. One of the main reasons for amending the above-mentioned article is that it “opens the door for compensation claims for true statements that damage honor – for example, an allegation made against a government minister of abuse of state funds, proven to be true²¹. In addition, it does not make a difference between statement of fact and statement of opinion, while “it is internationally recognized that statements of opinion deserve a high degree of protection.”²²

Finally, one of the greatest controversies in this article lies in the fact that it enables individuals to sue for damages on behalf of deceased people, provided they did not receive redress when alive. “The harm from an unwarranted attack on someone’s reputation is direct and personal in nature. Unlike property, it is not an interest that can be inherited...”²³ Moreover, the law fails to set limits on the amount of damages that may be awarded in cases on non-property damage, which grants the courts a power that has to be used carefully.

Proposed Amendments to Legislation on Defamation²⁴

The initiative to amend the current legislation on defamation has featured parallel attempts of amending both criminal and civil laws. These amendments propose to completely repeal insult and libel from the criminal law, along with articles that feature enhanced protection for foreign dignitaries and national symbols. Instead, the amendments provide protection

²¹ Ibid, p.14.

²² Ibid, p.15.

²³ Ibid.

²⁴ The information from this section is from the Relations for the amendments on Criminal and Civil Codes, drafted by the working group on amendment to defamation laws, and presented to the members of parliament in the series of lobbying for these amendments to pass.

only for public officials that suffer harsh insults in their official capacity, a contravention that is punishable only by fine, and no longer by imprisonment. In addition, the symbols of the Republic are still protected, but the sanction is changed to fine only, and can apply only if intention to contravene is proved.

In order to compensate the decriminalization of defamation, the working group also proposed amendments to the Civil Code. First, the amendment proposes to pose a statute of limitation of one year for the defamation action, seeking to improve the current article in the Civil Code, where no limitation period is imposed at all. “Clearly, such regulation is problematic from the point of view of free speech because as time goes by it becomes increasingly difficult for the parties to a defamation proceeding to show with sufficient clarity the facts that prompted the contested statement.”²⁵

In addition, the bill proposes to establish a casual link between the contested action or statement and the perceived damage to reputation. Moreover, liability is limited only to those cases when damage occurs as a result of inaccurate statement of facts. The abuse of tort claims for the desecration of memory of dead persons has also been limited. In order to attain these goals, the bill enumerates a list of circumstances to be considered by the court in determining liability of the defendant for defamation. More specifically, opinions and minor factual inaccuracies are not considered offense anymore. Also, for the first time, the court is expected to apply the public interest test. Namely, the person accused of defamation in issues of public interest, is liable only in those cases when he disseminates the information knowing that it is false.

Last, but not least, the bill seeks to introduce a mechanism that ensures proportionality of compensation to the damage suffered. The amendments aim to mitigate damage, mainly through publication of refutation, reconciliation of parties, considering whether there was personal gain involved in committing defamation, and the impact of compensation for damages in the financial situation of the defendant.

²⁵ Gent Ibrahim, “Defamation law in Albania: On the way to reform,” quoted in Mediaplan Institut, “The stumbling of media in times of transition,” 2005, p.169.

The process of amendment of the defamation law started in early 2004 and reached the present status through a series of roundtable discussions and lobbying activities of the initiators and the working group with MPs, media lawyers, journalists, editors, civil society representatives, etc. After receiving the written support of 23 MPs, the amendments proceeded to the Parliament on May 2005, but could not be voted due to lack of time, since the general elections took place soon afterwards. This initiative found the support of several international organizations such as OSCE, Article 19, Committee to Protect Journalists, etc: “The proposed amendments of Albania’s Criminal and Civil Codes would bring Albania closer to striking a fair balance between the right to freedom of expression and the right to reputation.”²⁶

Meanwhile, the current government, which came to power in 2005, seems to champion the cause of abolishing criminal defamation. The current Prime Minister issued an order on October 2005 stating that public officials should refrain from taking to court journalists on civil or criminal charges on libel and insult; only official refutations should be made instead²⁷. This order, although controversial in terms of balancing public servants’ rights with freedom of expression, was followed by government’s proposal to the Parliamentary Media Commission to pass the current amendments to defamation laws in the parliament. At the moment, the laws have not been voted yet in the parliament.

²⁶ Article 19 Open Letter to Servet Pellumbi, 28 April 2005.

²⁷ Albanian Media Institute, Albanian Media Newsletter, October 2005, available at www.institutemedia.org/newsletter

REGULATION ON COPYRIGHT

The intellectual property rights are dealt with by several documents adopted by the EU institutions. They are important for the common market, as they are seen as a basic prerequisite for the free and fair competition. Directives in question regulate intellectual property and related rights with regard to term of protection, protection of databases, satellite broadcasting and cable retransmission, and copyright and related rights in information society. The set of directives regarding terms of protection was codified in 2006, resulting in Directive 2006/116/EC “On the term of protection of copyright and certain related rights.”

More specifically, Directive 93/98/EEC, attempts to harmonise the term of protection of copyright and certain related rights, setting the term of protection of copyright for a literary or artistic work at 70 years from the death of the author of the work or the date on which the work was lawfully made available to the public if it is anonymous or was produced under a pseudonym. On the other hand, the term of protection for a film or audiovisual work is set at 70 years after the death of the last survivor among the following: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work. In addition, the term of protection of related rights is set at 50 years. This term is to be calculated on a case-by-case basis from the date of the performance, the publication or communication of its fixation or of the broadcast.

Another Directive that regulates satellite broadcasting and cable retransmission is Directive 93/83/EEC. While defining the terms of communication by satellite and cable retransmission, the directive states that satellite broadcasting of copyright works requires the authorisation of the right holder, whereas cable retransmission of broadcasts is governed by copyright and related rights in the Member States and by agreements between copyright owners, holders of related rights and cable operators. The Directive also imposes obligations for remuneration of broadcasting of artistic works, along with the possibility for these payments to be made to a fee collecting society for copyright protection.

In order to address the copyright problems that emerged with the rapid technological development, Directive 96/9/EC aims to provide copyright protection to databases of any form, defining a database as "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means". While the directive does not extend protection to software used in making or operating the database, its objective is to provide copyright protection for the intellectual creation involved in the selection and arrangement of materials and *sui generis* protection for an investment (financial and in terms of human resources, effort and energy) in the obtaining, verification or presentation of the contents of a database.

Directive 2001/29/EC takes into account the development of the informational society in Europe and, as a consequence, the development of an internal market for new products and services. The directive regulates the right of the author to communicate his/her work to the public "by wire and wireless means" and covers three fundamental rights:

- Reproduction rights – allowing the right of the concerned person to prohibit direct and indirect, temporary or permanent reproduction by any means and in any form, in whole or in part. It covers the authors, the performers, the phonogram producers, the producers of the first fixations of films and broadcasting organizations.
- Right of communication to the public – the exclusive right to authorize or prohibit the making available to the public of the works, in such a way that the members of the public may access them from a place and at a time individually chosen by them. It covers the performers, the phonogram producers, the producers of the first fixations of film and broadcasting organizations.
- Distribution rights – the exclusive right of the authors to authorize or prohibit any form of distribution to the public by sale or otherwise.

The directive allows for the Member States to provide for exceptions or limitations for the reproduction rights in some cases. The directive also states that the Member States have to adopt sanctions and remedies against the infringements of the rights. The sanctions have to be effective, proportionate and dissuasive.

Finally, Directive 2004/48/EC upholds the definition of copyright as stated in Berne Convention, namely that copyright is born together with the work, and it does not require formal registration. Most importantly, the directive states that Member States should set up the measures and procedures needed to ensure the enforcement of intellectual property rights, and take appropriate action against those responsible for counterfeiting and piracy.

The persons entitled to apply for the application of the measures, procedures and remedies are:

- a) the holders of intellectual property rights,
- b) all other persons authorized to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;
- c) intellectual property collective rights-management bodies which are regularly recognized as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law;
- d) professional defence bodies which are regularly recognized as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

The directive provides for rules on how to judge on cases on infringements of intellectual property rights and makes a clear distinction between the personal use and the “commercial scale” infringements. Measures or sanctions in rights of proven infringement of copyright may include recall from the channels of commerce, definitive removal, or even destruction of goods without copyright.

Applicable Albanian legislation on intellectual property

Law No.9380 “On Copyright and Related Rights” seeks to guarantee in detail the rights of authors of works of any kind, as well as the rights of others related to these works. In addition, Albania has ratified the most significant international agreements and conventions in this area, such as TRIPS Agreement, Berne Convention, Rome Convention, Paris Convention and other related treaties of World Intellectual Property Organization.

This law covers both rights of the author and other related rights, attempting to be all-encompassing in its protection of copyright. So, the law extends protection of copyright to artistic works, applied art works, architectural works, audiovisual works, choreographic works, cinematographic works, theatrical works, drawings, graffiti, pantomimes, folklore, musical work, screenplays, translations, databases, computer software, and the list goes on²⁸. In this way, the law tries to cover almost every possible work of art or intellectual creation, in all their potential forms of use.

The law distinguishes between pecuniary and non-pecuniary rights of authorship, providing for the respective procedures for each of them. Term of protection of copyright for literary and artistic works is extended until 70 years after the death of the author, or the death of the last surviving author. The same applies to cinematographic and other audiovisual works. In addition, the law applies the principle of national treatment, protecting copyright for foreign authors in the same way as for domestic authors. The law details a series of restrictions on copyright and the terms for transfer and general treatment of pecuniary rights, publication contracts, musical/theatre performances contracts, etc.

With regard to others rights related to copyright, this law extends protection to interpreting or performing artists, distinguishing again between pecuniary and non-pecuniary rights, providing for the respective procedures for each of them. Term of protection is defined as 50 years after the first public appearance/performance. A similar protection is reserved for producers of phonograms and those of cinematographic or other audiovisual works: term of protection is valid for 50 years since the first recording or public show of the work. Shorter periods are granted to photographic works and databases protection. Copyright related to satellite and cable broadcasting upholds the same values and rights that the respective EU directive grants to holders of copyright for the programs in question.

Finally, the law regulates the aspect of administration of copyright and other related rights in the provisions for the agencies of collective administration of these rights. These agencies should be non-profitable organizations and their licensing from Ministry of Culture, upon proposal of the Office on Copyright, is mandatory. License is renewable and

²⁸ Law no.9380 “On Copyright and Other Related Rights,” 28/04/2005, art. 4.

granted for a three-year term and Albanian agencies can transfer their copyright and other related rights to foreign agencies that cover a similar area.

Albanian legislation has foreseen a monitoring role for Albanian Office of Copyright, since all copyright agencies are forced to submit a list of distribution of royalties every year to this office. In addition, these agencies should submit their different working contracts on copyright to the Albanian Office of Copyright, which can also request information on its own on these issues by administering agencies of copyrights. Upon refusal to do so, the Ministry can suspend the license of agencies for six months.

The provisions on the role of Albanian Office of Copyright have been among the most controversial regarding this law. After a turbulent period, where copyright was very rarely respected and piracy reigned, one point of view was that having a more centralized or state-monitored practice in this area would improve the situation. On the other hand, the other view was that having an office that was under direct dependence of the Ministry of Culture monitor and impose rules on copyright enforcement agencies could lead to political or undue influence in this area. In the context of comparing EU regulation in this area with Albanian legislation, this is an issue that EU regulation leaves up to Member States to decide. Hence, in the absence of a more specific legislation on this area and given the relatively late establishment of Albanian Office of Copyright and its lack of experience, it will take time to assess its success or shortcomings and suggest amendments, if necessary.