LEGAL ANALYSIS ON THE DRAFT LAWS ON CHANGES AND AMENDMENTS TO THE LAW ON AUDIOVISUAL MEDIA AND THE LAW OF ELECTRONIC COMMUNICATIONS IN THE REPUBLIC OF ALBANIA

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Commissioned by the Office of the OSCE Representative on Freedom of the Media from
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Note: this document constitutes an updated version of the legal analyses elaborated between December 2018 and July 2019. It assesses the latest versions of the drafts transmitted by Albanian authorities

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Executive summary

This analysis examines a series of proposed amendments to Law no. 97/2013 on audiovisual media in the Republic of Albania and to Law no. 9918 of 19 May 2008 on electronic communications in the Republic of Albania.

These proposals have been submitted to the Office of the OSCE Representative on Freedom of the Media (hereinafter, the RFoM), as a follow-up to the legal analyses submitted by this expert between December 2018 and July 2019, on the draft law on "Amendments to Law nr. 9918, dated 19.5.2008, on electronic communications in the Republic of Albania", and the draft law on "Some changes and additions to Law no. 97/2013 on audio-visual media in the Republic of Albania". This document incorporates an assessment to the new proposals taking into the account the observations and recommendations already presented to Albanian authorities in writing and in the course of several visits and exchanges.

There are significant improvements vis-à-vis the previous versions analysed, particularly with regards to the draft amendments to Law no. 97/2013. The last versions of the draft incorporate a new wording of the provisions which define the object and scope of the law. These new provisions make clear that the law only applies to audiovisual media services and electronic publications providers. In its current version, the draft is finally clear when stating that electronic publications service providers do not need to register in order to be able to perform their activities in Albania. Under the current version of article 33/1, EPSPs are not given any more general responsibilities or obligations vis-à-vis the protection of privacy and dignity of citizens. The latest proposal of the media law draft amendments includes a new version of relevant parts of article 132 of the law. This is to be seen as a follow-up to the concerns and recommendations transmitted by the RFoM to Albanian authorities with regards to this very relevant and specific provision. The decision to suppress article 132/1 in the current version of the draft, to the extent that all possible measures regarding illegal content are already contemplated in article 132, can only be welcomed.

Recommendations regarding most relevant pending issues:

- "Supporting services" (article 2) shall not be included in the scope of the audiovisual media law, as they are already defined and regulated under the legislation on electronic communications.
- References to "political belief" and "union membership" included in paragraph 4 of article 33/1 need to be eliminated.
- A general provision regarding the right to appeal before the competent court any decision taken by AMA needs to be introduced.
- Considering the general role and responsibilities of AMA, particularly with regards to the protection of the right to freedom of expression in Albania, it is recommended to change the wording of paragraph 132 as follows:

  a) In paragraph 1.a).i, it is recommended to replace "*correction formula according to the form and content determined by AMA*" with "the correction or reply according to the provisions included in article 53/1 of this Law".

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b) In paragraph 5.a) it is recommended to replace *“block access to the Internet”* with “order the take down of a specific piece of content”.

c) In paragraph 5.a) as well, it recommended to replace “suspected of inciting” with “suspected, according to specific criminal legislation in force, to constitute one of the following criminal offenses”.

- It is recommended that provisions on sanctions for administrative contraventions enshrine additional application criteria in order to properly protect the principles of proportionality and necessity, as well as to guarantee that any sanction is adopted after proper consideration of the size and economic capacity of the media outlet in question.
- It is recommended that the new competence granted to AKEP in the draft amendment to the law on electronic communications – letter rr) of article 8 – is completely eliminated.

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Introduction

The present analysis was prepared by Dr. Joan Barata Mir, an independent media freedom expert, at the request of the Office of the OSCE Representative on Freedom of the Media.

The analysis examines a series of proposed amendments to Law no. 97/2013 on audiovisual media in the Republic of Albania and to Law no. 9918 of 19 May 2008 on electronic communications in the Republic of Albania. These proposals have been submitted to the Office of the OSCE Representative on Freedom of the Media (hereinafter, the RFoM), as a follow up to the legal analyses submitted between December 2018 and July 2019, on the draft law on "Amendments to Law nr. 9918, dated 19.5.2008, on electronic communications in the Republic of Albania", and the draft law on "Some changes and additions to Law no. 97/2013 on audio-visual media in the Republic of Albania" (using here their current titles). This document incorporates an assessment to the new proposals taking into the account the observations and recommendations already presented to Albanian authorities in writing and in the course of several visits and exchanges.

The present analysis is based on the unofficial English version of such proposals.

The structure of the report is guided by the tasks formulated by the Office of the OSCE Representative on Freedom of the Media. These tasks include comments on the current version of the draft law by comparing provisions against international media standards and OSCE commitments; indication of provisions which may be incompatible with the principles of freedom of expression and media; and recommendations on how to bring the legislation in line with the above-mentioned standards.

The analysis first outlines the general international standards on freedom of expression and freedom of information and then presents those particularly referring to online media services. These respective standards are referred to as defined in international human rights treaties and in other international instruments authored by the United Nations, the OSCE and the Council of Europe.

Part II presents an overview of the proposed legislation, focusing on its compliance with international freedom of expression standards. The Analysis highlights the most important positive aspects of the proposals and elaborates on the drawbacks, with a view to formulating recommendations for the review.

Part I. International legal standards on Freedom of Expression and Freedom of Information

General standards

In Europe, freedom of expression and freedom of information are protected by article 10 of the European Convention on Human Rights (ECHR), which is the flagship treaty for the protection of human rights on the continent within the Council of Europe (CoE). This article follows the wording and provisions included in article 19 of the International Covenant on Civil and Political Rights (ICCPR) and is essentially in line with the different constitutional and legal systems in Europe.

Article 10 reads as follows:

> "1. 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.
>
> 2. 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."

Freedom of expression and freedom of information are essential human rights that protect individuals when holding opinions and receiving and imparting information and ideas of all kinds. They also present broader implications, as the exercise of such rights is directly connected with the aims and proper functioning of a pluralistic democracy[1].

On the other hand, freedom of expression and freedom of information, as well as the other rights protected in the Convention, are not absolute and therefore may be subject to certain restrictions, conditions and limitations. However, article 10.2 ECHR clearly provides that such constraints are exceptional and must respect a series of requirements, known as the three-part test. This test requires that: 1) any interference must be provided by law, b) the interference must pursue a legitimate aim included in such provision, and 3) the restriction must be strictly needed, within the context of a

[1] See the elaboration of such ideas by the European Court of Human Rights (ECtHR) in landmark decisions such as Lingens v. Austria, Application No. 9815/82, Judgment of 8 July 1986, and Handyside v. The United Kingdom, Application No. 543/72, Judgment of 7 December 1976.

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democratic society, in order to adequately protect one of those aims, according to the idea of proportionality[2].

At the OSCE level, there are political commitments in the area of freedom of expression and freedom of information that clearly refer to the international legal standards existent in this area. In particular, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 proclaims the right to everyone to freedom of expression and states that:

> "This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards"[3].

Also, the very recent OSCE Ministerial Council Decision 3/2018, adopted by the Ministerial Council in Milan on 7 December 2018, establishes the following:

> "1. Fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers;
>
> 2. Bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference (...)"[4].

Standards with regards to online media content

General Comment No. 34 concerning Article 19 of the International Covenant on Civil and Political Rights adopted on 29 June 2011, by the UN Human Rights Committee[5], states the following (para 39):

> "States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3. Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge".

[2] See for example The Sunday Times v. UK, Application No. 6538/7426 Judgment of April 1979.

[3] This document is available online at: http://www.osce.org/odihr/elections/14304.

[4] Available online at: https://www.osce.org/chairmanship/406538?download=true

[5] Available online at: http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf.

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The UN Human Rights Council declared in its resolution 32/13 of 1 July 2016: "(...) the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the UDHR and ICCPR." In doing so, it recalled its resolutions 20/8 of 5 July 2012 and 26/13 of 26 June 2014, on the subject of the promotion, protection and enjoyment of human rights on the Internet.

Previously, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his Report of 16 May 2011, outlined the importance of the Internet as a platform that enables individuals to share critical views and find objective information".[6] At the same time, he warned that restrictions on the exercise of the right to freedom of expression through the Internet can take various forms, including blocking and filtering. Such measures may be incompatible with States' obligations under international human rights law and create a broader "chilling effect" on this specific right. The Rapporteur also warned about the fact that:

> "States' use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression, as the criteria mentioned under chapter III are not met. Firstly, the specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively. Secondly, blocking is not justified to pursue aims which are listed under article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and blocking lists are generally kept secret, which makes it difficult to assess whether access to content is being restricted for a legitimate purpose. Thirdly, even where justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal".

These principles have also been outlined by the Council of Europe in the Recommendation CM/Rec (2011) 7 of the Committee of Ministers to member states on a new notion of media:

> Despite the changes in its ecosystem, the role of the media in a democratic society, albeit with additional tools (namely interaction and engagement), has not changed. Media-related policy must therefore take full account of these and future developments, embracing a notion of media which is appropriate for such a fluid and multi-dimensional reality. All actors – whether new or traditional – who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection and provides a clear indication of their duties and responsibilities in line with Council of Europe standards. The response should be graduated and differentiated according to the part that media services play in content production and dissemination processes. Attention should also be paid to potential forms of interference in the proper functioning of media or its ecosystem, including through indirect action against the media's

[6] Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

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economic or operational infrastructure"[7].

The Recommendation also points to six criteria when an online resource may legally be acknowledged as a media outlet, be it a "written" or audiovisual media. These are:

- Intent to act as media,
- Purpose and underlying objectives of media,
- Editorial control,
- Professional standards,
- Outreach and dissemination,
- Public expectation.

The international mandate-holders on freedom of expression, including the UN Rapporteur on Freedom of Opinion and Freedom of Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression, in their Joint Declaration of 1 June 2011 on freedom of expression and the Internet[8], and state the following:

> "(...) When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.
>
> (...) Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it.
>
> (...) Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognising that no special content restrictions should be established for material disseminated over the Internet.
>
> (...) Self-regulation can be an effective tool in redressing harmful speech, and should be promoted".

Regarding filtering and blocking, they also state the following:

> "Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse".

Similarly, the Recommendation CM/Rec (2007) 16, of the Committee of Ministers of the Council of Europe, to member states on measures to promote the public service value of the Internet, stresses the need for member states to "affirm freedom of expression and

[7] Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc2c0
[8] Available at: http://www.osce.org/fom/78309

the free circulation of information on the Internet, balancing them, where necessary, with other legitimate rights and interests, in accordance with Article 10, paragraph 2, of the European Convention on Human Rights as interpreted by the European Court of Human Rights" by "promoting freedom of communication and creation on the Internet, regardless of frontiers," in particular through "not subjecting individuals to any licensing or other requirements having a similar effect, nor any general blocking or filtering measures by public authorities, or restrictions that go further than those applied to other means of content delivery". [9]

Last but not least, it is important to underscore the statements made by the European Court of Human Rights in this area, within the context of the landmark decision in the case of *Ahmed Yildirim v. Turkey* (Application no. 3111/10), of the 18 of December 2012[10]. Affirming that "the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information", the Court also declares that "(i)n matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power". On the other hand, the Court also establishes the need for States to adopt in this area measures that are not only foreseeable, but also that do not impose excessive restrictions and therefore restrict the rights of Internet users and have significant collateral effects.

An increasingly important area of international standards-setting refers to the role and responsibilities of online platforms or intermediaries, particularly when they provide services of content hosting, which include social media and content sharing platforms like YouTube, Facebook, Twitter, Instagram or many others. The Annex to the Recommendation CM/Rec (2018) 2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries[11], indicates, among others, the following obligations for States:

> "Any request, demand or other action by public authorities addressed to internet intermediaries that interferes with human rights and fundamental freedoms shall be prescribed by law, exercised within the limits conferred by law and constitute a necessary and proportionate measure in a democratic society. States should not exert pressure on internet intermediaries through non-legal means. (...)
>
> States should take into account the substantial differences in size, nature, function and organisational structure of intermediaries when devising, interpreting and applying the legislative framework in order to prevent possible discriminatory effects. (...)

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[9] Part III, para a). Available at: https://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/T-CY/T-CY_2008_CMrec0711_en.PDF

[10] Available at: https://hudoc.echr.coe.int/eng#{"fulltext":["Yildirim"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-115705"]}

[11] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680790e14

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Any legislation applicable to internet intermediaries and to their relations with States and users should be accessible and foreseeable. All laws should be clear and sufficiently precise to enable intermediaries, users and affected parties to regulate their conduct. The laws should create a safe and enabling online environment for private communications and public debate and should comply with relevant international standards. (...)

Any legislation should clearly define the powers granted to public authorities as they relate to internet intermediaries, particularly when exercised by law-enforcement authorities. Such legislation should indicate the scope of discretion to protect against arbitrary application. (...)

Any request, demand or other action by public authorities addressed to internet intermediaries to restrict access (including blocking or removal of content), or any other measure that could lead to a restriction of the right to freedom of expression, shall be prescribed by law, pursue one of the legitimate aims foreseen in Article 10 of the Convention, be necessary in a democratic society and be proportionate to the aim pursued. State authorities should carefully evaluate the possible impact, including unintended, of any restrictions before and after applying them, while seeking to apply the least intrusive measure necessary to meet the policy objective. (...)

State authorities should not directly or indirectly impose a general obligation on intermediaries to monitor content which they merely give access to, or which they transmit or store, be it by automated means or not. (...)

State authorities should ensure that the sanctions they impose on intermediaries for non- compliance with regulatory frameworks are proportionate because disproportionate sanctions are likely to lead to the restriction of lawful content and to have a chilling effect on the right to freedom of expression. (…)

State authorities should ensure that notice-based procedures are not designed in a manner that incentivises the take-down of legal content, for example due to inappropriately short timeframes. Notices should contain sufficient information for intermediaries to take appropriate measures. Notices submitted by States should be based on their own assessment of the illegality of the notified content, in accordance with international standards. (...)

States should guarantee accessible and effective judicial and non-judicial procedures that ensure the impartial review, in compliance with Article 6 of the Convention, of all claims of violations of Convention rights in the digital environment.

States should proactively seek to reduce all legal, practical or other relevant barriers that could lead to users, affected parties and internet intermediaries being denied an effective remedy to their grievances."

In this specific area, although EU law is not part of international standards but bearing in mind the commitment by Albanian authorities to align national legislation with EU legal

framework, the Directive 2000/31/EC, known as the e-commerce Directive[12], establishes liability exemptions for intermediaries under certain conditions of lack of knowledge of illegal activity or information and expeditious removal and disabling upon knowledge (article 14). The Directive also includes an important provision regarding the absence of any legal obligation for providers to monitor content (article 15).

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[12] Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031

Part II. Overview of the proposed legal reform

Content and scope of the proposed legislation

As previously mentioned, this analysis examines a series of proposed amendments to Law no. 97/2013 on audiovisual media in the Republic of Albania and Law no. 9918 of 19 May 2008 on electronic communications in the Republic of Albania.

The drafts include a series of proposals focusing in particular on the new legal notion of electronic publications. This notion embraces the written media outlets that use the Internet as a distribution platform (and not paper). Due to the deficient structure of Albanian media law, this specific form of communication was not specifically covered so far by any legislation.

As already mentioned in the analysis submitted in December 2018, the establishment of a specific regime only applicable to written media electronically distributed generates a different legal treatment between identical forms of speech. In other words, why shall the same piece of content be subjected to completely different legal regimes in Albania, depending only on the platform that has been used? Moreover, the enforcement of the proposed regime would determine that the online version of the same publication will be under a different regime than the printed version. This being said, and considering the special impact that some electronic publications may have in the context of the Albanian public sphere, it is important to guarantee that the very specific provisions now included in the drafts and applicable vis-à-vis electronic publication service providers (hereinafter, EPSPs), do not contain excessive and disproportionate restrictions to the rights to freedom of expression and freedom of information, as well as articulate a proper system of checks, balances and controls with regards to any decision taken by public authorities in this area.

Before analyzing the proposals in detail, it is also important to mention that this expert has also had access to an Impact Assessment Report and a general Report related to the adoption of the second draft. Some of the elements included in such documents will also be used for this analysis. However, it must be said that many considerations and recommendations included in these documents do not correspond to the measures currently included in the draft. This is probably due to the fact that they were elaborated to justify and explain previous versions.

In general terms, the proposals cover the following general areas:

- Subject and field of application of the law.
- Competence and powers of Albanian Media Authority (hereinafter, AMA).
- Competence and powers of AKEP (the independent regulatory body in the area of electronic communications in Albania).
- Introduction of a new type of media service providers: EPSPs, which are subject to a new and specific legal regime.
- Regulation of the Register of Media Service Providers.
- New provisions on administrative violations and sanctions, as well as powers of AMA vis-à-vis EPSPs.

This document does not assess the text of the Prime Minister's "Decision on measures to protect children from access to illegal and/or harmful content on the Internet", analysed

in a previous assessment submitted in July 2019. No specific information about the current stage of adoption or validity of this decision has been provided by Albanian authorities.

Analysis of the provisions of the proposal in light of applicable international standards

Scope of the media draft, definition, and registration requirements for electronic publications service providers

The last versions of the draft incorporate a new wording of the provisions which define the object and scope of the law. These new provisions make clear that the law only applies to audiovisual media services and electronic publications providers (according to the definitions later established in the draft as well). This needs to be welcomed.

This being said, it is also important to note that the definition of the scope of the law includes, besides audiovisual media and electronic publications services, the so-called "supporting services" to the latter. These supporting services are not clearly defined anywhere in the law, nor any regulation applicable to them can be found either. Supporting services are usually understood as the electronic communications (telecommunications) services which facilitate the transmission or distribution of media content. For this reason, such services shall not be included in the scope of the audiovisual media law, as they are already defined and regulated under the legislation on electronic communications. It is therefore recommended to eliminate this reference.

It also needs to be particularly acknowledged the fact that in its current version, the draft is finally clear when stating that electronic publications service providers do not need to register in order to be able to perform their activities in Albania. This being said, it is worth underscoring that media service providers that do not register will not be able to enjoy fiscal "or other type of treatments". This measure imposes an important degree of pressure on those actors, as in many cases non-registration would not be an economically feasible option. On the other hand, the vague reference to "other type of treatments" opens the door to discretionary granting additional benefits to registered companies, beyond what is specified in the law, thus creating an inadequate level of legal uncertainty in this area.

Obligations and responsibilities of electronic publications service providers

It is important to note that fact that under the current version of article 33/1, EPSPs are not given any more general responsibilities or obligations vis-à-vis the protection of privacy and dignity of citizens. As mentioned in a note sent to Albanian authorities in October, such provisions may create legal uncertainty and may lead to excessive or unexpected restrictions to publishers' right to freedom of expression. Particularly with regards to individual rights and dignity, it needs to be reminded that, in principle, these are matters already covered by other areas of legislation and under the competence of the judiciary. This improvement thus needs to be welcomed.

Paragraph 4 of article 33/1 enshrines a specific restriction to the right to freedom of

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expression, applicable to cases of dissemination of hate speech. Prohibiting the forms of speech generally described in article 20 ICCPR is an obligation for any State and therefore this would represent imposing a limited limit to the right to freedom of expression. In addition to this, international standards are relatively broad regarding the specific grounds on which hatred is disseminated. Therefore, new causes including gender, sexual orientation, social origin, despite not mentioned by article 20 ICCPR are accepted in this area. However, this paragraph refers among other matters, to "political or other belief" and "union membership". These elements are not related to the fact of belonging to a specific or potentially threatened community but to the expression or commitment to more general or vague principles or values. As a matter of fact, provisions of this matter can be used to prosecute fully legitimate (and even harsh) criticisms against political or social opponents thus limiting the free expression and exchange of ideas. Possible specific attacks or abuses in this area can be properly solved using the provisions and mechanisms already in place in the area of defamation. It is thus recommended that the mentioned references are eliminated.

Measures to be adopted vis-à-vis electronic publications service providers who contravene the law

The latest proposal of the media law draft amendments includes a new version of relevant parts of article 132 of the law. This is to be seen as a follow-up to the concerns and recommendations transmitted by the RFoM to Albanian authorities with regards to this very relevant and specific provision.

According to the draft, this provision now reads as follows:

"Article 132

Measures against violations

1. In case of violation of the provisions of this law, in accordance with the procedures and provisions of this law and its bylaws, after obtaining the opinion of the responsible authorities, if provided, the AMA (Board and/or AC) shall decide to:

a) oblige the media service provider to:

i. publish the correction formula according to the form and content determined by AMA;

ii. insert via PECA a notice technically characterized as "pop up";

b) impose a fine, the amount of which shall be determined in accordance with the provisions of this Law and its bylaws;

c) temporarily suspend the license and/or authorization;

ç) shorten the validity period of the license and/or authorization;

d) remove the license and/or authorization."

2. In its decision, AMA shall consider the extent and duration of the violation committed pursuant to the rules set forth in letter "k", paragraph 1 of Article 19 of this Law.

3. AMA shall impose sanctions provided for in this law no later than one year from the

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date of the violation.

4. When AMA observes violations of legal provisions for which sanctions are imposed by law by other state bodies, then it notifies the latter.

5. For violations committed by EPSPs, for the content of electronic publications, based on a decision made by the AMA, following the procedure provided for in this law and after obtaining written opinion from AKCESK, the Electronic and Postal Communication Authority (EPCA) shall:

a) block access to the Internet in cases when electronic media services are suspected of inciting one of the following criminal offences:

i. child pornography;

ii. promotion of terrorist acts;

iii. breaches of national security;

b) insert a "pop up" notice on the website/domain of the portal providing information on decisions of AMA decision-making bodies.

In making its decision under letter "a" of this paragraph, AMA, after hearing the electronic publications service provider, and, if possible, the author of the published content, shall assess the violation committed against the right to freedom of expression in accordance with the principle of proportionality.

6. The penalized entity may file an appeal with AMA within 30 days of the date of promulgation or notification under paragraph 3 of this Article. AMA examines the appeal and announces the decision within 5 days. AMA decision can be appealed to the judicial district court where the administrative body is based.

7. AMA decisions are executed by the bailiff service, in accordance with the provisions of the Code of Civil Procedure. AMA has no obligation to prepay the tax or fee for the bailiff service.

8. The decision of the Appeals Council may be appealed according to the provisions of point 6 of this article. The appeal does not suspend the execution of the Appeals Council's decision.

9. The decisions of the AC shall be executed by the Judicial Bailiff Service in accordance with the provisions of the Code of Civil Procedure. The AC has no obligation to prepay the tax or fee for the bailiff service."

From a general point of view, blocking or suspending online publications is considered to be an extreme State measure vis-à-vis the right to freedom of expression, and therefore it is contemplated and accepted by international standards in cases of very serious violations of other human rights or democratic principles and when other possible measures cannot be applied (that is to say, in cases of dissemination of child pornography, or terrorist content). Otherwise, suspending or blocking measures should be seen as unjustified, unnecessary and disproportionate, and therefore in contravention with human rights international standards.

In light of these standards, and while welcoming the introduction of new important

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restraints vis-à-vis the power of AMA (particularly regarding the blocking or suspension of online publications) there are a few observations that still need to be made in order to guarantee the existence of proper safeguards and avoid undue restrictions to the right to freedom of expression:

a) In paragraph 1.a).i, it is recommended to replace "*correction formula according to the form and content determined by AMA*" with "the correction or reply according to the provisions included in article 53/1 of this Law".

b) In paragraph 5.a) it is recommended to replace *"block access to the Internet"* with "order the take down of a specific piece of content".

c) In paragraph 5.a) as well, it recommended to replace "suspected of inciting" with "suspected, according to specific criminal legislation in force, to constitute one of the following criminal offenses".

d) As suggested in previous analyses, it is very important to introduce a provision to guarantee that AMA's decisions in this area can be appealed before the competent judge immediately after their adoption. The competent judge must decide whether to suspend or to keep AMA's decision in force during the appeal proceedings.

The decision to suppress article 132/1 in the current version of the draft, to the extent that all possible measures regarding illegal content are already contemplated in article 132, can only be welcomed.

This analysis, in line with what has already been expressed in the previous opinions provided to the RFoM, needs to refer, once again, to the possibility of imposing administrative fines up to 1.000.000 lekë to those providers who do not respect the obligations established by the law (article 133). it is necessary to welcome the reference introduced in paragraph 11 to the principle of proportionality. However, article 133 still refers to very high economic fines. Considering the size and characteristics of the electronic publications service providers who may become subjected to the new legal provisions, the amount of the fines might be excessive in many cases. Therefore, these fines could in fact be seen as an indirect way to force the closure or create serious survival problems to such operators. This measure clearly amounts to a violation of the principle of proportionality. It is therefore recommended that provisions on sanctions for administrative contraventions (including general guidelines for sub legal instruments) enshrine additional application criteria in order to guarantee that any sanction is adopted after proper consideration of the size and economic capacity of the media outlet in question. In any case, this expert has not had access to any report or assessment that justifies the adequacy and proportionality of these sanctions within the context of Albanian media market.

New competences for AKEP

As previously mentioned, the object of this analysis is also to examine one of the changes to the Law no. 9918 of 19 May 2018 on electronic communications in the Republic of Albania, in particular the proposal to introduce a new competence of AKEP.

This new competence is enshrined under a new letter rr) of article 8 of the Law no. 9918 of 19 May 2008 on electronic communications in the Republic of Albania:

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"rr) makes sure the entrepreneurs of electronic communication networks and electronic communication services fulfill their obligations related to the protection of the country's interests, public security, including in case of war or extraordinary situations, and guarantee the individual rights and freedoms, as well as every obligation provided for by the legal framework applicable in the Republic of Albania."

This provision was already criticised in previous legal analyses. As it has already been underscored, it contains a very broad empowerment to AKEP which, in practical terms, would give this body the capacity to adopt any measure to compel Internet service providers (ISPs) to block or prevent access to any piece of online content available to individuals connected to the web in Albania, on the basis of the alleged violation of no matter which (included the most simple and less harmful) infraction of whatever norm included in the Albanian legal system. Moreover, AKEP could go even further and allege a much broader and imprecise harm to vague principles such as "the country's interest" or "public security" to adopt such measures. Even if the case of AKEP acting for the purpose of protecting the exercise of a fundamental right, this legal provision does not include any specific rule with regards to the way this need would be assessed and how key elements at stake such as the proper protection of the right to freedom of expression would be taken into consideration. No references to the role of the judiciary or to the existence of any appeal or review mechanism are included either. This would mean, for example, that in cases of dissemination of alleged defamatory statements, the affected person (or even AKEP *ex officio*) would in principle be able to push measures aimed at blocking access to the content in question, without any prior judicial or even administrative decision based on minimum safeguards and due process principles.

In addition to this, it needs to be particularly underscored the fact that AKEP is a regulatory body in charge of electronic and postal networks and services and has no competence regarding the content of the services provided through electronic communications networks. Therefore, nothing justifies the fact that such body is tasked with the responsibility of assessing the impact of content provided through electronic communications services and networks and the even more important responsibility of defining and enforcing the limits to the exercise of the right to freedom of expression.

Therefore, this proposed new competence gives AKEP powers that are completely inconsistent with international standards of legal certainty, proportionality and necessity, which need to be respected when establishing limits to the right to freedom of expression.

A final remark needs to be made in order to guarantee that the proposed legislation is fully in line with international standards. Considering the potential impact on freedom of expression of AMA's decisions on the right to freedom of expression, and despite the existence of certain references to this matter in some passages of the law, it is recommended to introduce in article 6, as a fundamental and definitory principle, that any decision taken by AMA can be appealed before the competent court.

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