

Memorandum
by
ARTICLE 19
on
The Draft Law on Public and Private Radio and Television
of the
Republic of Albania

Submitted to the Parliamentary Commission for Mass Media, June 1998.

ARTICLE 19, the International Centre Against Censorship, wishes to make the following observations on the draft law on Public and Private Radio and Television, prepared by the Albanian Parliamentary Commission for Mass Media.

ARTICLE 19 considers the draft law to be a significant improvement on earlier Albanian legislation relating to the media and broadly in line with relevant international standards. ARTICLE 19 is concerned, however, about several aspects of the draft law, detailed below, which it urges the appropriate Albanian authorities to remedy before the draft is made law.

ARTICLE 19 wishes also to draw the Commission's attention to its previous comments on Albanian legislative initiatives regarding the media (proposed and enacted) and in particular to its July 1997 publication, *Albania: Towards Broadcasting Freedom*, which has previously been made available to Commission members in an Albanian translation.

1. The Right of "Rebuttal" - Article 46

ARTICLE 19 remains concerned about the draft law's provision on the right of "rebuttal" or reply, which remains unchanged from the 1997 broadcasting law. In its earlier comments, ARTICLE 19 set out the reasons why a voluntary complaints mechanism established by broadcasters themselves is preferable to a statutory right of reply. We continue to believe this to be the case and urge the Albanian authorities to give further consideration to this issue.

In the event, however, that it is decided to retain provision for a statutory right of reply, we urge that it should be framed in such a way as to fully reflect the following key principles:

- the person claiming a right to reply should bear the onus of proving that the information broadcast was false and that a legitimate interest has been harmed: this onus of proof should remain with the claimant, even after a broadcaster has refused to carry a reply;

- complaints relating to the right of reply should be heard by an independent administrative body - the Complaints Council for Radio and Television, to be established under this new law, would seem likely to be an appropriate body to undertake this task;
- the decisions of this administrative body should be subject to judicial review;
- the complainant should not be prohibited from disclosing whether or not s/he is planning to launch a defamation suit;
- the grant or refusal of a reply, apology or correction should be taken into account in any subsequent defamation suit only to reduce any sanction that may be awarded against the media.

2. Sanctions - Article 135

ARTICLE 19 notes that the National Council for Radio and Television (NCRT) may impose a range of possible sanctions, including fines, temporary suspension or reduction of the duration of the license and license revocation. ARTICLE 19 recommends that a fourth sanction – a warning – be added to this list and that it be explicitly established that only this sanction may be applied in the first instance. More severe sanctions should be considered only after a broadcaster fails to heed such a first warning.

We believe that a warning mechanism is particularly important in an environment in which broadcasters are adjusting to new legislation; the warning should alert the broadcaster to the breach of the legislation and allow the broadcaster an opportunity to adjust its behaviour before allowing the possibility of a more punitive sanction . ARTICLE 19 notes this is normal practice in established democracies.

ARTICLE 19 also recommends that the legislation be amended to make it clear that, where warnings have been ignored, the normal sanction should be a fine. Suspensions or reductions in license term should not be applied except in the most serious cases and where there has been repeated abuse and where fines have failed to bring about the desired result.

3. National and International Standards - Article 35

A firm commitment should be made to incorporate a reference in Article 35 to any constitutional guarantee of freedom of expression and information which may be included in the Albanian Constitution, likely to be introduced by the end of 1998.

4. Content Restrictions - Articles 23 and 36

The draft law defines “a radio or television program” as the “entirety of programs of informative, educational, cultural, artistic and entertaining character broadcast by a given station.” ARTICLE 19 understands, therefore, that where Articles 23 and 36 refer, for example, to the “pluralism” of the content of the programmes to be broadcast, this refers to the totality of output rather than the content of a single broadcast item – otherwise, these references would represent a serious interference with editorial independence. We would propose, however, that more specific terminology be added in order to make the matter absolutely clear.

Even if ARTICLE 19’s understanding of the above reference is correct, we are nevertheless concerned at the breadth of the conditions imposed on the content of programmes under Article 36, including the following:

- **Completeness and Truthfulness**

ARTICLE 19 is concerned that Article 36 requires broadcasters to respect the “impartiality, completeness, truthfulness and pluralism of information”, and also notes that Article 45 provides natural and legal persons a remedy under Albanian civil, criminal and other legislation against the broadcast of untrue and harmful information. In this connection, we wish to draw attention to our earlier comments to the Parliamentary Commission on Mass Media which highlighted the abuse of Article 5 of the now-abrogated Press Law of 1993: this, it will be recalled, placed a requirement of truth on editors and journalists and was used to prosecute journalists in lieu of defamation suits. We note too that false news provisions have been struck down in a number of jurisdictions as infringing the right to freedom of expression. We strongly recommend, therefore, that requirements of “truthfulness” be removed from the draft law.

The terms “impartiality”, “completeness” and “pluralism” are also too vague and subjective to meet the strict international standard for restrictions on freedom of expression and should likewise be removed from the draft law. (Such terms, if they are to be used at all, are more appropriate to professional codes of ethics).

- **Other Content Restrictions**

ARTICLE 19 reiterates its concerns, voiced in previous submissions, that the obligation on broadcasters to promote “the Albanian language and culture” and “the religious diversity of the Albanian world” is an unnecessary interference with editorial independence and a potential violation of freedom of opinion and expression.

ARTICLE 19 notes that the European Court, in a landmark judgment, has underlined that freedom of expression protects not only: “‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that

offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.”¹

Opinions critical of traditional Albanian culture and values must, therefore, be tolerated, including when such opinions are expressed in programmes carried on private radio and television channels. The Albanian state authorities should seek to promote culture, language and religious diversity through positive means, such as financial support for those producing local programmes, but not by restricting freedom of expression.

ARTICLE 19 recommends, therefore, that the phrases “the Albanian language and culture” and “the religious diversity of the Albanian world” be removed from Article 36.

5. Minority Language Broadcasting

ARTICLE 19 welcomes those provisions in the law which exempt broadcasters which are broadcasting in minority languages from meeting the language requirements specified in Article 37. This implies that some broadcasters - in addition to the publicly-funded media - will be granted licences to broadcast in minority languages. The law does not, however, guarantee that licences will be issued to broadcasters whose programming is partly or fully in minority languages. ARTICLE 19 is aware that regulations for licence allocation, to be drawn up by the NCRT, might include such guarantees, but considers that the broadcasting law should provide more explicit protection for minority rights by making it mandatory that some such licenses be issued.

ARTICLE 19 recommends, therefore, that a provision be added to the draft law guaranteeing allocation of licences to radio and television stations serving minority communities, providing that general technical and other criteria for holding a licence are met by these broadcasters.

¹ *Handyside v. United Kingdom*, 7 December 1976, No. 24, 1 EHRR 737, para. 49.