The Legislative Framework for Freedom of Audiovisual Communication in Tunisia: between Reality and Aspirations

Background paper

Introduction

Media plays a vital role in defending human rights. Establishing an independent, pluralistic, and professional media is therefore pivotal in achieving the goals of the Tunisian democratic transition process.

However, the negative legacy of the old regime in Tunisia, which manipulated media to make of it one of the pillars of the tyrannical system by transforming it into a tool for propaganda, falsification and distortion against dissent, presents a challenge to this. The regulation of media was previously inclined towards restricting freedoms. Though the 1959 Constitution enshrines freedom of the press and of expression under Article 8, the legislation regulating the sector was repressive and incomplete, lacking specific provisions for audiovisual communication, with the exception of those related to the national radio and television.[1]

During the revolution, the media scene witnessed many transformations that opened the door for significant reforms, which were launched on 2 November 2011 with Decree-Law No. 115 of 2011 on Freedom of the Press, Freedom of Printing and Freedom of Publication and Decree-Law No. 116 of 2011 relating to Freedom of Audiovisual Communication and the creation of an independent higher authority for audio-visual communication, in addition to the constitutional provisions of 27 January 2014 relating to Freedom of Expression and the Media[2]. However, the reform process faced numerous obstacles, since the ruling of the "Troika" government in 2011. These obstacles are the lack of political will to reform the media, especially putting the public audiovisual media under threat, that resulted in negative effects on the sustainability of media institutions and on the principle of abstention from political tensions, in addition to the precarious situation of journalists at the professional and socio-economic levels.

In this context, this briefing sets out the legislative context for freedom of audiovisual communication in Tunisia, highlighting existing reforms, areas of fragility and those areas where reform faces obstacles from legislative failures and initiatives within the Assembly of Representatives of the People.

[1] Law Number 33 of 2007 dated June 4th 2007 on public audio-visual enterprises
[2] Articles 31,32,49,125,an 127 of Tunisia Constitution

I- Existing reforms

After the fall of the authoritarian regime in 2011, freedom of expression and the media occupied an important place among the political reform priorities and this was embodied in the decrees-law of 2011, and then in the new Constitution of 2014.

A- The 2011 reforms: An important step in the reform process

After the fall of the former regime, the Ministry of Information and the Higher Council for Communication were suspended, and the National Authority for the Reform of the Media and Communication was established by virtue of Decree-law No. 10 of 2011 dated 2 March 2011 which was mandated to assess the state of media and communication in the country and to present legislative propositions for reform.

Cooperation was immediately established between the Authority and the media subcommittee within the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition, which resulted in the issuance of Decrees-law No. 115 and 116 relating to Freedom of the Press and Freedom of Audiovisual Communication. Thiswas the outcome of a participatory work to which experts and representatives of trade unions and of national and international non-governmental organizations contributed.

A set of principles and rights guaranteeing Freedom of Audiovisual Communication were adopted, such as freedom of expression, equality, plurality of opinions and ideas, objectivity and transparency in the audiovisual sector. In order to guarantee these rights and freedoms and to regulate the sector, Decree-law No. 116 stipulates the creation of a higher independent authority for audiovisual communication, with a civil personality and financial autonomy.

In terms of the structure, the authority includes a council consisting of nine independent members, known for their expertise, integrity and competence in the field of media and communication, to be appointed by virtue of an order. This composition is governed by the principles of participation and pluralism, as it includes two judges from the administrative and judicial courts, two members proposed by Parliament, two journalists proposed by the most representative professional organizations, a member nominated by the most representative organization of audiovisual institution owners, a member nominated by the organization most representative of non-journalistic media professions, and a member appointed by the President of the Republic after consultation with the members of the authority to occupy the position of president of the authority. Members are mandated for a term of six years, with a third of the members renewed every two years.

In terms of mission, the Independent Higher Authority for Audiovisual Communication has three complementary tasks: **decision-making, monitoring and consultation/advisory**.

Article 16 of the decree specifies the **decision-making powers** that relate mainly to setting up the rules and regulations applicable to the audiovisual sector, the adjudication of claims for issuing licenses for the creation and exploitation of audiovisual communication facilities, the granting of the necessary broadcasting frequencies, the elaboration of bid specifications and licensing and concluding agreements for audiovisual communication facilities and as well ensuring its respect. It also includes ensuring respect for the principles and codes of conduct specific to the sector, guaranteeing freedom of expression and pluralism in thought and opinion, and sanctioning committed violations.

In addition, the Independent Higher Authority for Audiovisual Communication sets the rules for the electoral campaign in audiovisual communication media on the basis of respecting the principles of pluralism, fairness and transparency (Article 44). It also defines the terms and conditions for producing, scheduling and broadcasting programs, reports and sessions related to electoral campaigns in cooperation with the Independent Higher Authority for Elections (Article 43).

The authority also has **supervisory and punitive powers** whereby the authority intervenes on its own initiative or at the request of those concerned in order to "monitor the extent of respect for the general principles of exercising audiovisual communication activities in accordance with the legislation in force" (Article 27). The authority can inflict gradual financial or non-financial penalties, in the form of fines of varying value and non-financial penalties that range from "a warning" to the permanent withdrawal of the broadcasting license. In all cases, penalties are subject to the principle of proportionality (Article 29). The authority could also refer the matter to the competent judicial or professional authority when necessary.

As for the consultative/advisory powers, they are related to providing opinions on draft laws pertaining to the audiovisual communication sector as well as regarding the appointment of the CEOs of public audiovisual communication enterprises[3]. The authority could also make legislative propositions regarding the reforms dictated by the evolution of the audiovisual sector.

B- The 2014 Constitution: Reinforcing the reform process

The National Constituent Assembly (NCA) continued legal reforms in the audiovisual sector by strengthening the right to freedom of expression and information and by reinforcing the institutional framework for freedom of information and communication.

1- Constitutional provisions on freedom of expression and information

Article 31 of the new Constitution stipulates that "freedom of opinion, thought, expression, information and publication is guaranteed. These freedoms may not be subject to prior censorship." Article 32 stipulates that the State "guarantees the right to information and the right of access to information and communication networks. The state seeks to guarantee the right to access communication networks." This explicit dedication guaranteeing these two rights represents a strong support for freedom of expression and information.

2- Authority for the Audiovisual Communication: An institutional guarantee of freedom of information

Freedom of Audiovisual Communication enjoys its own institutionalization embodied in the Constitutional Authority for the Audiovisual stated in Section VI of the Constitution and which has been pending for at least six years to replace the current independent Higher Independent Authority for Audiovisual Communication.

In this context, Article 125 of the Constitution states the following: "Independent constitutional authorities shall be devoted to support democracy. All state institutions shall facilitate their work.

These authorities shall enjoy legal personality and administrative and financial autonomy. They are elected by the Assembly of the Representatives of People by an enhanced majority. They submit to the Assembly an annual report that is discussed for each authority in a plenary session designated for the purpose.

The law determines the composition of these authorities, their representation, and the methods for their election, organization and means of accountability."

Article 127 of the Constitution specifies the features of the composition and the tasks of the audiovisual regulatory authority, stating that "the audiovisual communication authority shall undertake the regulatory process of the audiovisual sector, its development, and it shall ensure freedom of expression and information, and guarantee an impartial pluralistic media. The authority enjoys a regulatory power in its field of expertise and it is mandatorily consulted for draft laws related to this field."

The authority is composed of nine independent and impartial members who are known for their competence and integrity. They perform their duties for a one term period of six years, and a third of the members are renewed every two years.

The article affirms the same major principles that frame the work of the authority, which are "respect for Freedom of Expression and the Media" and ensuring "pluralism and integrity of the media." The powers vested in the authority would enable it to fulfill its complete role as a regulating body to the audiovisual sector.

The creation of a regulatory authority may be tentatively considered an important institutional guarantee for Freedom of Audiovisual Communication and for the maintenance of the balance amongst them and the limitations stipulated in Article 49 related to rights and freedoms, aiming at the protection of the rights of others, or for the public security requirements, national defense, public health, or public morals.

Consequently, monitoring these limitations and working to ensure that they are exercised "in a manner that does not undermine the essence of these freedoms, and that they are not only set as a necessity required by a civil, democratic State, while respecting the proportionality between these limitations and their obligations" in a manner that does not lead to restrictions on these freedoms.

3- Authority for the Audiovisual Communication: A constitutional authority

It is important to point out to the advantages of the constitutional consecration of this authority since its distinguished positioning among other constitutional institutions reflects its important role, in addition to the fact that stipulating it within the Constitution gives it a kind of immunity from the possibility of targeting it by trying to suspend it or to reduce its missions or tasks,

unlike the authorities created under legislative texts that can be amended by simpler procedures and by lower majority of vote than those applicable when amending the Constitution.

The importance of constitutionalization is also evident in principle because it removes the concerned authorities from the status of mere administrative authorities even if they are independent, in order to raise them to the level of the constitutional authority. Administrative authorities, even if they are described as independent, will be, due to their administrative nature, necessarily part of the management areas in which the head of government acts according to Article 92 of the Constitution, and who, according to the third paragraph of the same Article 92, "creates, modifies and suspends public institutions and establishments and administrative departments as well as controls their missions and powers after deliberation with the Council of Ministers."

The authority stipulated in Article 127 of the Constitution comes as a continuation of the Article 31 of the Constitution. The regulatory authority represents an institutional constitutional guarantee of this freedom. Article 127 of the Constitution cannot be read in isolation

from Article 125 that tops Section Six which defines the goals of constitutional authorities (being devoted to supporting democracy), its characteristics (enjoying a legal personality and administrative independence and financial autonomy), and the appointment method of its members (being elected by the Assembly of the Representatives of the People with an enhanced majority).

It is worth emphasizing in this context the specificity of the regulatory authorities in the field of media and audiovisual communication, considering the peculiarity of this highly sensitive sector, as it is not merely regulation of an economic market and seeking to establish its balance as is the case in other sectors, but is in addition to that, is a regulation at the heart of freedoms, aiming at protecting them and establishing balance with the authority and the requirements of security and public order within the scope of the power and freedom equation. Therefore, in all countries of the world, the sector is traditionally prone to doubled pressures in which economic and political issues are intertwined, leading to major risks to freedom of information and democracy, and opening the door to risks of subjugation and misappropriation.

Freedom is closely related to the issue of independence. The aim of the constitutionalization usually lies in seeking to fortify the freedom of the sector by establishing its actual independence from political (executive and legislative) authorities and keeping it away from narrow partisan, political, and financial conflicts in order to perform its role impartially and objectively and to be a positive counter-authority.

On the other hand, with regard to the regulatory authority, which is considered to protect the independence and freedom of the media and audiovisual communication institutions, there are worries that the appointment of its members through elections by the Assembly of the Representatives of People would lead to its subjugation to the will of the ruling parties and other large parties within the Parliament who would opt for political and partisan loyalty at the expense of competence and integrity. This would pose a great threat to the independence of the authority and to the credibility of its decisions and opinions, and hence to its regulatory function. Thus, it becomes clear that the process to reform audiovisual communication and the media in general faces many obstacles and risks that have increased in recent years.

II – Needs for reform

The process towards reforming the media sector in general and audiovisual communication in particular has been characterized since 2011 by an ongoing struggle between the will to push forward with the aim of establishing a free, pluralistic, professional and transparent media, and attempts to dominate, to manipulate and to create obstacles. The obstruction maneuvers have begun since the 2011 decree-laws, when the interim government at that time slowed down in issuing the two decree-laws that were supposed to be issued before the National Constituent Assembly elections, yet they were only signed and published after those elections on November 2nd, 2011. After the elections, the attempts to slow down and obstruct the process continued and multiplied with the "Troika" government which organized a consultation with the aim of reversing the two decree-laws in 2012and failed to set up the higher independent authority of the audiovisual communication. The said government only created it in May 2013 after strenuous struggles and activism by journalists and civil society. After the 2014 elections, pressures, obstacles and maneuvers increased, hence laws were enacted and draft laws were submitted, most of which limited the scope of freedom of information, such as the law on combating terrorism or the draft organic law on personal data. Successive governments deliberately maneuvered and hesitated, while other parties sought to violate the law and create channels neither with authorization, nor with transparency in terms of financing and expenditure methods, taking advantage of this institutional vacuum, especially in the period between 2011, the date of the issuance of Decree-law No. 116 and 2013, the date of the establishment of the Higher Independent Authority for Audiovisual Communication, where illegal television and radio channels were created that later refused to apply the decisions of the regulatory body.

On the legal level, maneuvers and attempts to push back have emerged in the form of governmental draft laws that the regulatory authority criticised, and presented alternative draft texts in response. (A)

At a time when there were some steps of rapprochement to issue a new legal framework up to the level of international standards and the requirements of the democratic system, other attempts emerged to push back and even to demolish the fragile regulatory system whose pillars began to form, especially through a surprising legislative initiative presented by the 'Karama Coalition' bloc in Parliament in May 2020 which was soon approved by the Parliament's Rights and Freedoms Committee, with the approval of urgent consideration despite much opposition.(B)

In July 2020, the government submitted new draft Organic Law on Freedom of Audiovisual Communication (c).

A- Projects by Government and the Higher Authority for Audiovisual Communication

In the context of the constitutional provisions of 2014, a number of draft laws have been elaborated, the most important of which were elaborated by the Ministry in charge of Relations with Constitutional Bodies, Civil Society and Human Rights and by the Higher Independent Authority for Audiovisual Communication.

1- The government draft laws related to audiovisual communication

In a first stage, the Ministry in charge of Relations with Constitutional Bodies, Civil Society and Human Rights, under the auspices of the former Minister Kamal Jendoubi, established a committee to elaborate a draft organic law on all aspects related to the legal framework of the audiovisual sector consisting of 170 articles divided into seven sections.

For its part, the Higher Independent Authority for Audiovisual Communication took the initiative to prepare a draft organic law on the same subject, containing the same number of articles and sections.

The two projects did not differ except in a few, but crucial, points which were a source of relative tension between the two institutions. They were mainly related to the formation of the next audiovisual communication authority, the method of appointing its members and its missions.

The most important difference was related to the method of appointing members. While the ministry's draft proposes the principle of free candidacy and the election of members by the Assembly of the Representatives of People with an enhanced majority, the authority's draft distinguishes between those who nominate members, that is the organizations that represent the sectors to which future members belong, and those who vote on their appointment: the Assembly of the Representatives of People.

The two projects sparked a lot of controversies and disputes over the stakes raised by the independence of the regulatory authority as well as by the objectivity and impartiality of its work, and the credibility of its decisions.

It could be argued that the approach proposed by the ministry was characterized by sparing the authority from the dominance of professional corporatism, but it implicitly opened the door to the dominance of parties and party blocs with a parliamentary majority that is already controlling the executive, which would threaten to undermine the independence of the authority and the credibility of its decisions and opinions.

On the other hand, the HAICA's draft almost eliminated public authorities, both legislative and executive, and tentatively guaranteed the authority's strong independence from political authorities. Thus, this approach seemed to be capable of keeping the work of the authority away from politicization and limiting the power of politicians, but it carried the risks of the predominance of corporal interests at the expense of the public interest.

As for the second difference, it relates to the advisory/consultative functions of the future authority, as the ministry's project maintained the authority's opinion in appointing heads of public audiovisual media, but it was silent on their exemption. As for the authority's draft, it affirmed such opinion and explicitly indicated that it is mandatory for both appointment and exemption.

And in an attempt to maneuver, the government decided, through the Ministry in charge of Relations with Constitutional Bodies, Civil Society and Human Rights, headed by Minister Mehdi Ben Gharbia in 2017, to divide the first draft into three separate legal texts.

- **The first:**

An organic law that included common requirements among all constitutional authorities. Parliament voted on it, despite the criticism it faced for compromising the independence of such authorities.

This bill was finally approved by Parliament, after hesitations and the intervention of the Interim Authority for Controlling the Constitutionality of Laws[4], and the Organic Law No. 47 of 2018 dated August 7, 2018, became related to common provisions between independent constitutional authorities.

- **The second:**

A project related to the authority's composition and part of its functions excepting the powers of monitoring and punishment, which would weaken the authority significantly, as

it would become without real monitoring or punitive authority, that is, without effective and efficient regulatory authority.

This project was presented to the Assembly of the Representatives of People on December 2017in the face of widespread opposition to this project[5], until it was finally withdrawn in 5 June 2020.

- **The third:**

This has been postponed, and it relates to the rest of the requirements of the original project, namely the public and private media system, violations and penalties.

This division into three separate draft laws was subject to strong rejection and criticism from professional organizations, experts and civil society organizations who considered it a source of many drawbacks, including fragmentation and lack of harmony between texts. It also contradicted the prevailing trend in the world today which relies on simplification by compiling and unifying laws[6].

In essence, the ministry's projects were considered a major regression when it comes to the acquisitions stated into Decree-Law No. 116 of 2011, which clearly weakens the regulatory authority and threatens, directly or indirectly, Freedom of Expression, Information and Audio-visual Communication.

2- MPs draft law on audiovisual communication

On the other hand, 34 MPs in the Assembly of Representatives of People adopted the draft prepared by the Higher Independent Authority for Audiovisual Communication in 2017 and it was referred as a parliamentary proposal to the Assembly on 2 January 2018. However, this project was withdrawn in early 2020 by the Parliament's office for reasons that were not explained.

The Higher Independent Authority for Audiovisual Communication, in coordination and consultation with several professional parties, civil society organizations and experts, undertook further scrutiny and clarification of some concepts and improved provisions contained in the draft it prepared and then referred it to the Presidency of the Government in late 2019.

In this context, while the government was in the process of presenting the draft prepared by the regulatory authority to the Council of Ministers for approval and referring it to Parliament, many were surprised by the 'Karama Coalition' bloc in the Assembly submitting a proposed law amending Decree-law Number 116 of 2011.

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[4]Decision of the interim committee on monitoring the constitutionality of draft laws No.04/2017 dated 8 August , 2017 related to common provisions among constitutional bodies
Decision of the interim committee on monitoring the constitutionality of draft laws No.09/2017 dated 23 November 2017 related to appeal in the constitutionality of draft organic law No.30/2016 on common probisions amongst the independent constitutional committees
[5] Organizations warn of the danger of the draft law proposed by "Authority of audiovisual communication" https://www.article19.org/ar/resources/tunisie-lettre-ouverte-sur-le-projet-de-loi-relatif-a-la-creation-de-linstance-de-la-communication-audiovisuelle/
An open letter dated 5 March 2018 addressed to the head of the ARP and chairman of the the rights and freedoms committee and its members. https://bit.ly/3akF02F
[6]Legal analysis of the draft organic law on the audiovisual communication prepared by A19
https://www.article19.org/wp-content/uploads/2018/01/Tunisia-analysis-Audiovisual-Commission-Analysis-Final-December-2017.pdf
A review of the draft organic law on the authority of the audiovisual communication prepared by the Association of Vigilance for Democracy and Civic State
https://www.fichier-pdf.fr/2018/01/11/plaidoyer-vigilance-web/plaidoyer-vigilance-web.pdf

B- The 'Karama Coalition' Bloc project: A dangerous step backward

While most of observers and stakeholders were waiting for the Council of Ministers approval of the project referred to the government at the end of 2019 and its presentation to Parliament for discussion and approval to replace Decree Number-law 116 of 2011 and resolve the temporary situation and establish the new constitutional authority for audiovisual communication, the head of the 'Karama Coalition' Bloc at the Assembly of the Representatives of People submitted, on 4 May 2020, a legislative initiative signed by 11 deputies, members of the aforementioned bloc to amend Decree-law No. 116 of 2011, with a request for urgent consideration.

1- The content of the legislative initiative of Karama Coalition

The text of this initiative includes three articles related to two issues: the composition of the current Higher Independent Authority for Audiovisual Communication and its renewal on the one hand. The removal of the Authority's power to issue licenses for the creation of TV channels, and adopting the principle of mere existence declaration, in the other hand.

- **Modification of the procedures to appoint the HAICA's members**

In explaining the reasons, the initiators of the legislative proposition justified their initiative regarding the composition of the authority and the renewal of the membership of its council with what they described as the constitutional crisis related to the expiration of the mandate of the current audiovisual communication authority.Thisresulted in their view from a contradiction between the provisions of Article 7 of Decree-Law No. 116 of 2011 and Articles 127 and 148 Paragraph 8 of the Constitution and the impossibility of dissolving such "knot" «with the texts in force and the absence of any possibility to change Decree-law 116 in the foreseeable future".

The drafting of a new Article 7 came as follows: "The Higher Independent Authority for Audiovisual Communication continues to supervise the organization and regulation of audiovisual media until the establishment and election of the audiovisual communication authority stipulated in Article 127 of the Constitution."

This article evokes the following observations:

This initiative comes to correct the decree of 2011 as a temporary text amended which enables the current authority to continue its same activity, but only in the form of "supervision" until the "establishment and election" the constitutional authority, which means until the new Organic law is approved relating to Freedom of Audiovisual Communication and the creation of an audiovisual communication body. However, it should be noted here, that the constitutional body was established legally in accordance with the Constitution, and what is required today is its election, concentration, or set up, not its establishment.

This initiative, as indicated by its initiators, expresses the inability to get out of the temporary situation and to establish the permanent legislative and institutional framework for the media and audiovisual communication sector, and at the same time an unbridled desire to review the composition of the current authority and its members in order to subjugate it and dominate it, especially through what is stated in the article 7 bis which changes the composition and provides for the election of its members by an absolute majority and not by enhanced majority as required by Article 125 of the Constitution regarding the constitutional authorities. This is an absolute and unenhanced majority through which some parties and party alliances can appoint members whose independence and impartiality are difficult to guarantee, which threatens the goals of the revolution and the aspirations of journalists and the will to establish an independent, impartial and professional regulatory system that

establishes a diverse and an quality content that guarantees the right to press stipulate in Article 32 of the Constitution.

Furthermore, this initiative gives the strongest parties in Parliament a great margin in selecting obedient members who suit them best, as they are allowed to choose 2 out of 6 candidates for journalists and one of three suggested names from non-journalistic audiovisual professions, and the same thing for enterprise owners.

- **Licenses removal for TV channels**

Article 3 of the initiative stated the addition of Article 17 bis which stated the following: "The creation of radio or satellite television channels is not subject to any license, but anyone who launches a satellite TV channel is entitled to submit a declaration of existence at the secretariat of the Higher Independent Authority for Audiovisual communication against a receipt." The 'Karama Coalition' justifies its initiative to remove licenses in a "Reasons of the Law" document saying that the claim to obtain license is "absolutely" unjustified, since, unlike radio stations, TV channels do not use the radio frequency band which is limited and cannot be explained according them "except by the desire of some parties to have political or financial dominance over the television scene." They consider the condition of obtaining a license "a barrier to investment and employment in the media sector," and justify the removal of licenses as well as the necessity of strengthening the principle of free commercial competition in the media field (...) as the only way that can improve quality and guarantee the transfer from the despicable locality to flourishing beyond national borders". The last motive they gave is to allow the creation of "channels of cultural, sports, educational, and even political nature with a non-profit dimension."

Thus, this second axis of the initiative appears, at first glance, libertarian and liberal, with many advantages and dimensions.

However, a careful reading of this initiative and placing it within its temporal and spatial context shows that, behind the misleading liberal glow, it carries many risks and practically leads to serving political parties and financial lobbies who are hostile to regulation and seek to gain control over the media and audiovisual communication sector and over the Authority charged with its regulation and organization.

First, let us note the existence of a set of weaknesses that reveal a limited perception conceived out of the communication and the media in general and of the audiovisual sector in particular, as it was dealt with based on a trade and merchandizing perspective that relies on the logic of commercial competition mainly, forgetting that media and communication in general and the audiovisual sector in particular relate above all to freedoms and rights, and that it is rather the gateway to individual and public, political and non-political freedoms, and that its regulation cannot be based only on commercial competition and declaration of existence but rather is based above all on the duality of power (both political and financial) and freedom and on the balance between them.

As for the most dangerous thing in the removal of licenses, it is the opening of a sector that is politically, economically, intellectually, and ethically very sensitive wide open to all in a way that opens the door to destructive chaos, especially when it's about conflicting partisan, associative and ideological channels that may lead to undermining stability and fueling sectarian and ideological conflicts that run the risks of tearing the country apart, as is the case in some countries across the region.

Moreover, the first beneficiaries would be the owners of illegal channels with unknown sources of funding that serve the interests of influential parties, lobbies, and movements, which explains the swift acceptance of the principle of urgency to consider this initiative by the Parliamentary office.

2- The harmful impact of the legislative initiative of Karama Coalition

In the end, and behind justifications that appear to be liberal and under the guise of respecting Democracy and supporting Freedom and rotation over public responsibilities, this initiative highlights the obsession with laying the hand on the audiovisual sector and undermining the independence of its regulatory body, and taking over it, as well spreading chaos in an audiovisual scene that already suffers in the current situation from violations, shallowness, overwhelming chaos, and rebellion against the law.

The text of this initiative and its justifications contain serious legal breaches, in addition to being full of contradictions in terms of content and representing a great danger in terms of its objectives.Such facts prompted many civil society organizations and non-governmental organizations to reject it, object it, and call for its withdrawal. In return, they emphasized the need to expedite the establishment of a radical and inclusive solution via the adoption of an organic law for freedom of audiovisual communication and the set-up of an audiovisual communication body in compliance with the constitutional provisions.[7].

C- The Government Project on Freedom of Audiovisual Communication: The Necessity for Improvement and Bridging Deficiencies

The Higher Independent Authority for Audiovisual Communication, in cooperation with a number of experts, the National Syndicate of Tunisian Journalists, and a number of civil society organizations and international non-governmental organizations prepared a draft organic law on freedom of audiovisual communication consisting of five sections and 188 articles. The authority's project - which remains subject to development and improvement - included several guarantees related to either the freedom of audiovisual communication or the regulatory authority. This would support the audiovisual scene as an essential element to ensure and reinforce freedom of the media. This project seeks to be in harmony with constitutional provisions and international standards for freedom of expression.

1- The difference between the government draft law and the draft prepared by the HAICA

Despite the commitment of the Presidency of the Government, according to a press release issued by it on June 5th, 2020 to submit a draft law that "has fulfilled all necessary consultations, has the consensus of the concerned stakeholders and consecrates the foundations of a democratic State that provides guarantees of Freedom of the Press, Information and Expression,"[8]civil society was surprised that the government submitted a draft organic law number 95/2020, dated July 9, 2020, that is relatively different from the project that was prepared by the Higher Independent Authority for Audiovisual Communication.

While the draft law submitted by the government included many provisions contained in the original draft prepared by the Higher Independent Authority for Audiovisual Communication, such as stipulating on the international standards for human rights, a clear and simplified legal system for violations and penalties related to audiovisual communication, and methods for appointing members of the audiovisual communication authority, However, it reflected strange trends regarding the legal system applicable to audiovisual communication facilities, especially commercial ones, where most of the articles related to their financing, terms of licensing and its duration have been abandoned, which calls for skepticism.

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[7] A19 calls for the withdrawal of the proposed new law being dangerous to the freedom of audiovisual communication https://www.article19.org/ar/resources/tunisie-46586

[8]An announcement issued by the Ministry of Relations with Constitutional bodies, civil society, and Human Rights

By referring to the project submitted to the Assembly of the Representatives of People, we conclude that the number of articles decreased to 100, compared to 188 articles in the draft prepared by the authority. The government has merged many articles, for example, the articles related to the definition of the audiovisual communication authority (Article 5 of the government draft) or its missions (Articles 41 and following of the government draft). On the other hand, many of the articles considered necessary for the regulatory authority to be able to ensure the regulation of the audiovisual sector in accordance with the constitutional principles were dropped. Indeed, the authority's function to bind audio-visual facilities "to guarantee credible information that would enable voters to have a conscious choice during electoral campaigns and to ward off all forms of deceit and manipulation" was dropped. In the same context, the article on applying the principles of the electoral campaign to the websites of audiovisual communication facilities and their pages on social networks has equally been abandoned.

As for ways to exempt members of the audiovisual communication authority, the government has chosen to stick to the option presented by Article 11 of the organic law on common provisions between constitutional authorities, which assigns the power to make the exemption decision to the Assembly of the Representatives of People, where the latter takes such a decision by a majority of two-thirds of its members (Article 19 of the government draft), while the authority's draft approved in its article 25 that the exemption decision is taken by two-thirds of its members.

As for the **transparency of media institutions**, they also removed articles that oblige media to ensure the transparency of their financing and management (article 73 and following articles of the authority's project) by publishing information related to the trade name, headquarters, financial reports, media conciliator data and the code of ethics on their respective websites.

Likewise, the articles related to the exercise of **the right of reply and correction** (articles 90 and the following of the authority's draft) through the audiovisual communication facilities were dropped, which is completely unacceptable, especially since the provisions of Decree-law No. 115 of 2011 do not apply to audiovisual media regarding the right of reply and correction. Moreover, the articles related to **commercial communication** (Articles 84 and the following of the authority's draft) were absent without any justification, which would lead either to the media practicing commercial communication without any regard for the right to information due to the absence of legislation, or for the authority to issue legislative restrictions in order to regulate this field in an arbitrary manner, given the absence of legislative rules to accurately determine the authority's intervention.

The deletions affected the most important provisions in the draft law which are those related to **the governance of commercial establishments for audiovisual communication**, as articles 123 and beyond of the authority's draft were absent. These articles relate to the legal conditions that must be met by the candidate company to obtain a license, deadlines for candidacy, decisions on candidacies, the duration of the license, formulas for their renewal, as well as the technical, material and financial obligations for televisions or radios. This legislative deficiency necessarily leads to a further marginalization of the audiovisual sector because the absence of these legislative rules would make the authority an authority without rules or limitations and would enable it to control the media as long as the legislative framework organize the relationship between them is absent. On the other hand, this legislative vacuum could lead to strengthening the leverage of politicians and commercial companies in controlling the media, especially if the appointment of the members of the authority is based on political inclinations, which represents a threat not only to the freedom of the media and the press, but to the fairness of the elections and of the democratic process as a whole.

The same risks apply to **associative media**, since the government has dropped in its project numerous legal provisions guaranteeing the transparency of licensed association broadcasters and the rights they have acquired, especially with regard to the fees assigned to this type of establishment.

2- Recommendations

Finally, it is worth noting the difficulties that the draft organic law on Freedom of Audiovisual Communication went through, as it came after a long path of debates, discussions and consultations in a political climate characterized by volatility and the dominance of party interests over constitutional considerations. And despite its endeavor to comply with international standards and the provisions of the Constitution and its ambition to include various aspects related to the organization and functioning of the audiovisual sector and its regulation, it still contains some weaknesses in form and in content that we deem it necessary to highlight and remedy.

In addition to recommending the restoration and improvement of the removed legal provisions, we recommendto, first, the governmental drafting committee, and then, to the Parliamentarian Commission of Rights and Freedoms the following:

- More precision regarding the definitions of key terms and concepts and their use in harmony with the various provisions of the draft (for example, the definition of fake news),
- The need to seek further harmony regarding the procedures related to the appointment of members of the authority, especially at the level of the number of nominations for each nominating body- not allowing for free candidacies and the limited openness to structures representing artistic professions (theater, cinema ...),
- The need to set up the rules relating to combating fake news with great accuracy, as the current project manifests a weakness in terms of clarifying mechanisms to address them and the absence of a precise and clear definition, to avoid the likelihood of abuses and threats to media freedom to occur under the guise of combating fake news,
- The need to adjust the provisions relating to the governance of public establishments for audiovisual communication to the draft law on the governance of public enterprises and institutions,
- The need to support the legitimacy of the authority to oversee the process of appointing the CEOs of public establishments for audiovisual communication, and not to be limited to expressing its approving opinion.
- The need for more precision regarding cases of exemption of CEOs of public establishments of audiovisual communication in order to avoid arbitrary decisions,
- The need to control over violations, penalties, and procedures related to them more accurately and clearly.

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Le contenu de ce document relève de la seule responsabilité dARTICLE 19 et ne peut aucunement être considéré comme reflétant le point de vue de l'Union européenne