

ALBANIA

By: Ilda Londo

Executive summary

Albania has at the moment a vivid media scene, which has marked significant development since its early stages. However, in spite of undeniable progress, ethical violations still exist. Part of the journalists has perceived freedom of expression as a license for hunting. Although many journalists seem to be aware of the situation, they lack both the incentive and the initiative to amend the situation.

Given the unstable nature of the labor market and the working conditions of journalists, this ranks very low in the agenda of Albanian media. Similarly, media owners, with a few exceptions, do not seem to be particularly interested in improving ethical record of their media.

However, in spite of this situation, Albanian courts do not abound with defamation laws against media and journalists. The lack of unified practice and case law, coupled with the absence of systematic research and monitoring of defamation cases by civil society, does not allow for accurate analysis conclusions on the situation.

On a more positive note, there are continuous attempts to decriminalize defamation and bring this area of legislation in line with international standards. Along the same lines, several stakeholders have been involved in discussing the possibilities to establish an effective self-regulation practice. Although these struggles have recently had a constant and concerted nature, their fate will depend on many other factors.

Context

Albania has been a parliamentary republic since the overthrow of the Communist regime in 1990, and has been trying to consolidate democracy ever since. Politically speaking, the country has made constant progress after two major crisis in the late 90s, with the latest parliamentary elections in 2005 considered as the best held to date. These elections resulted in a parliament where the coalition of the right-leaning parties holds 80 seats out of 140¹.

As of 1 January 2005, Albania's population was 3.135 million². According to the latest data, from 2004, the country's GDP per capita was €1,892³, and the average monthly wage in 2003 was ALL 19,123 (€159)⁴. The economy has progressed recently in a steady pace and currently most of the state enterprises have been privatised, except for the large utility companies, such as the ones providing water supply and electric energy, etc. In 2001, for example, only 18 percent of employees registered worked in state-owned enterprises⁵. However, this has not been a smooth process: when it came especially to large enterprises, such as public phone company, or the largest savings bank in the

country, the process has always provoked contestations and discussions regarding government stance and involvement in this process.

The situation is quite different when it comes to privatization of media outlets that dated back from the early 90s: in fact almost all publications that were issued before 1990 have ceased, except for the daily newspaper of the Socialist Party and some niche publications that continue to be published by the Academy of Sciences and other institutions of this nature. In fact, the current picture of the media market in Albania differs dramatically compared to 1990 and its evolution is remarkable. Its numbers have experienced a continuous boom in the last 15 years, in spite of the extremely small market. Along with the variety of choices these numerous media bring along, they also have brought up the question of their business practices and sustainability in view of the difficult way to survival in such a small, competitive market. At the moment there are 25 daily newspapers published in a country of three million people. According to official data, Albania has 66 local television stations, two national television stations, two satellite televisions, 40 local cable televisions. With regard to radio stations, there are 46 local radio stations and two national ones.⁶

Both print and electronic media have equally boomed, in spite of totally different regulation regimes. Print media operates in almost total lack of legal regulation on press. Instead, it is subject only to regulation by general competition and commercial laws. After the law on print media that was considered too restrictive and totally inadequate to Albanian context, was repealed in 1997, and the Law on Press was passed. This law contains only two provisions that guarantee the freedom of press in a general and vague manner. As a result, newspapers or print publications in general do not need to be registered. This totally relaxed policy contributes to a greater difficulty in knowing the exact number of publications at any time.

On the other hand, the legal framework on broadcasting activity in Albania is laid down by the Law on Public and Private Radio and Television in the Republic of Albania (hereafter, the Law on Radio and Television). The law, which has been amended six times since its adoption in 1998, purports to regulate in detail the activity of the electronic media, including the public broadcaster. The main body responsible for implementing the law is the regulatory authority: National Council of Radio and Television (KKRT, www.kkrt.gov.al). The regulator has not experienced a smooth progress in fulfilling its mission: its decisions first on frequency distribution and then on several sanctions imposed upon broadcasters, especially in the implementation of the anti-piracy provisions, have often been contested and have sometimes provoked protests.

In view of this situation, the last amendment on the law was an initiative of the government and sparked vivid debates: the law had to be voted twice, since it was returned to the Parliament a second time, after the President refused to decree it. The amendment and debates itself are related to the performance and independence of the regulatory authority of electronic media and governing body of public broadcaster. The amendment meant to change the formula of the appointment of the members of these bodies, based upon claims that the election formula that sought a balanced representation in KKRT of the main political forces in the Parliament so far has not produced the

desired professional results. In fact, both KKRT, the general regulatory authority of the electronic media, and KDRTVSH, the Steering Council of the public broadcaster, have not managed to be perceived as impartial and independent, in spite of some progress they have made. “KKRT has not yet managed to remove concerns that most of its decisions are influenced by one political group or another, and by the Government most of all.”⁷

According to the new amendments⁸, the KKRT is composed of five members that have a five-year mandate, eligible only for two terms. The Parliamentary Commission on Education and Public Information Means selects two out of four candidates that are proposed for each seat. Each of the following groups can propose these candidates:

- the electronic media associations;
- the print media associations;
- the academia and associations of electric and electronic engineering;
- the Chamber of Lawyers and other lawyer associations;
- the parliamentary groups themselves.

For the moment the newly elected regulatory body has just started working after being elected in the last July session of the Parliament, where the opposition refused to vote. It remains to be seen whether the new formulas will improve the effective regulation of the electronic media in a highly skeptical environment.

This lack of strong regulatory bodies in electronic media and the almost total lack of regulation in print media have influenced to some extent media editorial independence, or rather to a clear absence of its guarantees. The Constitution states that freedom of the press, radio and television is guaranteed.⁹ In similarly general terms, the Law on Radio and Television states that “editorial independence is guaranteed by law.”¹⁰ In addition to this broad provision, the law seeks to guarantee the independence of broadcasting through a number of important provisions pertaining to the regulatory authority, public broadcasting, content, sponsorship and other areas. As a matter of fact, the KKRT has never ventured into any efforts to guarantee the implementation of these particular provision so far.

The other paragraph of the same article in this law also guarantees what can be considered a sort of equal employment opportunity policy: “Employment, promotion, duties and rights of public and private radios and televisions are not determined by sex, ethnic (the law states simply origin, but “ethnic” is assumed) origin, political convictions, religion, or membership in trade unions.”¹¹ Again, this attempt to protect these two essential ingredients of independent media has many pitfalls when viewed from the legal angle, with no sanctions imposed in case of breach, and with no clear method of defining these concepts or proving their violation¹². However, the regulatory authority has never attempted to implement this article, and neither have journalists, also due to the extremely disorganized situation in which they find themselves vis-à-vis their employees.

There are several journalists’ associations, which remain extremely weak. The two main associations, the League of Albanian Journalists and the Association of Albanian Journalists, have not made any notable attempts to raise awareness among journalists and organise them for their common good. International Research and Exchange Board

(IREX), an international NGO involved among others in strengthening independent media, has recently supported the idea of establishing a trade union for journalists. According to the chairman of this trade union, the association is expected to come up with a collective contract type soon, which should then be negotiated with the media owners¹³.

Quality journalism is difficult to achieve when journalists themselves are very often deprived of their rights. The overwhelming majority of journalists work without contracts, given the weak implementation of Labour Code in the country and the lack of regular supervision of its implementation. It's not that they work as freelancers, they're just not given any contracts to sign in most cases, because the working relations are rarely enforced. In addition, there is no such a thing as collective bargaining yet. The country's Labour Code, which regulates employment relations and also applies to media outlets, is not respected in practice. The recently established union describes the media labor market as out of line with any norms or regulation, where the majority of journalists is without any working contracts and is not paid social insurance.¹⁴ A 2005 study on business practice of the main media outlets revealed that the contractual agreements that might guarantee the independence and protection of editorial staff lack references to the ethical standards at all¹⁵. As a result, journalists do not enjoy the conditions to stand up and fight for their opinion, especially if it is contrary to that of the owner.

In fact, the labour market within the sector is quite unstable. It is very easy to enter this market. As one report put it: "You can finish your studies in agriculture and still immediately become a journalist in Albania."¹⁶ Access to journalism, in fact, is quite open. There was an attempt to change this situation with a draft law in 2001. The bill provided for the establishment of an Order of Journalists that would serve as a regulator of the media community and its activities, which was strongly rejected as it was considered a structure that must be established upon the free will of journalists, and not engineered by the Parliament, or legally obliged to report to the Parliament. According to this provision, all journalists would be obliged to be members of this Order and to adhere to its regulations, a system modeled after the Italian regulation in this area¹⁷. The trend of *laissez faire* in the field of journalism won over the other interest groups at the time, preferring the media self-regulation instead of too much legal regulation.

Hence, due to incomplete or poorly implemented legislation and because journalists tend to have an extremely insecure employment status, there is ample room for media owners to interfere with editorial policy in any manner, at any moment. In this context, media owners seem to be the driving force within the developments of the media scene for many years now. The proprietors often have a background in other businesses, such as construction and trade, and there are also cases when the owners have political affiliations, or even government posts, before or after holding a media business. Media ownership became a controversial issue in 2003, due to the persistent allegations that owners have traded favourable coverage of politicians for patronage of their other businesses.¹⁸ In fact, this is an area that seems to need greater transparency. As with many other economic sectors in Albania, the media industry lacks transparency, a basic condition of the ethical behaviour, and neither the state, nor the media owners seem keen to change the situation¹⁹.

In light of all the above circumstances, establishing an efficient self-regulatory system is not at all an easy task. In fact, self-regulation so far has been almost inexistent. The lack of journalists' rights pose serious difficulties for the facilitation of self-regulation process. On the other hand low ethical standards and the existence of criminal law on defamation and inconsistent court practices in this area point to a clear need for establishing such practice. Consequently, in order to assess the possibilities for improving ethical media conduct it would be useful to examine whether there is a balance of freedom of expression and right to reputation in legislation and how this is applied in practice by media and courts alike. The following section describe the self-regulation situation in the media and review the laws of particular relevance to freedom of expression, and their implementation.

Codes of Ethics

Albania has had a code of ethics for journalists since 1996, drafted with the initiative of the Albanian Media Institute, the main NGO in the country dealing with media training and policy, and the two main journalists' associations: Association of Albanian Journalists and League of Professional Journalists. However, ten years since its creation, the implementation of this Code has been left to the individual will of journalists, since no implementing body has existed to enforce or supervise abidance by this Code.

The Code of Ethics covers the usual areas intended to promote responsibility of journalists in their everyday work, such as accuracy of information, protection of privacy, protection of minors, protections of victims of crime, and confidentiality of sources. The Code also includes provisions guarding against conflict of interests between the journalists' personal and professional life and between the newspapers' commercial and editorial policy. For the purpose of the code, public interest is defined as:

- a) Finding out and exposing a crime or a scandal;
- b) Protecting the public health and ensuring its security;
- c) Protecting the public from the distortion done by individual declarations or actions of somebody, of the organizations, institutions etc., finding or exposing a crime or scandal.²⁰

At the moment of the drafting of this Code, the media outlets were predominantly print media, considering that the boom of electronic media outlets started after 1995. However, since the moment of the signing of this Code by the two main journalists' associations, this Code has been the main code of ethics recognized by the media community in general, until recently, when some media outlets have drafted their own codes of ethics.

As mentioned above, the main weakness in the Code was not any provisions that were considered unsuitable or were not accepted by the community. Rather, the lack of an implementing mechanism that would supervise journalists' conduct in relation to the Code, was the main flaw of this attempt to self-regulation. The absence of this mechanism relegated the Code to a piece of paper that at best was not a determining factor in journalism conduct, and at worst, it was never heard about by journalists.

The drafting of the Code was a process that involved mainly the representatives of the two main journalists' organizations mentioned above, facilitated by the Albanian Media Institute. However, the passive role of these organizations and similar groupings in the media community have affected to some extent the journalists' awareness on the code and consequently its implementation. Both associations are members of the International Federation of Journalists, but there are no reliable statistics as to the number of members represented by each and neither is regarded as active in defending journalists' rights.²¹ As an editor-in-chief of a daily mentioned in an interview made in the framework of a regional study on media self-regulation: "The journalists association should have a greater role in self-regulation process. At the moment they are in a dormant position. The fault here is also of the journalists as well, who do not even pay the membership fee."²² Hence, for many reasons, the journalists' associations have not been able to have an active role with regard to self-regulation process or any other areas.

It is difficult to measure the degree of awareness of journalists on the code. This is mainly because the drafting of the Code was not followed by a process of signing of this Code by the media outlets at the time. Although the Code was sent to the main media outlets, requesting their feedback on the document, there was no successive effort for collective signing of this Code, along with the oath to abide by its provisions. There have been continuous attempts to raise awareness through training and roundtable discussions on the Code and ethical aspects in general, organized mainly by Albanian Media Institute, but there is no information on their outreach.

While the power of the Code has been closer to a formality, there have been some initiatives to establish internal codes of ethics in some media. The most popular and successful such effort is that of the Spekter media group, one of the main Albanian media groups, which publishes daily newspapers Shekulli, Sporti Shqiptar, and Biznes, as well as weekly magazine Spekter. The code of this company outlines how reporters should deal with their sources, cases when anonymity is allowed, how to avoid libel, respect for privacy, how to report on minors and victims, and other professional issues.²³

This Code is implemented by an ethics bureau, composed only of one representative, employed by the company²⁴. In general this board works in a retrospective manner: content is monitored by the staff and there is a meeting with journalists once a week, after publication of articles.²⁵ The participants in these meetings analyse and discuss the content of the newspaper and can even impose sanctions, such as fines, in cases of violation of the code. These sanctions are not specified in the Code, but rather determined on a case-by-case basis by the bureau in cooperation with the owner, after making the necessary verifications²⁶. Although the case of Spekter Code and journalist conduct seems to be a success story in the area of self-regulation, it remains unclear whether this conduct derives from fear of sanctions or individual awareness and willingness of journalists to abide by the code.

For example, in a case when a questionable "fact" was reported, the board and reporter further investigated and determined the reporter was wrong, levying upon him a fine of \$40.²⁷ This is an illustration of not only the functioning of the self-regulation within this company, but also of the educating role this process might have among journalists, who discuss together before reaching a conclusion. However, if not properly balanced, this

system risks to turn into a dictatorship of the owner or management on the newsroom. An example that testifies to this trend is that mentioned in an interview with the head of ethics bureau, who attributed a direct role to the owner in the decision to fire a journalist who was accused of violating the principle of checking a story with two sources²⁸. Even more so when a look at the code reveals that the code or the board that supervises its implementation, does not in any way regulate the relationship between journalists and owners/editors.

Hence, in a context where the code only aims to protect the public and journalists are bound to abide by it, it becomes imperative to balance this accountability of journalists with the proper editorial independence. Even more so when this area does not enjoy any specific legal or social protection and is often indicated as a serious problem by journalists: “In general the journalists comply with the political and ideological approach of the media in which they work. This happens primarily so that they can preserve their job, but also due to a kind of self-censorship they develop.”²⁹

New Code and mechanism

In light of this situation, the Albanian Media Institute started a new process of revising the existing code, along with the attempt to facilitate the discussions of the possibility of establishing a self-implementing mechanism that would supervise its implementation. Apart from the relative lack of success of the first Code and the need to adjust it to the changes that have taken place in the last decade, there was a third reason for this attempt to effectively self-regulate the media: the amendments aiming to decriminalize defamation and libel are on the process in the Parliament and will hopefully pass in the near future. So, this new Code, and most importantly, an implementing mechanism, would provide the proper balance between greater freedom of expression and journalism responsibility and accountability.

This process started in November 2005 with a round table that involved the main stakeholders, namely media owners, directors and managers, editors, journalists, civil society activists, members of parliament, media lawyers, etc. The participants in general expressed their consent with the need to update the existing Code and their will to discuss the establishment of a self-regulation mechanism³⁰. From this meeting two separate work groups were established, which would work in a parallel way: one on the revision of the Code of Ethics, and the other on the examination of the possibilities of establishing a self-regulating mechanism.

In the period that followed from November 2005 to July 2006, several meetings with different stakeholders took place. These meetings aimed to present the work done by the two work groups, receive the feedback of stakeholders, and incorporate it eventually in a new draft. The objective of this process was to involve as many stakeholders as possible, in order to have an ample feedback and a final product that would be as representative as possible. So, journalists, editors, media managers, owners, and finally columnists participated in these roundtable discussions. At the moment there is a final Code of Ethics and a statute of a self-regulation body that can be established. These will be presented in a final stakeholders’ meeting, scheduled in September, where the future of this new attempt at self-regulation will be determined.

The Revised Code

As expected, the revised Code was not different in its core from the existing Code: its main concern was still accuracy and fairness of information, right to reply, information sources, private life versus public interest, protection of minors, etc. However, the revision process involved the consultation of many codes of ethics in Europe and beyond, in order to have as broad a base of reference as possible in this area. What was new in this Code was that it started as a code of conduct, rather than as a code that included the main deontological aspects. In other words, it started as an attempt to respond to as many potential dilemmas journalists face in their work as possible, rather than outline the general principles, as the existing Code did. More specifically, it introduced some new areas or concepts, such as coverage of accidents and misfortunes, separation of editorial content from advertising, elections' coverage, public relations and press, reporting on polls, criminal memoirs, letters to the readers, etc. Also, three new chapters were added, such as plagiarism, the role of media in society, and the relations in the community of journalists.³¹

In general, the Code was regarded as a good and exhaustive one, covering the main aspects of journalists' conduct. The final Code has reflected all the relevant suggestions and remarks made by the stakeholders. However, it must be noted that stakeholders, particularly journalists, often addressed the issue of their protection and their contracts, as a parallel issue and a problem that should be solved in order for them to respect the Code without any problems. Another issue they raised was that of the necessity to establish a representative self-regulating body that would enjoy legitimacy vis-à-vis the media community; otherwise the new Code would be doomed as the first one.

Self-regulating mechanism

After reviewing several cases of self-regulation models in other countries, the work group drafted a statute that was closer to the Bulgarian model of self-regulation. This body, presently referred to as Council of Ethics, was proposed to register as an association, since, from the legal point of view this form guarantees the broadest representation³². Members of the council can be natural or legal persons, media outlets, civil society organizations working on freedom of expression, journalists, freelancers, columnists, etc. Hence, the general principle is that membership is voluntary and unlimited, but a broad range of membership is clearly preferred in order to provide the greatest legitimacy possible.

The highest body of the Council of Ethics would be the General Assembly, composed of all members. Similarly to a parliament of the Council of Ethics, this assembly would gather once a year, with legal persons being represented by one representative through a written authorization.³³ The meetings' quorum would be 50 percent of the assembly members, plus one.³⁴ A quorum of 2/3 of members is necessary for decisions that modify the Statute of the association, exclusion of members, or the dissolution of the association.³⁵

Another body within the organizational structure is the Chairmanship of the Association, composed of seven members, with a four-year mandate, with an open voting process. Each member is entitled to propose candidates for chairmanship. Candidates are elected through simple majority of votes.³⁶ The chairmanship would act as managing unit of the associations, with some of its main duties being:

- implementing long-term strategies of the association;
- regulating and implementing the financial activity;
- drafting the annual report and budget for next year;
- determining the membership fee and its mode of payment, etc.³⁷

The chairmanship should convene no less than four times a year, with a quorum of four members. Voting decisions are made with the simple majority.³⁸

In addition, two permanent commissions would be established within the Council of Ethics, one for print media and the other for electronic media³⁹. These would be the bodies that will examine the complaints regarding possible ethical violations. Each body would be composed of 12 members, out of which four would represent the media owners (namely publishers in the print media commission and TV/radio owners in the electronic media one), four would represent journalists for print and electronic media respectively, and four would be represented as independent ones. This last category will be composed of persons that have special merit in the media area, civil society representatives, etc. According to these grouping, members of the assembly can propose eight candidates, out of which four will be elected, for each group of representation.

This procedure rules out the right of the public or persons/media that are not members of the associations to propose their own candidates. However, members in this commission should not necessarily be members of the association. The commission members have a three-year mandate, and cannot have more than two successive terms. The mandate is revoked only in cases of resignation and if the chairmanship finds any incongruence.⁴⁰ However, the draft statute does not yet describe what could constitute incongruence.

Some of the duties of the commissions of ethics include⁴¹:

- examining complaints submitted by media or general public against those media outlets that are members of association;
- serving as a mediator between the complainer and the media in question, aiming to result in a correction or confutation, satisfactory to both sides;
- if necessary, publicly criticizing those media that have violated the Code;
- proposing amendments to the Code;
- informing the public on its activity in a periodical manner.

The public can also lodge complaints to the commissions of ethics, as long as the media they complain against are members of the Council of Ethics. The commissions should gather at least monthly and decide on simple majority, with a quorum of seven members.⁴² The decisions of the commissions should be made public through the members of the association, namely the media outlets, signatories of the Code and members of the Association.⁴³ The same media should offer free advertising time to the activities of the commissions, on a monthly basis.⁴⁴

One of the most debated issues on the council of ethics was its financial support. According to the draft statute, the financing sources would be the annual membership fees, subsidies, donations, and sponsoring, as well as any revenue generated from the selling of publications of association's studies.⁴⁵ Although regarded as a fair way of support for the association's activities, some stakeholders have expressed their doubts on whether this was achievable, given the bad experience of associations of journalists' in collecting membership fees. On the other hand, the inability to gather many members would harm the legitimacy and representative nature of the association.⁴⁶

Unfortunately, for the moment the coordinated effort to revise the Code of Ethics and establish a press council seems to be the only attempt for media self-regulation in the country. As a result, other possible forms of self-regulation, such as in-house ombudsman have yet to make their appearance. However, there are efforts to raise awareness on ethical behaviour and self-regulation: there is continuous training on ethical issues for journalists, offered by the Faculty of Journalism as a subject, by the Albanian Media Institute as one of the endorsers of the Code, and other different organizations.

However, in the absence of continuous monitoring of ethical conduct or a body that would cover this area, it is difficult to measure the impact of training and education on everyday conduct of journalists. In addition, there is no specialized publication on media issues and development in the country, where ethics would be a part of the public and professional debate. After the quarterly "Media Shqiptare: magazine ceased publication in 2004, no other publication or forum of a different kind has replaced it. In this context, the public debate on ethical conduct of media is very weak and sporadic, emerging only on flagrant cases or issues involving famous persons and dying soon after another issue comes up.

Defamation: legislation and implementation

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

Criminal Law provisions

The current Criminal Code contains two main articles that make up the bulk of defamation law: one of them is on insult and the other is on libel. The alleged victim should start these lawsuits. When it comes to penalties, the ones for insult are slightly lower: a fine or up to six months of imprisonment⁴⁷, as compared to a fine or up to one year of imprisonment for libel.⁴⁸ According to the same provisions, when these acts are committed publicly which implies media as well, the sanctions are the same for both contraventions: fine or up to two years' imprisonment. No distinctions are made whether

the offender is a journalist or a common citizen; the law applies to all citizens, and hence all journalists, independently from the kind of media they work in.

A note must be made on the legal approach of alleged defamation versus public officials here. There are specific criminal provisions intended to prevent insulting or defaming public officials on duty, stating that intentional insulting or defamation of an official in his official capacity constitute criminal contraventions and are punishable each with a fine or up to one year of imprisonment.⁴⁹ The penalties are higher if the acts are committed publicly. So, these provisions raise the sanctions for public officials in cases of insult, whereas defamation sanctions are the same.

In addition to this increased protection, criminal law also favors public officials in another aspect: public officials who are defamed against do not need to litigate their case themselves, because the prosecution service will do so, instead.⁵⁰ Graver sanctions for defamation against public officials and ex officio prosecution are probably the most problematic when it comes to examining legislation and court cases' impact on freedom of expression. This part of Albanian regulation clearly collides with the important principle articulated by European Court of Human Rights, according to which public officials should tolerate a greater degree of criticism than private persons⁵¹. In fact, international organizations concerned with freedom of expression campaigns have strongly recommended that instead of providing extended protection for public officials, the standard for defamation in cases brought by public officials should be stricter than the standard for other individuals.⁵²

Finally, criminal law contains some articles intended to prevent defamation of the representatives of foreign countries, the symbols of national anthem and flag, the President of Republic, the Republic's symbols, and judges, have constituted a source of concern and debate for journalists, freedom of expression activists, and media lawyers recently. "Whereas journalists are increasingly aware of the limits imposed on journalistic freedom for the sake of protection of individuals, they question the appropriateness of having defamation provisions in place for the protection of objects such as the national flag and other symbols."⁵³ An international review of defamation legislation in Albania also posed the same doubts: "Defamation laws should not be used to protect the 'reputation' of objects, such as State or religious symbols, flags or national insignia; nor can they be used to protect the 'reputation' of the State, or nation, as such."⁵⁴

Civil Law provisions

Albania's Civil Code contains two articles that relate to defamation, one on libelous and inaccurate publications, and the other on liability concerning non-property damages. According to these provisions, the court can order the publication of a refutation when proved that the information published was inaccurate or libelous, independently whether there was reckless disregard of the truth or not.⁵⁵

In addition, a more general article provides for the right to sue if persons feel their honor or dignity has been harmed.⁵⁶ The greatest controversy in this article lies in the fact that it enables individuals to sue for damages on behalf of deceased people, provided they did not receive redress when alive. “The right to sue in defamation for the reputation of deceased persons could easily be abused and might prevent free and open debate about historical events.”⁵⁷ Moreover, the law fails to set limits on the amount of damages that may be awarded in cases on non-property damage, which grants the courts a power that has to be used carefully.

Proposed Amendments to Legislation on Defamation⁵⁸

The initiative to amend the current legislation on defamation has featured parallel attempts of amending both criminal and civil laws. These amendments propose to completely repeal insult and libel from the criminal law, along with articles that feature enhanced protection for foreign dignitaries and national symbols. Instead, the amendments provide protection only for public officials that suffer harsh insults in their official capacity, a contravention that is punishable only by fine, and no longer by imprisonment. In addition, the symbols of the Republic are still protected, but the sanction is changed to fine only, and can apply only if intention to contravene is proved.

In order to compensate the decriminalization of defamation, the working group also proposed amendments to the Civil Code. First, the amendment proposes to pose a statute of limitation of one year for the defamation action, seeking to improve the current article in the Civil Code, where no limitation period is imposed at all. “Clearly, such regulation is problematic from the point of view of free speech because as time goes by it becomes increasingly difficult for the parties to a defamation proceeding to show with sufficient clarity the facts that prompted the contested statement.”⁵⁹

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

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

The process of amendment of the defamation law started in early 2004 and reached the present status through a series of roundtable discussions and lobbying activities of the initiators and the working group with MPs, media lawyers, journalists, editors, civil society representatives, etc. After receiving the written support of 23 MPs, the amendments proceeded to the Parliament on May 2005, but could not be voted due to lack of time, since the general elections took place soon afterwards. Presently, the Albanian Media Institute has resumed its lobbying efforts, since some of the MPs that showed support for the bill did not renew their mandate. This initiative found the support of several international organizations such as OSCE, Article 19, Committee to Protect Journalists, etc: “The proposed amendments of Albania’s Criminal and Civil Codes would bring Albania closer to striking a fair balance between the right to freedom of expression and the right to reputation.”⁶⁰

Implementation of Defamation Law

Given the rarity of cases of defamation in court⁶¹, as well as the lack of a unified court practice in this area, it is difficult to determine its impact on freedom of expression. “The ad hoc approach taken by the courts any time they are faced with a defamation case tends to put the emphasis on the accurate assessment of facts, with the protection of reputation usually upheld, at the expense of free speech.”⁶²

What is noticed in general is that civil protection is sought almost in all cases: persons affected have recently only preferred compensation in economic terms. Although this trend certainly marks a progress in the context when imprisonment can also apply, proportionate fines should also be applied to secure a fair trial. If criminal law is applied, both defamation and insult are considered offences, and the fine/compensation for the offences ranges from ALL 50.000 to ALL 5.000.000 (approximately Euro 400⁶³ to Euro 40,000).⁶⁴ However, if civil law is applied, the floor or ceiling for fines in these cases are lacking.

For example, in September 2003, Koco Kokedhima, a well-known entrepreneur and media owner, filed a claim for damages of his reputation against five daily newspaper companies, using civil law. The charge was on articles these newspapers had published on the plaintiff, which he claimed damaged his reputation. The newspaper companies did not delegate any representatives to appear in court and prove the falsity of the claims. In this context the court ordered each company to pay a compensation of Euro 800, in addition to the court expenses.⁶⁵

In another case, when one of the companies of the same entrepreneur started lawsuit against the daily newspaper of the Socialist Party with defamation, the court decision stated that the newspaper should pay damages to the amount of ALL 1,5 million, or Euro 12,000, in addition to the publication of refutation. The newspaper was accused of deliberately defaming the company in some articles that questioned the quality of construction of roads by the company in question. According to the court ruling this damage has been caused deliberately, because calumnies and offenses have been disseminated through public means, thus endangering the activity of the society.⁶⁶ These

two cases clearly show the lack of pattern how to apply proportionate fines and compensation determined by the courts in civil cases, in the absence of a legal mechanism that would allow for proportionate fines. “Albanian civil defamation laws, which make harm to reputation a tort, suffer from even greater vagueness and lack of defined standards than the criminal laws.”⁶⁷

Another thing to consider when examining the implementation of the defamation law is the burden of proof. According to Albanian legislation, the burden of proof lays with the plaintiff, which is, in theory, good news for journalists and media. In the recent period there seem to be no problems with respecting this procedure in court. However, there have been cases when this procedure has been distorted in the not-so-distant past. “In three consecutive cases from 2000, which involved then-Prime Minister’s wife, Monika Kryemadhi, who had filed criminal lawsuits against the main opposition party’s daily newspaper, “Rilindja Demokratike,” the court perverted one of the basic tenets of the Albanian Criminal Code, as it shifted the burden of proof from the plaintiffs on the accused journalists, who were invited to show the court the accuracy of the contested statements.”⁶⁸

However, probably the most controversial articles on defamation law concern the enhanced protection of public officials vis-à-vis the others. In this context, and perhaps in the overall defamation practice, the most celebrated case is perhaps that of the lawsuit of ex-Prime Minister Fatos Nano against Nikolle Lesi, MP and well-known media owner. In March 2004 then-Prime Minister and two of his aides sued “Koha Jone” newspaper, owned by Lesi, for non-material damage, after the publication of the newspaper of a government resolution. This resolution stated that following the privatisation of the largest state bank in the country, the plaintiffs would receive five monthly salaries as a reward, which amounted to corruption, according to the newspaper. The court of first instance found the defendant guilty and ordered payment of damages amounting to ALL 2 million, or Euro 15,000. The ruling was then revoked by the Court of Appeals. However, in addition to the harsh financial penalty in the first ruling, a procedural violation was also noted: “the procedure in the lower court was completed in an unprecedented 15-day timeframe, compared to the usual 3-7 months.”⁶⁹

Without discussing the possible politically influenced court decision itself, among other things, this court case reveals the possibility of receiving preferential treatment when you are a high public official (in this case the second higher in the country.) “The courts have failed to make the necessary differentiation between those defamation cases where the allegedly injured person is a private person and those other cases where the injured person is a public figure, thus failing to secure a broader margin of freedom of speech in the latter category of cases.”⁷⁰ In fact, rather than adequate legislation, its implementation by the courts in a fair and independent manner has been one of the main concerns of development of democracy in the country for more than a decade now.

However, on a more positive note, the current Prime Minister Sali Berisha issued an order on October 2005 stating that public officials should refrain from taking to court journalists on civil or criminal charges on libel and insult; only official refutations should be made instead⁷¹. This order, along with the ongoing initiative to pass the amendments

on defamation, certainly bid well for the future of freedom of expression. The present court proceedings for this year reveal only three cases of defamation against journalists, and the first instance court has ruled the journalists are innocent in these cases.⁷²

Disclosure of classified information/protection of sources

The classification, possession, dissemination, and declassification of state secrets is regulated by the Law on Information Classified as State Secret, approved in February 1999, amended in May 2006. When first passed the law filled a void after the passing of the Criminal Code in 1995, which punished the dissemination of state secret, but on the other hand did not define what the state secret was and what the procedures for classification of information would be.⁷³ This law defines state secret as any classified information that, if revealed in an unauthorized manner, would endanger national security.⁷⁴ Depending on the kind of information, the amended law outlines four levels of importance to the information⁷⁵:

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

The amendment of the law, which added a fourth level of classification to the existing ones, provoked a reaction especially from international organizations. “The bill’s definition of ‘restricted information’ is so broad that it can render meaningless the right to information,” said Darian Pavli, an expert on freedom of information law at the Justice Initiative. “This new classification creates a limitless loophole for denying legitimate requests for information.”⁷⁶ Government, who initiated the amendments, claimed that the only aim was to satisfy NATO requirements regarding classification of information, and the law was finally passed in the Parliament. However, in general the amendment did not receive significant media coverage, in view of the amendments proposed for the regulatory authorities of electronic media a few days later, which involved most of the media in a two-month debate.

Authorities entitled to classify information include the President, Prime Minister, directors of the State Register of Classified Information authorized by the Prime Minister, high official within these institutions, who are delegated this authority.⁷⁷ The law also reserves to any citizen the right to suggest the classification of information to the relevant institution, if there are valid reasons for doing so.⁷⁸ Although theoretically this article applies to all citizens, in practice the citizens’ range able or interested in applying this article is limited to those who are familiar with the law and to state employees, who can come across information that could be classified as state secret.⁷⁹

Content that can lead to classification of information includes information on⁸⁰:

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

The legislator has also attempted to prevent any abuse with the law, determining that it is forbidden to classify an information when this act is done with the aim of hiding law violations, administration inefficiency or mistakes, hindering the right of information, or hindering or delaying the revelation of information that does not need to be classified as state secret.⁸¹

In addition, the law recognizes some exceptions when a person can access classified information, provided that⁸²:

- the person needs to know the information to fulfill legal interests and aims;
- the person has signed an agreement for the non-disclosure of the information;
- the person has credentials of information (clearance to work with it);
- the person is mentally capable of acting.

Apart from this, this law does not set out any sanctions for people who violate it, and consequently not even for journalists. These violations are in fact criminalized by articles 294, 295, and 296 of the Criminal Code. These articles make a distinction between the offender's position: namely whether the person was somebody who was entrusted with state secrets because of his/her duty, or whether he/she came to know the information from somebody entrusted with this secret. This distinction is materialized in different sanctions: the state employee can be fined or sentenced to prison up to five years and if the crime is done in a public manner including by media the sentence can reach ten years.⁸³ On the other hand, if the offender is any citizen, who does not have the information because of duty, the fine or a sentence of three years is applicable; the sentence can be five years if the crime is committed publicly.⁸⁴ In cases of losing information classified as state secret, the sanctions are more lenient: a fine or a maximum of three years of prison.⁸⁵

In this way, legal provisions regarding classified information are split on two levels: officials dealing with this issue, and any citizen. No special provisions are made for journalists or their disclosure of restricted information. In fact, this is a law that has not been on the focus of attention in the recent years, neither in cases involving journalists or media in general, nor in cases involving public officials or public in general.

Other provisions related to the regulation of information classified as state secret include article 160 of the Code of Criminal Procedures, which states that state and public employees are not allowed to testify in court on facts that are state secrets. The same is true for those persons that claim the information is state secret, and in that case the court demands a written confirmation from the classifying authority. Even in cases of

confirmation of the secrecy status of information, if proof is essential to the court case, the court suspends the case until the highest state administration body answers this dilemma. If there is no answer yet after 30 days, the court forces the witness to testify⁸⁶. This is the only form of legal provision that obliges the court to demand revelation of information classified as state secret. Again, this provision is not made having in mind media or journalists; it includes any Albanian citizen.

In light of the above information, it can be concluded that there is no national law on protection of journalists from sanctions if they refuse to disclose their sources of information. On the other hand, there is a provision in the Code of Criminal Procedures regarding the confidentiality of professional secret, which includes journalists in this group, as well. Article 159 of this Code states that professional journalists cannot reveal information regarded as professional secret, hence their sources. However, if the data is essential in proving the criminal offense and the source is the only way to prove this, the court can order the journalists to reveal their sources.⁸⁷ In addition, another paragraph of the same article enables the court to force the witnesses to provide information, if the court deems that the claims of witnesses to withhold information are not valid. The law does provide some sanctions and penalties in case of refusal, as laid out in article 307 of Criminal Code: the offender can be fined or imprisoned up to one year and if proven that the reason for refusing to testify is personal gain, the sentence of imprisonment can be up to three years.⁸⁸

In another perspective, there are no legal provisions regulating the relation between journalists and their sources in these cases. Journalists can only appeal to the Code of Ethics or their consciousness in finding out whether to reveal their source or not. The revised Code of Ethics contains a provision saying that journalists should not reveal their sources, unless they have obtained the latter's clear consent to do so⁸⁹. Whether this is an article journalists will respect remains yet to be seen.

In such potential cases at court, the law gives protection to "professional journalists," without specifying their position in the newsroom or media company, and with no distinction for the kind of media they work in. These cases have been extremely few in number (a couple in the last ten years) to draw a general picture in the practice of journalists and courts in this area. A survey carried out on ethical behavior of media businesses in 2005 revealed that all ten main media outlets that participated offered legal assistance when it came to court cases⁹⁰. However, only two of them indicated that the journalist is not involved in these cases, the editor-in-chief follows the matter⁹¹. In other words, there is no established legal route or internal media practice: the procedures are on a case-by-case basis and depending on the issue at hand.

As it can be seen, these provisions do not absolutely shield journalists from revealing information, but on the other hand, they can always appeal to this article. In other words, the degree of protection journalists can face in these cases is determined by the courts, and the jurisprudence in Albanian courts in this area so far is quite insufficient in order to allow to reach a conclusion. Although there have been some similar in the past, these cases have become quite rare in the last four years, if not absent altogether. Unfortunately there is no regular monitoring and documentation of cases of this nature in the country

that would help keep track of the development of these cases and their impact on free speech in general and more specifically on media behaviour.

Access to public sources

Journalists, and all citizens, in fact, are entitled to access public documents, unless they are classified information. This practice is regulated with Law on Access to Information on Official Documents, approved in June 1999. According to this law “everyone is entitled, upon his request, to get information on an official document without being obliged to explain the motives of such request.”⁹² Excluded from availability are those documents that are classified based on other laws (such as the Law on State Secrets or the Law on Protection of Personal Data), but in cases of denial, the public authority should provide a written explanation of the cases of refusal.⁹³ The supply for information on official documents may be subjected to fees, if this supply causes expenses, but in any case the fees should not exceed the direct costs incurred for supplying the data.⁹⁴

A sensitive issue on this law has been that of time limits, especially concerning journalists, who are bound by deadlines all the time. According to this law, the public authority decides whether to accept the request for information or not within 15 days’ time⁹⁵, and in case of admission, the request should be met in 30 (40) days from its admission.⁹⁶ When the bill was being discussed journalists protested on this particular provision, claiming this delay in receiving information would harm good journalism.

This timeline has also been in the focus of international organizations’ analysis and recommendations. For example, an analysis of the law by Article 19, commissioned by OSCE, states that the 15-day decision-making period is in line with international standards, but “the 40-day deadline for supplying information represents an unacceptably lengthy delay to responding to applications for information and is hard to reconcile with the shorter decision-making period.”⁹⁷

Government’s response when the bill was discussed was that the law was not aimed at journalists; rather, its main objective was to broaden citizens’ access to official documents. On the other hand, the assumption is that journalists have their own sources and are able to speed up or obtain the information before the timelines, unlike any common citizen.⁹⁸

Overall, this law has been considered in line with international standards. “However, there exists a sheer discrepancy between the elevated standards of FOIA and its implementation.”⁹⁹ The first factor to have in mind is the lack of proper training of public administration. “In 2003, 87% of the people surveyed working in public authorities did not even know that Albania had a freedom of information law.”¹⁰⁰

Moreover, even when aware of the law, its implementation does not seem to be among the top priorities among authorities. For example, in a monitoring exercise of the law carried out in 22 institutions that were sent an information request, only five answered

respecting the 40-day deadline; after lodging an administrative complaint to the other 17 institutions, only 8 of them provided an answer.¹⁰¹

In addition, the extremely low level of awareness of citizens on the law and the weak civic initiative adds to the problem. According to the same survey, only 23 percent of citizens surveyed seem to be aware of FOIA.¹⁰² In view of this situation, major projects have been started on raising awareness on this law, coupled with further training of public administration on implementation of the law. Albanian Media Institute has focused a significant part of its activities in the last two years in promoting awareness on the law among journalists in different areas of the country. However, due to lack of monitoring and research in this area, there is no accurate information on the degree of awareness and implementation of the law.

On a more specific level, there is no media accreditation to the main institutions and in general there is no problem in allowing media access to public meetings, unless the nature of the meetings does not allow their attendance. It is a fact that media in Albania cover key events and issues with little restriction¹⁰³. The only problem that comes to mind in this context is that of the main opposition party in 2004 denying access to News 24 TV. The spokesperson of the party at the time claimed that the television only broadcast news that were in fact fiction written from government and refused to broadcast the confutations that the Democratic Party had sent them¹⁰⁴. After a brief period of mutual censure from both sides, the media was allowed to follow the activities again. However, this can be regarded as an extreme and isolated case; the norm is usually that there are no problems with media access in public institutions.

Conclusions

Improving ethical conduct of Albanian media is a difficult task, but not necessarily an impossible one. The existence of the Code of Ethics has not affected the ethical record to date, given the lack of an implementing mechanism. Recent developments led to the revision of the Code and its update, which was generally accepted by stakeholders to the moment.

However, the true test to the Code and its impact on the media scene will be the establishment of a self-regulatory body. Even though the stakeholders have generally agreed on the need to establish such practice and the willingness to abide by some ethical guidance, there is also mentioning of other areas to consider. The feeble position of journalists vis-à-vis management and owners, combined to their lack of organization, do not favour the articulation and pursuit of their interests, hence impairing editorial independence and ethical standards. The lack of strong trade unions or associations of journalists and good implementation of labor provisions by the state have only worsened their position and potential for ethical behaviour.

Despite recent developments, it will be a long time before journalists properly organize themselves. What might take less is, in fact, amendments to legislation on defamation. Although rarely used, the provisions on defamation are out of line with international

standards and can have a chilling effect on media freedom. Case law in the past has proved this. More positively, the new government has showed good will in this regard recently, in spite of the necessary steps this change has to go before becoming effective. In this context, it becomes increasingly important for Albanian media to respond to greater freedom with greater responsibility and accountability.

Recommendations

The Government should take specific steps to enforce the Labour Code in media organisations and regularly monitor its implementation.

Journalists' associations, with the assistance of other civil society actors, should demand enforcement of the Labour Code in media companies, and eventually collective bargaining.

Civil society organisations should support individual journalists whose rights are violated by media owners, State authorities or other parties.

The Government and civil society should regularly monitor and investigate allegations of violations of media freedom and independence.

Civil society organizations and journalists' associations should raise awareness on the newly revised code of ethics and facilitate the process for the establishment of an effective body that would supervise its implementation.

Journalists' associations should significantly strengthen the capacities for public debate and awareness of media organisations and associations, particularly through improved cooperation and by promoting journalists' rights vis-à-vis media owners and the Government.

Parliament should repeal criminal insult and libel provisions as well as provisions on enhanced protection for public officials.

Parliament should amend the civil provisions on non-proprietary damage in order to provide for a proportional mechanism of compensation, after all efforts to mitigate damage of reputation have been considered.

The government should provide systematic training to judges on international human rights law, especially on the jurisprudence of European Court of Human Rights.

¹ *Parliament of Albania, data available at*
<http://www.parlament.al/dokumenti.asp?id=529&kujam=Zgjedhjet%20e%20fundit%20të%20kuvendit>
(accessed on September 1, 2006)

² *Institute of Statistics (INSTAT), data available on*
<http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Popullsia?POP%202004/pop1.xls>
(accessed on September 1, 2006)

³ *Institute of Statistics (INSTAT), data available at*
<http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Ekonomik/Llogarite%20Kombetare/Korrik2006/Tab1.xls> (accessed on September 1, 2006)

-
- ⁴ Institute of Statistics (INSTAT), data available at <http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Pagat/PAG%202004/Tab1.xls> (accessed on September 1, 2006)
- ⁵ INSTAT, "Statistical Yearbook, 1993-2001", Tirana 2003, p.45.
- ⁶ KKRT, Department of Jurisdiction and Licenses, 16 May 2006.
- ⁷ Chapter on Albania in EUMAP, "TV Across Europe," 2005, p. 195.
- ⁸ Law no.9531, on Some Amendments to Law no.8410 On Public and Private Radio and Television.
- ⁹ Constitution of the Republic of Albania, approved by Parliament on 21 October 1998, adopted by the Referendum of 22 November 1998, and in force since its promulgation by the President of the Republic on 28 November 1998, art. 22.
- ¹⁰ Law no. 8410, On Public and Private Radio and Television, art. 5.
- ¹¹ Ibid.
- ¹² I. Londo, Report on Albania, in Brankica Petkovic (ed.), *Media ownership and its impact on media independence and pluralism*, Peace Institute and SEENPM, Ljubljana, June 2004, available at <http://www.mirovni-institut.si/media_ownership/albania.htm> (hereinafter, PI/SEENPM, *Media ownership – Albania*) p. 40.
- ¹³ Aleksander Cipa, "Albanian Union of Journalists: trade union organization in the media life in the country," quoted in Albanian Media Monitoring Center, "Albanian Media Monitor," 2005, p. 66.
- ¹⁴ Ibid.
- ¹⁵ I. Londo, Report on Albania, in Manuela Preoteasa (ed.), *Media: The business of ethics, the ethics of business*, Center for Independent Journalism and SEENPM, Bucharest, 2005 (hereinafter, CPJ/SEENPM, *Business of ethics – Albania*) p. 29.
- ¹⁶ IREX, *Media Sustainability Index 2005*, available at <http://www.irex.org/msi/2005/MSI-2005-Albania.pdf>
- ¹⁷ Draft Law on Press, 2001.
- ¹⁸ Chapter on Albania in EUMAP, "TV Across Europe," 2005, p. 199.
- ¹⁹ Ibid.
- ²⁰ Code of Ethics of Albanian journalists, 1996, chapter XVII, available at www.media-accountability.org/library/Albania.doc (accessed on September 1, 2006).
- ²¹ Chapter on Albania in Article 19/International Federation of Journalist, "Research on Development of Media Self-Regulation in South East Europe," 2004.
- ²² Interview with Alfred Peza, editor-in-chief of Korrieri, Tirana, 12 December 2004.
- ²³ Spekteer jsc. Code of Ethics, available at <<http://www.shekulli.com.al/index.php?page=kodietikes&PHPSESSID=7c3a9d05419c2c2fb412638191d292c6>>
- ²⁴ Interview with Mark Marku, Head of Board of Ethics, Tirana, 10 December 2004
- ²⁵ Ibid
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ Ibid.
- ²⁹ Chapter on Albania in Media Center, "Ethics and Journalism," 2005, p.21.
- ³⁰ Comments from Roundtable Meeting with Stakeholders, November 4, 2005, Tirana.
- ³¹ Revised Draft Code of Ethics of Albanian journalists, 2006, hereafter referred to as "Revised Draft Code."
- ³² Concept of the Council of Media Ethics, 2006.
- ³³ Ibid.
- ³⁴ Draft Statute of the Association "Council of Journalism Ethics," February 2006, article 12, hereafter referred to as "Draft Statute."
- ³⁵ Draft Statute, art. 13.
- ³⁶ Ibid, art. 15.
- ³⁷ Ibid, art. 16.
- ³⁸ Ibid, art. 17.
- ³⁹ Ibid, art. 23, 24, 25.
- ⁴⁰ Ibid, art. 26.

-
- ⁴¹ *Ibid*, art. 28.
- ⁴² *Ibid*, art. 29.
- ⁴³ *Ibid*, art. 30.
- ⁴⁴ *Ibid*, art. 31.
- ⁴⁵ *Ibid*, art. 40.
- ⁴⁶ Comments from roundtable with stakeholders, March 27, Tirana.
- ⁴⁷ Criminal Code of Albania, art. 119.
- ⁴⁸ *Ibid*, art. 120.
- ⁴⁹ *Ibid*, art. 239-240.
- ⁵⁰ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.159.
- ⁵¹ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.30.
- ⁵² Article 19, "Memorandum on Albanian Defamation Law," commissioned by OSCE, September 2004, p.11.
- ⁵³ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.157.
- ⁵⁴ Article 19, "Memorandum on Albanian Defamation Law," commissioned by OSCE, September 2004, p.11.
- ⁵⁵ Civil Code of Albania, art. 617.
- ⁵⁶ *Ibid*, art. 625.
- ⁵⁷ Article 19, "Memorandum on Albanian Defamation Law," commissioned by OSCE, September 2004, p.15.
- ⁵⁸ The information from this section is from the Relations for the amendments on Criminal and Civil Codes, drafted by the working group on amendment to defamation laws, and presented to the members of parliament in the series of lobbying for these amendments to pass.
- ⁵⁹ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.169.
- ⁶⁰ Article 19 Open Letter to Servet Pellumbi, 28 April 2005.
- ⁶¹ There are no regular efforts to collect data and documentation on court cases involving media/journalists in the country. Only the most notorious cases are usually followed, involving high-profile politicians, journalists, or celebrities, creating thus a void on all the other cases that might occur and making it impossible to have complete statistics in this area. Two of the most serious studies on documentation of defamation studies were completed by the Institute for Public and Legal Studies and a report of Human Rights Watch, dating back from 2003, and 2002 respectively. Unfortunately these were also the most recent studies on this issue, leading to a lack of data/statistics on the trends in this area.
- ⁶² Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.161.
- ⁶³ Exchange rate used: 1 Euro= ALL 125
- ⁶⁴ Criminal Code of Albania, art. 34.
- ⁶⁵ Verdict of the Court of Tirana, civil case no.727, 04.09.2003, quoted in Albanian Media Monitoring Center, "Albanian Media Monitoring," 2003, p.371-373.
- ⁶⁶ "Court indemnifies '2K Group' for the articles in 'Zeri i Popullit,'" quoted in Albanian Media Monitoring Center, "Albanian Media Monitoring," 2005, p.115-116.
- ⁶⁷ Human Rights Watch, "The Cost of Speech", June 2002, p.23.
- ⁶⁸ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.161.
- ⁶⁹ Article 19 Open Letter to Fatos Nano, May 27, 2004.
- ⁷⁰ Gent Ibrahim, "Defamation law in Albania: On the way to reform," quoted in Mediaplan Institut, "The stumbling of media in times of transition," 2005, p.162.
- ⁷¹ Albanian Media Institute, Albanian Media Newsletter, October 2005, available at www.institutemedialib.org/newsletter
- ⁷² Gjykata e Tiranës, Archive of Court Cases, available at www.gjykatatirana.gov.al
- ⁷³ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.37.
- ⁷⁴ Law no. 8457 on Information Classified as State Secret, 11.02.1999, hereafter referred to as "Law on Classified Information."

⁷⁵ *Law on Classified Information, art. 3.*

⁷⁶ *Open Society Justice Initiative, "Albanian Secrecy Bill Threatens Freedom of Information," February 10, 2006, available at: http://www.justiceinitiative.org/db/resource2?res_id=103097*

⁷⁷ *Ibid, art.4.*

⁷⁸ *Ibid, art. 5.*

⁷⁹ *Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.39.*

⁸⁰ *Law on Classified Information, art. 6.*

⁸¹ *Ibid, art. 11.*

⁸² *Ibid, art. 21.*

⁸³ *Ibid, art. 294.*

⁸⁴ *Ibid, art. 295.*

⁸⁵ *Ibid, art. 296.*

⁸⁶ *Code of Criminal Procedures, Law no. 7905, 21.03.1995, art. 160.*

⁸⁷ *Ibid, art. 159.*

⁸⁸ *Criminal Code of Albania, art. 307.*

⁸⁹ *Revised Draft Code.*

⁹⁰ *Interviews with general managers/directors of the selected media outlets, June 2005, in CPJ/SEENPM, Business of ethics – Albania.*

⁹¹ *Interview with Milto Baka, sales manager of TV Klan and Korrieri, 23 June 2005.*

⁹² *Law no.8503 on the Right to Information over Official Documents, 30.06.1999, art. 3, hereafter referred to as Law on Access to Information.*

⁹³ *Ibid, art. 4.*

⁹⁴ *Ibid, art. 13.*

⁹⁵ *Ibid, art. 10.*

⁹⁶ *Ibid, art. 11.*

⁹⁷ *Article 19, "Memorandum on the Albanian Law on the Right to Information on Official Documents," commissioned by OSCE, September 2004.*

⁹⁸ *Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.49.*

⁹⁹ *Chapter on Albania in ACCESS/SEENPM, "Media landscape of South East Europe," 2002, p.171.*

¹⁰⁰ *Article 19, "Memorandum on the Albanian Law on the Right to Information on Official Documents," commissioned by OSCE, September 2004.*

¹⁰¹ *Citizens' Advocacy Office, "Survey on the Right for Information: Tirana, Korca, Shkodra," 2004, p.11.*

¹⁰² *Citizens' Advocacy Office, "Survey on the Right for Information: Tirana, Korca, Shkodra," 2004, p.13.*

¹⁰³ *IREX, Media Sustainability Index 2005, available at <http://www.irex.org/msi/2005/MSI-2005-Albania.pdf>*

¹⁰⁴ *"Akuzat e PD," Gazeta Shqiptare, August 21, 2004.*