



Internet

Governance

in Albania and its Role
in Media Freedom





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Internet Governance in Albania and its Role in Media Freedom

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LIST OF ACRONYMS AND ABBREVIATIONS

3G	Third-generation mobile telecommunications technology
4G	Fourth-generation mobile telecommunications technology
ACCC	Australian Competition of Consumer Commission
ADSL	Asymmetric digital subscriber line
AKEP	Electronic and Postal Communications Authority
AMA	Audio-visual Media Authority
AMI	Albanian Media Institute
APC	Association for Progressive Communications
BIRN	Balkan Investigative Reporting Network
ccTLD	Country code top-level domain
CDT	Center for Democracy & Technology
CII	Critical Information Infrastructure
CoE	Council of Europe
CSCE	Commission on Security and Cooperation in Europe
CSIRT	Computer Security Incident Response Team

gTLD	Generic top-level domain
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	International Convention on Civil and Political Rights
ICT	Information and Communications Technology
IGF	Internet Governance Forum
INSTAT	Albanian National Institute of Statistics
ISP	Internet service provider
IT	Information technology
ITU	International Telecommunications Union
JTI	Journalism Trust Initiative
JUFREX	Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe
LGBTQ	Lesbian, gay, bisexual, transgender, and queer
LLC	Limited liability company
NAECCES	National Authority for Electronic Certification and Cyber Security

DCPR	Dynamic Coalition on Platform Responsibility
DNS	Domain Names System
EC	European Commission
ECHR	European Convention on Human Rights
ECPMF	European Centre for Press & Media Freedom
ECtHR	European Court of Human Rights
EDRi	European Digital Rights
EU	European Union
FOI	Freedom of Information
GAC	Governmental Advisory Committee
GDPR	General Data Protection Regulation
GFMD	Global Forum for Media Development
GNI	Global Network Initiative
GPD	Global Partners Digital
GSA	Gambling Supervisory Authority

NUIS	Tax identification number
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
OTT	Over-the-top media service
RSF	Reporters Without Borders
SDG	Sustainable Development Goal
TLDs	Top-level domains
ToS	Terms of service
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	UN Educational, Scientific and Cultural Organization
VAT	Value-added tax
VLT	Video lottery terminal
WEF	World Economic Forum



FORWARD

The report “Internet Governance in Albania and its Role in Media Freedom” has been produced by BIRN Albania as part of the project “Raising Critical Awareness on Internet Governance in Albania”, funded by the European Commission, represented by the Delegation of the European Union to Albania and implemented by the partnership of the Albanian Media Institute (AMI) and the International Federation of Journalists (IFJ). Through this study on Internet governance, BIRN Albania aims to provide a realistic and easily grasped review of the current legal landscape for online media and content providers, as well as explore the primary issues and processes that overlap between media development and Internet governance, in order to inform involved stakeholders and the public debate. The report explores a number of topics where Internet governance and regulation intersect with online media, market conditions, financial regulations, ownership and competition, access to information and data protection, and copyright and cyber-security – while providing real world examples of when the abuse or poor definition of these regulations leads to restrictions on freedom of the media and on freedom of expression in the country.



I. INTRODUCTION



According to both local and international rights watchdogs, the Albanian media environment has deteriorated in recent years, under a government that has increasingly restricted access for journalists and sought to pass legislation that is not in line with international human rights standards and best practices¹. This raises concerns that Albania is not meeting its obligations as a member of the Council of Europe and OSCE, and as a candidate country for accession to the European Union².

Politicians' use of social media networks to directly communicate with voters, in order to control the narrative, while restricting access to reporters and bypassing critical media, is reducing the role of journalists as public watchdogs to hold those in power accountable and their ability to give an unbiased perspective of the actions of those in power.

A rising number of defamation lawsuits, orchestrated smear campaigns and verbal attacks, sometimes coming from the highest echelons of power, both offline and online, have created an environment in which journalist often resort to self-censorship and avoid coverage of sensitive topics³.

The 2020 Reporters Without Borders Index⁴ on freedom of the media ranked Albania in 84th place out of 180 countries, a drop of two positions compared to the previous year. The report underlined that during the course of 2019, the government had stepped up its attempts to control the media under the guise of the fight against fake news and disinformation, particularly after the deadly earthquake registered in November 26th. Government attacks on the media in Albania

¹ Joint Statement, 2019: Mission preliminary findings: Press freedom is deteriorating in Albania. <https://europeanjournalists.org/blog/2019/06/21/albania-preliminary-findings-of-joint-freedom-of-expression-mission/>

² Balkan Insight, 2019, Albania's EU Commitment Questioned over Media 'Censorship' Laws, <https://balkaninsight.com/2019/12/30/albanias-eu-commitment-questioned-over-media-censorship-laws-2/>

³ Reporters Without Borders and BIRN Albania, 2018, Media Ownership Monitor – Albania: Media Under Fire, <https://albania.mom-rsf.org/en/findings/mediaunderfire/>

⁴ Reporters Without Borders, 2020 World Press Freedom Index, <https://rsf.org/en/albania>

have focused particularly on online media outlets, which are more diverse and often critical of its policies and decisions.

Online Media in Albania

A survey conducted in 2019 on the use of information technology by families and individuals in Albania, conducted by the National Institute of Statistics (INSTAT),⁵ showed 82.2 per cent of Albanian households now have Internet access. The rapid spread of the Internet and growing use of social media in the country has significantly affected the behaviour of existing or traditional media as well as digital native media⁶. According to the Union of Journalists, more than 800 online publications operate in Albania,⁷ ranging from the websites of legacy media to new multi-media platforms and blogs. However, there is no full account of such publications, their popularity and the strength of their editorial structures and practices.

Data from the Balkan Barometer in 2018⁸ suggest that even though Albanians mainly use the Internet to communicate with family, friends, and colleagues, the two next highest percentages of use relate to news and entertainment, showing a tendency to increasingly use the Internet for news, mainly through online media but also through social media. The spread of smart phones and cheaper mobile data packages introduced by telecommunication companies⁹ has had a particularly strong impact on the increased readership of online media in the last few years.

A survey conducted in 2017 by the Tirana-based Institute for Development, Research and Alternatives, IDRA, showed that online media are one of three main sources of information for

⁵ INSTAT, 2019, Survey on Information and Communication Technologies (ICT) usage in Households and by Individuals in 2018-2019, <http://instat.gov.al/media/6436/survey-on-information-and-communication-technologies-ict-usage-in-households-and-by-individuals-in-2018-2019.pdf>

⁶ Ilda Londo, 2017, Online Media in Albania – Not Yet a Game Changer, http://seemediapartnership.cji.ro/wp-content/uploads/2018/01/Rep_Albania_2017.pdf

⁷ Vertetmates.mk, 2020, Cipa: Media Received Blow from Pandemic, <https://vertetmates.mk/cipa-media-pesoi-goditje-te-rende-nga-pandemia-mbi-40-gazetare-humben-vendin-e-punes-nderkaq-rreth-30-e-gazetareve-pesuan-ulje-te-pagave/>

⁸ Regional Cooperation Council, "Balkan Barometer 2018, <https://www.rcc.int/pubs/66/balkan-barometer-2018-public-opinion-survey>

⁹ Reporters Without Borders and BIRN Albania, 2018, Media Ownership Monitor – Albania, <http://www.mom-rsf.org/en/countries/albania/>

44 per cent of the population – coming second only to television stations, and leaving the press and radio stations well behind.¹⁰ Similar studies reveal the marked difference in the choice of sources of information among different age groups. Young people tend predominantly to use online sources for information – 67 per cent of them – compared to 30 per cent that use television. Only 1.6 per cent rely for information on the press, and only 1.4 per cent on the radio¹¹.

The emergence of online media outlets has dramatically changed the media landscape in Albania. The growing number and influence of online media have certainly given journalists more space and freedom to express their views and report on different issues that might not always be welcome in traditional media. There has been a visible trend among important names in journalism to migrate to digital media.¹² However, the explosion of new online media outlets has also raised concerns about professionalism, tabloidization, ethical problems, abuse of personal data and copyright issues. This is stirring debate among stakeholders on how to best regulate this new environment without restricting freedom of expression and freedom of the media in the Internet.

Albania's audiovisual media are regulated by law, and implementation is overseen by the Audio-visual Media Authority. The law "On the press in the Republic of Albania" has a single article stipulating that the press is free. Although there is no specific law on online media in Albania, constitutional principles on freedom of expression and freedom of the press do extend their rights and restrictions to online outlets, while the regulatory environment on Internet governance, both domestic and foreign, influences how these outlets operate and do business.

As the online media market develops and exerts a growing influence on public policy, the government has made several attempts to regulate it, either through amendments of the E-commerce law or, in a more recent attempt, to extend the purview of the Audio-visual Media Authority on online media outlets under the guise of fighting fake news and disinformation. In December 2019, parliament

¹⁰ Institute for Development, Research and Alternatives, 2017, Impunity - Perceptions and experience of Albanian Citizens, https://www.idrainstitute.org/files/impunity_final_report_2017.pdf

¹¹ Mema, Briseida. "Dilemmas on information in the digital era – the Albanian case," qtd. in Albanian Media Institute, "Online media in Albania: legislation, self-regulation, development, and main tendencies." 2016.

¹² Ilda Londo, 2017, Online Media in Albania – Not Yet a Game Changer, http://seemediapartnership.cji.ro/wp-content/uploads/2018/01/Rep_Albania_2017.pdf

passed two controversial media laws as part of a so-called “anti-defamation package” that aimed to empower this administrative body to receive complaints about news websites, order retractions and impose fines of up to 8,000 euros¹³.

The proposed amendments to the law on Audio-visual Media and amendments to the law “On Electronic Communications” sought to empower the Complaints Commission in the Audio-visual Media Authority to review the content of online publications and act as a quasi court.

The proposed regulations met strong resistance from the journalistic community and rights organisations in Albania and abroad¹⁴. They were also contested by the European Commission and the Council of Europe, which called them threats to media freedom. In an opinion elicited by the Parliament Assembly of the Council of Europe, the Venice Commission warned that if the proposed regulations were passed without changes, they would have a chilling effect on media freedom¹⁵.

Aim of the report:

In the context of growing regulatory threats to online media in Albania and amid attempts by the media community to self-regulate, it is important for stakeholders to understand the legal environment and framework in which these platforms operate, also known as Internet Governance. Internet governance is understood as the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the internet.¹⁶

BIRN Albania has compiled this report to inform stakeholders of the complex environment and the role that Internet governance plays in media freedom. The report reviews the domestic legal

¹³ Balkan Insight, 2019, Albania Approves Controversial Media Laws Despite Bitter Protests, <https://balkaninsight.com/2019/12/18/albania-approves-controversial-media-laws-amidst-protests/>

¹⁴ Balkan Insight, 2019, Albania Govt Ignores Outcry Against Online Media Laws, <https://balkaninsight.com/2019/12/13/albania-govt-ignores-outcry-against-online-media-laws/>

¹⁵ Venice Commission, 2020, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)007-e)

¹⁶ World Summit on the Information Society, 2005, Tunis Agenda for the Information Society, <http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html>

framework, the market context for the online media in Albania, the principles by which local regulators of Internet and service providers operate, their oversight of online media in terms of domain registration and data collection, the financial and tax regulations for online media, and how they compare to legacy outlets. It looks also at public subsidies, support and how ownership and competition is regulated, restrictions on freedom of expression online, protection of copyright, data, privacy and other ethical considerations, and at provisions on illegal content and cybersecurity.

This report aims to provide a clear overview of the rights and responsibility of online publications in the Internet environment and the governance this environment by public institutions, while encouraging a multi-stakeholder debate with the goal of supporting and strengthening freedom of expression and the professional practice of journalism on the Internet. Given the great complexity of this topic, this report is not exhaustive and further studies and consultations are required to elaborate the web of regulations that tie Internet governance and online media.

Owing to knowledge fragmentation, lack of understanding of the connection between Internet regulation and the media and an undeveloped regulatory environment, the report has inevitable limitations; more work is needed to develop a full understanding of digital and media policy. However, the authors believe this is an important first stepping-stone towards putting the discussion on online media regulation onto firm foundations.

II. FREEDOM OF EXPRESSION AND MEDIA FREEDOM



The freedom to express one's ideas and opinions is not merely central to the human condition but is fundamental to a successful democracy. For democratic governance to thrive, the free exchange of such ideas and opinions without fear of retaliation is essential. Not only does freedom of expression form a foundation for many other rights, such as the right to privacy and the right to information, but it protects all forms of thought and creativity – from art and science to

comedy and education. In an environment that champions debate and dialogue, open exchange and freedom of thought, citizens are better prepared to participate in a democratic system by informing themselves, holding those in power to account, and advocating for their rights.

Within this context, freedom of the press is paramount. The press is central to informing citizens but also acts as a watchdog against corruption and other forms of abuse of power that slowly erode social cohesion and political stability. Yet, throughout the world, freedom of expression and press freedom are threatened. The rise of the Internet and other information and communications technologies (ICTs) has had a significant impact on modern democracy, exacerbating existing tensions between citizens and governments as well as exposing new ones. With information freely flowing without the gatekeepers that exist in legacy media, instant communication acts as a powerful bridge between citizens and government officials – one that fosters information sharing and transparency, for instance, but also facilitates the rapid spread of misinformation and harmful content.

Regardless of their power for both the positive and the negative, online communications are not divorced from the impact of offline political decision making (or the lack thereof). Within Albania, significant gaps exist between respecting freedom of expression and how it is manifested in practice in both law and regulation. Now that more than 82 per cent of Albania's roughly 2.88 million citizens are online,¹⁷ the Internet has a significant impact – but is significantly underdeveloped within the Albanian legal system.

Legal Framework

The Albanian constitution expressly guarantees freedom of expression and freedom of the media in Article 22. Several amendments have been made to the constitution since it was approved by a popular referendum in 1998, but the article guaranteeing freedom of expression and freedom

¹⁷ INSTAT, 2019, Survey on Information and Communication Technologies (ICT) usage in Households and by Individuals in 2018-2019, <http://instat.gov.al/media/6436/survey-on-information-and-communication-technologies-ict-usage-in-households-and-by-individuals-in-2018-2019.pdf>

of the media has not changed.

Article 22 specifies:

1. Freedom of expression is guaranteed.
2. Freedom of the press, radio, and television is guaranteed.
3. Prior censorship of means of communication is prohibited.

However, the constitution recognises that these rights, along with other fundamental rights, may be restricted. Such restrictions can only be made by law, in the public interest, or for the protection of the rights of others. These restrictions must be proportional, and cannot exceed the limitations provided for in the European Convention on Human Rights (ECHR), which Albania ratified in 1996.¹⁸

This direct reference to the ECHR is significant for two main reasons:

1. It makes the ECHR part of the Albanian constitution, to serve as a benchmark for the protection of freedom of expression.
2. It assures that interpretations of human rights restrictions are not left only to Albanian institutions but subordinates them to the interpretation mechanisms of the ECHR and to the case law of the European Court of Human rights (ECtHR).

The ECtHR has constantly considered the convention a “living Instrument,” and has introduced the concept of “European consensus” to refer to the level of uniformity present in the legal frameworks of the member states of the Council of Europe (CoE) on a particular topic.¹⁹

Furthermore, the ECHR is not part of the Albanian legal system only due to its ratification by the Albanian parliament. It also has supremacy over domestic acts, according to the Albanian

¹⁸ Law no. 8137, dated 31 July 1996, (amended), “The convention for protection and defence of universal human rights”.

¹⁹ See, for example, <https://www.coe.int/en/web/help/article-echr-case-law>. This concept is used, *inter alia*, to impose new standards where there is a clear trend in most Member States, thus advancing the interpretation of the convention.

constitution.²⁰ Therefore, Albanian institutions and courts are bound to apply the provisions of the ECHR and its interpreting mechanisms, such as case law.

Freedom of expression is covered by Article 10 of the ECHR, which says:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The case law of the ECtHR on freedom of expression is considerably broader with significant landmark decisions, which also guarantee access to the Internet as a means of communication.

One of the most relevant cases with special interest for Internet governance is the case of Ahmed Yildirim v. Turkey (Application no. 3111/10, 18 December 2012). The court stipulated that Article 10 guaranteed freedom of expression to “everyone” and applied not only to the content of information but also to the means of disseminating it. It further iterated that the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest.²¹

²⁰ Article 116 in conjunction with Article 122 of the Albanian constitution provides for a hierarchy of the legal norms, considering that ratified international agreements are higher in the hierarchy compared to domestic laws, when there is a conflict between such norms.

²¹ The European Court of Human Rights, 2012, Case of Ahmet Yildirim v. Turkey, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-115705%22%7D>

Other international instruments of interest are the Universal Declaration of Human Rights (UDHR) and the International Convention on Civil and Political Rights (ICCPR); Albania signed and ratified the latter in 1991.²²

Article 19 of the UDHR stipulates:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.²³

Article 19 of the ICCPR stipulates:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.²⁴
3. The exercise of the rights, provided for in paragraph 2 of this article, carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; and
 - (b) For the protection of national security or of public order, or of public health or morals.

Lastly, within the framework of EU integration, Albania ratified a Stabilisation and Association

²² UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=2&Lang=EN

²³ Universal Declaration of Human Rights (UDHR), <https://www.un.org/en/universal-declaration-human-rights/>

²⁴ International Convention on Civil and Political Rights (ICCPR), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Agreement with the European Union in 2009.²⁵ Article 2 of this agreement stipulated that:

Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the European Convention on Human Rights, in the Helsinki Final Act and the Charter of Paris for a New Europe, respect for international law principles and the rule of law as well as the principles of market economy as reflected in the Document of the CSCE Bonn Conference on Economic Cooperation, shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement.

Domestic legislation

Although Albanian legislation does not specifically guarantee freedom of expression for online media outlets, such rights are guaranteed in the domestic legislation for print and broadcast media.

Regarding press freedom, the domestic law in force is Law no. 7756, dated 11 October 1993, “On the Press”, as amended²⁶. With these amendments, the law includes only one article that reads: “The press is free. Freedom of the press is protected by law.” Although this regulation has been considered practically non-existent,²⁷ it might be interpreted as obliging the government to refrain from any form of regulation of the press.

Interpreted in conjunction with the above-mentioned constitutional and international norms, it leaves regulation of the press in Albania to best international standards.²⁸ This has also been

²⁵ Stabilisation and Association Agreement, published in the Official Journal, L 107, 28 April 2009, p. 166.

²⁶ Law no. 7756, dated 11 October 1993, “On the Press”, as amended with Law no. 8239, dated 3 September 1997. <http://80.78.70.231/pls/kuv/f?p=201:Ligj:8239:03.09.1997>

²⁷ See, for example, Rrapo Zguri, *Marrëdhëniet mes medias dhe politikës në Shqipëri*, Tirana, 2017, Albanian Media Institute and Friedrich Ebert Stiftung, <http://library.fes.de/pdf-files/bueros/albanien/14000.pdf>

²⁸ Such as those established by the Council of Europe (e.g., <https://rm.coe.int/msi-joq-2018-rev7-e-draft-recommendation-on-quality-journalism-finalis/168098ab76> and https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d), the Organization for Security and Co-operation in Europe (<https://www.osce.org/fom/media-self-regulation>), and UNESCO (e.g., <https://en.unesco.org/themes/communication-and-information>)

interpreted as meaning that self-regulation of the press based on international standards is the best alternative to formal regulation.²⁹

Similarly, Law no. 97/2013, “On Audio-visual Media”, stipulates freedom of audio-visual broadcasting activity and freedom of expression as core principles of audio-visual broadcasting regulation in Albania.

As per the above, the conclusion can easily be drawn that freedom of expression and media are clearly defined in the Albanian constitution as well as in the international treaties and agreements Albania has ratified that are part of its constitutional and legal system – which clarify, supplement, and interpret the domestic legislation without any pressing need for detailed regulation. Despite the lack of specific regulation for online media and publications, either in the law on the press or in the law on audio-visual media, international standards and constitutional norms, including guarantees and limitations, are applicable for them as well.

Threats to media freedom

Reports from local watchdog groups and international organisations say freedom of the media and freedom of expression in Albania have deteriorated significantly in recent years.³⁰ This decrease can be attributed, among other trends, to the government’s efforts to pass legislation that would empower an administrative body to censor the content of online media through draconian fines, as well as increased defamation lawsuits towards journalists and media outlets, an increase in physical and verbal threats to journalists by people vested with political power and authority, increased self-censorship and smear campaigns, the lack of transparency of public institutions, and a high concentration of ownership in the media and advertising market.

²⁹ However, such ideas has been criticised for leaving the Albanian legal system with no clear provisions on matters of editorial responsibility. See Irion, K., Cavaliere, P., and Pavli, D., 2015. Comparative Study of Best European Practices of Online Content Regulation: Law and policy of online content regulation, in particular defamation online, in the light of Albanian legislative proposals. Study commissioned by the Council of Europe, Amsterdam/Edinburgh/Tirana, August 2015.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047080a>

³⁰ Joint Statement, 2019: Mission preliminary findings: Press freedom is deteriorating in Albania. <https://europeanjournalists.org/blog/2019/06/21/albania-preliminary-findings-of-joint-freedom-of-expression-mission/>

Albania's broadcast media and the press are controlled by a handful of powerful families, which have affiliated businesses in regulated markets like construction, banking, gambling and private higher education.³¹ The businessmen who invest in media use the outlets to support their affiliated businesses, and stories that conflict with the owner's political and economic interests are often avoided. Such an environment makes journalists vulnerable to pressure, encouraging self-censorship. By contrast, online media outlets are more diverse; many are start-ups owned by journalists, and allow more diverse viewpoints and reporting angles.

The 2019 Media Freedom Index,³² published by Reporters Without Borders (RSF), accused the Albanian authorities of abusing the so-called fight against "fake news" to increase control over media outlets. RSF noted that verbal attacks and smear campaigns from people in the highest level of government had increased while too many cases of physical attacks remain unresolved, creating a chilling effect on media freedom and freedom of expression. Albania was ranked in 84th place that year out of 180 countries assessed by RSF's index. It had also fallen by two places compared to the previous year.

In December 2019, the government passed a series of controversial amendments to the law "On Electronic Communications"³³ and to the law "On Audio-visual Media",³⁴ which aimed to regulate the content of online media outlets through a Complaints Commission – an ethics administrative body operating inside the Audio-visual Media Authority.

Local and international media organisations condemned the draft law as a tool of censorship³⁵ by the government, and the country's President vetoed the bills and returned them to parliament

³¹ Reporters Without Borders and BIRN Albania, 2018, Media Ownership Monitor – Albania, <http://www.mom-rsf.org/en/countries/albania/>

³² Reporters Without Borders, 2019, World Press Freedom Index: Country Profile – Albania, <https://rsf.org/en/albania>

³³ Draft Law "On Electronic Communication," 2019 <https://www.parlament.al/Files/ProjektLigje/20191217153348Komisioni%20i%20Ligjeve%20AKEP.pdf>

³⁴ Draft Law "On Audio-visual Media Services," 2019 <https://www.parlament.al/Files/ProjektLigje/20200121101826ligj%20nr%20%2091%20dt%20%2018%2012%202019.pdf>

³⁵ Balkan Insight, 2019, <https://balkaninsight.com/2019/12/18/albania-approves-controversial-media-laws-amidst-protests/>

for review.³⁶ The amendments were opposed by the European Commission and the Council of Europe among others. The ruling centre-left government of Prime Minister Edi Rama vowed to overturn the President's veto. In January 2020, however, parliament only passed the amendments to the law "On Electronic Communications". It held up the vote on the amendments to the law "On Audio-visual Media". This came after the Parliamentary Assembly of the Council of Europe asked the European Commission for Democracy through Law, known as the Venice Commission,³⁷ to review the legislation.³⁸

In its opinion, published in June 2020, the Venice Commission argued that the amendments to Law no. 97/2013, on "Audio-visual Media"³⁹ as passed by parliament in December 2019 and later vetoed by the President, should not be approved in their current form, as they would have a chilling effect on media freedom.⁴⁰

Definition of online media

Even though online media have become one of the main sources of information in Albania, current Albanian legislation provides no definition of online media. Nor does the audio-visual media law or the e-commerce law.

The amendments to the draft law "On Audio-visual Media" described online media as electronic publications with some form of editorial control. The draft amendments to Law no. 97/2013 define an "electronic publication" as editorially shaped webpages and/or web portals containing electronic versions of written media and/or information from the media that is accessible to the general public and has the objective to entertain, inform, and/educate. Electronic publications

³⁶ Balkan Insight, 2020, <https://balkaninsight.com/2020/01/13/president-turns-down-albania-controversial-anti-defamation-law/>

³⁷ The Venice Commission is the Council of Europe's advisory body on constitutional matters: https://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN

³⁸ Balkan Insight, 2020, <https://balkaninsight.com/2020/01/23/venice-commission-to-judge-over-albania-controversial-media-law/>

³⁹ Draft Law "On Audio-visual Media Services," 2019 <https://www.parlament.al/Files/ProjektLigje/20200121101826ligj%20nr%20%2091%20dt%20%2018%2012%202019.pdf>

⁴⁰ Reporter.al, 2020, <https://www.reporter.al/opinioni-final-i-venecias-rrezon-ligjin-e-qeverise-per-mediat-online/>

managed by individuals that are not editorially managed or do not aim to inform, entertain or educate the general public are not included in this definition. In its June 2020 opinion on the draft-law, however, the Venice Commission⁴¹ warned that this definition of electronic publication was “too nebulously and broadly defined.” The Commission also highlighted that it is unclear if the definition only covers media outlets or extends to individual bloggers and people with personal pages on social media networks; this would raise even greater concerns about media freedom and freedom of expression in Albania.

III. ACCESS TO THE INTERNET IN ALBANIA



As an important means of exercising the dissemination of free speech and the right to information, the case law of the ECtHR has identified access to the Internet as guaranteed by Article 10 of the European Convention on Human Rights. An estimated 7.5 million people speak Albanian, and Albanian language content is widely available on the Internet. According to Alexa’s rankings, of the most popular web pages in Albania, seven of the 10 most read websites in the country are in local language content.⁴²

Since Albania’s constitutional framework states that restrictions on freedom of expression should be proportional and may not exceed the restrictions provided by the ECHR, access to the Internet as a means of communication to exercise freedom of expression and information is, therefore, guaranteed in the context of the domestic legal framework.

A survey conducted in 2019 on the use of information technology by families and individuals conducted by the Albanian National Institute of Statistics (INSTAT)⁴³ showed that 82.2 per cent of all Albanian households now have access to the Internet, compared to 80.7 per cent a year earlier

⁴¹ Venice Commission, 2020, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)007-e)

⁴² Top Sites in Albania, Alexa, 2020, <https://www.alexa.com/topsites/countries/AL>

⁴³ INSTAT, 2019, Survey on Information and Communication Technologies (ICT) usage in Households and by Individuals in 2018-2019, <http://instat.gov.al/media/6436/survey-on-information-and-communication-technologies-ict-usage-in-households-and-by-individuals-in-2018-2019.pdf>

and 66.4 per cent in 2016.⁴⁴

More than half of households with access to the Internet (56.6 per cent, or 359,884 households) have access to broadband Internet (optical or cable network, asymmetric digital subscriber line (ADSL), etc.). The percentage of households with Internet access via mobile broadband connectivity (3G or 4G mobile service) was 88.9 per cent – up from 63 per cent in 2018 and 72 per cent in 2017.⁴⁵ The decline of broadband connectivity via mobile in 2018 was down to the bankruptcy of Plus Mobile – Albania’s fourth mobile operator.

Furthermore, INSTAT found that 68.8 per cent of all individuals aged between 16 and 74 had used the Internet within three months of the survey being conducted, 87.1 per cent of whom used the Internet daily. Strikingly, almost 96.8 per cent of all individuals aged between 16 and 74 had used a smartphone to access the Internet, a five-point increase on the previous year. Similarly, 92.3 per cent had used or continued to use mobile applications such as Viber, WhatsApp, and Skype. The survey also found that 23.7 per cent of the respondents accessed the Internet on a laptop and 6.8 per cent through a tablet, an increase of 8.5 per cent for laptops and 1.1 per cent for tablets, respectively, compared to 2018.

Internet service providers

Law no. 9918, of 19 May 2008, “On Electronic Communications in the Republic of Albania”, as amended, defines the Electronic and Postal Communications Authority (AKEP) as the national authority responsible for supervising, controlling and monitoring the activities of Internet service providers (ISPs) in Albania. Article 13 of the law says any entrepreneur is free to provide electronic communications networks and services in the Republic of Albania in accordance with the requirements of this law. The provision of electronic communications networks and services is based on authorisation by AKEP.

⁴⁴ International Telecommunications Union (ITU), 2017, https://itu.int/dms_pub/itu-s/opb/pol/S-POL-BROADBAND.19-2018-PDF-E.pdf

⁴⁵ AKEP, 2019, Yearly Report 2019, <https://akep.al/wp-content/uploads/2018/09/AKEP-RAPORT-VJETOR.pdf>

Three main providers of mobile broadband technology (3G and 4G) services operate in Albania: Vodafone, Telekom Albania and Albtelecom. The country's first 3G services were launched in July-September 2015 and cover 65 per cent to 85 per cent of the population; 4G coverage is lower, estimated at 55.6 per cent of the population and mainly concentrated in urban areas. The main broadband fixed operators in Albania are Albtelecom, with 36 per cent of the total market share, Abcom, with 18 per cent, ASC/Tring with 14 per cent, and Abissnet with 10 per cent.

Net neutrality

The concept of network neutrality refers to the principle that operators, including ISPs and government regulators, should treat all Internet traffic (data) equally, not discriminating or charging differentially based on user, content, website, platform, application, type of attached equipment or the mode of communication.⁴⁶ ISPs manage and distribute data and traffic over their networks to end-users, either when the data is requested from subscribers from content providers, like Netflix, YouTube, Facebook, or native online media outlets, as well as in cases where the communication is restricted between the end-user themselves. The equal transmission of data traffic between these different providers and subscribers, by separating the application from the protocol and infrastructure layers of the Internet, boosts the innovation of applications independent of the ISPs, improving the choices for end-users. Article 1 of the Law on the Electronic Communications in Albania refers to net neutrality, under the principles of the law, but contains no specific provisions on how to enforce it.

Zero rating

Emerging from the same problematic principles that underpin net neutrality, zero rating is defined as the practice of excluding certain Internet traffic from overall data caps, or providing Internet access without financial cost under certain conditions, such as by only permitting access

⁴⁶ Tim Wu, 2003, Network Neutrality, Broadband Discrimination, http://jthtl.org/content/articles/V2i1/JTHTLv2i1_Wu.PDF

to certain websites or by subsidising the service with advertising. Such practices have received considerable attention in Europe, as applying different charges for specific types of data over a network by an ISP is perceived as incompatible with the principle of net neutrality. The Law on Electronic Communications in Albania does not regulate zero rating, and it is left to the companies to negotiate or offer such services. One particular service previously excluded by data caps from ISPs in Albania has been Facebook Zero. The lack of clarity from the government regarding zero rating is concerning, especially because zero rating is particularly relevant to journalism and media organisations. Powerful content distributors may advocate the elimination of net neutrality principles so they can gain more power and influence over content, for instance – usually to the detriment of small, local, alternative, new, and/or independent media producers as well as to media freedom as a whole.⁴⁷

IV. DOMAIN REGISTRATION AND SERVER HOSTING



WWW.

WWW.

Domain name management and administration is central to broader Internet governance, and directly affects press and media freedom within a country. Blocking domain names is a key form of censorship imposed around the world, for instance, and is often used to prevent access to information and silence dissent. Albania is a member of the Governmental Advisory Committee (GAC)⁴⁸ of the Internet Corporation for Assigned Names and Numbers (ICANN), and the Albanian government administers the .al country code top-level domain (ccTLD). Understanding how domain names are registered, especially ccTLDs, is critical, as it is one of the most developed and concrete policy areas within Internet governance, with a wide-reaching impact on how the Internet is accessed, developed, and innovated.

⁴⁷ Freedom of the Press Foundation, 2017, Protecting net neutrality is an important press freedom issue, <https://freedom.press/news/protecting-net-neutrality-important-press-freedom-issue/>

⁴⁸ As of 2020, Albania is represented on the GAC by Vilma Tomco, the director of the Department of European Agenda and ICT Council of Ministers (see: <https://gac.icann.org/about/members>).

The registration of .al top-level domains

A domain name is a sequence of characters (a string) that defines the realm of a specific administrative authority on the Internet. More simply, it is the foundation of the Internet's addressing system that is used to identify networks and other resources connected to the Internet. Domain names are formed based on the rules and procedures of the Domain Names System (DNS); any name registered in the DNS root domain is a subdomain. The first level of subdomains is considered top-level domains (TLDs), which can be generic top-level domains (gTLDs) like .com, .org., or .net, or ccTLDs like .al or .eu.

Domain registration in Albania for the ccTLD .al is regulated in the law "On Electronic Communications in the Republic of Albania," no. 9918, of 19 May 2008, as amended.⁴⁹ The main institution administering the .al ccTLD and its subdomains is AKEP.⁵⁰ At the end of 2018, 21,537 .al domains had been registered through AKEP.

Regulation no. 2, of 21 February 2008, as amended, "On the registration and administration of domain names under .al and sub domains .gov.al, .mil.al, .edu.al, .com.al, .org.al and .net.al", stipulates in detail the rules on the registration and administration of the .al ccTLD. This regulation contains general stipulations and specific rules on registration and administration of .al and its subdomains by AKEP.

It stipulates that domain names are registered "to serve the general interest of the public" and "to ensure especially the protection of intellectual property". Subjects with the right to own one or more domain names are both public and private legal entities, physical commercial persons and natural persons. A physical person can register up to five .al ccTLDs, and a private legal entity up to 15 .al ccTLDs.⁵¹ The regulation specifically stipulates that AKEP is only responsible for administering

⁴⁹ For a consolidated version, see: <https://akep.al/wp-content/uploads/images/stories/AKEP/legjislacioni/ligji9918ndryshuar-versioni-publikim-web190313.pdf>

⁵⁰ See article 8, letter K of the law on electronic communications.

⁵¹ Note that this provision is not in line with the terminology used from the National Business Centre in compliance with laws regulating the registration of businesses. The term "physical commercial persons" should be used equivalently with the term "Natural persons exercising commercial economic activity," and the term "natural persons" should be understood as individuals.

.al ccTLDs and its subdomains,⁵² and not, therefore, responsible for administering international domains.

The .al ccTLDs are open for registration for all interested parties. No obligation requires a local domicile. Subdomains do have an obligation to have a local presence. When domain owners that are subject to registration in the National Business Centre cease to operate as legal entities and are delisted from the commercial registry, they lose the right to use the domain name.

When choosing the domain name, the applicant should fulfil the following obligations (Article 18):

- The name should not be on the “forbidden names” list.⁵³
- The name should not be on the “reserved names” list.⁵⁴
- The name must be in line with the syntactic rules foreseen in this regulation.
- The name should not affect other parties’ rights, in particular:
 - Copyright (literary and artistic property and/or industrial property); and
 - Competition law and correct behaviour in business and commercial relations.
- Names may not violate public morality and order, and in particular may not include terms that:
 - Violate fundamental human rights and freedoms, personal rights and freedoms, political rights and freedoms, and economic, social, and cultural rights and freedoms and rights provided for in the constitution; and
 - Can cause damage related to the development of minors.
- The names must be different from the names of the administrative and territorial divisions according to the relevant law in force of the Republic of Albania.

“Forbidden” names include, but are not limited to, abusive, offensive, and/or racist meanings, words related to crimes or misconduct, and/or those that are contrary to good habits. “Reserved”

⁵² See Article 6, paragraph 6.1 of the regulation.

⁵³ AKEP, 2020, List of forbidden names for domains, https://akep.al/wp-content/uploads/images/stories/AKEP/rregullore/2018/Lista_me_emrat_e_ndaluar_te_domaineve_al_dhe_nendomaineve.pdf

⁵⁴ AKEP, 2020, List of restricted names for domains, https://akep.al/wp-content/uploads/images/stories/AKEP/rregullore/2018/Lista_me_emrat_e_rezervuar_t%C3%AB_domaineve_al_dhe_nendomaineve.pdf

names are considered names subject to specific conditions related to the identity and the category of the applicant. Names of trademarks, patents and industrial designs approved by the relevant authorities are reserved to the registered owners of such trademarks, patents, and industrial designs. Other examples include technical Internet terms, names connected with the activity and operations of the state, names of international organisations, names of administrative and territorial divisions, and areas based in their popular or historical denominations, cultural, or natural monuments, as designated by law or secondary legislation.

AKEP maintains and updates a list of reserved and forbidden names. However, an application can be rejected on such grounds even if the name is not on the published list. In case of rejection, a reasoned complaint can be lodged within 30 days of the refusal of registration. A complaint can also be lodged by the owner of an .al ccTLD in case of closure as a result of inclusion in the list of forbidden or rejected domains. This complaint should be lodged in line with the provisions of the Code of Administrative Procedure, and should be reasoned and submitted in writing. The governing council of AKEP examines the complaint in line with the Code of Administrative Procedure provisions, and sends a reply to the applicant. In case of dissent with the reply, an action can be lodged to the competent court.

Registration can be done by the AKEP directly or through registrars on a first come, first served basis.⁵⁵ AKEP activates a domain name after examining the application and determining that it is in line with regulation no. 2, described above. This regulation has also detailed rules and conditions that a company must fulfil in order to become a domain name registrar, along with details about the monitoring of their activity. There is no limit on the number of registrars as long as they fulfil the conditions and pay the fees. The application form to become a registrar is also annexed in the regulation.

⁵⁵ A list of domain registrars can be found at: <https://akep.al/2018/12/08/informacion>

Suspension of actions for domain names

When there is a dispute over the registration, transfer, or modification of a domain name, AKEP can issue a suspension of action under specific conditions. Article 24 of Regulation no. 2 stipulates that AKEP may impose suspension of action for domain names on any type of action (e.g., modification, transfer, etc.) for reasons that include but are not limited to:

- a) In the case of an administrative procedure, initiated *ex officio* by AKEP, via a request based on this regulation, or on the basis of a decision by the governing council of AKEP after the review of an administrative complaint.
- b) In the case of an order issued by a court for a transfer of ownership or the suspension of actions, supported by a temporary execution order or by the authority of a final decision as provided in the article related to the forced transfer.
- c) Pending the arbitral award on the respective dispute in case the applicant has opted for this alternative to solve the dispute.

The suspension freezes all actions that may be taken from the responsible authority (i.e., AKEP), but the owner of the domain can still use it unless otherwise provided by a court decision. The suspension period ends on the reaching of a final court decision or the issue of an arbitration award for the resolution of the conflict.

Blocking a domain name

Based on Article 25 of Regulation no. 2, AKEP can block the domain name if it identifies a violation of the conditions or criteria set forth in this regulation, including but not limited to:

- a) In the case of an unsuccessful identification of the owner of the domain.⁵⁶
- b) If none of the communication alternatives are functional (valid) even after 15 calendar days from the notification to update the information.

⁵⁶ Initially, before execution of this measure, the owner of the domain is notified by AKEP and is allowed a period of 15 calendar days to correct the discrepancy of the information submitted under the conditions set out in the regulation. If the owner does not act within this deadline, AKEP blocks the domain name/s.

- c) In the case of a court order ordering the blocking of the domain name, be it a temporary order or a final decision.
- d) In cases when the relevant payment has not been made within the set deadline.
- e) In the case of a reasoned decision of the Governing Council of AKEP, at the end of an administrative procedure, or review of a complaint.

Closing of a domain name

Based on Article 26 of Regulation no. 2, the closure of a domain is an immediate and irrevocable action except for cases when the owner gives legally indisputable evidence to the contrary within 30 calendar days of the closure date. When a domain is closed, it is available for registration by a new applicant within 30 days. The regulation also stipulates that the closure of a domain name is conducted in the instances listed below:

- a) When the situation that led to the blocking has not been resolved after 30 days.
- b) Based on a court order mandating the blocking of a domain name, be it a temporary order or a final decision. The decision must be submitted by the interested party to the responsible authority via post.
- c) In the case of an arbitration award for dispute resolution.
- d) When the domain name contains an expression that is openly illegal, or is included in the list of prohibited or reserved names.
- e) Registration of the domain in connection with the owner is illegal despite its specific usage.
- f) The owner has breached the substantive articles of the regulation repeatedly, or despite the warnings issued from the responsible authority.
- g) When owner data or administrative contact data are not corrected even after the notification of the responsible authority to correct and update them.
- h) When it is impossible to determine the identity of the owner, or the administrative contact.

- i) The address provided by the owner is still not valid after 30 calendar days of blocking the domain.

The domain owner is entitled to ask for the closure of the domain at any given time through the use of the specific form at the responsible authority. In such cases, they are liable for all the responsibilities arising from this action. Based on the facts and reasons, in emergency situations when timing is of the utmost importance, closure of the domain can be done through a decision of the responsible authority without prior notification.

Data collected from domain owners and their protection

Through the standards application form issued through the domain registrar, AKEP, as the responsible authority, collects data and documents from the physical persons and legal entities that register .al ccTLDs.

The data collected includes the domain owner's legal status, physical address, email address and phone number. When the domain owner is an individual, AKEP obtains a copy of their ID card, the identification number and date of issue of the ID card. If the domain owner is a business, AKEP also registers a copy of its tax identification number (NUI), address, and the personal data of an administrative contact and/or a technical contact.

The information and documents that are held or deposited at the responsible authority are considered confidential. No information is transferred to third parties unless there is a legal obligation to do so, or an interested party requests data necessary for starting a legal suit, or for an alternative dispute resolution procedure.

In case of an alternative dispute resolution, the responsible authority will provide all the requested information related to the disputed domain name to the body in charge. In line with the legal framework in force, the right to privacy of the owner will be respected.

In an effort to amend the Law 07/2013, “On Audio-visual Media”, to include online media outlets and publications within its framework, the government erroneously and repeatedly misstated in 2020 that the creation of an online media register in the Audio-visual Media Authority (AMA) was necessary because the courts could not identify the addresses and contacts of people that had registered the domains of online media outlets in civil proceedings. Such a claim has no basis. As described above, the responsible authority for the registration of domains in Albania does collect such information on ccTLDs, and the data is accessible to physical persons or to legal entities seeking to file a lawsuit.

Legal provisions for web hosting companies

Web hosting companies are mainly regulated by the provisions of Law no. 9918, “On Electronic Communications in Republic of Albania”. Providers are free to offer networks and electronic communications services upon (a) general authorisation and (b) individual authorisation, as stipulated by Article 20 of Law no. 9918.

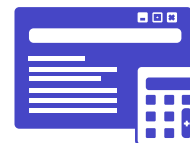
General authorisation is required in case the offer of networks and electronic communications services does not require use of end-resources (numbers and frequencies). A system of automatic registration is in place, and the authorisation is considered as issued, even if there is no reply from the authority. Telecommunications networks and related infrastructure must be constructed following the applicable laws on urban planning, construction, and environmental protection. While they construct/use telecommunications service networks, the providers must ensure public order, safety and security, and public health.

There are no specific rules on hosting companies in Law no. 9918, but general rules apply to them, too, as long as they are involved in data storage and processing. Since web hosting companies rent their computer space through the Internet, they can be located in Albania and abroad. Because of the quality of service, security, and lower prices, a good portion of Albanian ccTLDs are hosted on servers and by web hosting companies abroad. As such, they are subject to regulations other

than those provisioned by Law no. 9918.

In some cases, the regulations imposed on hosting companies have created headaches for local publishers, which have seen their websites closed by such companies due to complaints of copyright infringement. Several cases have been reported of individuals and companies that have filed abuse reports on different platforms, such as Facebook, HostGator, or Cloudflare⁵⁷. Abuse reports might relate to copyright infringement, trademark infringement, etc. One well-known case was registered in 2016⁵⁸ when Carlo Bollino, a journalist and media owner based in Tirana, complained to HostGator LLC – a web hosting company based in Houston, Texas, USA – about a series of articles published by the Albanian digital publication, hastagalbania.com. The complaints related to hashtagalbania.com's use of Bollino's photos without his consent in a series of critical stories. Bollino maintained that the stories were slanderous, and were accompanied by photos of him and his wife published without his authorisation. Hashtagalbania.com was consequently delisted from HostGator. The website owners complained of censorship and later reopened under the domain hashtag.al.

V. FINANCIAL AND TAX REGULATION FOR ONLINE MEDIA



Online media in Albania operate on the same financial rules and tax regime as other businesses registered in the country. No specific tax or financial rules, subsidies, or incentives are designed specifically for online media outlets.

The individuals or legal entities who wish to register and operate a website and engage in financial transactions, such as selling advertising and subscriptions, or one that is maintained based on paid labour, need to operate as a legal entity, either as a business enterprise or a not-for-profit organisation. They can also operate as a sole proprietorship, which refers to an individual engaged

⁵⁷ Netzpolitik.org, 2020, <https://netzpolitik.org/2020/a-german-company-is-responsible-for-the-deletion-of-videos-critical-of-the-albanian-government/>

⁵⁸ Boldnews, 2016, <https://boldnews.al/2016/10/14/bollino-si-veliaj-mbyll-mediat-online/>

in a certain trade. In such cases, they need to be registered – with the National Business Centre in case of companies, and the Registry of Not-For-Profit Organisations at the Court of Tirana, for non-profits. Tax authorities issue an NUIS, and the legal entities registered report to the tax authorities based on the relevant tax legislation. The registration procedure for businesses at the National Business Centre in Albania is straightforward and requires minimal time – with little red tape attached. Registration of a non-profit organisation is more complex and time-consuming. An online media portal registered as a non-profit organisation is limited to earning only 20 per cent of its annual revenue from the sale of services; the remaining 80 per cent should come from grants and donations.

The relevant tax regime for online media, whether it be a business enterprise or a not-for-profit organisation, is the same as for any other business or not-for-profit. However, there are some distinctions between different types of media when it comes to the tax paid on sold advertisements. From 2019 onwards, the Law on Value Added Tax (VAT) specifies that audio-visual media (i.e. TV and radio stations) can sell ads for a reduced VAT rate of 6 per cent; print media have always been exempt from VAT for advertising, subscriptions, and newspaper sales. Such provisions, while permitting the audio-visual media to sell advertisements for a reduced VAT rate, allow them at the same time to recover the 20-per-cent VAT paid on goods and services.⁵⁹

In contrast to print and audio-visual media, the tax regime for native online media outlets is the same as for the rest of the economy. Advertising that online media sell is taxed at a VAT rate of 20 per cent. Even online advertising sold by legacy media should be taxed at a VAT rate of 20 per cent, despite other forms of advertisements enjoying a lower tax rate.⁶⁰ A proposal is now before parliament to lower the VAT rates for online media to 6 per cent. The proposal has been introduced but not yet discussed in the parliamentary commissions.⁶¹

⁵⁹ Reporter.al, 2018, Qeveria vendos TVSH për reklamat në media në masën 6%, <https://www.reporter.al/qeveria-vendos-tvsh-per-reklamat-ne-media-ne-masen-6/>

⁶⁰ For more information, see Article 49 of the Law on Value Added Tax: <https://www.tatime.gov.al/c/6/71/tatimi-mbi-vleren-e-shtuar>

⁶¹ For more information, see the proposal at the website of the Parliament of Albania: <http://parlament.al/ProjektLigje/ProjektLigjeDetails/51400>

Per Albanian tax law, social media companies like Facebook, Google, and Twitter along with other online media not registered in Albania should have a registered agent in the country and pay a tax rate similar to native online media outlets. Such provisions within the tax code are seldom enforced on social media giants and other international digital media companies, however, leading to charges of unfair competition by local media outlets. Although no data is publicly accessible on the share of the local advertising market controlled by companies like Facebook and Google, the lack of taxation of their advertising products gives them de facto an unfair advantage to local online media outlets, which are taxed at the rate of 20 per cent. This is especially frustrating when financial sustainability and economic viability are critical challenges facing journalism and the news media sector,⁶² one of many economic sectors disrupted by the Internet economy,⁶³ and impacted by systemic media market failure.⁶⁴

Online media in Albania have often been the target of verbal abuse by politicians at the highest levels of power. This includes the current Prime Minister, Edi Rama. He accused web portals of tax evasion in October 2018. While discussing amendments to the law on audio-visual media in a Twitter post,⁶⁵ Rama called web portals an “online jungle” that should be legalised through registration as businesses in the National Business Centre. The Prime Minister also insinuated that online media have no addresses and are ghost enterprises, used to distribute slanderous material. Following Rama’s statement, AKEP issued a press release threatening to close the domains of 44 news websites if they did not register with the tax authorities. It is unclear how AKEP drafted the list of websites that it accused of failing to register with the tax authorities. However, it became evident that the list mistakenly included media outlets that were registered as non-profits and paid tax regularly as well as websites that acted as a blog or news aggregator without generating any financial transactions. Asked to clarify how the list was drafted, AKEP refused to answer.

⁶² Global Network Initiative, 2020, Threats to Media Sustainability and Freedom of Expression in the Digital Era by Michael J. Oghia & Mira Milosevic, <https://medium.com/global-network-initiative-collection/threats-to-media-sustainability-and-freedom-of-expression-in-the-digital-era-by-michael-j-41fab4d8664a>

⁶³ Tom Wheeler, 2018, Time to Fix It: Developing Rules for Internet Capitalism, <https://shorensteincenter.org/developing-rules-internet-capitalism/>

⁶⁴ Center for International Governance Innovation, 2019, Public Investments for Global News, <https://cigionline.org/articles/public-investments-global-news>

⁶⁵ <https://twitter.com/ediramaal/status/1050123498352463872>

However, the threat to close the domains of news websites not registered as businesses with the tax authorities was never acted on.⁶⁶

Subsidies and public media support schemes

The Albanian legal framework does not provide for any form of subsidies for journalism and the media, either for legacy or online media outlets. No laws establish favourable public support schemes for the news media sector in the form of cash grants or interest-free loans, either. Indirect tax subsidies in the form of tax exemptions are also not available for legacy or online media.

Although state advertising does not account for the lion's share of the financial revenues of legacy media and online outlets, it can play an important role in the form of an indirect subsidy and skew editorial coverage in favour of the government, public institutions and state-owned corporations. Such institutions can channel money to media outlets directly or indirectly through advertising agencies or other third parties. These transfers are particularly problematic, as they take on the role of subsidies in an environment where no clear rules exist on the distribution of state advertisements. State advertisements are not distributed fairly among the media in Albania – whether broadcast, print, or online. No mechanism guarantees that state advertisements are based on audience share or readership. The simplistic state advertising procurement rules leave plenty of room for abuse⁶⁷, especially since the procedure allows advertising contracts to be awarded to advertising agencies that can then outsource the contract, with no obligation to respect any specific or established criteria. No official body is mandated to monitor this process, either. Another problem with advertisements is that they are often commissioned in the context of various projects implemented by central or local government authorities that are not subject to any procurement rules.

⁶⁶BalkanInsight, 2018, <https://balkaninsight.com/2018/10/15/albania-communication-authority-threatens-website-closure-10-15-2018/>

⁶⁷ Albanian Media Institute, 2019, "The advertising market in the Albanian media", <http://www.institutemedia.org/wp-content/uploads/2020/01/Tregu-i-Reklamave-ne-Median-Shqiptare.pdf>

E-commerce provisions for online media

Although few online media in Albania offer subscription services, this model of generating revenue is expected to gain more traction in future.⁶⁸ In this regard, electronic financial transactions conducted online for media subscription services are regulated by Law no. 10128/2009 (as amended) “On E-commerce”, which establishes the rules on:

- E-commerce activity and information society services;
- The protection of parties to such transactions;
- Data privacy of consumers and of parties to such transactions;
- The free movement of information services; and
- The responsibilities of service providers.

The definition of “information society services” set out in the law includes services provided at a distance by electronic means, on the request of the recipient, against compensation. Online and other media subscriptions sold through the Internet via electronic payment are classified under this category and, thus, must fulfil the provision and specifications of this law.

The law applies to all services offered electronically to natural or legal persons registered with the National Business Centre, without specifically referring to online media.⁶⁹ The service provider should provide the authorities and service recipients with certain minimum information, including its commercial name, the address of its legal seat, its website and email address, and company registration data.

Transactions conducted electronically are considered validly executed under the E-commerce

⁶⁸ Albanian Media Institute, 2018: “Mapping Online Media in Albania,” http://www.osfa.al/sites/default/files/media_online_english.pdf

⁶⁹ Note the following exemptions: services of a notary public or similar relating to the execution of public authority; the representation of third parties before the courts or other authorities; activities subject to payment for participation in bets, lotteries, electronic games, games of chance, and casinos; and legal relationships arising from fiscal activity, the protection of personal data, or agreements governed by the Competition Law.

Law if they comply with the requirements of the Civil Code⁷⁰ and the Law on the Protection of Consumers⁷¹ (9002/2008).⁷²

AKEP is responsible for supervising compliance with the E-commerce Law, while the protection of consumers is safeguarded by the Commission for the Protection of Consumers under the Ministry of Finance and Economy along with other bodies as designated in the Law on the Protection of Consumers, such as the Ombudsman, arbitration and administrative court, etc.

The E-commerce Law sets out the penalties applicable in case of a breach of its provisions. The fines that may be imposed by the supervising authorities range up to 200,000 lek (EUR 1,613.40).

VI. OWNERSHIP AND COMPETITION



Journalists and the news media industry as a whole face unprecedented threats in the changing information environment, with economic and market challenges being some of – if not *the* – most significant globally. The market landscape for financially sustaining and monetising independent and trustworthy news media is faltering.⁷³ The Leipzig-based European Centre for Press & Media Freedom (ECPMF) has noted: “Independence of media and free journalism is only possible if media companies are economically independent and financially sustainable.”⁷⁴

The media industry is one of many economic sectors disrupted by media capture⁷⁵ – where

⁷⁰ The Civil Code of the Republic of Albania: <https://qbz.gov.al/preview/f010097e-d6c8-402f-8f10-d9b60af94744>

⁷¹ Law 9002/2008 “On Protection of Consumers”, http://www.erru.al/doc/ligji_9902_per_mbrojten_e_konsumatoreve.pdf

⁷² This law does not apply to contracts that create or erase rights to immovable property; contracts that require by law the participation of the court, public authorities, or public service professionals; contracts governed by the Family Code; actions governed by the chapter of the Civil Code regulating issues of testamentary inheritance; and financial or insurance services contracts.

⁷³ Reuters Institute, 2019, Digital News Report 2019, https://reutersinstitute.politics.ox.ac.uk/sites/default/files/inline-files/DNR_2019_FINAL.pdf

⁷⁴ European Centre for Press and Media Freedom, 2018, Media freedom in Europe: CODE RED, <https://ecpmf.eu/archive/news/press-releases/media-freedom-in-europe-code-red.html>

⁷⁵ The National Endowment for Democracy, 2017, In the Service of Power: Media Capture and the Threat to Democracy, <https://cimaned.org/publication/media-capture-in-the-service-of-power/>

governments, elites, and centres of power use media systems for their own interest – as well as by the Internet economy.⁷⁶ If journalism and news media organisations cannot meet their basic financial needs or must increasingly redirect precious resources to safeguard themselves from digital threats, including botnets,⁷⁷ state-sponsored troll farms,⁷⁸ platform algorithms and content demonetisation, it is an even greater challenge to address the myriad other concerns that journalists face – from safety to censorship – as well as democracy as a whole.

Ownership consolidation, competition and market access each play a key role in exacerbating the precarious situation of journalism and the news media sector. As more of our lives and subsequent outcomes of our decision-making are transformed into data, the uninhibited and opaque collection, use, and trade of personal data by several companies has created virtual (data) monopolies and bottlenecks to efficient and freely functioning digital marketplaces. As a result, multi-billion-dollar technology companies compete directly with journalism and media organisations for the attention, loyalty, and engagement of users, as well as for the wallets of every advertising company used to help support the legacy business model of journalism. Compounding this, the barriers to the entry of new, innovative services are constantly rising, while space for public services, including public-service journalism, is rapidly shrinking. Turning a bad situation into a worse one is the ongoing COVID-19 crisis and the ensuing economic fallout, which ensure that journalism and news media have never been more vulnerable.⁷⁹

Thus, enacting robust competition policies, ensuring transparent ownership requirements and establishing strong anti-trust practices are inextricably linked to solving the wider crises facing

⁷⁶ Tom Wheeler, 2018, Time to Fix It: Developing Rules for Internet Capitalism, <https://shorensteincenter.org/developing-rules-internet-capitalism/>

⁷⁷ A bot is a software application that runs automated tasks (scripts) over the Internet. For more information, see: <https://gijn.org/2018/11/05/how-to-identify-bots-trolls-and-botnet>

⁷⁸ Institute for the Future, 2018, State-Sponsored Trolling: How Governments Are Deploying Disinformation as Part of Broader Digital Harassment Campaigns, https://iftf.org/fileadmin/user_upload/images/DigIntel/ITF_State_sponsored_trolling_report.pdf

⁷⁹ Reuters Institute, 2020, What will the coronavirus pandemic mean for the business of news? <https://reutersinstitute.politics.ox.ac.uk/risj-review/what-will-coronavirus-pandemic-mean-business-news>. For more information, see: https://freedex.org/wp-content/blogs.dir/2015/files/2020/04/A_HRC_44_49_AdvanceEditedVersion.pdf and <https://gfmd.info/emergency-appeal-for-journalism-and-media-support-2/>

the journalism and news media sector,⁸⁰ while also helping to secure and bolster other pro-democratic human rights online, including freedom of thought and expression, the right to access information, and the ability to explore multiple narratives.⁸¹

Global debates taking place within legislatures, regulatory agencies and policy circles are considering the wider impact that the digital economy, government regulation, and digital platform policy have on society. Yet, these debates often overlook or minimise journalism and news media as well as the implications of digital platforms' market power on access to high-quality news content. From disinformation to intermediary liability, content-related issues must also be seen within the wider context of market-related challenges, while clearly distinguishing content regulation from market regulation.

Examples of best practice from which Albania could draw inspiration include the European Commission's competition policy,⁸² the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry,⁸³ work being conducted by the United States-based advocacy organisation Free Press,⁸⁴ and the analysis and recommendations offered by the Stigler Committee on Digital Platforms Final Report, conducted by the George J. Stigler Center for the Study of the Economy and the State at the University of Chicago,⁸⁵ specifically those of the Committee for the Study of Digital Platforms' Market Structure and Antitrust Subcommittee⁸⁶ and more specifically, its Media Committee.⁸⁷

⁸⁰ UNCTAD, 2019, Restoring Competition in "winner-took-all" digital platform markets, https://unctad.org/en/PublicationsLibrary/serp-2019d12_en.pdf

⁸¹ Article 19, 2018, How can competition law help to secure freedom of expression on social media? <https://article19.org/resources/how-can-competition-law-help-to-secure-freedom-of-expression-on-social-media/>

⁸² European Union, 2019, Competition Policy for the digital era, <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

⁸³ Australian Competition and Consumer Commission's (ACCC), 2019, Digital Platforms Inquiry, <https://acc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/final-report-executive-summary>. A useful comparison between the Australian and EU approach is also available at: <https://gfm.d.info/digital-platforms-regulation-and-media-sustainability-a-lesson-for-europe-from-down-under/>

⁸⁴ <https://www.freepress.net/issues/media-control>

⁸⁵ <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf?la=en&hash=2D23583FF8BCC560B7FEF7A81E1F95C1DDC5225E>

⁸⁶ <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/market-structure-report.pdf>

⁸⁷ <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/media---report.pdf?la=en&hash=B9C175BCDBF29606704740B23D290CD447D1F3BA>

Disclosure of ownership details for online media

Research conducted by BIRN Albania indicates that the biggest factors influencing the Albanian media's editorial line are the political and economic interests of media owners, which in turn place pressure on many journalists to self-censor.⁸⁸ As such, media outlet ownership transparency, regardless of the medium (i.e., print, broadcast, digital, etc.), is important for the public to identify any political and economic bias that might influence the coverage of a certain topic or issue, as well as recognise conflicts of interest.

Albanian legislation does not provide any specific provision for the public disclosure of the ownership of media outlets. The Audio-visual Media Authority collects and disseminates data from broadcasters, but the law does not include any specific provisions on ownership transparency in general, much less for online media. In 2018, BIRN Albania and Reporters Without Borders through the Media Ownership Monitor published a database, with data on the most important media outlets in the country.⁸⁹ The database is user-friendly, but does not necessarily reflect the latest changes among shareholders and administrators.

Albanian legislation also does not contain any specific provision for the public disclosure of the ownership of digital media outlets, both local and international ones. Most information regarding the ownership of media companies registered at the Albanian tax authority is provided in the Commercial Register of the National Business Centre.⁹⁰

This register is publicly available, but it might be difficult for the public to identify the owners, as some media outlets may not be registered as a business. If the media outlet is registered, moreover, the company may have a different name from the online entity, further complicating efforts to investigate its ownership. When the online media outlet is run by a not-for-profit organisation, the public will also face difficulties accessing information on the administrators and the board of

⁸⁸ BIRN Albania, 2015, A Blind Eye on News: Self-Censorship in the Albanian Media, <https://birn.eu.com/wp-content/uploads/2017/05/Report-on-self-censorship-in-the-Albanian-media.pdf>

⁸⁹ Reporters Without Borders and BIRN Albania, 2018, Media Ownership Monitor – Albania, <http://www.mom-rsf.org/en/countries/albania/>

⁹⁰ <http://qkb.gov.al/home/>

directors. To seek such information, interested parties should know the name of the organisation and file a request at the District Court of Tirana, as such information is not available online.

The Albanian legal framework includes only a few provisions that regulate ownership and market concentration among audio-visual media,⁹¹ some of which have been challenged in the Constitutional Court and are no longer applicable.⁹² There are also no provisions or recommendations related to ownership or vertical or horizontal market concentration concerning online media in Albania.

Competition in online media

Law no. 9121, dated 28 July 2003, “On Competition Protection”, as amended,⁹³ ensures that business entities comply with the rules for free and effective competition in the Albanian market. The institution in charge of applying and enforcing the law is the Competition Authority. The law “On Competition Protection” is applicable in all sectors of the Albanian economy, as well as for all enterprises, both private and public that exercise their activity in the country. This extends to enterprises that perform their activities abroad but ultimately impact the domestic market. No specific regulation of any economic sector is foreseen in the law; therefore, electronic media falls under the Competition Authority’s jurisdiction as a general business entity.

The activity of the Competition Authority focuses on the identification of (a) cartel-type agreements; (b) dominant positions in the market and market monopolies; and (c) mergers, acquisitions, and enterprise concentration. These activities under scrutiny apply to all enterprises that directly or indirectly affect the market – which includes all the companies registered in the territory of the Republic of Albania – but also companies that operate outside the country if the impact of their activity is felt within the internal market. These would technically include companies like Facebook

⁹¹ Law no. 97/2013, “On Audio-visual Media,” as amended: <http://ama.gov.al/wp-content/uploads/2018/05/LIGJI-Nr-97-2013-PER-MEDIAT-AUDIOVIZIVE-NE-REPUBLIKEN-E-SHQIPERISE.pdf>

⁹² See the Legal Assessment Media Ownership Monitor Albania: https://albania.mom-rsf.org/uploads/tx_lfrogmom/documents/237.pdf

⁹³ Law no. 9121, dated 28 July 2003, “On Competition Protection,” as amended: http://www.caa.gov.al/uploads/laws/Ligji_Per_mbrotjen_e_konkurrences_i_Perditesuar.pdf

and Google that are registered abroad and capture large amounts of the local advertising market in Albania.

Freedom of expression is not a specific goal of competition policy, but might be a factor taken into consideration when competition authorities intervene in the media market. The most important concern in such cases is media concentration, both vertical and horizontal, with the latter usually being considered more detrimental to competition.

The law on competition exerts its control in two ways: ex-ante, by controlling mergers and acquisitions (also known as market concentration), and ex-post, by prohibiting the abuse of a dominant position in a market. In the latter case, a high market share is an indicator used to determine a company's dominant position, though it is not the only variable taken into consideration. Barriers to entry, especially technical, legal, and financial, also act as an important metric.

Regarding ex-ante regulation, the law on competition stipulates that mergers and acquisitions or market concentration and dominance are deemed to have arisen where there is a change of control on a lasting basis as result of: (a) the merger of two or more independent undertakings or parts of undertakings; (b) the acquisition – by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of shares or assets, by contract or by any other means – of direct or indirect control of the whole or parts of one or more other undertakings; or (c) direct or indirect control over one or more undertakings or part of it.

According to the law, control is constituted by rights, contracts, or any other means that – either separately or in combination and having regard to the considerations of fact or law involved – confer the possibility of exercising decisive influence on an undertaking, particularly by: (a) ownership or the right to use all or part of the assets of an undertaking; and (b) rights or contracts that confer decisive influence on the composition, voting, or decisions of the structures of an undertaking.

However, the Competition Authority only reviews market concentrations when the following turnover thresholds are met: (a) the combined worldwide turnover of all participating undertakings

is more than 7 billion lek (approximately EUR 50 million) *and* the domestic turnover of at least one participating undertaking is more than 200 million lek (approximately EUR 1.4 million); or (b) the combined domestic turnover of all participating undertakings is more than 400 million lek (approximately EUR 2.8 million) and the domestic turnover of at least one participating undertaking is more than 200 million lek. Based on the best available information, online media market operators seem generally to fall under these thresholds. If they are part of bigger media companies, however, they may be subject to a merger and acquisition review by the Competition Authority. Ultimately, the lack of clarity is problematic and should be rectified.

If these thresholds are met, the Competition Authority will assess if the merger risks significantly restricting competition in the market or in part of it, especially as a result of the creation or strengthening of a firm's dominant position – further reinforcing that market concentration is one of the main elements, if not the only one examined. Based on the best available information, the Competition Authority has reviewed media concentrations only from a business point of view and has not taken any other metric, such as freedom of expression or media pluralism, into account.

In one of the most recent decisions within the Albanian media market – Competition Authority Decision no. 653, of 17 October 2019, “On the Authorisation of the Concentration Realised Through the Acquisition of Control of the ABC News SHA from Mr Aleksandër Frangaj and Ms Alba Ginaj”, the Competition Authority took cross-ownership in other media companies into account but without providing any details on specific markets (viewers, advertisements, etc.) or considering the particular nature of ABC News Albania as a 24-hour, news-only broadcaster and not a general media outlet.⁹⁴

⁹⁴ Competition Authority, 2020: Yearly Report for 2019, [https://www.parlament.al/Files/Kerkese/20200302103507All-Raporti-2019-20200221%20\(2\).pdf](https://www.parlament.al/Files/Kerkese/20200302103507All-Raporti-2019-20200221%20(2).pdf)

VII. RESTRICTIONS ON FREEDOM OF EXPRESSION ONLINE



Although the Albanian constitution and the European Convention on Human Rights recognise the fundamental rights to freedom of expression and freedom of the media, they also provide for proportional restrictions. Such restrictions can only be made by law, and should be in the public interest or for the protection of the rights of others. In Albania, the main restrictions on freedom of expression online regulated by law include defamation and libel, hate speech, copyrighted material, and data protection. The main institutions tasked with overseeing these restrictions are criminal and civil courts, the Commissioner for Anti-Discrimination and the Commissioner for Data Protection, as well as self-regulatory bodies, like the Albanian Media Council.

Defamation and libel

Defamation in Albania is still a criminal misdemeanour punished by a fine. The current criminal code defines defamation as the “intentional distribution of untrue data and of having full knowledge of the untrue nature of the data for the purpose of infringing the dignity and the honour of another person”. Punishments can vary from 50,000 to 1,500,000 leks (EUR 400–12,000). The criminal code was reformed in 2012 to remove the punishment of prison sentences of up to two years for defamation.

The civil code⁹⁵ treats defamation as non-contractual, non-pecuniary damages suffered by the plaintiff. At the same time, a compromise in 2012 between the main political parties agreed to limit parliamentary immunity in case of defamation. Article 73 of the constitution now reads: “A member of parliament cannot be held accountable for thoughts expressed in parliament and for votes cast during his functions. This clause shall not be valid in case of defamation.”

Based on data gathered by BIRN through Freedom of Information (FOI) requests, the District Court

⁹⁵ The Civil Code of the Republic of Albania: <https://qbz.gov.al/preview/f010097e-d6c8-402f-8f10-d9b60af94744>

of Tirana presided over 13 criminal cases of defamation and 62 civil defamation claims between 2018 and 2019. Nearly half of these lawsuits targeted journalists and media outlets. There have been 240 cases of both criminal and civil defamation lawsuits registered in Tirana's District Court over the past decade, about half of which were against media outlets. Most of the others were defamation claims amongst politicians over public statements – the better part of them written on social media. The punitive sums requested and those actually awarded by the court show a clear downward trend over the years. Claims from plaintiffs and awards from judges were higher at the beginning of the decade, reaching 40 million lek (EUR 319,433) in one case, with a downward trend registered by the end of the decade.

Criminal Code

The Albanian criminal code (Article 119, as amended in 2012) states that the intentional insult of a person is considered a criminal misdemeanour, and is punishable only by a fine between 50,000 and 1 million lek. When such an act is committed in public, to the detriment of several people, or is repeated more than once, the fine ranges from 50,000 to 3 million lek.

Article 120 of the criminal code states that intentional dissemination of statements and any other pieces of information, with the knowledge that they are false, affecting a person's honour and dignity, is a criminal misdemeanour, punishable by a fine of 50,000 to 1.5 million lek. When such an act is committed in public, to the detriment of several persons, or more than once, it shall be punished by a fine of 50,000 to 3 million lek.

Civil Code

Article 625 of the civil code establishes that a person who has suffered non-pecuniary damage shall be entitled to compensation when:

- Sustaining a physical, emotional, mental, or psychological damage;
- Their honour, personality, or reputation is impaired;
- Their right to their name is impaired;
- Their privacy observation is impaired; and/or
- The remembrance of a deceased person is impaired. The spouse or the relatives of the deceased up to the second degree may seek the indemnification of the nonpecuniary damage.

The civil code (Article 647/a added in 2012) also has a set of guidelines for courts to follow when determining civil liability. On a case-by-case basis, the court shall take account the following factors:

- Way, form, or time of distribution of the statements or commission of actions;
- Degree of abiding by the rules of the professional ethics by the perpetrator of the statements;
- Forms and degree of guilt;
- Whether the statements have been quoted or referred accurately to the statements of a third person;
- Whether the statements are false, specifically in the event of impairing reputation;
- Whether the statements pertain to the privacy issues of the impaired person and their relationship to the public interest;
- Whether the statements consist in opinions or assertions containing only insignificant factual inaccuracies;
- Whether the statements are related to issues of public interest or persons in state offices or election candidates;
- Conduct of actions to prevent or reduce the extent of damage, such as publishing a correction for the false statements, as well as any other measure applied by the perpetrator of the statements to the effect of reinstatement of the honour, personality, and reputation

- of the impaired person;
- Whether the perpetrator of the false statements has benefitted from their dissemination, as well as the extent of this benefit; and/or
- Whether the indemnification aggravates the financial situation of the perpetrator of the damage significantly.

Hate speech

In its 2018 report on Albania,⁹⁶ the European Commission noted the use of hate speech against various social groups as a growing concern, particularly its sharp increase in audio-visual, online, and social media in recent years. The 2017 report, “Monitoring Hate Speech and Discrimination in Online Media”,⁹⁷ documented that, during the monitoring period from November to December 2017, 21 per cent of articles published by online media outlets contained hate speech directed towards certain groups or communities, particularly the Roma community and other ethnic minorities, the LGBTQ+ community, and women.⁹⁸

The main legal instrument against hate speech in Albania is the provision of several anti-hate crimes and misdemeanours in the criminal code.⁹⁹ Interestingly, use of computer systems as a *modus operandi* is specifically foreseen in some of these articles. It should be noted that it is considered an aggravating circumstance (Article 50/j of the criminal code) if the offence is committed due to motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious, or philosophical convictions, health status, genetic predispositions, or disability.

⁹⁶ Commission Staff Working Document: Albania 2018 Report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>

⁹⁷ ProLGBT, 2017, Monitoring Hate Speech and Discrimination in Online Media, <https://www.historia-ime.com/wp-content/uploads/2018/01/Raportin-e-Plotë.pdf>

⁹⁸ Women throughout Albania face extensive sexual harassment and other forms of gender-based violence offline, which has undoubtedly translated online: <https://eca.unwomen.org/en/digital-library/publications/2019/05/sexual-harassment-gender-based-violence-in-albania>

⁹⁹ Criminal Code of the Republic of Albania, <https://qzb.gov.al/preview/a2b117e6-69b2-4355-aa49-78967c31bf4d>

Provisions in the Criminal Code:

- Article 74/a states that offering materials that deny, significantly minimise, approve of, or justify acts that are genocide or crimes against humanity in public or deliberately disseminated to the public through computer networks carries a sentence of three to six years in prison.
- Article 84/a states that a serious threat to murder or serious injury to someone because of their ethnicity, nationality, race, or religious affiliation through computer systems shall be punished by a fine or up to three years' imprisonment.
- Article 119 states that the intentional insult of a person constitutes a criminal misdemeanour, and is punishable by a fine of 50,000 to 1 million lek. The same act, when committed in public, to the detriment of several persons, or more than once, constitutes a criminal misdemeanour, and shall be punished by a fine of 50,000 to 3 million lek.
- Article 119/a states that offering material with racist or xenophobic content in public or deliberately disseminating it to the public, or through computer systems, constitutes a criminal misdemeanour that is punishable by a fine or up to two years' imprisonment.
- Article 119/b states that the intentional insult of a person due to their ethnicity, nationality, race, or religion in public or through computer systems, constitutes a criminal misdemeanour and is punishable by fine or up to two years' imprisonment.
- Article 253 states that discrimination by a worker holding a state function or public service conducted because of his capacity or during its exercise, when the discrimination is based on origin, sex, sexual orientation or gender identity, health status, religious or political beliefs, trade union activity, or because of their affiliation with a particular ethnic group, nation, race, or religion, which consists in creating unfair privileges or in refusing a right or benefit deriving from law, is punishable by a fine or up to five years' imprisonment.
- Article 265 states that inciting hate or disputes on the grounds of race, ethnicity, religion, or sexual orientation, as well as intentional preparation, dissemination, or preservation for purposes of distributing writings with such content, by any means or forms, carries a sentence of two to 10 years' imprisonment.

- Article 266 states that endangering the public peace by calling for national hatred against other parts of the population, by insulting or defaming them, or by requesting the use of force or arbitrary actions against them, carries a sentence of two to eight years' imprisonment.

Hate speech is also addressed, albeit indirectly, in Albania's anti-discrimination law, namely Law no. 10221, of 4 February 2010, "On Protection from Discrimination".¹⁰⁰ Based on this law, the anti-discrimination Commissioner appointed by parliament is responsible for reviewing complaints from subjects that claim to be victims of discrimination, including public administration and private parties. After conducting an investigation, the commissioner may issue recommendations; fines are imposed in case of non-compliance.¹⁰¹ Its scope includes direct discrimination, indirect discrimination, discrimination by association, etc. There is a general clause of prohibition of discrimination, and the law foresees specific measures for discrimination in employment, housing, education, offering of goods and services, etc. Aside from this law, hate speech is not specifically mentioned. In response to this, amendments to the law have been drafted to better address this issue,¹⁰² which is seen as prevalent throughout Albanian society.¹⁰³ In the current law, hate speech falls under the definition of "annoyance". This is a form of discrimination that occurs in the case of undesirable conduct, specifically when it is related to any of the causes mentioned in Article 1 of the law,¹⁰⁴ which has the purpose or effect of violating the dignity of a person and the creation of an intimidating, hostile, degrading, humiliating, or offensive environment for that person. It also

¹⁰⁰ Law no. 10 221, dated 4 February 2010, "On protection from Discrimination", <https://kmd.al/wp-content/uploads/2018/05/1308053956-Ligji-per-mbrojtjen-nga-diskriminimi.pdf>

¹⁰¹ Every person who violates the provisions of this law is punished by a fine as follows: a) a natural person, from 10,000 to 60,000 lek (EUR 80.33-482); b) a legal person, from 60,000 to 600,000 lek (EUR 482-4,792.41); c) a natural person within a legal person who is responsible for the violation, from 30,000 to 80,000 lek (EUR 239.62-479.24); d) a person who exercises a public function and is responsible for the violation on the basis of this law, from 30,000 to 80,000 lek.

¹⁰² See the 2019 yearly report of the commissioner on protection from discrimination: <https://www.kmd.al/wp-content/uploads/2020/05/Raporti-vjetor-2019-KMD.pdf>

¹⁰³ See the yearly reports of the Commissioner on Protection from Discrimination: <https://www.kmd.al/raporte-vjetore/>

¹⁰⁴ This law regulates implementation of and respect for the principle of equality in connection with gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious, or philosophical beliefs, economic, education, or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group, or for any other related reason.

applies in the case of less favourable treatment performed as a result of an objection or failure to submit by the person affected by such behaviour.

Another issue of interest for the media is the prohibition of discriminating advertisements. Article 8 of the law “On protection from Discrimination” specifically prohibits publication of various advertisements and announcements if they present, openly or in an implied manner, a purpose to discriminate for the causes mentioned in Article 1 of this law.

Despite the complaints collected so far by the Commissioner regarding various forms of discrimination, during the last five years there have been only 14 complaints about the use of hate speech in the media, while specific complaints regarding cases of the use of hate speech in online media registered during the same time period number only three. Also, due to the focus of the law on ‘individual responsibility’, the decisions of the Commissioner on possible cases of hate speech are not addressed to the media, but to the specific individuals that have used discriminatory language. Although the complaints relate mainly to the language used in television programmes, it should be kept in mind that decisions to remove materials or delete a specific statement also affect all relevant television show posts on the media’s website, social networks, and various platforms (mostly YouTube).

Similarly, the Complaints Council in the Audio-visual Media Authority can receive complaints about the content of television and radio programmes broadcasted or posted online. Despite the few cases reported in the above-mentioned institutions, hate speech remains a widespread and underreported phenomenon in Albanian media and on social networks, where one of the main problems is the lack of reader comment moderation.

Authors’ rights online

Copyright is a form of intellectual property granted by law to authors of creative works for the exclusive reproduction of material they create. An author’s intellectual property rights are recognised by Article 58.2 of the constitution, by domestic legislation, and by the Berne Convention

for the Protection of Literary and Artistic Works, which Albania signed in 1993.¹⁰⁵ Despite these ample legal guarantees, copyright is regularly breached in Albania, particularly in online media, where reproduction of copyrighted material is technically effortless.

The report “Mapping Online Media in Albania”,¹⁰⁶ published by the Albanian Media Institute (AMI) in 2018, found that, based on the votes of online media owners and managers, copyright violations were considered the biggest problem facing the online media, followed by the lack of quality information and financial difficulties.

The criminal code indicates that total or partial reproduction of a work of literature, music, art, or science that belongs to another, or if its use is conducted without the author’s consent, when his personal and property rights are violated, constitutes a criminal contravention, and is punishable by a fine or by up to two years’ imprisonment.

According to Law no. 35/2016, of 31 March 2016, “On Copyright and Related Rights”, as amended,¹⁰⁷ copyright infringement which does not constitute a criminal offence, may still constitute an administrative infringement, which is punishable by a fine. This law punishes harmful or illegal actions that infringe upon intellectual property rights but does not regulate online content-related issues when certain actions performed through the Internet infringe upon intellectual property rights.¹⁰⁸

Conversely, there are no specific provisions in the copyright law for the protections of authors’ rights online, but general rules do apply. Law no. 35/2016 stipulates that authors shall benefit from copyright protections of their work(s), and according to the provisions of this law, for the mere fact of the realisation of a creation. Thus, the existence and enforcement of copyright does not require any registration of the work or other formalities.

¹⁰⁵ Berne Convention for the Protection of Literary and Artistic Works, <https://wipolex.wipo.int/en/treaties/textdetails/12214>

¹⁰⁶ Albanian Media Institute, 2018: “Mapping Online Media in Albania,” http://www.osfa.al/sites/default/files/media_online_english.pdf

¹⁰⁷ Law no. 35/2016, of 31 March, 2016, “On Copyright and Related Rights”, as amended, https://kultura.gov.al/wp-content/uploads/2017/11/Ligi_nr._35_dt._31.3.2016.pdf

¹⁰⁸ Swiss Institute of Comparative Law, 2015: Blocking, Filtering, and Take-Down of Illegal Internet Content <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651682>

Furthermore, copyright is granted protection in line with the following criteria and conditions:

- Works are protected during the author's life and for 70 years after their death (Article 41.1).
- The property rights of a work of co-authorship are protected until the death of the last surviving author and then for 70 years after their death (Article 41.3).
- The property rights of co-authorship in a work of written music are protected for 70 years after the death of the last surviving author, the author of the text, or the composer of the musical work when their contribution has been specially created for the use of the musical work (Article 41.4).
- Audio-visual works are protected for 70 years after the death of the author/co-author(s) (Article 41.5).
- Anonymous or pseudonymous works where the author remains unknown are protected for 70 years from 1 January of the year following the date when the work is lawfully disclosed to the public. If the work is not lawfully disclosed to the public within 70 years from creation, copyright protections cease to exist and are inapplicable (Article 41.6).
- Property rights in collections are protected for 70 years from the day of the lawful public disclosure of the work (Article 41.7).
- The terms of protection are calculated from 1 January of the following year of the author's death, or where appropriate, to the first legal public disclosure of the work. (Article 41.2).

Article 8 of the law mentions that written literary and opinion pieces, as well as photos and long audio-visual features, are subject to copyright, both offline and online. Despite the legal protection granted to audio and visual products via copyright, the copyright law (Article 12.1) does not protect news and press information, both offline and online, which are simply informative in nature. The definitions in the law do not clarify which elements of online media may be banned for reproduction without authorisation and which may not, nor is any specific license specified for the publication of online content in the domestic legal framework.

Apart from the restrictions based on the domestic legislation on copyright protection, content providers also should be aware of the policies and regulations used by social media and what constitutes copyright infringement and fair use in these platforms. In this context, the actions of a German-based company, Acromax Media, on copyright infringement by Albanian local language content creators, have become emblematic of the threats such regulations can pose for freedom of expression and freedom of the media. A company based in Hamburg, Acromax Media bills itself as a digital rights management company, which includes content protection, marketing and distribution. It has signed a top list of who is who in the entertainment and media industry in Albania, protecting their brands and content online. Among its clients are listed top television stations such as Top Channel TV, Klan TV, News 24 TV, Vizion Plus, ABC News and pay-per-view platforms like Digitalb and Tring.

However, some online media outlets and opposition influencers have claimed that the company has also been engaged to remove online posts that are critical of Prime Minister Rama and Tirana Mayor Erion Veliaj – so acting as a tool of online censorship.¹⁰⁹ Reportedly, Acromax Media has flagged critical social media videos on Facebook and YouTube, which have been used without permission content from providers it represents, when they are critical of the ruling parties. Activists and rights organisations have claimed that Acromax Media reports alleged copyright infringements to platforms such as Facebook and makes journalistic content disappear from the Internet.¹¹⁰ Reporters Without Borders has considered such practice by the company an attempt to suppress independent journalism.

Data protection

Personal data is defined as any information relating to an identified or identifiable natural person, directly or indirectly, in particular by reference to an identification number or to one or more

¹⁰⁹ Acromax Media — Albanian Government's Tool for Online Political Censorship, Exit.al, 2019, <https://exit.al/en/2019/08/19/acromax-media-albanian-governments-tool-for-online-political-censorship/>

¹¹⁰ Netzpolitik.org, A German company is responsible for the deletion of videos critical of the Albanian government, 2020, <https://netzpolitik.org/2020/a-german-company-is-responsible-for-the-deletion-of-videos-critical-of-the-albanian-government/>

factors specific to his physical, physiological, mental, economic, cultural, or social identity.

The main law that regulates personal data protection is Law no. 9887, of 10 March 2008, “On the Protection of Personal Data”, as amended.¹¹¹ This law defines the rules for the protection and legal processing of personal data. According to this law, the legal processing of personal data shall respect and guarantee the fundamental rights and freedoms of persons, and their right to privacy in particular. This law applies to the processing of personal data – wholly or partly by automatic means – and to the processing by other means of personal data stored in a filing system or are intended to form part of a filing system.

Law no. 9887 is applicable to any action related to data processing, including the collection, storage, disclosure, and/or transfer of personal data for each of the following subjects:

- Data controllers;
- Diplomatic missions or consular offices in Albania;
- Data controllers who are not established in Albania, but make use of any equipment located within the territory of Albania; and
- Public authorities processing data in the framework of crime prevention and prosecution activities, in cases of a criminal offence against the public order and other violations in the field of criminal law, defence, and national security.

It also applies to automatic processing and non-automated processing. Based on the specifications of the law, AKEP, like any other public authority in Albania, is a subject to the obligation to protect personal data during the collection, storage, disclosure, and/or transfer of data.

The institution in charge of implementation of the law on data protection is the Commissioner for the Right to Information and Protection of Personal Data, as an independent authority for

¹¹¹ Law no. 9887, dated 10 March 2008, “On Protection of Personal Data,” https://www.idp.al/wp-content/uploads/2019/10/LDP_english_version_amended_2014.pdf

supervising and monitoring both the protection of personal data and the right to information by respecting and guaranteeing fundamental human rights and freedoms in compliance with the law.

Under Law no. 9887, every person whose data has been used and/or published can exercise the right to request rectification or erasure. The data subject has the right to request rectification or erasure of their data, free of charge, whenever they are informed that data relating to them is irregular, untrue, and incomplete, or if their data has been processed and collected in contradiction to the provisions of this law. Within 30 days from the receipt of the data subject request, the controller shall notify the data subject on the lawful processing of the data, whether the blocking, rectification, or erasure has been fulfilled or not. In such cases, media organisations are considered and should act as data controllers.

When the controller does not initiate the blocking, rectification or erasure of the data requested, the data subject has the right to file a complaint with the commissioner. Following this complaint, in accordance with the Code of Civil Procedure, the data subject may file a complaint in court to ask for compensation.

The law has foreseen a specific regime for processing personal data vis-à-vis freedom of expression. A specific instruction has been issued on the terms and conditions when processing data for journalistic, literary, or artistic purposes that grants an exemption from certain legal obligations, which are allowed up to the extent that they reconcile the right to protect personal data with the rules governing the right to freedom of expression.

According to Instruction no. 9, of 15 September 2010, “On Fundamental Rules in Connection with the Protection of Personal Data in Print, Visual, and Audio-visual Media”, as amended,¹¹² everyone processing personal data only for journalistic, literary or artistic purposes shall have primary consideration for the right of the individual, the person of these personal data, to protect them.

¹¹² Instruction no. 9, 15 September, 2010, “On Fundamental Rules in Connection with the Protection of Personal Data in Print, Visual, and Audio-visual Media”, https://www.idp.al/wp-content/uploads/2016/11/instruction_no_09.pdf. This section reproduced the text of the instruction, with only minimal editing done for the purpose of clarity.

Based on this instruction, the preservation of confidentiality (secrecy, intimacy, familiarity and trust) is a fundamental right of the individual, and is not subordinated to or superseded by the right to freedom of expression of journalists or any other entity. Print, visual, and audio-visual media shall make arrangements not to publish information that is unclear, misleading, or distorted, including photos. The moment that a considerable inaccuracy or a misleading or distorting statement is encountered, it shall be rectified immediately. In print media, a clear distinction shall be drawn between the comment, presumption, and the fact.

The journalist shall guarantee the right to inform about news of public interest, preserving the essence of information, but avoiding when possible references to personal data indicating the individual's race, ethnicity, religious, philosophical, or similar convictions, political views, party affiliation, membership in philosophical or political associations, as well as data that may indicate their health status and sexual orientation.

The journalist shall respect the right of the person to non-discrimination based on race, religion, political conviction, gender, sexual orientation, and personal, physical, or mental circumstances. In addition to the essence of information, the journalist shall not provide news, public photos, or photos of persons involved in events impairing the dignity of the person, and shall not refer to details of violence, unless they consider it as news or an image in public interest. Unless they consist of information that is relevant to the public interest, or for established justice and police purposes, the journalist may not obtain or produce images and photos of people being placed under arrest without their consent. The persons should not be filmed while in handcuffs either.

The print, visual, and audio-visual media shall take account of the following principles of privacy:

- Every person shall be entitled to have their private or family life, house, health, as well as the correspondence, including digital communication, respected.
- Journalists may not intervene with the private life of any individual without their consent.
- It is unacceptable to publish photos of individuals in private places without their consent. Private places are considered public or private property depending on the reasonable

belief of where intimacy exists.

Sensitive data may be processed by journalists only after they obtain the consent of the interested person, and such consent can be revoked at any given time. Consent is not necessary when journalists are abiding by the rights and restrictions of press freedom granted by the constitution and related documents, specifically the essential formations with regard to events within the public interest.

Public interest will be considered within the following limitations:

- Interests related to national security;
- Territorial integrity or public safety;
- Prevention of riots or crimes;
- Public prevention of fraud due to an act or declaration of an individual;
- Protection of health or morals;
- Protection of the reputation and rights of others;
- Prevention of disclosure of confidential information; or
- Guarantee the impartiality of judicial power.

The regulation also stipulates that in the capacity of a data controller, journalists are subject to the legal obligation to cooperate with the Commissioner for the Protection of Personal Data, thus ensuring all the information the Commissioner's office might need to perform its tasks as stipulated by the law "On Protection of Personal Data".

All public and private controllers of print, visual, and audio-visual media in the territory of the Republic of Albania are obliged to comply with this instruction. Noncompliance with rules set forth in this instruction shall be considered a breach of the law on data protection, and is punishable by a fine ranging from 10,000 to 500,000 lek (EUR 81–4,050.12).

Two sets of special instructions and considerations for journalists on how to protect personal and sensitive data are listed below.

Special considerations: Protection of minors

Special consideration within the constitution, as part of Law no. 18/2017 “On the Rights and Protection of the Child”, and in line with the UN Convention on the Rights of the Child¹¹³ – which Albania ratified in 1992 – is extended to the protection of minors, as they are among the most sensitive and vulnerable persons with regards to the risk of violating their fundamental rights, specifically their right to privacy. Minors under the age of 16 may not be interviewed or photographed for issues including their wellbeing (progress) or that of another child, unless the responsible parent or guardian provides their consent. Moreover, students under 16 shall not be photographed or interviewed at school without permission of the school authorities.

Journalists shall not publish the names of minors included in news reports, or provide details that might lead to their identification. Protection of the identity of a child must take account of the quality of the news and its components. Dissemination of details, by any means, of news or photos to identify a child involved in a crime, is forbidden. Journalists shall not identify minors under 16 who are victims or witnesses in sexual crime cases. In every press report on a case, including a sexual crime against a child, the child shall not be identified and attention shall be paid to not identifying the child indirectly by publishing the relationship between the defendant and child.

The right of a minor to privacy, specifically in the event of an abuse case, always takes precedence as compared to the right to free of expression, and this is also valid in cases where their identity is made known through official sources or family members. Additionally, the press shall not identify the victims of sexual assaults or publish material that might contribute to such an identification.

News that a child has been adopted may not be published without the approval of the adoptive parents. At the same time, journalists may not publish data violating the privacy of

¹¹³ UN OHCHR: <https://ohchr.org/en/professionalinterest/pages/crc.aspx>

the adopted and adoptive persons.

The anonymity of the minor shall be safeguarded in any legal procedure, especially in procedures where a minor is involved in a divorce case or in other dedicated cases that may influence their social, mental, or psychological development.

Journalists should prioritise the interests of the minor, take the nature of the relationship between the parent(s) and the child into account, and whether or not the parent(s) is/are in a position to positively represent the interests of the child. The information obtained from the parent(s) of a child may not always be reported by the journalist, since they are always responsible for evaluating whether the publication is in the best interest of the child, implying the protection of the child's personal, social, mental, and psychological development.

The name of a minor with a severe illness shall not be used for propaganda purposes or for any other reason that is in conflict with their rights and does not prioritise their dignity.

Minors in serious crisis conditions shall not be interviewed (for instance, when they have run away from home, or been used by organised crime, or for prostitution, etc.). If an interview is necessary for the public interest, the minor's anonymity shall be safeguarded to the maximum. Participation of minors in media programmes when the emotional load of the child is being discussed is not permitted. Moreover, journalists shall not use the fame or position of a parent or custodian as justification to publish details of the private life of a child.

Special considerations: Court and crime reporting

Special rules are set out on the protection of privacy in criminal proceedings. Throughout the course of reporting on a crime, the relatives or friends of the convicted person(s) or person(s) being accused of a crime shall not be identified without their consent. At the same time, journalists are responsible for ensuring that published information is comprehensive,

accurate and up-to-date. Moreover, the fundamental guarantees of the defendant shall be observed in every case, and a presumption of innocence should be respected.

There may be cases when it is difficult to establish if the allegations made by a third party are true, but they must be reported for the sake of public interest. If editors wish to publish materials under these circumstances, they should do so without identifying the defendant. Editors should bear in mind that everyone – including those being charged or convicted in connection with the crime – has the right to have their privacy respected, as well as their home, property, health, and correspondence.

Respect for the principle of the presumption of innocence is a constituent part of the law in order to ensure a fair process without legal infringements. Opinions and information with regard to criminal proceedings that are being conducted shall be communicated by the press only if they do not impair the presumption of innocence of a suspect or person charged with a certain crime.

To make information available in connection with suspects, charged or convicted persons, or other persons having a connection to this process, their right to privacy shall be respected in accordance with Article 8 of the European Convention on Human Rights. Specifically, this protection shall be guaranteed to minors, vulnerable persons or communities, victims, and witnesses, as well as the family members of suspects and/or charged or convicted persons. Detrimental consequences that may befall these persons as a result of any disclosure of information that might facilitate the discovery of their identity must be accounted for.

The identity of witnesses shall not be disclosed unless these persons have provided preliminary consent, unless the identification of the witness(es) is in the interest of the public, or their testimony has been made public in advance. Specifically, the identity of the witness shall not be disclosed where such consequences, such as a risk to their life, safety, or livelihood, might come about. The measures provided for in witness protection programmes shall be observed, specifically in criminal proceedings with a connection to organised crime or

crimes within the family, such as domestic violence. Journalists are allowed to contact jailed and imprisoned persons to the extent that this does not impair the functioning of justice, the rights of inmates and prison personnel, or the security of the penitentiary Institute.

The disclosure of the names of persons under investigation or being tried is prohibited in order to protect their privacy and the right to the protection of data in connection with third parties involved in any investigation. The disclosure of names of convicted persons in contrast to cases involving a suspect or defendant may be done freely, since that decision has been made by the court and is then in line with the public interest. However, a journalist must evaluate the publication of the identifying data of a convict on a case-by-case basis, since they have the responsibility to take into account, inter alia, the specific qualities of the involved persons, such as disabled or mentally disturbed persons, the type of verified crime, etc.

Journalists should not disclose data and names of relatives and friends of the defendant, or publicly identify the names and other information pertaining to persons seemingly not involved in the investigation but have a connection with the protagonists of the event (e.g., they have intimate relations or cohabitate with them), or due to fact-related circumstances (e.g., the identification of the owner of a property where a crime has been committed).

General Data Protection Regulation (GDPR)

No specific legislation has been enacted to implement the EU's General Data Protection Regulation (GDPR)¹¹⁴ in Albania. Amendments to bring data protection legislation in compliance with GDPR are foreseen In the Data Protection Commissioner's 2018-2020 strategy, but are not yet in place.¹¹⁵

¹¹⁴ General Data Protection Regulation (GDPR) <https://gdpr-info.eu/>. For more information, see: https://ec.europa.eu/info/law/law-topic/data-protection_en

¹¹⁵ See the 2018-2020 strategy document: https://www.idp.al/wp-content/uploads/2018/02/Strategjia_per_te_Drejten_e_Informimit_dhe_Mbrojtjen_e_te_Dhenave_Personale.pdf

One significant feature of GDPR is that it applies outside the borders of the European Union (referred to as the extra-territoriality principle). This is because all non-EU data controllers and processors, including Albania's, must comply with EU data protection obligations when processing data from individuals within the EU, such as when non-EU firms offer goods or services to EU citizens. GDPR is also applicable when businesses or other types of organisations are monitoring the behaviour of individuals within the EU.

No specific rules regarding the right to be forgotten – the practice of removing personal or private information from websites and/or search engine indexes – are currently in force, but foreseen amendments to Albanian data protection law, to bring it into compliance with GDPR, are expected to regulate the right to be forgotten.¹¹⁶ Oversight of the amendment process is critical, so that any right-to-be-forgotten measure that is adopted includes provisions that safeguard press freedom.¹¹⁷

Code of Ethics for Journalists

The Albanian Code of Ethics is a self-regulating instrument drafted to strengthen the quality and professionalism of journalism in Albania, and instil a sense of accountability in journalism and media institutions to their readers, audiences, and the public in general. The first code of ethics for the Albanian media was drafted in 1999, but few media organisations adopted it as an internal regulatory document.

The most recent Code of Ethics was drafted in 2018 by the Albanian Media Institute (AMI) with the support of the Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX) project – a joint initiative led by the European Union and the Council of Europe.¹¹⁸ The introduction stipulates that:

¹¹⁶ Ibid.

¹¹⁷ Michael J. Oghia, 2018, Information Not Found: The “Right to Be Forgotten” as an Emerging Threat to Media Freedom in the Digital Age, <https://cima.ned.org/publication/right-to-be-forgotten-threat-press-freedom-digital-age/>

¹¹⁸ The full text of the Code of Ethics is available at: <https://kshm.al/wp-content/uploads/2018/04/Kodi-i-Etikës-final-English-4.pdf>

“The Code of Ethics is a self-regulating instrument that aims to guide, strengthen, and improve the quality of journalism and the sense of responsibility of journalists in Albania. The principles of this Code are in line with the universal ethical values of journalism, which are widely recognised and accepted by media organisations and journalism unions in democratic countries. They are a cornerstone of democratic pluralism, and also respect the spirit of the Constitution of the Republic of Albania and the Universal Declaration of Human Rights.”

The rules and code of conduct set forth in the Code of Ethics are applicable to all persons and organisations engaging in the gathering, editing, preparation and dissemination of journalistic information. It includes both print and electronic media, as well as all journalistic platforms, offline and online, including journalism disseminated through social media and Internet portals. The code also covers several other areas, including:

- Accuracy and fairness of information;
- Albanian Language;
- Conflict of interests;
- Distinguishing fact from opinion;
- Editorial independence;
- Hate speech;
- Incitement to crime and violence;
- Intellectual property rights;
- Intrusion into private life;
- Liability after publication;
- Pre-publication agreements;
- Protection of children and people with disabilities;
- Public Interest;
- Rectification and reply;
- Relations between journalists;

- Relations with sources;
- Reporting of accidents and disasters; and
- Reporting of court proceedings and the presumption of innocence.

The AMI also published a set of Ethical Guidelines for Online Journalism with JUFREX's support.¹¹⁹ This self-regulatory mechanism establishes a set of principles related to the specifics of online publications that should be respected by Albanian journalists and media (as listed in the box below). According to these guidelines, online journalism must respect all professional code of ethics and the core values of journalism, irrespective of the forum or format it uses. In particular, information published by online media must be:

- Accurate and fact-based;
- Verified and published without sensationalism;
- Published without intent to do harm to others;
- Impartial and inclusive of all relevant points of view; and
- Transparent in the origin of content and methods of journalism used.

Ethical principles for online publications

- Respect the dignity, reputation, and privacy of individuals.
- Prohibit the publication of materials that incite hatred or violence, or causes direct or indirect discrimination on the basis of gender, age, marital status, language, physical or mental disabilities, sexual orientation, political convictions, religion, or ethnic or social status.
- Prevent cyber-bullying and the publication of malicious content with the intent to do harm

¹¹⁹ The guidelines are available at: <https://kshm.al/wp-content/uploads/2018/04/ETHICAL-GUIDELINES-FOR-ONLINE-JOURNALISM-7.pdf>

to others, especially in forums dedicated to the young and minors.

- Distinguish between editorial content and user-generated content.
- Provide a duty of care to ensure that hyperlinks embedded in website content do not direct users to other sites that contain deliberately harmful and false information or that do not respect the Journalism Code of Ethics.
- Monitor user-generated content, including websites and social media pages, in order to take measures that prevent or stop the publication of unlawful content, content that violates human dignity or privacy, or hate speech.
- Publish rules and third-party content management policies that users must follow to add comments or other content to their pages and make reporting mechanisms available.
- Remove unacceptable content and comments that constitute hate speech, endanger the safety or physical integrity of individuals, or may cause other serious violations of human rights as expediently as possible.
- Have in place special policies and mechanisms for the identification and expeditious takedown of sexual content or non-consensual intimate images (e.g., photographs, video, etc.) in view of their especially serious impact on the privacy and dignity of the affected persons.
- Adopt effective mechanisms for reviewing public complaints or reports about material that may be unlawful or in violation of website policies.
- Provide a duty to care when using third-party content obtained from social media or provided by the general public.
- Use caution to ensure that user-generated content does not become a vehicle for the promotion or justification of illegality in general and organised crime in particular.
- Maintain online archives of their published content.
- Comply with copyright rules set forth in the Code of Ethics.

Despite the progress made, this code is a voluntary instrument. Thus, it is not clear how many media outlets are willing to commit themselves to respecting the recommendations of the Albanian

Media Council, nor are there any explicit or enforceable accountability or redress mechanisms.¹²⁰

VIII. REMOVAL OF ILLEGAL CONTENT



In addition to how data is handled by digital platforms, intermediaries, and third parties, as described above, content moderation and removal policies are some of the most widely debated – and divisive – topics within global policy circles. Often an online platform’s terms of service (ToS) are long, complex, and intentionally difficult to understand, which leads to confusion about what is considered appropriate and inappropriate content. Coupled with vague or inadequate policy and regulation detailing when content should or should not be removed, this leads to many problems with removing inappropriate content, such as inconsistency in enforcement or content being removed that has historical, educational, and/or public-interest purposes.

Governments have responded to this challenge in various ways, such as requiring one or more digital platforms to moderate content (as in the case of Germany¹²¹) or creating new standards, principles, and best practices on how to address disinformation and misinformation (such as in the case of the EU’s Code of Practice on Disinformation¹²²). Social media platforms, such as Facebook, meanwhile, have responded by relying more heavily on content moderation and artificial intelligence (i.e., machine learning), automatic flagging, and other technological measures – with mixed and inconclusive results.¹²³

¹²⁰ For more information, see the website of the Albanian Media Council: www.kshm.al

¹²¹ The law is available at: https://bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RegE_NetzDG.pdf?__blob=publicationFile&v=2, while analysis is available at: <https://nytimes.com/2018/05/19/technology/facebook-deletion-center-germany.html>

¹²² <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>. The New York Times also provides examples of how multiple solutions are needed to address disinformation and misinformation: <https://youtu.be/yA-FCxQNHg>

¹²³ Article 19, 2018, Regulating social media content: Why AI alone cannot solve the problem, <https://article19.org/resources/regulating-social-media-content-why-ai-alone-cannot-solve-the-problem/> and Center for Democracy & Technology, 2017, Mixed Messages? The Limits of Automated Social Media Content Analysis, <https://cdt.org/wp-content/uploads/2017/11/2017-11-13-Mixed-Messages-Paper.pdf>

There is no panacea for content moderation and takedowns; harmful content negatively impacts human moderators, while technology typically does not understand nuance. Violent and extremist content, child pornography, suicide-related content and a host of other forms of harmful content must be properly accounted for without encouraging censorship, undermining end-to-end encryption,¹²⁴ or eroding press freedom, while also addressing nuanced issues that are often subject to content moderation, such as with nudity. Instead, a cocktail of solutions is needed, including but not limited to:

- Inclusive, research-driven, and evidence-based regulation, particularly aiming to reform archaic laws and regulations and/or draft new ones that better reflect current use and technological development;
- Greater oversight, transparency, and accountability of online platforms, content ranking and moderation algorithms, and digital service providers;
- Expanded digital media literacy and critical thinking education;
- Robust and accurate fact checking; and
- Inclusive, collaborative, and multi-stakeholder processes aimed at establishing consensus-based best practices for content moderation and effective, accountable self-regulation.

Questions are inevitably being raised about how to regulate online content, especially content hosted by over-the-top (OTT) media service providers such as Airbnb, Netflix, Skype, Viber and WhatsApp, which are intrinsically important to any discussion of these matters within Albanian media and digital policy. Organisations, forums and initiatives such as the World Economic Forum (WEF),¹²⁵ Access Now,¹²⁶ RSF via its Journalism Trust Initiative (JTI),¹²⁷ the Center for Democracy &

¹²⁴ Himanshu Gupta and Harsh Taneja, 2018, WhatsApp has a fake news problem—that can be fixed without breaking encryption, https://cjr.org/tow_center/whatsapp-doesnt-have-to-break-encryption-to-beat-fake-news.php

¹²⁵ <https://weforum.org/agenda/2018/02/how-should-we-regulate-the-flow-of-online-content-here-are-three-crucial-facts-in-the-debate-over-digital-media/>

¹²⁶ <https://accessnow.org/watch-bad-regulation-ott-services-can-risk-rights/>

¹²⁷ <https://jti-rsf.org/en/>

Technology (CDT),¹²⁸ the European Digital Rights initiative (EDRI),¹²⁹ ARTICLE 19,¹³⁰ Global Partners Digital (GPD),¹³¹ the Association for Progressive Communications (APC),¹³² the Global Network Initiative (GNI),¹³³ the Global Forum for Media Development (GFMD),¹³⁴ the UN Internet Governance Forum (IGF),¹³⁵ and a host of others – including the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression¹³⁶ – continue to explore the best ways to harmonise law, policy and regulation with free expression, press freedom and other fundamental rights and freedoms. Each provides relevant, rights-respecting case studies and recommendations drawn from international best practice that can provide influence and guidance in this process in Albania.

Content moderation and takedowns

No specific law explicitly regulates the filtering and blocking of illegal Internet content. However, the provisions of several laws regulate illegal Internet content. Law no. 9918, “On Electronic Communications in the Republic of Albania”, empowers AKEP to enforce its requirements. One of the enforcing actions is the issue of general authorisations to the ISPs who want to offer network and electronic communications services. This authorisation is subject to a number of conditions, including restrictions regarding illegal or harmful content (Article 15, paragraph 1/e).

Until now, AKEP would send a request to one or more ISPs based on the decisions of the competent authorities, as well as monitor its implementation from the ISPs for the blocking or removal of illegal

¹²⁸ <https://cdt.org/area-of-focus/free-expression/>

¹²⁹ <https://edri.org/theme/freedom-of-expression/>

¹³⁰ <https://article19.org/issue/media-freedom/> and <https://article19.org/issue/censorship/>

¹³¹ <https://gp-digital.org/wp-content/uploads/2018/05/A-rights-respecting-model-of-online-content-regulation-by-platforms.pdf>

¹³² <https://ohchr.org/Documents/Issues/Opinion/ContentRegulation/APC.pdf>

¹³³ <https://globalnetworkinitiative.org/>. Specifically, see the GNI Principles on Freedom of expression and Privacy: <https://globalnetworkinitiative.org/gni-principles/>

¹³⁴ <https://gfmd.info/internet-governance/>. Also see: <https://bit.ly/IssuePaperV4>

¹³⁵ For examples, see the work of the Dynamic Coalition on Platform Responsibility (<https://bit.ly/IGF-DCPR>) and the Dynamic Coalition on the Sustainability of Journalism and News Media (<https://bit.ly/IGF-DCSustainability>).

¹³⁶ <https://freedex.org/a-human-rights-approach-to-platform-content-regulation/>

content. With the establishment of the online database from the National Authority for Electronic Certification and Cyber Security (NAECCES) in 2020, ISPs will now be automatically informed of all relevant decisions to remove illegal content handed down by the competent authorities. AKEP will still monitor implementation of such decisions.

There is no official or published list of what is considered illegal and/or harmful content, or of the competent authorities that can ask the ISPs to remove illegal content. For this reason, the key institutions mandated by law to order the removal of illegal content are listed below, which are based on the caseload developed by AKEP.

Judicial and law enforcement agencies can request removal of illegal content based on the relevant articles in the criminal code. This includes:

- Article 74/a – Dissemination of materials over the Internet in favour of genocide or crimes against humanity;
- Article 84/a – Threats due to racist and xenophobic motives over the Internet;
- Article 119/a – Dissemination of racist or xenophobic materials over the Internet;
- Article 119/b – Insults due to racist or xenophobic motives over the Internet;
- Article 143/b – Computer fraud;
- Article 186/a – Computer falsification;
- Article 192/b – Unauthorised computer access;
- Article 293/a – Unlawful wiring of computer data;
- Article 293/b – Interference in computer data;
- Article 293/c – Interference in computer systems;
- Article 293/ç – Misuse of equipment;
- Article 117 – Pornography;
- Article 147 – Fraud on works of art and culture;
- Article 148 – Publication in someone's own name of the work of another person;
- Article 149 – Unlawful reproduction of someone else's work;
- Article 149/a – Violation of rights to industrial properties;

- Article 149/b – Violation of the rights to the topography of semiconductor circuitry;
- Article 232 – Training to commit acts for terroristic purposes; and
- Article 232/a – Incitement, spreading propaganda, and issuing public calls for committing acts with terroristic purposes.

One of the most problematic requests from law enforcement agencies, passed on to ISPs through AKEP, was the blocking of the domain of the popular online media Jeta Osh Qef (Joq.al) following the deadly 26 November 2019 earthquake in Albania. On 30 November 2019, the information websites joq.al, joqalbania.com, and jetaoshqef.al were blocked following charges against two executives, Erland Dalliu and Gentian Cengeli. The police referred them to the prosecution for spreading panic through the alleged publication of “fake news”. It is unclear whether the request to block access to the pages was done by the police, the prosecutor’s office, or AKEP, based on the statement¹³⁷ issued by the Permanent Representative of Albania to the Council of Europe, via the CoE’s Platform¹³⁸ to Promote the Protection of Journalism and Safety of Journalists.

In another concerning case following the same earthquake, a 25-year-old activist in Durrës, Xhuliana Aliaj, was arrested on 1 December 2019 for “spreading panic” after posting links from an Italian media site on her Facebook page, and writing a status update calling for part of the city to be evacuated, for fear of buildings collapsing. In total, the post received 27 engagements, including likes and comments. The harsh and disproportionate measure of arresting her was widely seen as a continuation of the government’s attempt to forcibly control the media and stifle free expression.¹³⁹

Aside from judicial and law enforcement agencies, the **Audio-visual Media Authority (AMA)** is authorised by Law no. 97/2013, “On Audio-visual Media”, to (a) license audio-visual media, and (b) fight piracy of copyrighted audio-visual content it has licensed. In 2019, the AMA asked AKEP

¹³⁷ Letter from Albana Dautllari, the Permanent Representative of Albania to the Council of Europe: <https://rm.coe.int/albania-replyrev-en-information-website-joqalbania-com-blocked-6januar/1680996a20>

¹³⁸ The platform is a public space that facilitates the compilation, processing, and dissemination of information on serious concerns about media freedom and safety of journalists in CoE Member States, as guaranteed by Article 10 of the ECHR: <https://www.coe.int/en/web/media-freedom/the-platform>

¹³⁹ Reporter.al, 2019, <https://www.reporter.al/lirohet-25-vjecarja-e-arrestuar-per-perhapje-paniku/>

to block content in 86 cases, all of which related to films and football games copyrighted by the television stations that had licensed them that were then pirated and broadcast by online television stations.¹⁴⁰ Law 07/2013 on “Audio-visual Media” is nebulous, however, and does not provide a clear definition of what ‘online TV’ is, much less greater clarity on OTT services.

In some cases, AMA’s request to AKEP to block a specific subdomain that was broadcasting illegal content has brought unwarranted consequences, with ISPs temporarily blocking content for top-level subdomains. In April 2020, for example, an AMA request to block a specific page hosted on the popular online journalism platform Medium.com – whose creator had uploaded and begun broadcasting a pirated copy of a film by Albanian comedian Ermal Mamaqi – led to the temporary block of the entire platform by some ISPs. In response, the AMC criticised the blocking of Medium.com as censorship. Later, the AMA told BIRN Albania that it has since developed an internal procedure to avoid such problems.¹⁴¹

Law no. 155/2015, “On Gambling in the Republic of Albania”, gives the **Gambling Supervisory Authority** (GSA) the enforcement tools to secure and block unlicensed operators online. Through Law no. 75/2018, which amended the law “On Gambling in the Republic of Albania”, casinos were restricted to 5-star hotels, while sports betting shops, resort casinos, and video lottery terminal (VLT) games were allowed to operate until 31 December 2018. Based on requests from the GSA in 2019, AKEP has asked ISPs to block access to more than 8,000 pages that offer access to online gambling games and websites.¹⁴²

During an earlier crackdown on illegal gambling in 2013, AKEP asked ISPs to block access to some 500 websites offering access to unauthorised gambling games. During the crackdown, some popular blogging pages based on the WordPress platform were temporarily denied access, most likely because they were mistaken for gambling pages.

¹⁴⁰ AKEP, 2020, Press Release, <https://www.akep.al/2020/04/20/informacion-per-publickun-nga-akep-lidhur-me-kufizimin-e-aksesit-ne-rrjet-te-disa-domain-dhe-faqe-interneti-nga-sipermarresit-e-rrjeteve-dhe-sherbimeve-elektronike/>

¹⁴¹ Citizen Channel, 2020, <https://citizens-channel.com/2020/04/22/vendimet-e-akep-per-mbyllje-te-faqeve-online-ngrene-shqetesime-per-censure-dhe-paligjshmeri/>

¹⁴² AKEP, 2020, Press Release, <https://www.akep.al/2020/04/20/informacion-per-publickun-nga-akep-lidhur-me-kufizimin-e-aksesit-ne-rrjet-te-disa-domain-dhe-faqe-interneti-nga-sipermarresit-e-rrjeteve-dhe-sherbimeve-elektronike/>

The **Commissioner for Personal Data Protection** is authorised by Law no. 9887 “On the Protection of Personal Data”, Article 30, paragraph 1/b, to order the blocking, deletion, destruction or suspension of the unlawful processing of personal data.

The **State Agency for the Rights and Protection of the Child**, as established by Law no. 18/2017 “On the Rights and Protection of the Child,” has stated that children and minors should be protected from access to harmful or illegal content on the Internet (Article 27). The agency also obliges ISPs, educational institutions, and any other public or private institution providing Internet access, to apply technical tools and other measures to protect children and minors from accessing harmful or illegal content on the Internet, in-line with the legislation in force.

Albania’s Council of Ministers approved a decision in 2019 to further define and detail the obligations of companies and institutions to protect children and minors. Decision no. 465, dated 3 July 2019, “Measures to Protect Children From Harmful and Illegal Materials Online”¹⁴³ obliges ISPs to immediately block any website that hosts any illegal and/or harmful content to children online. Illegal sites that have been blocked are published on the portal administered by the National Authority for Electronic Certification and Cyber Security (NAECCES).¹⁴⁴ The law also obliges the State Agency for the Rights and Protection of the Child to review any report from third parties on the case of potential illegal and/or harmful content for children on the Internet, and stipulates taking the following actions:

- Take the appropriate measures in cooperation with the AMA to block any illegal and/or harmful content for children by media service providers that has been identified; and
- Take measures in cooperation with AKEP to block the website(s) in cases when it is verified that a webpage hosts illegal and/or inappropriate content for children on the Internet, and publish them on the NAECCES portal.

The NAECCES homepage features a banner leading to a form on which to report inappropriate

¹⁴³ Decision no. 465, dated 3 July 2019, “Measures to Protect Children from Harmful and Illegal Materials Online” <https://www.unicef.org/albania/reports/new-cornerstone-law-adopted-protect-children-harmful-and-illegal-content-online>

¹⁴⁴ National Authority for Electronic Certification and Cyber Security (NAECCES), www.cesk.gov.al

content, which may include exposure to images and other materials of sexual content, cyberbullying, child pornography and other offensive posting.

Apart from the above-mentioned domestic regulatory framework, Albania has also ratified a number of related international conventions as detailed in the box below.¹⁴⁵

International Conventions

- The “European Convention on Cybercrime” ratified by Law no. 8888, dated 25 April 2002.¹⁴⁶
- Additional Protocol to the Convention “On Cybercrime on the Criminalisation of Acts of Racist and Xenophobic Nature Committed through Computer Systems”, ratified by Law no. 9262, dated 29 July 2004.
- The Council of Europe’s “Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse”, ratified by Law no. 10071, dated 9 February 2009.
- Optional Protocol to the “Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography”, ratified by Law no. 9834, dated 22 November 2007.
- The Council of Europe’s “Convention on the Prevention of Terrorism”, ratified by Law no. 9641, dated 20 November 2006.
- The “Convention for the Protection of Human Rights and Fundamental Freedoms”, ratified by Law no. 8137, dated 31 July 1996.
- The “Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data”, ratified by Law no. 9288, dated 7 October 2004.

¹⁴⁵ The list is adapted from the Swiss Institute of Comparative Law, 2015: Blocking, Filtering, and Take-Down of Illegal Internet Content, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651682>. For a full list of the conventions and human rights instruments that Albania has signed and ratified, see: <https://indicators.ohchr.org/>.

¹⁴⁶ In relation to the Article 42 of this convention, Albania has ratified the convention under conditions, in conjunction with Article 10: Offences related to infringements of copyright and related rights thereof.

Additionally, the government does not restrict or disrupt access to the Internet – including authorising partial or complete Internet shutdowns – or censor online content. There are no credible reports that it has monitored private online communications without appropriate legal authority.¹⁴⁷ Based on the Code of Criminal Procedure,¹⁴⁸ prosecutors can request that ISPs retain and disclose electronic communications data for suspects in an ongoing criminal investigation.

Cybersecurity

Albania has made significant progress in recent years in developing the ICT sector and the use of information technology (IT). It is catching up with the worldwide “revolution” in information technologies, and practically every facet of Albanian society – from business and politics, to e-governance and education – has been affected by such development. This opportunity, however, is also accompanied by risks related to cybersecurity and cybercrime.

Albania ratified the Convention on Cybercrime – known as the Budapest Convention – on 25 April 2002 with Law no. 8888. The Albanian criminal code¹⁴⁹ is mainly in line with this important international instrument, containing several specific articles dedicated to fighting cybercrime. The Code of Civil Procedure also details specific regulations on evidence and the investigation of cybercrimes.¹⁵⁰ More specifically, the criminal code has criminalised activities, such as:

- Unauthorised access (hacking) (Article 192/b/1);
- Possession of hacking tools (Article 293/c/1);
- Denial of service attacks (Article 293/ç);

¹⁴⁷ Albania Human Rights Report, US State Department, 2019, <https://www.state.gov/wp-content/uploads/2020/02/ALBANIA-2019-HUMAN-RIGHTS-REPORT.pdf>

¹⁴⁸ Law No. 7905, date 21.03.1995, Code of Criminal Procedure, as amended, http://drejtesia.gov.al/wp-content/uploads/2017/10/PROJEKTLIGJ_KODI_I_PROCEDURAVE_PENALE_27_01_2014_FINAL_1-1.pdf

¹⁴⁹ Law no. 7895, dated 27 January 1995, “Criminal Code of the Republic of Albania,” as amended: <https://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-11-06-2015-EN.pdf>

¹⁵⁰ For a detailed comparison between the Budapest Convention and Albanian legislation, see the Council of Europe’s Country Legislative Profile – Albania: https://www.coe.int/hu/web/octopus-old2019/country-legislative-profile/-/asset_publisher/LA6eR74aAohY/content/alban-17_101_INSTANCE_LA6eR74aAohY_viewMode=view/

- Phishing (Article 143/b);
- Infection of IT systems with malware (Article 293/b); and
- Identity theft and identity fraud (Article 186/a).

Damaging, deforming, or deleting data from military systems or data related to national security, public order, public health, civil protection, or other data of public importance is punishable by up to 10 years' imprisonment (Article 293/b/2 of the Criminal Code).

Although not directly related to cybersecurity, the criminal code also details the consequences of engaging in various anti-social electronic and/or online activities. For instance, a number of other criminal offences committed through computer systems – including crimes against humanity, serious threats to kill or injure, or hate crimes based on ethnicity, nationality, race, or religion – are punishable by a fine or imprisonment (Articles 74/a and 84/a of the criminal code). Offering or distributing materials with racist or xenophobic content through computer systems to the public is punishable by a fine or imprisonment for up to two years. (Article 119/a of the criminal code). Public insult involving ethnicity, nationality, race, or religion through a computer system constitutes an administrative violation as well, and is punishable by a fine or imprisonment for up to two years (Article 119/b of the criminal code).

Another important law governing cybersecurity is Law no. 2/2017, "On Cybersecurity". The main aim of this law is to achieve a high level of cybersecurity within Albania by defining security measures, rights, and obligations, as well as mutual cooperation between entities operating in the field of cybersecurity. This law applies to communication networks and information systems, the violation or destruction of which would affect the health, safety, and/or economic well-being of citizens and the effective functioning of the economy in Albania.

It is worth noting that outside the scope of this law are electronic communications networks and information systems subject to legal regulations in force on electronic signatures, electronic identification and trusted services, and electronic communications networks and information systems that process, archive, or transmit classified state information – as well as electronic communications networks and information systems regulated in the legislation on electronic

communications in the Republic of Albania.

The entity responsible for applying this law is the NAECCES, which is also responsible for oversight of enforcement of Law no. 9880/2008, “For Electronic Signature”, and for Law no. 107/2015, “For Electronic Identification and Trusted Services”. Its mission is to guarantee the security of trusted services, especially to ensure the security and reliability of electronic transactions between citizens, business, and public authorities, and increase the effectiveness of public and private services and electronic commerce.

The NAECCES also defines the minimum technical Critical Information Infrastructure (CII) operators of data security and computer network/systems of the information society with the goal of creating a safe electronic environment. Its main objective is to create credibility for the users of electronic signing, electronic identification and trusted services, and increases the security of information system networks in Albania. The NAECCES coordinates its activities with security and defence institutions, cooperates with international authorities in the field of cybersecurity, particularly in line with established legislation and joint agreements. It is further tasked with the following responsibilities, to:¹⁵¹

- Enact national cybersecurity measures;
- Act as the point of contact at the national level for operators in charge of network security, and provide assistance and methodical support to operators;
- Inspect the method of generating and managing public keys and electronic certificates;
- Oversee the process of issuing qualified electronic certificates and implementation of electronic signature, electronic identification and other trusted services.
- Guarantee CII operators on the safe identification of individuals who are issued with qualified electronic certificates, which also includes registering and accrediting Trusted Service Providers as well as overseeing their activities;
- Analyse Internet security weaknesses and vulnerabilities;
- Act as an accredited national computer security incident response team (CSIRT);¹⁵²

¹⁵¹ <https://www.trusted-introducer.org/directory/teams/akcesk/naeccs.html>

¹⁵² More information on its accreditation status is available at: <https://www.enisa.europa.eu/topics/csirts-in-europe/csirt-inventory/certs-by-country-interactive-map#country=Albania>

- Coordinate work on solving security incidents in the security field;
- Administer cybersecurity incident reports;
- Conduct awareness-raising and education activities in the field of cybersecurity;
- Establish any additional cybersecurity measure not already listed.



Internet Governance in Albania and its Role in Media Freedom

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