MEMORANDUM

on

Draft Amendments to Law No. 8410 "On Public and Private Radio and Television in the Republic of Albania"

by

ARTICLE 19
Global Campaign for Free Expression

London
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I. Introduction

This Memorandum analyses draft amendments to Law No. 8410 "On Public and Private Radio and Television in the Republic of Albania" (the Broadcasting Law), as received by ARTICLE 19 in July 2003. The analysis is based on an unofficial translation of both the Amendments and the existing Broadcasting Law.[1]

The draft amendments require all broadcasters, prior to the transmission of a programme, to submit to the National Council of Radio and Television (NCRT) evidence to prove that they possess the right to broadcast that particular programme. The draft amendments will also prohibit the transmission of programmes showing the logo of a foreign broadcasting company. Both new provisions will be enforced with fines of up to USD9,000, with repeat offenders being punished by a 50 per cent reduction in the remaining duration of their broadcast licence. All penalties will be imposed by the NCRT, acting *ex officio* or on the complaint of another broadcaster.

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[1] We received this draft Law through the Office of the Representative on the Freedom of the Media of the Organisation for Security and Cooperation in Europe (OSCE), who also provided the translation.

This Memorandum analyses these proposals against international standards on freedom of expression and broadcast regulation. To the extent that they have led to concern about the independence of the NCRT,[2] the pivotal body in the enforcement of the new provisions, this Memorandum also analyses the guarantees that exist to ensure its independence under the current Broadcasting Law. Our analysis relies upon general international standards regarding freedom of expression – as developed by international courts like the European Court of Human Rights – and also two specific standard-setting documents on freedom of expression and broadcasting, namely: Council of Europe Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector (the Council of Europe Recommendation),[3] and ARTICLE 19's *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (the ARTICLE 19 Principles).[4] The former represents standards developed under the Council of Europe system while the latter takes into account wider international practice, including under United Nations mechanisms as well as comparative constitutional law and best practice in countries around the world.

This Memorandum first outlines Albania's international and constitutional obligations, emphasising the importance of freedom of expression and its implications as regards broadcast regulation. It then examines both the draft amendments and the existing provisions to guarantee the NCRT's independence in further detail, offering suggestions for improvement.

II. International and Constitutional Obligations

II.1. The Guarantee of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR),[5] a United Nations General Assembly Resolution, guarantees the right to freedom of expression in the following terms:

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

The right to freedom of expression is also guaranteed in the *International Covenant on Civil and Political Rights* (ICCPR),[6] also at Article 19, and the *European Convention on Human Rights* (ECHR),[7] which guarantees freedom of expression at Article 10. Albania ratified the ICCPR on 4 January 1992 and the ECHR on 2 October 1996.[8] Through the Albanian Constitution, the rights guaranteed in these treaties take precedence over any Albanian laws or practices that are incompatible with them.[9] The Constitution also

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[2] These concerns have been communicated to us privately.
[3] Adopted by the Committee of Ministers on 20 December 2000.
[4] London, April 2002.
[5] UN General Assembly Resolution 217A(III), adopted 10 December 1948.
[6] UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.
[7] Adopted 4 November 1950, in force 3 September 1953.
[8] Article 2 ICCPR; Article 1 ECHR.
[9] Articles 5 and 122 of the Albanian Constitution, adopted 21 October 1998, as translated by K. Imholz, K.

guarantees right to freedom of expression separately, in Article 10 (freedom of expression in public life), Article 20 (freedom of expression of minorities) and Article 22 (freedom of expression and freedom of the press, radio and television).

II.2. The Importance of Freedom of Expression

International bodies and courts have made it very clear that freedom of expression and information is one of the most important human rights. In its very first session, in 1946, the United Nations General Assembly adopted Resolution 59(I)[10] which states:

> Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.

As this resolution notes, freedom of expression is both fundamentally important in its own right and key to the fulfilment of all other rights. It is only in societies where the free flow of information and ideas is permitted that democracy can flourish. In addition, freedom of expression is essential if human rights violations are to be exposed and challenged.

The European Court of Human Rights has held:

> Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to [legitimate restrictions] it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".[11]

Statements of this nature now abound in the case law of the European Court and in cases decided by constitutional and human rights courts around the world.

II.3. Restrictions on Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 10(2) of the ECHR also recognises that freedom of expression may, in certain prescribed circumstances, be limited:

> 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 or impartiality of the judiciary.

Loloci (Member of the Technical Staff of the Constitutional Commission and ACCAPP: <http://pbosnia.kentlaw.edu/resources/legal/albania/constitution/>.

[10] 14 December 1946.

[11] *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

It follows that restrictions must meet a strict three-part test, requiring any interference to be: (1) prescribed by law; (2) pursue one of the legitimate aims, as listed, and; (3) be necessary in a democratic society.[12] International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court has stated:

> Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.[13]

The European Court has held that the requirement that an interference is 'prescribed by law' will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[14] Second, the interference must pursue a legitimate aim. These are the aims listed in Article 19(3) of the ICCPR and Article 10(2) of the ECHR. Third, the restriction must be necessary to secure one of those aims. The word "necessary" means that there must be a "pressing social need" for the restriction. The reasons given by the State to justify the restriction must be "relevant and sufficient" and the restriction must be "proportionate to the aim pursued."[15]

The European Court of Human Rights has made it very clear that the any measure that provides for the prior scrutiny of publications must be subject to intense analysis as it may act as an unwarranted restriction on freedom of expression. In the *Spycatcher* case, which involved publication of the memoirs of a former secret service employee, it stated:

> The dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court. This is especially so as far as the press is concerned…[16]

Accordingly, it is now internationally accepted that prior scrutiny may take place only as an exceptional measure, subject to strict safeguards against abuse.

The Albanian Constitution, in Article 17, effectively mirrors these guarantees by stating that "[t]he limitation of [rights] may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it … These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights."[17] Furthermore, Article 22 of the Constitution provides that "[p]rior censorship of a means of communication is prohibited."

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[12] See, *Mukong v. Cameroon*, views adopted by the UN Human Rights Committee on 21 July 1994, No. 458/1991, para. 9.7.
[13] See, for example, *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.
[14] *The Sunday Times v. United Kingdom*, 26 April 1979, Application No.13166/87, para. 49.
[15] *Lingens v. Austria*, 8 July 1986, Application No.9815/82, paras. 39-40.
[16] *The Observer and Guardian v. the United Kingdom*, 26 November 1991, Application No. 13585/88, para. 60 ("*Spycatcher*").
[17] Note 9.

II.4. Broadcasting Freedom

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and the Internet. As the Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."[18]

Because of their pivotal role in informing the public, the media as a whole merit special protection. As the European Court of Human Rights has held:

> [I]t is … incumbent on [the press] to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.[19]

This applies particularly to information which, although critical, is important to the public interest:

> The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest [footnote deleted]. In addition, the court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.[20]

This does not imply that the broadcast media should be exempt from regulation; Article 10 of the ECHR states that the right to freedom of expression "shall not prevent States from requiring the licensing of broadcasting … enterprises". However, two key principles apply to broadcast regulation. First, any bodies with regulatory powers in this area must be independent of government. Second, an important goal of regulation must be to promote diversity in the airwaves. The airwaves are a public resource and they must be used for the public benefit, an important part of which is the public's right to receive information and ideas from a variety of sources.

II.5. Independent Regulatory Bodies

Any bodies which exercise regulatory or other powers over broadcasters, such as broadcast authorities or boards of publicly-funded broadcasters, must be independent. This principle has been explicitly endorsed in a number of international instruments, including both the Council of Europe Recommendation and ARTICLE 19's Principles. Central to both documents is the requirement that regulatory bodies should be established in a manner which minimises the risk of interference in their operations – for example

[18] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, 13 November 1985, Inter-American Court of Human Rights (Ser.A) No.5, para. 34.

[19] *Thorgeirson v. Iceland*, note 13, para. 63.

[20] *Fressoz and Roire v. France*, 21 January 1999, Application No. 29183/95 (European Court of Human Rights), para. 45.

through an open appointments process designed to promote pluralism – and which includes guarantees against dismissal and rules on conflict of interest.[21]

Chapter II of the Appendix to the Council of Europe Recommendation states:

> 3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.
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> 4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:
>   - regulatory authorities are under the influence of political power;
>   - members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.
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> 5. Furthermore, rules should guarantee that the members of these authorities:
>   - are appointed in a democratic and transparent manner;
>   - may not receive any mandate or take any instructions from any person or body;
>   - do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.
>
> 6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.
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> 7. In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court.
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> 8. Given the broadcasting sector's specific nature and the peculiarities of their missions, regulatory authorities should include experts in the areas which fall within their competence.

Principle 10 of the ARTICLE 19 Principles notes a number of ways in which the independence of regulatory bodies should be protected:

> Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:
> - specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
> - by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
> - through the rules relating to membership;
> - by formal accountability to the public through a multi-party body; and

[21] CoE Recommendation, note 3, Guidelines 3-8; ARTICLE 19 Principles, note 4, Principle 13.

- in funding arrangements.

These same principles are also reflected in a number of cases decided by national courts. For example, a case decided by the Supreme Court of Sri Lanka held that a draft broadcasting bill was incompatible with the constitutional guarantee of freedom of expression. Under the draft bill, the Minister had substantial power over appointments to the Board of Directors of the regulatory authority. The Court noted: "[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought."[22]

III. Analysis of the Draft Amendments to Law No. 8410 "On Public and Private Radio and Television in the Republic of Albania"

The draft amendments propose five new provisions to be inserted in the existing Broadcasting Law. A new Article 40/1 would require broadcasters to submit, prior to broadcast of a programme, evidence to the NCRT showing that they possess the required broadcasting rights; new Article 40/2 would prohibit the broadcasting of any programme showing the logo of a foreign broadcasting company; and new Article 54/1 states that broadcasters should possess broadcasting rights for all advertising carried by them. Under new Article 137/6, breach of new Articles 40/1 or 54/1 would carry a fine ranging from USD4,500 – 9,000, while repeat offenders would face a cut in the remaining duration of their licence. All decisions and fines may be appealed to a court of law.

Our overall recommendation is that both the requirement to submit evidence of broadcasting rights prior to the broadcast of every programme, and the absolute prohibition on the broadcast of programmes carrying a foreign logo are incompatible with the international guarantee of freedom of expression and should be removed from the proposals. We are also concerned that the proposed penalties are disproportionate. With regard to the NCRT, we recognise that the existing Law goes some way to guaranteeing its independence. However, in several respects its position could be further strengthened. In the following sections, we elaborate on these concerns.

III.1. Requirement to submit evidence of broadcasting rights

Proposed new Article 40/1 states that:

> Radio/television operators broadcast programs produced by them and in cooperation with the others, based on an agreement with selling, exchanging or donating contract. The radio/television operators are obliged to identify with the view, sound and also to document the programs … determining the kind of the program and the copyright over the subject who produces and possesses the program. [They should also] submit to the NCRT of Radio [and] Television, before broadcasting, the documents that

[22] *Athukorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97, (1997) 2 BHRC 610.

> verify he/she has the broadcasting right of programs on an agreement with selling, exchanging or donating contract.

Article 54/1 states that: "[i]n order to broadcast ads the radio television operators should have the right of broadcasting them in Albania."

As mentioned above, under proposed new Article 137/6, a violation of these requirements can be punished with a fine ranging from 500,000 – 1,000,000 lek (USD 4,500 – 9,000), imposed by the NCRT either acting *ex officio* or upon on the complaint of another broadcaster. Broadcasters who have violated the law more than 5 times would see their licence term reduced by 50%. Although licence termination is not explicitly mentioned as a sanction, the third paragraph of Article 137/6 provides that "[u]pon the official notification to remove the licence, the radio television operator should cut off immediately the broadcasting." Thus, it appears that licence termination is envisaged as a possibility. Perhaps this would be the case when a broadcaster's eight year licence is reduced to four years and it is already into the fifth year of its licence.

Analysis

Article 40/1 appears to impose three distinct obligations on broadcasters. First, before each broadcast, a broadcaster would have to identify the 'kind' of programme being broadcast. Second, before or after the transmission of each programme, broadcasters would be required to indicate who holds the copyright. Third, before transmission of a programme, broadcasters would be required to submit evidence to the NCRT demonstrate that they hold the broadcasting rights. Article 54/1 merely stipulates that broadcasters must possess the broadcasting rights for advertisements carried by them.

While the requirement relating to advertisements and the requirement to indicate, in each programme, who has produced the programme and who holds the copyright is uncontroversial, the two other requirements are highly problematic.

The proposal that all broadcasters, prior to transmission of a programme, should submit evidence to the NCRT that they possess the relevant rights is not compatible with the right to freedom of expression. As drafted, this proposal would have a significant effect on news and current affairs programmes. For example, an evening news programme could not broadcast short clips taken from other producers unless this has been cleared with the NCRT. This would have made it impossible for a television station to broadcast a short clip of the Twin Towers disaster taken from CNN, a defining moment in recent international politics, until NCRT's permission had been obtained. Such a procedure arguably constitutes prior censorship, prohibited under international law as well as under Article 22 of the Albanian Constitution.

Even if the procedure is viewed as administrative in nature, not censoring content but merely verifying that a broadcaster possesses the relevant rights, it would seriously hamper the ability of Albanian television to produce even a simple news programme. This is contrary to the public interest in receiving information in a timely fashion. In reporting the news, journalists have to be able to act quickly. This has been recognised by the European Court of Human Rights, which has stated:

> [N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest."[23]

Other types of programmes would suffer under the proposed requirement, too. Its implementation would add an unnecessary layer of bureaucracy to all broadcasting, probably requiring already fledgling broadcasters to hire additional administrative staff. This is not in the public interest. Although we recognise that the problem of copyright infringement by broadcasters is a real one, this proposal is a disproportionate response to it. If a broadcaster breaches copyright laws, that is a matter to be settled in the civil courts, or out of court, between the copyright holder and the infringer, analogous to the procedure for the broadcasting of films provided under Article 43 of the current Broadcasting Law. If the NCRT is to be given a role in enforcing copyright law in the broadcast sector, this should be strictly *ex post facto*, in line with constitutional and international guarantees on freedom of expression.

The proposed requirement that broadcasters indicate what 'kind' of programme will be broadcast is wholly unclear. If interpreted in conjunction with the first sentence of the proposed new Article 40/1, it would require broadcasters to indicate whether the programme has been produced in-house, in cooperation with others, or whether it has been bought from independent producers. However, the provision can be interpreted in many other ways, for example requiring broadcasters to indicate the subject of the programme or whether it contains sex or violence. Given the harsh penalties that may be imposed for its breach, it is important that this requirement be redrafted to indicate more clearly what broadcasters are required to include in their programming.

Finally, we are concerned about the severe nature of the sanctions that may be imposed for violations of the proposed requirements. Under the proposed new Article 137/6, violations would lead to the imposition of significant fines or curtailment or even the loss of a broadcasting licence. Such penalties are disproportionate, particularly in relation to the requirement that broadcasters indicate whether a broadcast was produced in-house, in cooperation with others or by outside producers.[24]

Recommendations:

- The obligation on broadcasters to submit evidence that they possess the broadcasting rights prior to transmission of a programme should be removed.
- The obligation on broadcasters to identify the 'kind' of programming broadcast should be clarified.
- Any role for the NCRT in enforcing copyright law should be strictly *ex post facto*.
- The law should only provide for such penalties as are proportional to the obligations imposed.

[23] *The Observer and Guardian v. United Kingdom, Observer and Guardian v. the United Kingdom*, 26 November 1991, Application No. 13585/88.

[24] *See Tolstoy Miloslavsky v. United Kingdom*, 13 July 1995, Application No. 18139/91 (European Court of Human Rights).

III.2. Prohibition on the transmission of programmes carrying foreign logos

The proposed Article 40/2 states that:

> Radio television operators, with the exception of licensed operators to broadcast foreign programs, with radio television relays, are not allowed to broadcast programs with the logo of foreign radio television operators … It is excluded the broadcasting of informative programs in Albanian language, adjusted with an agreement between both sides, based on the criteria defined by the NCRT.

The sanctions proposed in new Article 137/6 would not apply to a violation of this prohibition.

Analysis

This provision would penalise the broadcasting of any programming showing foreign logos, unless the programme is considered 'informative' and is broadcast in the Albanian language. News and current affairs programmes in Albanian would appear to fall within this category, clear criteria for which are to be drawn up by the NCRT; news and current affairs programmes in minority languages would not. Other programmes, such as sports or entertainment, may also not benefit from the exception.

The impact of this proposed new provision would be important. First, although news and current affairs programmes in Albanian would continue to be able to show 'clips' of events taped by non-Albanian operators and showing the logos of these operators, non-Albanian news and current affairs programmes would not. This is clearly discriminatory, in violation of binding international legal standards that grant equal rights to the members of minority language groups, such as those found in the *European Framework Convention for the Protection of National Minorities*, ratified by Albania in 1999.

Second, non-current affairs programming would also suffer. For example, a short clip from a sporting event for which a large international broadcaster such as Eurosport or ESPN has been granted exclusive rights could not be shown unless the logo could be removed. Consequently, Albanian residents may be deprived of a wide variety of information, constituting a clear infringement of the public's right to know.

Like the proposed new Article 40/1, the proposed amendment appears to be aimed at combating broadcast piracy by preventing broadcasters showing illegally acquired content. As is the case with the proposed Article 40/1, this provision, too, constitutes a disproportionate response to that problem. As outlined in relation to Article 40/1, above, breach of copyright is a matter to be resolved between the parties concerned, in civil court or through other avenues, as recognised in Article 43 of the current Broadcasting Law. In view of the availability of these other, effective, avenues for redress, a sweeping prohibition such as proposed by the draft amendment cannot be considered legitimate.

Recommendations:

- The prohibition on the transmission of programmes showing foreign logos should be removed.

III.3. Independence of the regulatory body

As currently drafted, the Broadcasting Law includes a number of provisions aimed at safeguarding the independence of the NCRT.

Article 6 establishes the NCRT as "an independent body acting on the basis and for the implementation of the provisions of this law … set up for the regulation and supervision of radio-television activity in the Republic of Albania." Under Article 8, "[i]t acts independently in compliance with this law." Its powers and competencies are clearly set out in Article 7.

Article 9 provides that the seven members of the NCRT are elected by the People's Assembly for a five-year term and may not serve more than two successive terms. The President nominates one of the candidates, while the other six are nominated by a parliamentary committee "representing equally the ruling and opposition parties in the parliament." The Chairperson will be elected by the Assembly from two candidates proposed by secret ballot by the NCRT. Under Article 15, members' terms may be terminated on their own request, when they are sentenced for committing a crime, when they become incapable of performing their duties due to illness, when a member misses more than one third of all meetings held in a year, or when evidence emerges that one of the rules of incompatibility outlined in Article 14 applies.

Article 14 provides that members of the NCRT may not be members of the government, parliament or any political party, and that they should not act in the interests of any political parties or figures. NCRT members also should not have any interests in mass media companies nor have any financial interests that are linked to radio or television broadcasting. During their terms of office, NCRT members should not voice any opinions or take a stance that might "question their impartiality."[25]

Article 10 provides that the NCRT will have its own management and staff. Article 10a provides that the chair of the NCRT will be its Executive Director, organising and directing its activities in accordance with the law. The chair and deputy-chair will receive the same salary as a minister and a deputy-minister, while the remuneration of the other members is decided by the People's Assembly.

The NCRT will determine its own procedures, on the proposal of the Chair. Article 17 requires the NCRT to meet at least monthly. All meetings, decision-making procedures and voting processes must be conducted in accordance with Law No. 8480 "On the functioning of the collegial organs of state administrations and public agencies." Prior to the adoption of any normative acts, Article 17 requires the NCRT to consult with associations of radio and television broadcasters.

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[25] Article 14, final paragraph.

Under Article 8, funding for the NCRT will be derived mainly from the government, "to the extent its normal functioning allows," although Article 11 also allows a number of other sources of income, including licence fees and other regulatory payments and donations. Article 12 requires the NCRT to keep annual accounts in accordance with national law. Under Article 13, all donations must be declared to the relevant parliamentary committee, as well as to the 'High State Audit'.

Analysis

The current Broadcasting Law includes a number of important guarantees aimed at safeguarding the independence of the NCRT. These existing guarantees are extensive and largely in line with international standards. However, in a number of respects, they could be further improved upon.

First, the ARTICLE 19 Principles as well as the Council of Europe Recommendation require that appointments process for bodies with regulatory powers in the broadcasting sector should be conducted in a democratic and transparent manner.[26] Although six of the seven members of the NCRT are appointed by the Assembly on the proposal of the Permanent Parliamentary Commission for the Public Information Media, the President is still entitled to nominate one of its members. This means that this member may be seen as a political appointee, which is to be avoided. Additionally, the Law should in general be more specific regarding the number of nominees to be provided for each vacant position. As currently drafted, Article 9 does not make it clear whether one candidate is nominated for each vacancy, which the Assembly then has the option either to approve or not to approve, or whether two or more candidates may be nominated for each vacancy, giving the Assembly the option to choose. The latter procedure, which is provided for the election of members of the Steering Council of the public broadcaster under Article 88 of the Broadcasting Law, is the preferred one.

Second, although there are several references to the status of the NCRT as an independent body, this guarantee could be strengthened and given greater prominence in the Law. The ARTICLE 19 Principles suggest that the independence of regulatory bodies be guaranteed in the following wording:

> The [name of body] shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies. This autonomy shall be respected at all times and no person or entity shall seek to influence the members or staff of the [name of body] in the discharge of their duties, or to interfere with the activities of the [name of body], except as specifically provided for by law.[27]

The independence of the members of the NCRT could be strengthened along similar lines. Although the Law requires that they should not act in the interests of political groups or individuals, it should also state that they should not take or seek instructions from anyone, including commercial interests.

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[26] CoE Recommendation, note 3, Guideline 5; ARTICLE 19 Principles, note 4, Principle 13.

[27] Note 4, In Principle 11.

Third, although the Law elaborates the competencies of the NCRT in some detail, it fails to provide an overall 'mission statement' setting out the overall policy guidelines to be adhered to. The ARTICLE 19 Principles recommend that "[l]egislation establishing regulatory bodies should set out clearly the policy objectives underpinning broadcast regulation, which should include promoting respect for freedom of expression, diversity, accuracy and impartiality, and the free flow of information and ideas. Regulatory bodies should be required to take into consideration and to promote these policies in all their work, and to act in the public interest at all times."[28]

Finally, the funding procedures are not clearly specified. The Law states that government funding will be provided only "to the extent [the state's] normal functioning allows." This is a formulation of some elasticity, allowing the government to use funding to exert pressure on the NCRT. It would be better if funding were provided through the People's Assembly, on the basis of a budget proposal submitted by the NCRT to the Permanent Parliamentary Commission for the Public Information Media. This would provide for more transparency in the NCRT's funding and remove the possibility of any government interference.[29]

Recommendations:

- The President should not have the power to nominate any members of the NCRT.
- Article 9 should be amended to clarify how many candidates may be nominated for each vacancy.
- The Law should clearly affirm the independence of the NCRT and its members, and include a clear statement requiring the NCRT to promote freedom of expression, diversity, accuracy and impartiality, and the free flow of information and ideas in the broadcast sector.
- State funding for the NCRT should be provided through the Assembly, on the basis of a budget proposal drawn up by the NCRT and forwarded to the Permanent Parliamentary Commission for the Public Information Media.

[28] Note 4, Principle 12.
[29] ARTICLE 19 Principles, note 4, Principle 17.