



**Organization for Security and Co-operation in Europe
Presence in Albania**

15 July 2004

**Response
to the request by Chair of the Albanian Parliamentary Media Committee
for assistance with regard to some core issues pertained to drafting of the print
media law**

In June 2004, Chair of the Parliamentary Media Committee Musa Ulqini asked the OSCE Presence to provide the Committee with assistance in the process of drafting the law on the print media. The draft is currently being discussed by the Committee. Mr. Ulqini asked whether the Presence could provide the Committee with an opinion on whether and to which extent the following issues should be addressed in the draft law on print media:

- Status of journalists
- Media market competition and financial transparency of media publishers/owners
- Government institutions advertising
- Government obligations towards distribution of dailies to remote rural areas

1. Status of journalists

The draft law should not contain substantive labour provisions relating specifically to journalists. At most, and perhaps ideally, it should contain a provision to the effect that the relevant articles of the Labour Code are fully applicable to journalists, whether they are full or part time employees or employed under other arrangements.

As a general matter, journalists should not unnecessarily be singled out for differential legal treatment. The primary effort should be to ensure that the provisions of the Labour Code are in fact enforced on behalf of journalists. However, it may be that employers are under the mistaken impression that journalists do not enjoy the full protection of the Labour Code, and therefore there may be some benefit to including a provision in the draft law to the effect that the relevant articles of the Labour Code apply fully and directly to journalists.

2. Competition and financial transparency of media publishers/owners

Issues such as obligation to reveal sources of revenue, to impose a minimum price for newspapers and maximum profit for newspaper sellers, and to impose restrictions on the ability of owners to bid for public procurement contracts are measures aimed at solving what is essentially a political issue, through over-regulation of the media. While the

problems identified do need to be addressed, there are at least three reasons why the approach proposed to be adopted in the draft media law should not be pursued: first, excessive regulation of the media will not eliminate official corruption and misuse of discretionary powers, or even political control over the media. Besides, there are laws already in place in Albania that regulate the financial state of private business companies¹. This legislation applies also to media businesses, and therefore there is no need to provide exclusive laws only for media companies. There is thus an issue of effectiveness. Second, the provisions will actually be susceptible of abuse by the government as weapons against media critical of the regime. Third, the net effect of the provisions will be to hamper media development along open, competitive lines, causing harm to the development of the media market.

Obligation to reveal ownership structure and sources of revenue

Transparency as to the ownership structure of media should be prescribed by the law. The ownership structure of all journalistic media must be known by the public, as proposed by the OSCE Representative on Freedom of the Media in July 2003, in the Principles for Guaranteeing Editorial Independence.²

There should however be no provision in the print media law regarding financial transparency of privately-owned print media/publishers.

Requiring media to disclose specific financial information, beyond what is required by law to satisfy shareholders, will not eliminate bias in news coverage. Also, a requirement to publish such data would impose an onerous administrative obligation that may actually impede the development of a viable media industry in Albania, and thus will dissuade small players from entering the field.

Privately-operated media companies should not be targeted with an obligation to disclose financial records unless all privately-held companies and all government bodies are also subject to full disclosure requirements. Furthermore, it means that private companies will be forced to reveal information that could undermine their competitive advantage. Finally, such a provision will be capable of abuse as the government may enforce the law only against media that are critical of it.

Conversely, publicly-owned media should be subject to obligations promoting financial transparency since they depend on public monies. Transparency rules – for example, publishing annual reports and submitting these to the Assembly – should be part of the constituting legislation of the media, and publicly-owned or operated bodies should be subject to the general access to information regime.

The issue of transparency of the commercial agreements between the state institutions and private companies, including those that have ownership over the media, is better addressed in access to information legislation, rather than within the context of a media law. Access to information legislation is a legislative tool frequently used to expose

¹Law No. 7683 on Commercial Companies (1992), Law No. 7971 on Public Procurement (1995), Law No. 8044 on Competition (1995), etc.

² Please see the Annex for the Principles.

government corruption and cronyism, particularly in the public procurement process. Such legislation can also be used to expose the nature of the government's relationship with the media. Access to information however does not represent a sole solution to Albania's political problems.

The Armenian government recently attempted to introduce a similar provision into its media law, but the attempt was severely criticised because it was feared that if the opposition press was forced to disclose its sources of financing, those sources would withdraw support out of fear of government reprisals. Consequently, the opposition press would disappear for lack of resources, leading to less diversity and ultimately more State control over the media, not less. Subsequently, the government backed down from requiring media outlets to publish information on their sources of financing.

Minimum price for newspapers

There should be no minimum price for newspapers as this cannot achieve the desired results and will only disadvantage the Albanian population. Either the price would be so low as to be meaningless or it would be so high as to constitute an unwarranted infringement by the government on the public's right to information. To impose a minimum, and obligatory, price on print media at a time when these are struggling to survive in an era of unlimited television and Internet access is an intrusive commercial measure which is tantamount to accelerating the demise of print. Those who do not have easy access to alternate media and/or are poor will suffer a disproportionate disadvantage, and struggling newspapers will fold – resulting in less diversity. Such a provision would also hamper issuance of free of charge publications, which is in conflict with the right to free access to information.

Furthermore, imposing a maximum profit of ten per cent on newspaper sellers will simply discourage anyone from entering the business, causing further harm to the overall health of the sector. The profit should be an effect of market rules.

Limitations on government contracts

The proposal to prevent media owners or their family members, or other shareholders from obtaining government contracts is also untenable. The adoption of rules against conflict of interest would go some way to addressing problems of patronage and cronyism in the tendering process. The proposal, however, would only result in a weakening of the Albanian economy as the number of potential companies that could bid on a contract would be reduced – all in the name of achieving less bias in the media. Again, the problem of bias is best addressed through creating an environment in which more players want to enter the media market. The proposed provisions will act as a deterrent to new entrants, thus facilitating the consolidation of control by the State and by media supported by the State.

The proposal takes a command-control approach to the development of the private media sector. In countries that have a diverse media sector, the opposite approach has been adopted: the less regulation, the better – for the financial health of the sector and for freedom of expression. The Albanian government should resist a desire to revert to command-control economic theory and should drop the proposal from the law.

3. Government institutions advertising

The situation whereby government-owned companies are able to exert an indirect control over content of the media by virtue of their position as principal sources of advertising revenue is one of the arguments in favour of a strong, independent public service broadcaster. The freedom of expression problems lie in the tendency of the media to self-censor in order to ensure financial survival. To date, as far as we are aware, no effective solution has been found beyond providing guarantees for editorial independence³. In a Joint Declaration of 20 November 2001, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS (Organization of American States) Special Rapporteur on Freedom of Expression also said that media owners and media professionals should be encouraged to conclude agreements to guarantee editorial independence and that commercial considerations should not unduly influence media content.

The problem in Albania appears to be structural, and cannot be addressed by a media law alone. Apparently, there simply are not enough advertisers in the market to support the burgeoning industry and to guarantee its independence. Imposing an obligation on publicly-run companies to advertise in all newspapers is excessively onerous and probably constitutes a misallocation of public monies, better spent elsewhere.⁴

4. Government obligations toward distribution of dailies to remote areas

In principle, imposing a duty on government to promote the right to receive information is positive; speaking strictly from a freedom of expression perspective, perhaps a governmental obligation to assist in the distribution of newspapers to remote areas could be seen to fall within this category. However, the imposition of such an obligation could open the door to considerable abuse, and would need to be implemented with care and oversight. Under no circumstances should newspapers which are supportive of government or its policies receive special treatment in relation to their distribution to remote regions.⁵

In general, governments should be encouraged to take on obligations to further the protection and expansion of freedom of expression, including the right to receive information.⁶ Accordingly, in principle, there is no objection to imposing an obligation

³ Ibid.

⁴ A further concern may be that there is simply not enough advertising to “go around”, and that therefore certain newspapers, representing minority or other points of view which should be represented, may not continue to be viable. To address this problem, certain other options should be considered, including the provision of assistance and financial incentives not impacting content.

⁵ In view of the complexity of government subsidy schemes such as the scheme of tax subsidies, further study of this proposal is recommended. It may well be that such a scheme would find a more natural place in the tax code than it would in a law on the print media.

⁶ For example, the European Court of Human Rights, in *Ozgur Gundem v. Turkey*, judgement of 16 March 2000, recognized that, in certain situations, government has a positive obligation to protect persons in their exercise of their freedom of expression:

on government to assist in the distribution of dailies to remote regions. But the potential for abuse of such an obligation is very real, and must be taken fully into account. Most obviously, there is the potential that only newspapers which support the government and its policies would, as a practical matter, be the beneficiaries of the government's distribution, or subsidy, efforts. Accordingly, any positive efforts along these lines would need to be accompanied by oversight by an independent body (for example, an independent association of newspaper publishers), which would monitor the distribution efforts, to ensure against abuse.

“Genuine, effective exercise of [freedom of expression] does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which is inherent throughout the Convention. The scope of this obligation will inevitably vary, having regard to the diversity of situations obtaining in Contracting States, the difficulties involved in policing modern societies and the choices which must be made in terms of priorities and resources.”

Annex:

Principles for Guaranteeing Editorial Independence

**Proposed by the OSCE Representative on Freedom of the Media
at a roundtable in Berlin on 16 July 2003**

Over the past years, foreign companies have started investing in the media in the emerging democracies. In several countries, foreign ownership is generally high with control exercised over the majority of the print media. In the history of Europe's constitutional culture media play an important and indispensable role for the development of our democracies. The role and therefore the responsibility of the owners of journalistic media go far beyond other market oriented industrial products. In some Western democracies this difference is marked by special tax allowances. These are the reasons why the OSCE Representative on Freedom of the Media is monitoring the situation closely. In general he does not get involved in cases where foreign ownership of media is in line with domestic legislation. However, potential reasons for concern exist, especially regarding the editorial policies of the journalistic media in light of the often-fragile state of democracy and rule of law. On the other hand freedom of the media can be strengthened by investments in the media.

The OSCE Representative on Freedom of the Media has approached media companies with international business interests to agree to observe the following principles:

- The ownership structure of all journalistic media, including those that are partly or solely owned by foreign investors, must be known by the public.
- On the editorial independence of the journalistic media, a common code of conduct should be reached between the staff and the board of directors on basic journalistic principles.
- This common *code of conduct* shall at least contain the following principles:
 - standing up for human rights;
 - standing up for the fundamental democratic rights, the parliamentary system and international understanding, as laid down in the United Nations Charter;
 - fighting totalitarian activities of any political tendency;
 - fighting any nationalist or racial discrimination.
- Any institutional political affiliation of a journalistic media should be clearly and publicly stated.
- Should cases of the dismissal of editors-in-chief be controversial, they could be brought before the Representative on Freedom of the Media who would, upon request by one of the parties involved, act as arbitrator, which shall be limited to journalistic matters. He or she would speak out in favour or against the dismissal on the basis of the journalistic principles referred to in the mandate⁷. This, however, shall not affect

⁷ "The OSCE Representative on Freedom of the Media may at all times collect and receive from participating States and other interested parties (e.g. from organizations or institutions, from media and their representatives, and from relevant NGOs) requests, suggestions and comments related to

the right to dismiss the editor-in-chief for serious non-journalistic reasons. Furthermore, it shall not exclude the ordinary jurisdiction.

- Where a company holds more than one title, it commits itself to safeguarding journalistic independence and plurality as a contribution to democratization and to strengthening freedom of the media.

strengthening and further developing compliance with relevant OSCE principles and commitments, including alleged serious instances of intolerance by participation States which utilize media in violation of the principles referred to in the Budapest Document, Chapter VIII, paragraph 25, and in the Decisions of the Rome Council Meeting, Chapter X. He or she may forward requests, suggestions and comments to the Permanent Council recommending further action where appropriate”.