



REPORT

ON THE SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN ALBANIA FOR 2018

March 2019

REPORT
ON THE SITUATION OF RESPECT
FOR HUMAN RIGHTS AND FREEDOMS
IN ALBANIA FOR 2018

Tirana, March 2019

This report was prepared in the framework of the project *‘Improving the Human Rights Situation in Albania Through Strengthening the Rule of Law - Legal Clinic XII’*, implemented by the Albanian Helsinki Committee and supported financially by the Civil Rights Defenders organization, funded by the Government of the Kingdom of Sweden.



The content of this report is the full responsibility of the Albanian Helsinki Committee and does not reflect the stance of the Swedish Government nor that of the Civil Rights Defenders organization

Prepared by:

- 1. Ms. Rovena Vuksani, Jurist/Project Assistant at AHC**
- 2. Ms. Ardita Kolmarku, Jurist/Project Assistant at AHC**
- 3 Ms. Alketa Vushaj, Jurist at AHC**

Edited by:

- 1. Mr. Niazi Jaho, Legal Advisor at AHC**
- 2. Mrs. Erida Skëndaj, AHC Executive Director**

Translated by:

Mr. Anri Pashaj

Design: Dafina Stojko

Stampa: Classic Print

© All rights are reserved to the author. No part of this publication may be reproduced without its permission and reference.

Author: © Albanian Helsinki Committee

Rr. Brigada e VIII-te, Pallati “Tekno Projekt”

Shk. 2 Ap. 10, Tirana-Albania

Kutia Postare nr. 1752

Tel: 04 2233671

Mob: 0694075732

E-mail: office@ahc.org.al;

Website: www.ahc.org.al

Dear reader,

During 2018, the Albanian Helsinki Committee (AHC), in fulfillment of its mission, persisted in its work pertinent to respect and defense of human rights and freedoms in Albania. For the accomplishment of this mission, AHC relied on the domestic legislation, the European Convention on Human Rights, the international documents that Albania has adhered to and the practice of the European Court of Human Rights.

We are aware that in the area of protection of the freedom and rights of citizens despite all achievements, much more remains to be done. Albania's European integration is conditioned by many factors. The primary task remains the implementation in practice of the justice reform, the fight against corruption and organized crime, as well as free and fair elections. This makes it necessary that during 2019, AHC continues to carry out monitoring in these areas also because these are preconditions for the opening of accession negotiations to the European Union.

During 2018, AHC's main focus was directed on the implementation of the reform of the justice system, in particular for the Vetting process (the transitional re-evaluation of judges and prosecutors). AHC has implemented and continues to implement important initiatives with its primary approach to monitoring the on-the-spot-verification of the situation pertinent to respect for human rights as well as through public statements. In its methodology, AHC has paid particular attention to raising the awareness of citizens about getting acquainted with various legal provisions wherein their rights are sanctioned

AHC in its activity is not limited to ascertaining only but has acted to restore the violated law as well as in regards to the fair handling of citizens' complaints. Besides evidencing violations, in its reports, dissemination of information and public statements, AHC has provided concrete recommendations and suggestions both for further improvement of the legislation and for taking more effective action in combating corruption and irresponsibility of some state bodies. While in cases of blatant violations or infringements of the rights of vulnerable groups of society, AHC has commenced several Court proceedings in the domestic Courts and the Strasbourg Court, some of which have proved successful.

In the particular focus of this report is also the freedom of media in Albania. Through several articles written by journalists and human rights

activists, AHC brings out views and professional opinions about the issues and challenges with which the most important pillar of a free democracy, the Media is being faced today.

In conclusion we would like to thank for their contribution provided with commitment and professionalism the AHC General Assembly members and AHC executive staff, activists, observers, correspondents, associates and external experts of AHC, as well as those from our sister organizations in Serbia, the Netherlands, Greece and Norway.

We would like to thank those state institutions that have shown openness, accountability and responsibility in the exchange of correspondence and that participated in advocacy meetings to address and improve of respect of human rights and freedoms in Albania.

Special thanks to the domestic and international organizations that have enabled the financial support of our operations, namely the Open Society Foundation for Albania, the Swedish Embassy, the United States Embassy, the Embassy of the Kingdom of the Netherlands, the British Embassy, European Commission, Save the Children, European Roma Rights Center, etc.

Best regards,

Erida Skëndaj
Executive director
Albanian Helsinki Committee

CONTENTS

SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN ALBANIA FOR 2018	6
1. Justice Reform	6
2. Respect for the Freedoms and Rights of Citizens from Police Institutions	7
3. Right to life and health	7
4. Respect for the Freedoms and Rights of Citizens at Border Crossing Points	8
5. The rights of persons deprived of their liberty	8
6. The right to elect and to be elected	11
7. Corruption in the Higher Education System	11
8. The fight against violent extremism, equality and the prohibition of discrimination	11
9. Right to property	12
10. Lobbying and Advocacy	12
11. Free legal service	13
12. Freedom of expression and challenges faced by Albanian journalists	13
12.1 PIRACY AND MEDIA DEFAMATION BY MR. KUJTIM ÇASHKU, HUMAN RIGHTS ACTIVIST, A FOUNDER OF THE ALBANIAN HELSINKI COMMITTEE	14
12.2 THE ONLINE MEDIA UNDER FIRE: LEGAL INITIATIVES AND POLITICAL RHETORIC, BY MRS. KRISTINA VOKO, EXECUTIVE DIRECTOR BIRN (BALKAN INVESTIGATIVE REPORTING NETWORK)	17
12.3 THE MEDIA, NOT ONLY AN INFORMATIVE BUT ALSO A CULTURAL MISSION - MR. DENIS DYRNJAJA, JOURNALIST	21
12.4 THE RIGHTS OF JOURNALISTS AT WORK, MS. DAFINA HYSJA, A JOURNALIST	22
12.5 CAN MEDIA BE CONTROLLED (ONLY) BY LAW? - MRS. KAROLINA RISTO, JOURNALIST	26
12.6 IS FREEDOM OF EXPRESSION LINKED TO VIOLATIONS OF THE CODE OF ETHICS? - MR. KOLORETO CUKALI, JOURNALIST	30

SITUATION OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN ALBANIA FOR 2018

During 2018, the Albanian Helsinki Committee (AHC) has focused its activities on important domains such as the implementation of justice reform, access to justice for vulnerable groups, respect for human rights in penitentiary institutions, police commissariats, psychiatric hospitals, border crossing points and asylum seekers centers, prevention and fight against violent extremism and discrimination, promotion of free media, transparency and good governance by state institutions, environmental protection, etc.

AHC has conducted frequent monitoring, has undertaken awareness raising campaigns and legal education, has reacted publicly to cases of blatant violations of citizen's rights, has requested information from various state institutions. From the results of specific monitoring and verification it has presented recommendations and suggestions for restoring the violated law and improvement of the situation, provided free legal services to vulnerable groups, and has represented issues of public interest in the Constitutional Court and the European Court of Human Rights.

1. Justice Reform

The process of vetting judges and prosecutors, although accompanied by some delays, has managed to raise high interest in the public. Citizens have lodged a considerable number of complaints to the vetting bodies, but in no case does it appear that they have requested the status of a justice collaborator. The vetting has yielded its first concrete results. During the monitoring of hearings conducted by the Independent Qualification Commission and the Special Appeals Panel, it was found that the process was generally public, transparent, and the due legal process was respected. However, AHC observers have identified sporadic cases of double standards in the KPC's decision-making, so we think that the vetting practice needs to be consolidated. The reevaluation process is based in the majority of cases on the assets criterion, not taking into consideration the other two criteria: the image evaluation and professional skills.

Delays in implementing the law on vetting, delays in establishing the Justice Appointment Commission (JAC), the High Judicial Council (HJC) and the High Council of Prosecutor's Office (HCP) have created stalemates and concerning issues in terms of citizen access to justice, and in processing the backlog in these Courts, particularly that in the Constitutional Court and to the High Court.

Some of the reasons that hampered the constituting and the full legitimacy of the decision-making of the JAC, were the non-dynamic pace of the vetting with the priority on the JAC members chosen by lot, the failure to pass the vetting for most

of these candidates or their resignation, as well as difficulties encountered in finding candidates who meet the criteria set out in the law. The same factors have largely affected delays in the election of magistrate members in the two Councils (HCJ and HCP). However, the stalemate in these two Councils was unlocked after the meeting of judges and prosecutors, which was characterized by an open, public and transparent process. However, we are of the opinion that the platforms of magistrate candidates in these Councils, in some cases were not visionary. In the judge's and prosecutor's decision-making, some of the magistrate candidates noted elements of corporatism. AHC observers noted that in some cases were selected those candidates that did not maintain a fair balance in the platforms they presented, in terms of strengthening the independence of judiciary on the one hand and enhancing responsibility and accountability of the judicial system on the other.

Several of the Justice Reform Laws have been subject to review at the Constitutional Court. This court, in three of its decisions has annulled as incompatible with the Constitution, several of the provisions of the two laws that were challenged, but so far it is ascertained that the Albanian Parliament has not examined them.

2. Respect for the Freedoms and Rights of Citizens from Police Institutions

February - June 2018, AHC monitored 28 police stations throughout Albania. Despite investment in infrastructure, the conditions of accommodation of persons who have been accompanied, detained and arrested in flagrante in some of these commissariats are inadequate and in some cases there are elements of inhumane treatment (lack of hygiene, beds, natural or artificial lighting, lack of ventilation, etc.). AHC has monitored 2 complaints of violence perpetrated by police forces. There have been other allegations of violence in this regard, but they have been delayed and as a result their verification has been difficult. Lack of doctor or medical check-up, lack of cameras during interview (which is not foreseen in our internal legislation either), or claims that violence was exercised during the transfer to the Police Station or from the Commissariat to the Prison, has made difficult to prove the allegations of the alleged victims. In some of these cases, as well as those of family members of the deceased Enea Ftoi who lost his life in the police premises, AHC has asked the prosecution to carry out a full, objective and comprehensive investigation.

3. Right to life and health

AHC has undertaken 13 monitoring missions in psychiatric hospitals and prisons in the country, to respect the rights of citizens with mental health problems. Regarding the safety of persons suffering from mental health disorders, the medical and psycho-social staff failed to take appropriate steps to periodically assess the risk of self-injury of these citizens. In the penitentiary system, were noted vacancies for medical and psycho-social staff specialized for the treatment of these patients,

together with irregularities in filling out of the clinical files. Accommodation of citizens under the forceful medical treatment security measure in the prison system remains a worrying phenomenon. Problematic in the psychiatric hospitals is the phenomenon of abandonment by family members of chronic and sub-acute patients accommodated in psychiatric services. Vacancies in health staff are mainly noted among the secondary nursing staff. The lack of external outdoor facilities has negatively affected the rehabilitation of the sick. Moreover, several irregularities have been noted in the procedures followed for documenting the cases of placement of patients in involuntary treatment and the lack of respect for the standards of physical restraint.

4. Respect for the Freedoms and Rights of Citizens at Border Crossing Points

From the monitoring that AHC has carried out at the border crossing points, a significant increase in the flow of asylum seekers and illegal migrants has been ascertained compared to last year. AHC has noted the lack of infrastructure and human resources to address this increased inflow. Order no. 805, dt. 01.08.2017 of the Director General of the Police has had an impact in the strengthening of the border management system through strict border controls, however it is needed that this order to be conceived and implemented in the spirit of the convention obligations that envisage respect for freedom of movement. AHC appreciates the efforts of the authorities to draft the National Strategy on Governance of Migration and Action Plan 2019-2022.

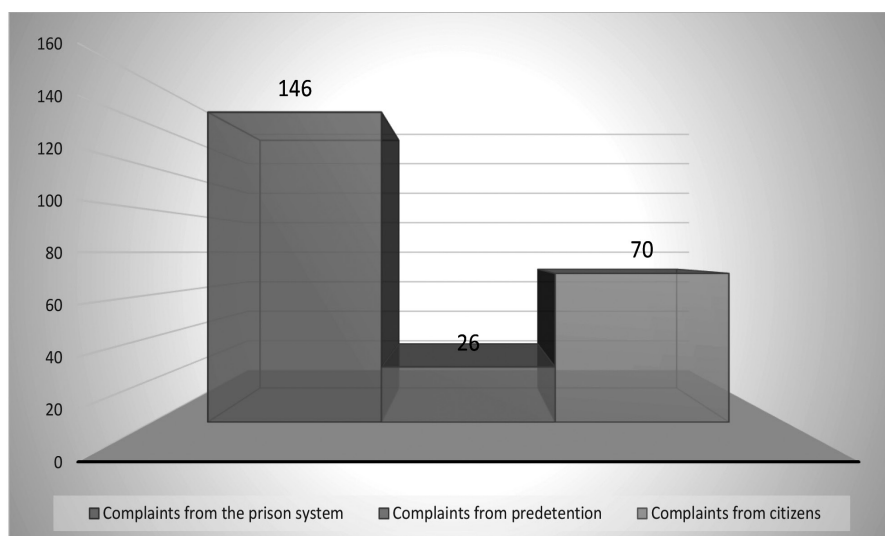
5. The rights of persons deprived of their liberty

AHC has conducted around 26 missions to verify complaints in the prison system, in Court and in the field. There persist a problematic issue in the penitentiary system concerning its overcrowding, which, in some cases, has been the cause of the accommodation of pre-trial detainees and prisoners in the isolation rooms. AHC has also noted the lack of medical staff and medication. Educational and rehabilitation programs are not paid due attention. The barrier in this direction is also the inadequate infrastructure of some institutions and the limited number of social workers and psychologists. In some cases, persons deprived of their liberty in prisons have reported alleged cases of passive corruption by prison staff, regarding the awarding of remuneration permits practices, transfers, sentence reduction practices, and recognition of working time in the institution. The entry into force of the new Criminal Justice Code for Juveniles, has positively affected the reduction of the number of juveniles accommodated in the penitentiary system.

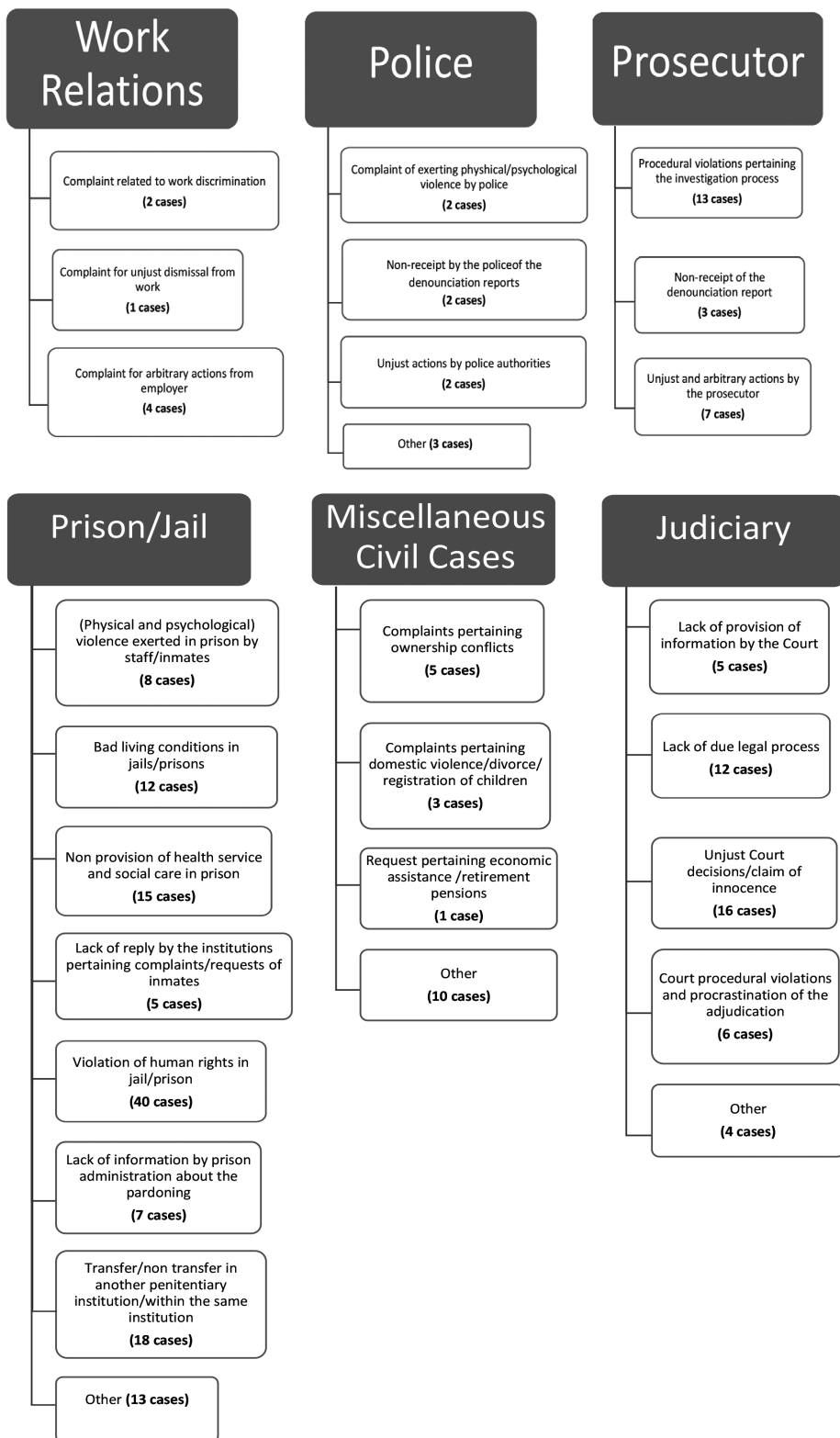
AHC has processed 3 complaints from convicts, who claimed to have been physically abused by prison police staff. From the communication we have had with

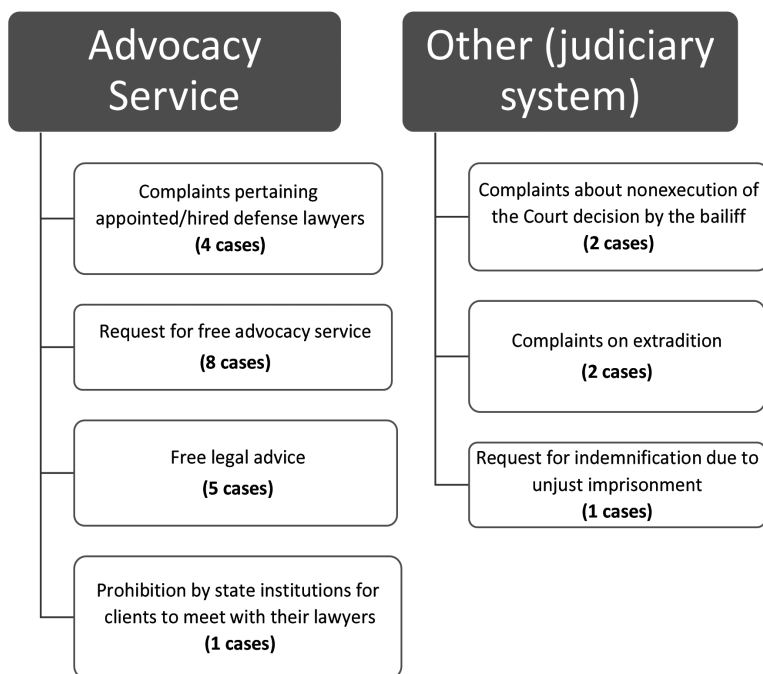
the prosecution body and the decisions that this body has made available to us for not initiating investigations or terminating the criminal process, AHC has noticed that complaints about the exertion of violence against convicts are not always investigated in full and objective terms. While the penitentiary institutions infrastructure but also prison staff themselves does not provide good documentation of allegations of violence (e.g. lack of security cameras or their dismal quality, non-observation of the medical record of allegations of violated persons as well as signs found by the doctor etc.). These offenses do not qualify under Article 86 of the Criminal Code “Torture or Inhuman Treatment” but qualify as light injuries or arbitrary acts, which greatly alleviates the legal position of charged persons from the ranks of staff for perpetrating the violence.

During 2018, AHC reacted publicly in 39 cases for verified complaints in penitentiary and police institutions on issues related to the protection of the environment, life and health of citizens, the very poor infrastructural conditions in the Commissariats and Prisons etc.. AHC has processed and has provided legal services for 242 complaints by citizens. About 71% of complaints are of persons deprived of their liberty, while the rest are related to property disputes, domestic violence, labor relations and appeals to the justice system. From the examination of complaints and their fair handling, AHC addressed the relevant institutions with recommendations to restore the victim’s right or to take measures for a faster treatment and in accordance with the law on reviewed complaints.



Complaints by categories and sub-categories are presented below:





6. The right to elect and to be elected

AHC has followed closely the electoral reform process, mainly in addressing OSCE/ODIHR recommendations. The establishment of the special parliamentary committee on electoral reform did not manage to reach the necessary consensus among the political parties for the changes in the Electoral Code, while in June next year, elections will be held for the local government bodies. Electoral reform continues to be hijacked by the monopoly of political parties.

7. Corruption in the Higher Education System

The level of corruption remains high and the recent facts show that even in the education sector corruptive acts have occurred as well. Forums organized by AHC with university students, have identified various forms of corruption.

8. The fight against violent extremism, equality and the prohibition of discrimination

During this year, AHC has also been engaged in organizing awareness raising meetings with youth and representatives of civil society on the risk posed by the phenomenon of violent extremism and radicalization. From the activities conducted

in the field, there were ascertained a number of issues related to the relatively low recognition of these phenomena, the existence of potential risk for the radicalization of vulnerable groups, the occurrence of bullying in schools, the risk of increased use of the social media which may constitute a dangerous source of recruitment especially for the so-called lonely wolves, etc..

9. Right to property

AHC has followed on and is monitoring housing and property cases raised in citizens' complaints. In the process, it was noticed the disregard of the legal deadlines for the notification of the demolition of houses by the ICMM, as well as the lack of sustainable housing alternatives for the vulnerable people. AHC has reacted publicly regarding the protest of the residents of the Unaza e Re street, calling on authorities to constructively dialogue in finding an adequate solution conform standards set by the Strasbourg Court as the minimum obligations for the States Party in enforcement of the European Convention of Human Rights. The Connors v. United Kingdom case is the prevailing precedent in the practice of this Court pertaining the issue of illegal constructions, where the system of restrictions on the right to housing has been analyzed. This right defends not only the illegal constructions, but also the plastic and portable shacks of the Roma and Egyptian Minorities, which has expanded the scope of the defense of Article 8 of the European Convention which defends the right to family life¹.

10. Lobbying and Advocacy

AHC has also provided a modest contribution with the intention to improve various legal and sub legal acts that have been drafted during 2018. Specifically, legal objections have been provided for 12 different Acts, including those pertaining social housing, gambling organization, the free vocation of attorneys, sub-legal acts pertaining legal aid guaranteed by the state, etc..

1 *The ECtHR has examined the case of the unexpected loss of the apartments in the case of decisions to demolish them due to them being constructed without a permit and in violation of the legislation regulating the construction of housing (Ivanova and Cherkezev vs. Bulgaria). The ECtHR examined primarily whether the demolition was "necessary in a democratic society". In its consideration of the case, the Court relied on previous decisions, in which it was found that the procedures for expulsion from home must comply with the interest defended by Article 8 of the Convention; losing a home is one of the most extreme forms of intervention in the right to respect of the residence, regardless of whether or not the person living in the apartment belongs to a vulnerable group. In assessing whether or not there had been a violation of Article 8 in this case, the Court based the assessment on the conclusion that the case in question had been examined by the domestic Courts only on the basis of the lawfulness of the construction and the judgment was limited only to that regard, without taking into account the disproportionate potential effect of enforcing an order of demolition, in the applicants' personal situation. (Ibid., §§ 49-62)*

11. Free legal service

During 2018, AHC has set in motion on its own initiative or has represented several citizens on issues of public interest before the Commissioner for Protection from Discrimination, the domestic courts, the Constitutional Court and the Strasbourg Court. It is worth mentioning here, cases such as the lack of potable water supply of Roma Minority residents in a Fushë-Kruja neighborhood, accommodation in the prison system of citizens under forceful medical treatment security measure ruled by the Court, the providing and placement of a cochlear implant for juveniles, lack of adequate remuneration for the work of convicts, pollution caused by limestone furnaces in Fushë-Kruja, pollution in the Gjanica, Tërkuza and Devolli rivers, etc. Some of these issues have been resolved successfully, establishing positive models of judicial defense. Currently, five concerning cases raised by citizens and represented by AHC were reviewed at the Strasbourg Court during 2016-2017.

12. Freedom of expression and challenges faced by Albanian journalists

In the context of the protection of freedom of expression, AHC has reacted publicly even in the cases of pressure or threats against journalists related to the exercise of their duty, the worst of them being the assault against journalist Klodiana Lala's residence. In some cases, the violation of freedom of expression has been minimized after pressures, threats and interference in the exercise of the journalist's free vocation, while the perpetrators of these cases, at the conclusion of the investigations, are not found to have been criminally sanctioned or to prove if the assault was done because of the journalist's duty. In this regard, it is worth revising the provisions of the Criminal Code, which do not provide for special criminal protection for journalists when the criminal offense is committed due to the exercise of the profession by a journalist.

Freedom of assembly peacefully is a constitutional right and envisaged in the European Convention on Human Rights. Real and non-formal dialogue with protesters is an obligation that every institution has in meeting the principle of open governance. In some cases, the use of insulting words to protesters or the politicization of protests has impacted their escalation, being associated with injuries among police officers and protesters. At some gatherings, according to the media, there have been cases of commencement of criminal proceedings against protesters for the criminal offense of Organizing and Participating in Illegal Meetings and Demonstrations. We are of the opinion that the law on rallies and the Criminal Code is worth reviewing in the light of the case law of the Strasbourg Court, which in its practice has observed various forms of state intervention in the right to be organized peacefully (such as for example letter 'a' refusal of the authorities to allow the rally, 'b' dispersing the rally, 'c' evacuation of the protesters from the gathering place, 'd' prohibition and sanctions following the rally, both in the administrative and criminal sense).

12.1 PIRACY AND MEDIA DEFAMATION BY MR. KUJTIM ÇASHKU, HUMAN RIGHTS ACTIVIST, A FOUNDER OF THE ALBANIAN HELSINKI COMMITTEE

Piracy and defamation might as well be seen nowadays as a spiritual and mental degradation factor of man. Neil Postman in his 'Amusing Ourselves to Death' says that there are two ways in which the human cultural soul of a human is ruined: that violent Orwellian one of imprisonment of freedom and the non-violent Huxleyan burlesque one, of the dissolvment of freedom into chaos.

In its essence, both forms of mental and spiritual degradation constitute a violation of freedom of expression and integrity of human reputation.

Our media as a whole, including those on-line, still remain infected by these two phenomena, both by the violent one regarding the language and vocabulary used and the non-violent one by the "entertainment" piracy.

Under dictatorship, Albania imprisoned the free speech, while in the post dictatorship time we are witnessing the devaluing and loss of meaning of that freedom in a burlesque way, which leaves us with only an illusion of the existence of that freedom in our society. That is to say that today one is free to say anything, but, alas, to no avail.

Someone labels another a thief and a criminal, and the other does the same against him, even from the pulpit of the Parliament, and as a result the terms thief and the criminal have lost their meaning and weight as long as the criminal sanctions are not being applied to either side.

Faik Konica tells us that the language (that is the word) displays faithfully the mental method of a people, the usual way through which it conveys its ideas.

The degradation of the mind and soul through the misuse or malevolence of a dememorising violence makes the person indifferent to the value of words. That plunges one into disillusionment and destroys the person's trust in the justice institutions, in the law and in the truth.

In the dictatorship, this degradation was carried out by the ideological propaganda, whereas today, in the post dictatorship, by means of non-separation and degradation of powers. The only power that recruits and corrupts other powers, including the media, is the power of money.

Here in Albania, the media power just as the political parties was established and continue to maintain itself, that is only to serve the financial interests that are derived by that power. The media buys politics and politics buys the media, circumventing the public interest they are created for in the first place.

The methodology of reaching goals is reduced to banality and aggressivity, language of hate and defamation, piracy and rampant corruption, a pattern of violence and evading being caught in the net of the law. To illustrate this phenomenon it would suffice to remember what is happening with the procrastination and current resistance to the justice reform.

This methodology has become the norm, something like a play in theater, in a

theatrical entertainment in the Parliament, the centrifugal tables of the media and in all sorts of daily public communication ritual.

The same mimetic phenomenon (copy-paste) has spread as a methodology to use not only in the existence of the 68 TV networks, but also in about 800 on-line portals in a country of just 2.8 million inhabitants.

The irreversible development of new technologies, full access to internet, has definitely broadened the spectrum of freedom to information, the communication and exchanges with anyone, toppling all physical and geographical barriers, all cultural clashes and existence of any nationalistic and monopolistic government of the world. Our planet has become smaller whereas the knowledge about it is ever increasing.

On the flip side, the rapid pace of technological advances has put to question several moral foundational and ethical values of the modern society. There is some sort of ecological, cultural and spiritual pollution. The relation of humans to justice and truth has been put to question. People have lost trust in other people, in the law, in the institution, in justice and truth as genuine values that would ensure his/her human relations. Freedom of speech has been put to question. The questions that therefore arise are:

- How do we measure up freedom of speech?
- Is it boundless?
- Is it the same freedom of speech when we defend something of public interest in relation to those that use the freedom of speech to hide and defend a personal corrupt interest?
- Does defamation damage the public interest even when it tampers the dignity and reputation of a given individual?
- What is the internal mechanism that serves as self-regulator within the society?
- Is the cultural level with its ethical and moral values serviceable as self-regulator?
- Is education and its educative role in society, a regulator that should rearrange itself in relation to the new dynamics of forms of freedom of speech?
- Who would make possible a more proper relation between freedom and abuse of it?
- Are the legal mechanisms sufficient to criminally sanction any misuse of freedom, be it also in the democratic countries?

Currently, out of the 28 EU member states, 20 of them consider slurs and defamation criminal offences and punish the perpetrators with prison sentences. Other countries suffice themselves with sanctions of hefty fines.

Of course, criminal prosecution of defamation is an indelible right, but not a choice. That is true especially in the societies effected by a cultural and spiritual degrading such as our post-traumatic society.

If deception and defamation has become a part of the business-as-usual of our

daily communication, then we need to take into consideration several other regulatory elements within the society itself such as ethics and moral. Therefore, some laws and unwritten codes that are part of the spiritual constitution but that preserve what is known as *common sense* and that automatically serves as a regulator of equilibriums in the bosom of the society.

We are redesigning the role of the community as a vital social stratification factor. About five decades after extreme collectivization and three decades after an extreme individualization, the need for a 'common sense' is becoming a must.

This common sense is placing an additional weight to the educative role of the community action as a protective mechanism to the public interests.

In our educational system are being applied electronic platforms with the direct support that comes through the European Commission policies that foster these community actions.

EPAEL (European Platform for Adult Learning in Europe) on Ethics in the Educational System in Albania, is involving a wide range of pre-education, elementary, secondary and tertiary communities.

Environmental ecology and the mental health are becoming part of the community action, as a self-regulatory and self-protective mechanism of the society.

Media pollution from TV channels which now resemble so much each-other both in regards to information, so also in their program, is being contradicted by this self-regulatory common sense. Currently there is a detachment and a drastic dip of the public's interest, that in silence rejects the cliché of following the one-dimensional tele-culture.

The community demand for the identification and registration of the online media with the National Business Center, is another self-regulatory and self-defense step of the community in order to curb piracy.

It is well known that 75 %, of the intellectual property currently is prone to theft. Anonymous individuals make considerable gains out of this piracy and all of them are getting away with it precisely because they are not registered anywhere.

Personally, I have blocked 28 websites and you-tube channels that abuse with art works. I have lodged complaints in the relevant platforms for the thefts perpetrated, but such an act would be nice if taken also by institutions with relevant specialization.

We have relevant state offices that defend on legal grounds the piracy and are not yielding yet the fruit for which they were established.

Lastly, the vetting process I believe that should spread to include also the media owners, in order to cut out the program piracy, to restore the proper relation between the owner of a media outlet and journalist's independence, as well as to further foster the role of the investigative journalism as a direct protector of the public interest in Albania.

12.2 THE ONLINE MEDIA UNDER FIRE: LEGAL INITIATIVES AND POLITICAL RHETORIC, BY MRS. KRISTINA VOKO, EXECUTIVE DIRECTOR BIRN (BALKAN INVESTIGATIVE REPORTING NETWORK)

The online media, which are often referred to as news portals, have become ever predominant on the media market in Albania. The online media number has exploded over the last few years; with hundreds of open-source news portals and aggregates. According to the head of the Union of Journalists of Albania, a Tirana-based NGO, there are more than 650 news portals registered in 2017, of which only 72 are run by journalists. Due to the small number of media and small market, most online media, with few exceptions, have no financial resources and most of them overwhelmingly publish news from major commercial news media. Plagiarism or the so-called 'copy-paste method', sensational headlines to serve as a bait and lack of professional standards, are only some of the problems commonly associated with the online media.

According to a survey conducted by IDRA, the online media is one of the top three sources of information for 55% of the population - ranking second after television stations and leaving behind the printed press and radio stations. A special factor that led to the increase of online readability over the last few years has been the spread of smartphones and the cheapest internet service packages provided by telecommunications companies.

With the increase of the market share of online media, in recent years, a number of attempts have been noted by high rank state officials to put it under their control, sometimes through legal initiatives and sometimes through verbal attacks on media and journalists. Below are in a nutshell some of the major legal initiatives and political rhetoric, which in most cases have targeted specifically the online media.

Online media legal initiatives

The Albanian Parliament and/or the Government of Albania during the last four years have undertaken five legal amendment initiatives aiming at putting in place some degree of control on the online media, mainly through three mechanisms: the obligation to identification or registration with a public authority; assignment of administrative liabilities with respect to the content of web pages, whether from site owners or by third parties in the role of site users and; the threat of shutting down the Internet information pages in case of non-compliance with the above criteria. These three elements aimed at identifying, fining and shutting down websites have been introduced as amendments in five different laws and have originated what political authority sees as 'annoying' in its work.

1. The first proposed change is known in the media as the "Bregu Amendment". It was proposed by former MP Majlinda Bregu in April 2015 as an intervention in the Civil Code. The intervention envisioned the 'identification' of the person in charge of a portal, AKEP's blockage of access to sites that did not meet this condition, civil administrator liabilities for a wide range of "offenses" described by the proposer

as violations of “honor, personality or the reputation” of an individual.

All three interventions, namely identification, blocking and liability, stemmed from what the proposer called “personal experience”. As such, the concerns that were to be addressed through legal amendments could/could not have been general concerns of the population. They aimed at replacing the current system of grievances settlement of Court cases of an administrative nature. However, the interventions proposed in this amendment were not related to the regulation of the content of the information pages, that is information provided to the public, but only with public comments on the topics dealt with.

2. In November 2015, the Albanian government sent to parliament in complete secrecy and without any preliminary public consultation process, a legal initiative that provided for changes to the Criminal Code and the ‘criminalization of defamation’. However, the initiative did not intend to criminalize any libel, but only that kind of speech, writing, or statement targeting state leaders. Defamation, according to this bill, was only those “behaviors that are manifested against senior state officials or the elected ones, in cases when the latter are slandered deliberately and publicly with regard to facts that the law envisages as criminal offenses”.

The proposal was intended to condemn what the government called “defamation against senior officials” by a sanction that ranged from a fine to up to three years of imprisonment. The government claimed that this action was necessary in order to stop “abuse of freedom of speech”.

The protests and public outrage caused by the discovery of the government’s plan to sentence with three years of imprisonment “defamation against senior officials” as “crime against the state”, prompted the government to declare the draft law withdrawn within less than 12 hours from the publication of the news. Prime Minister Edi Rama, who was the sponsor of the proposal, apologized in a Facebook post and attempted to suggest that it was a misunderstanding and that his intention was to condemn politicians, not journalists.

3. About a year later, after the “Bregu amendment” failed to pass through the parliamentary procedure as a result of a broad public debate that issued, the Ministry of Innovation proposed some amendments to the Law “On Electronic Commerce”.

In this case, information sites were narrowly treated as electronic commerce entities and as such, they were charged with liabilities for “illegal content”. Also, in this bill, the websites were broadly defined to include everything from conventional media websites to personal blogs or company websites. Here too, the main task was the easy identification of the pages through the obligation to publish the address and the person in charge.

While in the world of electronic commerce it is normal to have a working terms document, contact address and other details, the identification of the realm of information with the “electronic commerce” category, regardless of whether there is a financial relationship between the possessor and the user and

regardless of the type of this financial relationship, the expansion of trade to the world information, raised concerns about the possibility of pressure on news sites.

Amendments to Article 17 of the law provided for the website's liability in the event that "illegal content" was found on its server and it did not remove it within 24 hours of "receiving notice". Even in this case, courts were replaced by "institution in charge" and/or "affected parties". Even in this case, the threat, in addition to the fine, consisted of 'deactivating access' to the service provider, as well as the establishment of control institutions, including the Commissioner for the Right to Information and Protection of Personal Data and the Minister of Innovation. The fine for the offense was set in this proposal at 200,000 ALL.

The draft law does not directly address the content of news or comment, but in a number of interviews, Milena Harito, the then Minister of Innovation, made it clear that the goal was 'the sanctioning the online comments'.

4. In December 2016, while the "Harito bill" remained not submitted for hearing from the Albanian Parliament, the chairman of the socialist parliamentary group Mr. Taulant Balla submitted to the Albanian Parliament proposals for amendments to the Electoral Code. "Balla Proposal" included the obligation of portals for registration at an institution called the Media Monitoring Board and their closure in case they engage in what the lawmaker refers to as "electoral propaganda." The proposal was not sent to parliament for consideration.
5. On December 2018, the Audiovisual Media Authority and the Postal and Electronic Communications Authority presented the proposed amendments to the two organic laws of these institutions. In the first press release sent on December 12, AMA presented draft laws as "proposed by the Council of Ministers". Same as in the spirit of previous initiatives, the draft laws aim at creating an online media record, the obligation of the news sites themselves to be identified as well as the establishment of a news content policing body with a wide scope of action, with powers to impose fines and shut down online media or block access to it.

Verbal abuse towards media

In September 2016, with the initiative of several Socialist MPs, the Albanian Parliament adopted amendments to the Law on Integrated Waste Management. The initiative envisaged allowing the import of waste and was severely criticized by the public, where the prime minister recalled that his main promise in the 2013 elections was precisely the annulment of the import of waste, which was initially authorized by the PD + LSI government in 2011. After popular protests against the Rama amendment of the law and following activists of various kinds, such as the writing of names of mostly socialist MPs in dumpsters all over Albania, Rama described media as "garbage", an epithet which he continues to use ever since.

A month later, on October 30, 2016, Rama delivered a speech on Facebook in which he attacked "the vast majority of media outlets and analysts, who according to

him have morphed into a political party that does not get voted nor is accountable to anyone.” He charged the media outlets without specifying any by name, that they “are funded by illicit fines”, consisting of “a network of paid actors that produces criminalizing titles” or that there are “blackmailing reports”.

Rama’s attacks on the media, particularly on the Internet, persisted throughout 2017. In June, during an interview in the Free Zone show on TV Klan, he was read a list of journalists for him to answer whether or not they were garbage.

In October 2017, while the Socialist majority dismissed the prosecution’s request for the arrest of former Interior Minister Saimir Tahiri, Rama attacked journalists at an impromptu press conference outside the doors of the Albanian Parliament. In addition to Rama’s attacks, journalists who were interviewing Tahiri on October 21, 2017 faced insults and slurs from his supporters.

During 2018, Rama’s efforts to protect himself from multiple charges by assaulting the media marked at a new higher intensity. In October, in a series of Twitter messages, he threatened the “portals” he considered such as needed “legalization” through registration at the National Business Center.

His 72-hour deadline threat did not materialize, but a few days later, the Postal and Telecommunications Authority threatened with shutdown 44 websites assuming that these websites were not registered at the National Business Center and subsequently created the insinuation that online media is a tax evading business.

AKEP’s press release was widely criticized. OSCE Representative for Freedom of Expression Harlem Désir published a critical statement while the Reporters Without Borders reacted on Twitter condemning it.

“RFS condemns an Albanian government decision that forces some online media to enroll in a public institution within three days or otherwise close,” the RSF wrote.

‘It is assumed that this action seeks to strike at the online slander, but this initiative by the prime minister @ediramaal jeopardizes the media freedom and independent web sites that often provide investigative reporting on Albanian government corruption and its cooperation with organized crime,’ RFS added.

In December, the government proposed amendments to two key laws, the Electronic Communications and the Audiovisual Media Law, warning the establishment of an online media register, as well as the “administrative liabilities” of online media, including fines of up to 8,000 Euro and closure of access in the Albanian territory.

Introduced as an initiative aimed at “disciplining” the media, both draft laws were condemned by Albanian and international organizations, which called for the government to withdraw them. Prime Minister Edi Rama has stated that he does not intend to withdraw from this initiative.

If these laws are adopted, Albania will become one of a handful of countries in the world that have laws pertaining “illegal content” online and have extra-judicial administrative procedures for fining and shutting down websites.

12.3 THE MEDIA, NOT ONLY AN INFORMATIVE BUT ALSO A CULTURAL MISSION - MR. DENIS DYRNJAJA, JOURNALIST

The media, not only an informative but also a cultural mission!

Some background

Along with the advent of the pluralistic system in Albania, media pluralism was born also. With the creation of the first opposition party, the first opposition newspaper also emerged as party body. A shift in the mindset needed to take place in order to move from a centralized thinking system to an open system of conveying news and opinions. The indoctrination by the system that we were leaving behind, narrowed the avenues and spaces of thought, but the freedom that had just been gained exerted pressure for an openness in this regard. Therefore, the initial efforts were hopeful after the first non-party newspapers were established, which turned into the main sources of information and outlet of the public opinion. At a later stage, first the radio channels and later television stations and later online media that is widely spread today, underwent the same change. However, while in the printed media there was a tradition and quality of journalists and was merely a matter of adaptation, radio and television journalism was still in its embryo from scratch, as the tradition of Albanian Radio Television was inadequate to keep pace with the new technology and the new way of reporting. Therefore, there were some conversions that I would call inappropriate. Written Press Journalists began to penetrate the audio-visual media. They came without experience in this genre and created a hybrid reporting that we inherit today, unlike the British, French, or Germanic reporting schools. It was a grafting between the classical Eastern static school we inherited in our mindset and the Italian one that we had instinctively acquired. Thus, an improvising hybrid outside the classical reporting standards was formed. The reporting language was very linear, often very simple not to say poor, and it persists that way with just a few exceptions. Due to cultural factors, we inherited a weak reporting language, often badly written and mispronounced.

Media as a conduit of culture

Media is not simply the reported event. Within it there are elements of culture that the public obtains. The language used and written in the news serves directly and indirectly in the formation of the general culture of society. Therefore, the following question arises: Does the language spoken today in the media transmit cultural values? The answer is yes but this is a culture often superficial or truncated. In many cases it conveys vulgarity and lack of information and knowledge. The majority of the array of journalists who are militating in the media, have limited communication skills and inadequate writing quality and knowledge of the domains they cover. Education in the relevant schools is dismal. Journalism is seen as a profession that you can do for a job,

not as an elite profession that not anyone who sits in front of a computer keyboard, microphone or camera can do. Because of these shortcomings in culture, in media final products we have much mediocrity, banality and vulgarity in communication. The phenomenon is so widespread that it has become the new normal, even the standard. A separate problem is also the ethics, which is quite vulnerable. There is no distinction between the beginning and the end of what is allowed, either in the written or transmitted news. The media has become a source of discrimination and defamation, but in extreme cases even in violating the interests of individuals or businesses, etc. This way of doing journalism has seriously compromised the mission of the media in general and journalism in particular. Research journalism is deficient and in many cases either selective or superficial. Therefore, too many social phenomena and problems are left either uncovered or they get a poor coverage.

Revolution and the media catharsis

How will we break away from this vicious circle in which media in Albania has for years been vegetating on? First, there needs to be established the cult of integrity. The cult of Integrity should be established since students are at their school desks, in which the students who aspire to become journalists or media reporters in the future would be injected with the sanctity of the journalist's profession in its relation to truth. There are not two truths but one and it can not be part of the compromises for capital gain. A new relation with truth and a direct relation to the public needs to be established. The public has to see and feel that the media reflects and protects its interests rather than simply using them for a super show or daily consumption. It is necessary to create a new generation of courageous journalists who would build and represent a new and courageous media in the public interest. The media establishment should be shaken because it is the main contributor to public confusion or public drowsiness. An active professional media would always keep engaged the public opinion on issues of its interest, create a more responsible governance and a better overall politics. The media is not the culprit, but with its inaction or with its wrong approach it can become complicit in terms of mishandling of truth, reality and the public interests.

12.4 THE RIGHTS OF JOURNALISTS AT WORK, MS. DAFINA HYSA, A JOURNALIST

Freedom of expression and the media are enshrined in the Albanian Constitution, but still today, the profession of journalist is unregulated and severely plagued by informality. The media community has put emphasis on continuity in market regulation itself, which has remained a constant challenge. Being a journalist who respects the basic principles of journalism is becoming increasingly difficult in Albania. Nowadays, media employees, in addition to an uncertain economic situation, face threats from the crime world, but also insults and pressures from politics, and even by top leaders of the executive power. Censorship and self-censorship, as well as the uncertainty

surrounding about 80% of journalists about retention of their workplace in the future, are among the top issues in the recent report of “Reporters Without Borders”. The self-censorship stems from editorial interventions and attitudes predetermined by media owners, having knowledge of links and interests of owners with certain politicians and groups, as well as advertising.

Given this situation, should there be debates pertaining a market regulation, but without violating editorial freedom and empowering the state intervention? Could the journalist’s status bring about an improvement of the situation?

We all agree on the importance and necessity of having an independent and professional journalism. However, is that really possible as long as no favorable working conditions, professional autonomy and financial guarantees are provided? Studies by both national and international organizations present a grim picture of what happens to the media in Albania.

Indeed, insecurity in the media market, though not at these levels, has started to feel strongly for at least a decade. I one of those people that job retention uncertainty has pushed toward in-depth studies in the realm of justice.

Fictitious employment contracts

The employment contract is an agreement between the employer and the employee that contains the rights and obligations of the parties, a tool in the interest of especially the employee as the weakest party in such a relationship. However, although 60% of journalists claim to have signed employment contracts, during their career, they have been almost fictitious. The report of the European Commission this year associates the problem with the lack of formalization of labor contracts by media owners. The report emphasizes that job security for journalists needs to be strengthened, through the proper implementation of the Labor Code.

In Albania, in the absence of a specific law, for different sectors, such as journalists and media employees, their labor relations are regulated through the Labor Code. Referring to this Code, the labor contract is consensual and has as essential element the free will of the parties. However, what generally happens to media employees is the signing of a standard contract, drafted unilaterally by the employer. This is done especially to formally meet the employer’s obligation pertinent to legal requirements. Due to the specificity of the journalist’s work, it is seen as a need that, in addition to the formal criteria of a labor contract provided for by the labor code, emphasis should be placed on its autonomy.

The collective labor contract is also seen with interest. It guarantees a higher level of protection for the employee. Collective contracts are agreements between employers or organizations representing them and employee organizations that essentially stipulate the terms of work. The importance of this contract lies in the fact that the rights set forth therein will subsequently be part of the individual contract that the employee will enter with the employer. Even today, in none of the media in Albania functions a collective employment contract.

Informality in the media market, 40% of employees are unregistered

Over the years, media has been considered as one of the sectors plagued by the highest levels of informality. In the year 2000, referring to various publications, it was estimated that only 10% of journalists in Tirana were insured, which therefore leaves 90% working unregistered. This situation continued with slight fluctuations dropping to 75% unregistered in 2006. By the end of 2011, 65% of journalists according to UGSH were insured, however 50% of which are registered at the minimum wage. When it was expected that the market would be further formalized, in fact the opposite happened. In the annual reports published in 2015 and 2016, the Albanian Journalists Union reported that informality in the media market was 80%. This result is also related to the establishment and entry into the market of a large number of portals, with the majority of their employees properly registered. At that time, from the data of the union was ascertained that employed in the media sector (TV, radio, newspapers and portals), 2,350 journalists and about 5,700 other employees. The campaign against informality, launched in September 2015, has also statistically influenced also the media sector. Referring to UGSH, the level of informality has dropped to about 40%. However, the signing of contracts is a quasi-formal process that does not in essence entail a dignified treatment and respect of the journalist's rights, but as a measure not to result in legal violations, in case of control by the institutions (for the sake of truth, media is a sector that makes an exception).

In the questionnaire conducted in 2018 by the Media Institute, 67% of respondents claimed to have signed an indefinite contract or a one-year term one; 28% were without a contract, while 5% refused to answer. It should be noted, however, that we are dealing with data from a survey involving 212 media employees, mostly editors, editors in chief and journalists.

Gray employment, penalization of journalist mothers

As other sectors where the level of informality is very high, estimated at 40%, so also the media is no exception. The only difference is that journalists report on employees in other sectors work without being registered but fail to raise their voice about their violated rights. Another significant part is in the gray employment category, or in other terms registered employees but not with real wages. 54% of respondents in the Media Institute poll, conducted in 2018, claimed that they did not receive the claimed wage. This method is used by companies, even occasionally without informing employees, especially those who have negotiated the net salary, while the company has taken over the repayment of other obligations. As a result, employers pay a lower social insurance and health contribution or personal income tax. Such treatment, apart from fiscal evasion, is above all financial penalization for media employees, such as for instance in the case of health reports, temporary and permanent disabilities, maternity leave, or even when they reach the retirement age.

However, there are many cases in which the media employees accept unregistered employment, even when they are aware of the consequences, as it is one of the

conditions set by the employer in exchange for gaining or retaining the job, journalists and editors, are still declared with the minimum wage, that currently is set at 24,000 ALL per month. Many journalists, once they have brought their children into life, have received a maternity leave at a modest rate, compared to the real pay they received. With the amendments of the year 2015, the Law No. 7703, dated 1.5.1993 “On Social Insurance in the Republic of Albania” has also changed the formula of calculation of the retirement pension, which results from the mean number of the contributions made during the employee’s entire career over the years.

RECOMMENDATIONS

- Finding instruments and mechanisms to strengthen the role of trade unions and expanding trade union movement in any media. Today, colleagues do not even talk about their work-related problems not even in social networks, and that because it is not seldom that there are cases of penalization for even such a stand. Although there are several journalism and/or media unions operating, their lobbying for employees’ rights is at a low level but I would undoubtedly exclude the Union of Journalists as the only voice that continuously identifies and addresses institutions, problems of media employees, who come from disrespect of laws.
- Initiating discussions and undertaking the initiative to approve the journalist’s status. There are countries like Belgium, France, Ukraine or Turkey that have already a legal definition of who is considered a professional journalist. In Germany, the profession of journalists derives directly from Article 5 of the Constitution, which protects freedom of thought, expression and the press and prohibits censorship. Journalists in Germany should not be subjected to formal or mandatory procedures. The profession is open to all, without any need for training or selection. The professional organizations have always had an opposing stand against a binding legal definition or regulatory definition for fear that the parliament or the political authorities in general would curb their freedoms. Another example is that of Poland, where the status of journalists is no longer defined by law, as it was until the 1980s.
- The signing of collective labor contracts guarantees a higher level of protection for the employee. Since so far the Union of the Albanian Journalists despite attempts has failed to convince media leaders to sign collective bargaining agreements, it is proposed that addressing this issue to find a solution goes to other levels, up to the Commission for Education and Public Information Mediums.
- Given the high level of informality as well as the unregistered work, it is necessary and even more importantly a legal obligation, the intervention of the institutions such as: the State Labor Inspectorate, the General Directorate of Taxation, as well as the Social Insurance Institute. Strengthening controls

by institutions of the line, would change this landscape, reducing significantly informality.

- Thorough verification, to avoid the social and health insurance contribution for a lower salary than the real one. At the same time, a verification needs to be made, to avoid journalist registration in the position of another employee in the media, that does not require special qualification nor higher education. There have been ascertained cases when journalists have really been enlisted instead of other media employees.

12.5 CAN MEDIA BE CONTROLLED (ONLY) BY LAW? - MRS. KAROLINA RISTO, JOURNALIST

(Regulation or self-regulation of the media)

Control over the media is control over the opinion of a large group of people who can then use it to your purpose.

The first to try to get more control over the media (mass media/the opinion of the masses) are naturally the politicians, and those who have more access to that goal are politicians who have the power.

Here is a rhetorical question: Do governments prefer a free, independent or a controlled media?

Even in the case of a completely liberal and idealistic politician who believes 100% in what he/she says, this politician (who is unlikely to exist) would like his/her pristine cause to be believed/supported by as many people as possible. And those media that do not cover it as he/she would have it covered, are automatically considered as belonging to “the other camp”, that is in the group of those who are ranked in the wrong direction of history (Barak Obama’s favorite expression while he was president of the United States).

And whoever starts this game of control over the media, has clear ideas of how to reach that goal:

- The media is controlled through direct funding/empowering/controlling the state media
(Implied here it is not just the Albanian public radio and TV, namely RTSH, but also the well-organized “army” in the battalions of press offices that releases infinite material for consumption)
- The second way is to intervene in private media. It is known that these media survive through advertising and “financing”. Advertising and financing either coming directly from the state, or reaching the media owners in other forms (business) and indirectly affecting their editorial policies (the media institute has conducted many studies on the links of major Albania media outlet owners with politics)
- The third way is the social media, officially accepted not only as a media but is gaining ground in % of public information compared to all other platforms. Social media is difficult to control, but in Albania the solution has been found

with what has been the practice for years in other sectors: diversion. If there is an online media that has popularity (but which has a stance that is unfavorable to the politician who prefers to control public opinion), then let he/she open 10 new other ones of the same kind (with some suspicious funding), with similar layouts but opposite content. If there is a Facebook page that is having an impact, let him/her create one alike as well. If there is a portal that has a lot of commentators (mostly critical in nature), then let us employ the PR host (the underground press offices) to change the ratio between negative and positive comments.

And with this pace and with these methods, media has turned into a cobweb threaded with different colors where it is almost impossible to follow a thread with the color you have chosen from the beginning to the end as it all resembles one of those maze games.

“Game” of lobbying with the public

The most common trap in which the public falls, is that of intentional lobbying. People through private media, supported by private businesses, are made aware about seemingly right causes but that actually serve these media purpose. Only when the awareness raising culminates, and has received broad support, then is proceeded by a legal initiative or other form of reaction that ultimately brings benefits only to those who inspired from behind the scene and in silence this awareness raising. We are all witnesses to extensive campaigns in certain media, such as those pertaining:

- Littering of the roads
- Against combustion of waste as it causes pollution
- Pro waste recycling

Moreover, after the leavening of public opinion of a civic consciousness that action needs to be taken - because at the end of the day who would oppose the non-littering initiative or the idea of not burning up the trash - and then comes the demand for the construction of some incinerator, which of course is a private initiative. This is just an illustration of the public lobbying game.

The online chaos

The above description was to show that the media situation, both of the registered one that is certified, approved and licensed is just as problematic as that of online media. The latter are even more chaotic but what good would it do to for example register a portal.

If I click today at ahc.org.al, the Albania Helsinki Committee's website would open. However, if I want to open an identical website outside of the Albanian domain, that is one that does not end in .al but in .com. I could open the same website even today, from my desk, in China, USA, Germany etc. What would then the registration of websites benefit in this media situation and especially in the chaos of online media. There is no reason to oppose the formalization of a private initiative, but if there is an initiative to be associated with all the precautionary steps so that there will not be

any doubt, accusation, guesswork that in fact is just a tool of rather exerting pressure on these portals.

Can you imagine that for the same violation, should the amendments and additions proposed in the Law 'On Audiovisual Media in the Republic of Albania' come into effect, a portal, such as ahc.org.al would be fined with up to 1 million AL Lek. Therefore, in a nutshell if a portal or blog .al that can have a total of 5 employees does not open a window dedicated to complaints and does not address or give proper space to this complains at the time stipulated by law, then it risks being fined by AMA with up to 1 million ALL.

With the same law, a national television or Albanian public television risks also fines but one of only 400 thousand Lek, that is 60% smaller.

Nevertheless, should a person feels that a libel is published against him/her, does not Article 120 of the Criminal Code suffice envisaging a sanctioning with a fine up to imprisonment for defamation cases?

A portal, sanctioned with a fine of 1 million Lek would go bankrupt.

A television can survive a fine of 400,000 AL Lek, though AMA's fined media list is examined, the latest ones are the small cable television. Large media for months, years and perhaps some of them never have committed any violation of ethics, libel, fake news, nudity in the screen, inappropriate language, or improper use of children. etc.

To take the argument a step further, the proposed amendments to the law also provide that if a portal receives from AMA 5 administrative measures, then AKEP may suspend the portal for 1 year from the internet. Do these legal penalties seem drastic and not so much in proportion to reality.

This is an argument, but the other side perhaps the most important one is: these legal amendments, drastic as they may be, from who/what/how do protect the public?

Protect it from fake news?

- Is there today a media that has immunity from fake news irrespective of the legal form it has been registered under or its content?

Protects it from defamation?

- We have a law on libel, which provides not only a fine but also a prison in severe cases.

Protects copyrights?

- Today there are many organizations that protect copyright in Albania, which authorize the media on the basis of some complex formulas approved by the Ministry of Culture, Ministry of Finance etc.

Example 1: If you are a user of artistic, musical or cinematographic works, you must go straight to the One Stop Copyright Administration Desk (SUADA) to get permission/authorization for the use of that material.

Example 2: AKDIE, claims to be the only licensed Agency for the Collective Rights Management of Albanian Performants Artists in Albania, licensed for the first time in

2008 and with a renewed license on a continuous basis every three years, that is the last deadline of validity according to the legislation in force.

The two agencies are in conflict and opposing litigants, but until the Court makes the decision, the media are obliged to pay both because both are licensed by the Ministry of Culture to bill the media on the basis of the methodology for setting the tariff value on the artist's copyright.

Do the media need another law to check their above-board stance?

Some states have resolved the situation (as much as it can be resolved) with other forms of organization

- Unions
- Journalist's Union
- Journalist's Order

In fact, such forms of organization have been attempted in Albania for years. We currently have:

- (i) The Union of Albanian Journalists, chaired by Aleksandër Çipa
- (ii) Association of Albanian Journalists Professionals chaired by Armand Shkullaku
- (iii) Association of Albanian Journalists chaired by Ylli Rakipi.
- (iv) Albanian Electronic Media Association chaired by Aleksandër Frangaj
- (v) An even longer list of non-profit media organizations.

None of these attempts has been managed to become the representative authority and let alone the regulator for journalists. There are sporadic cases when they have come to the defense of a journalist who is battered or publicly attacked, but this is not done in any case by all organizations together.

Also, none of them have even tried to turn into the body with which, very simply:

- (i) Journalists register to be recognized as such
- (ii) Get protected when their rights are violated:

That is not impossible. One example would be the following. In case that the Italian Journalists' Order decides to sanction a media, it may impose a fine, it may not accredit any of its journalist for a certain period, it may not defend it.

There are over 100,000 journalists members of the Italian Journalists' Order. This is the main institution that regulates the functioning of journalists in Italy, although the law on journalist profession has been in force since 1963. This law did not need intervention because many decades ago defined the profession of journalist as an intellectual activity, moreover, it does not treat the journalist as an employee or as a worker but rather recognizes him/her the essential role he/she plays in the social life of the country.

In Italy, Europe, and in most developed countries, media laws are limited to general definitions of journalists' profession, freedom and rights, but essentially tend to leave their own choice or set internal rules.

Few democratic states have taken the liberty to put the border on the autonomy of information, leaving it to the hands of organizations such as the Journalist Order, the Trade Union or the Society.

The Journalist's Order has some rules to be accepted by everyone who joins it. In the Italian example, the rules are:

- Without being accredited by the Order, he/she can not benefit the status of a professional journalist
- To be accredited, it is necessary to have 2 years of apprentice in one of the media recognized by the Order

Moreover, equally important are the disciplinary measures taken against journalists or editors themselves in cases when accredited members are found guilty of "acts that affect professional dignity".

- They can get a warning
- Suspended from 2 months to 1 year from office

Lastly,

- The order is to ensure that the rights of the signatories are respected

This is just the Italian example. Other states have found other solutions, but the key word of these solutions is: self-regulation.

12.6 IS FREEDOM OF EXPRESSION LINKED TO VIOLATIONS OF THE CODE OF ETHICS? - MR. KOLORETO CUKALI, JOURNALIST

For several months, for statistical purposes, the Albanian Media Council has conducted a monitoring of 20 online portals regarding violations of the Code of Ethics. For the period September 1 - December 15, there were found 957 violations of the Code of Ethics in these 20 media outlets, averaging 9 violations a DAY.

Violations of the Code of Ethics occur for two main reasons:

1. Unintentional (from neglect/ignorance/editorial irresponsibility/difficult working conditions)
 2. Deliberate (political and economic interests of publishers to distort the news)
- Intentional violations of the Code of Ethics constitute 45% of violations.

This study also produced an overview of the Key Scriptural Articles of the Code of Ethics:

1. Unethical reporting of court proceedings and innocence 49.0%
The media labels as criminals people that have not been sentenced by the court or reports cases in violation of ethics.
2. Accuracy of Information 30.1%
The information provided is inaccurate, with or without intent.
3. Distinction between Facts and Opinions 7.2%
In most cases, this violation is intentional.
4. Editorial Independence 7.7%
It is clear that the Press is free but abuses are considerable. There are 2 ways to resolve the situation:

Via Governmental Regulation

Or

Via self-regulation

REGULATION by the GOVERNMENT

Government regulation comes through the anti-defamation package. The so-called “anti-defamation” package consists of 2 draft laws:

Draft-Law 1: ‘On Audiovisual and Electronic Media in the Republic of Albania’

Draft-Law 2: ‘On Electronic Communications in the Republic of Albania’

Draft-Law 1 (of AMA)

Some of the most problematic articles of this draft law are:

Article 9 (Procedures for handling and reviewing complaints)

4. The provider of electronic publishing service, within 24 hours from the receipt of the complaint, must review the complaint and inform the complainant.

5. If the OSHPE rejects the complaint or does not respond within 24 hours of its receipt, the person has the right to appeal to the Complaint’s Council. The Complaint’s Council, **within 72 hours** from the lodging/filing of the complaint, decides on the respective complaint or from the submission of the claims by the OSHPE in cases of application of point 6 of this article.

6. The Complaint’s Council, **when it deems necessary**, passes the complaint filed to OSHPE for it to present its stance within 48 hours.

7. After reviewing the complaint and/or claims of the OSHPE, the Complaints Council, **if it judges that there is a violation, takes the appropriate action**, including sanctions in accordance with this law.

Article 11 (sanctions)

1. For OSHPE registered at AKEP:

a) Suspension/Blocking of Internet Access, for a 24-hour period, if within a calendar year has committed 3 (three) administrative offenses envisaged by this law;

Suspension/Blocking of Internet Access for a 7 (seven) day period, should it within a calendar year has committed no less than four administrative offenses;

Suspension/Block of Internet Access for a one year period, should it within a calendar year has committed not less than 5 (five) administrative offenses provided by this law.

2. For providers of electronic publication services that are not registered with AKEP:

Block access to the electronic publication service in the territory of the Republic of Albania, **for a 24-hour period**, if they fail to consider the complaints filed by the Complaint’s Council, more than three times during a calendar year;

The ultimate block/close of access to the electronic publication service in the

territory of the Republic of Albania should they fail to consider the complaints filed by the Complaint's Council more than four times during a calendar year.

The Problems:

1. The Court avenue is not included on the decision-making on sanctions. The decision is made directly by the AMA Appeals Council.
2. The 24 hour response time required is too short.
3. This draft law regulates only portals, not printed media.
4. There is no safeguards from the AMA Complaint's Council to conduct independent and impartial trials, being itself an institution whose board is elected by the politics.
5. For the same violation there is civil sanction but also an administrative one! Administrative sanctions against portals, are more severe than those against audio-visual media. Overall sanctions are very severe.
6. The EU has chosen self-regulation as the only method of creating an ethical media.

Self-Regulation

Self-regulation is a process where media gather and decide for themselves how to regulate the implementation of the Code of Ethics.

1. Media are organized in an independent state organization (for example the KSHM).
2. Members (media) elect democratically the Complaint's Board.
3. The Board is independent, with integrity.
4. The Board deals with complaints arriving at kshm.al or at the Council's website.
6. The Board convenes periodically and makes decisions to resolve the conflict.
7. Decisions of the Board are implemented by the media (for example correction, etc.)
8. After the decision of the Board, the claimant may address the Court.