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Report of the Council of Europe expert mission to consider broadcasting regulation in Albania (Tirana, 16-17 February 1998)

This document summarises the comments and recommendations made by the consultants who participated in the expertise mission organised by the Council of Europe in Tirana on 16-17 February 1998, at the request of the Albanian authorities, on broadcasting regulation in Albania.

The consultants were:

- Ms Carolyn Morrison, Head of International Broadcasting, Department for Culture, Media and Sport, London
- Dr Jürgen Brautmeier, Head of Programme Service, Regulatory Authority for the Broadcasting Sector of the Land of Nordrhein-Westfalen, Düsseldorf
- Mr Benoît Danard, Higher Audiovisual Council (Conseil Supérieur de l'Audiovisuel), Paris

The consultants were accompanied by Mr Christophe Poirel, Head of Media Section, Directorate of Human Rights of the Council of Europe.

The consultants had three working sessions with the members of the working group responsible for the preparation of a draft Law on Public Radio and Television. The consultants also had meetings with the Speaker and Deputy Speaker of the People's Assembly of Albania, as well as with representatives of the public and private broadcasting sectors.

The working sessions were devoted to an in-depth examination of a number of specific issues of interest to the above working group. Owing to lack of time, the consultants were not able to review in detail the provisions of the draft Law on Public Radio and Television which had been prepared by the working group.

A summary of the comments made by the consultants on each of the issues raised by the working group is set out below:

I. As to the advisability of having a single law or two separate laws to regulate the broadcasting sector

The consultants were asked whether it would be preferable to have only one law covering both the public and private broadcasting sectors or, on the contrary, two separate laws addressing each sector.

The consultants recommended that only one law be prepared for the two sectors, as public and private broadcasting are two closely related branches of the broadcasting landscape and, therefore, need to be addressed and operate in a coherent and balanced manner.

In this context, the consultants drew attention to the fact that a number of basic requirements should equally apply to both public and private broadcasters (in particular, requirements concerning fairness and impartiality in news programming as well as standards concerning taste and decency).

The consultants noted that the need for a single coherent regulatory framework was all the more necessary since, under Article 52 of the draft Law on Public Radio and Television, the public broadcasting sector would have the possibility, like private broadcasters, of having recourse to private sources of funding such as advertising and sponsorship. They drew attention to the importance of striking an appropriate balance between public and private broadcasting, when determining their respective ways of funding, so as to allow for the sustainable development of private broadcasting, while at the same time guaranteeing a secure funding framework for the public broadcasting sector.

In this connection, reference was made to the policy orientations given, as regards the funding of public service broadcasting, in Resolution No. 1 of the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994).

The consultants stressed that, over and above the specific question of funding, the Resolution, as supplemented by Recommendation No. R (96) 10 of the Committee of Ministers of the Council of Europe on the guarantee of the independence of public service broadcasting, should guide the transformation of the Albanian State broadcasting organisation into a genuinely independent public service broadcaster.

At the same time, account should be taken of the need to define separate rules concerning the respective obligations which public and private broadcasters should comply with, over and above the aforementioned basic common requirements. On the one hand, the public service broadcasting sector should be the subject of specific programming requirements, so as to offer a variety of information, educational and cultural programmes which meet the requirements of the public, including minority groups and audiences, as advocated in the above Resolution.

On the other hand, private broadcasters should be compelled to comply with similar, although less demanding, requirements in return for the granting of a licence, as the latter constitutes a public commodity made available to them free of charge. Such requirements should be specified in the licences granted to private operators and the National Radio and Television Council (hereinafter called the NRTC) established under the Law of 14 May 1997 should monitor compliance by private broadcasters with these requirements.

II. As to the relationship between the authority responsible for granting frequencies to the broadcasting sector and the authority responsible for granting licences to broadcasters

The consultants stressed the need to clearly separate the question of the management of the frequency spectrum and the allocation of frequencies on the one hand and, on the other, the question of the granting of licences to broadcasters, as these are two separate matters which should be dealt with by two distinct bodies. Against this background, they underlined that no authority other than the NRTC should be competent to grant licences, on the basis of the frequencies made available to it by the authority responsible for the management of the frequency spectrum.

The consultants also stressed that the frequencies allocated to the NRTC with a view to the subsequent granting of licences to broadcasters should be of good quality, since this is an essential prerequisite for the successful development of their activities.

III. As to the funding of public service broadcasting

The consultants recalled the need to establish an appropriate and secure funding framework in order to guarantee the future public service broadcasting organisation the means necessary to accomplish its missions, as underlined in the above-mentioned Resolution of the Prague Ministerial Conference. They took note that the draft Law on Public Radio and Television provides for the establishment of a licence fee system. They stressed that the level of the licence fee should be fixed for a certain period of time (for example 5 years) so as to allow the future public service broadcaster to engage in long term planning, in particular as regards its programming and technical investments. They also underlined that, as foreseen in Article 56, paragraph 15, of the draft Law, the level of the licence fee should be reviewed on a regular basis so as to adapt it to the inflation rate.

The consultants supported the idea of attaching the licence fee to the electricity bill to be paid by the consumers, as a simple and efficient means of collecting licence fee revenues.

The consultants stressed that the future public service broadcasting organisation should be both transparent and accountable, in particular vis-à-vis the public, as regards the way in which it uses its resources. Transparency and accountability should be guaranteed by appropriate means such as the preparation and submission of an annual report, covering both its programming and financial activities, to the Parliament and the public at large.

IV. As to the establishment of a complaints body

The consultants were informed that the drafters intended to establish a body with which individuals could lodge complaints against the programmes of broadcasters. They drew attention to the fact that such complaints should be clearly separate from the question of non-compliance by broadcasters with the law and the conditions set out in their licence, a matter which should fall within the exclusive competence of the NRTC.

In order to avoid any interference with the powers of the NRTC, it was suggested to establish an advisory committee which would be responsible for drawing up guidelines to

broadcasters on matters concerning taste and decency, as well as for receiving complaints by the public for non-compliance by broadcasters with such guidelines. In case the committee would establish that a given broadcaster has failed to comply with these guidelines, the committee should be given the power to issue a statement, as far as possible at the same time as when the programme concerned was originally broadcast, to inform the public of the non-compliance. Over and above such statements, the possible imposition of sanctions on broadcasters should remain the sole responsibility of the NRTC.

It was stressed that any action by the advisory committee or the NRTC should only take place a posteriori, once a programme has been broadcast, in order to avoid any interference with the editorial independence of broadcasters.

In view of the close link which would exist between the activities of this body and those of the NRTC, it was recommended that the members of the advisory committee should be appointed by the NRTC and that the advisory committee should report on a regular basis to the NRTC.

The consultants also drew attention to the fact that the advisory committee should include media experts as well as representatives of the public so as to perform its missions in a proper way.

V. As to the monitoring of the news programmes of the broadcasters

The consultants were informed that the intention was to entrust a non-governmental organisation with the task of monitoring the news programmes of Albanian broadcasters, so as to ensure that they report in a fair and impartial manner on domestic political affairs. It was noted that the main reason for having recourse to an NGO was that only such an organisation was for the time being equipped with adequate human, technical and financial resources to perform this mission.

Without disagreeing with the idea of having recourse to an NGO, due to the reason explained above, the consultants stressed that in principle and under normal circumstances, the monitoring of news programmes transmitted by broadcasters should fall within the responsibility of the NRTC. As recourse to the NGO was meant to be only a transitional and ad hoc solution until the NRTC is able to carry out this task, it was suggested to indicate in the law that the NRTC can delegate its monitoring mission to a third party organisation. This would make it possible for the NRTC to take over this function, without being obliged to amend the law, once it has the necessary resources to perform this mission correctly.

The consultants recalled that the general requirement concerning fairness and impartiality in news programming should apply not only to the future public service broadcasting organisation but also to private broadcasters (see Section I above). They also underlined that compliance with this requirement should be monitored from both a quantitative (i.e. the amount of time devoted in news reports to the different political forces) and qualitative (i.e. the way in which the views of the political forces are presented) perspective.

Finally, the consultants drew attention to the fact that, under Article 36 of the draft Law on Public Radio and Television, the Steering Council which would supervise the

activities of the future public service broadcasting organisation would be responsible for monitoring "the impartiality, objectivity and completeness of the radio and television information programmes". They recommended that the respective monitoring competencies of the NRTC and the Steering Council be clarified, in order to avoid any overlap.

VI. As to the measures which might be taken to guarantee and promote media pluralism

The consultants were asked to indicate which measures should be included in the law so as to limit the development of media concentrations and guarantee media pluralism. They underlined that, although it was important to allow for the development of commercial broadcasters, at both the national and regional/local levels, so as to widen the range of programmes available to the public, it was equally important to avoid the establishment of dominant positions by media companies or groups, as this might be detrimental to pluralism.

For this purpose, the law should provide for limits, at both the national and regional/local levels, to the accumulation of interests in any single media sector (monomedia concentrations) as well as in two or more media sectors (multimedia concentrations).

This being said, the consultants felt that the 25% share limit foreseen in the second sentence of Article 19 of the Broadcasting Law of 14 May 1997 was too strict especially since, under the specific economic situation of Albania, it might be difficult to find many persons or groups who would be able to invest in broadcasting activities.

The consultants also noted that the 20% share limit on foreign investments provided for under the third sentence of Article 19 of the above Broadcasting Law could hinder such investments at a time when they are particularly needed. On the other hand, the consultants stressed that any increase in this threshold should be carefully examined, in order to avoid any domination of the Albanian broadcasting sector by foreign interests. In any event, any limitation on foreign investments should not be lower than limitations applicable to Albanian citizens.

The consultants expressed similar concerns about the third paragraph of Article 19 of the Broadcasting Law of 14 May 1997, which fixes a limit to cross-ownership in the press and broadcasting sectors, as 10% of the total circulation of newspapers in Albania was considered to be a very low threshold.

The consultants recommended increasing the above three limits without, however, suggesting any precise figure, as this could only be done on the basis of a careful examination of the situation of the country.

In line with the comments already made during the legislative expertise organised by the Council of Europe on 12-13 May 1997, the consultants expressed serious reservations about the fact that, under paragraph 1 of Article 19 of the Broadcasting Law of 14 May 1997, the granting of licences would be restricted to "stock companies".

The consultants strongly recommended that other legal persons such as associations, universities and local communities should be allowed to establish and operate radio and television services, as such non-commercial broadcasting organisations would contribute to

enhancing the range of programmes available to the public, in particular local and minority audiences which are usually not served by commercial broadcasters.

Similarly, as already indicated in May 1997, the consultants drew attention to the fact that the capital required to operate national and local radio and television programme services under Article 27 of the Broadcasting Law was exaggerated in view of the current economic situation in Albania. It was suggested to replace this provision by a new Article whereby the NRTC would be entitled to ask applicants for licences to demonstrate their ability to operate a broadcasting service, in particular from a financial point of view.

Finally, the consultants drew attention to the fact that the networking of local/regional radio or television stations might be used as a means to circumvent possible anticoncentration mechanisms. They recommended including in the Law a provision whereby networking would be either prohibited or limited, for example via the imposition on all broadcasting stations of an obligation to broadcast a minimum percentage of original programmes reflecting the interests of the population living in their respective area of coverage.

VII. As to the relationship between public authorities and the broadcast media

The consultants strongly recommended that local public authorities should not be authorised to operate a radio or television station, as this could be used by local political figures and leaders for political and electoral purposes. They suggested that such a prohibition be clearly spelt out in the Law, as was already the case for political parties under Article 24 of the Broadcasting Law of 14 May 1997. The consultants also recommended that the same prohibition be applied to religious groups and organisations.

The consultants also advocated the deletion of Articles 18 and 19 of the draft Law on Public Radio and Television, as well as of the second paragraph of Article 39 of the Broadcasting Law of 14 May 1997, so as to distance the future public service broadcasting organisation from the political arena.

In line with the comments already made in May 1997, the consultants underlined that both public and private broadcasters should freely determine whether any political development or official announcement deserves coverage in their news and current affairs programmes, in accordance with the fundamental principle of editorial independence. The only acceptable restriction would be that provided for under the third paragraph of Article 39, concerning "short communiqués related to the health, natural calamities, order, etc., which are of interest for the zones they transmit".

Finally, the consultants recommended the inclusion in the Law of a provision whereby political advertising, as well as advertising for religious groups and any ideology, would be prohibited.