

THE IMPACT OF THE NEW MEDIA LAWS ON THE FREEDOM OF EXPRESSION IN MACEDONIA

Ivan Stefanovski

Scuola Normale Superiore di Pisa (seat in Florence), Italy

Abstract: After a long and tiring process of political bargaining, public debates and negotiations, the Law on Media, and the Law on Audio and Audiovisual Media Services were passed in Parliament. Media experts, media organizations and critical media in Macedonia, insist that new regulations will further diminish freedom of media and freedom of expression in Macedonia. The main goal of the paper will be to measure the effects of the new laws, after six months of their introduction in the legal system. The activities of the Agency for Audio and Audiovisual Media Services and the Macedonian Radio and Television will be closely followed, mostly by examination of the minutes of their meetings, participation on meetings and depicting effects of their ruling. The ultimate goal will be to propose future recommendations for enhancement of the media sphere, and most precisely, the freedom of media and freedom of expression, in Macedonia.

Keywords: Media, Laws, Freedom of Expression, Macedonia Impact.

I. INTERNATIONAL STANDARDS FOR FREEDOM OF EXPRESSION

The Freedom of expression, as one of the basic political freedoms since the enactment of the Universal

Declaration of Human Rights, is clearly guaranteed in each respectable international document in modern legal history. Additionally, it is straightforward guaranteed in the constitutions of all modern recognized democracies.

The Universal Declaration of Human Rights (UDHR) dedicates Article 19 to the Freedom of expression, combining it together with the Freedom of opinion, and the freedom to hold opinions without interference to seek, receive and impart information and ideas: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."* One of the main characteristics of Article 19 is that it does not foresee any restrictions regarding the freedom. This can be explained by the relatively "weak" legal strength of the document, but also the lack of enforcement and implementation mechanisms.

Just several years after the embracing of the most significant human rights document in legal history, the Council of Europe enacted the Convention for Protection of Human Rights and Fundamental

Freedoms, colloquially known as the European Convention for Human Rights (ECHR). The ECHR positions the Freedom of expression in its Article 10, together with the freedom to hold opinions and to receive and impart information and ideas, quite similarly to the UDHR: *"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."* In this article, unlike in the text of Article 19 from EDHR, in the second paragraph, we can see certain exemptions from the freedoms, giving possibilities to the contracting authorities (the signatory countries) to impose restrictions on the guaranteed freedoms. This is called "Margin of Appreciation" in regard to the countries. If we analyze the restrictions, we can see that states have the right to prescribe limiting procedures based on law, mainly for the necessities of a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of torture and crime, for the protection of health and morals, for the

protection of reputation and rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Also, if we shortly jump back to paragraph 1, we can conclude that the states have the right to impose licences for broadcasting, television or cinema enterprises, which means that the Freedom of expression does not "go without saying". Compared to the UDHR, the ECHR gives much more manoeuvring space to the states, mostly because the Council of Europe (CoE) has implemented a strong system for control of the implementation of the Convention provisions. Firstly, via the authority of the European Court for Human Rights (ECtHR), and later by the monitoring of the decision implementation by the Committee of Ministers. This means that each time a provision of the Convention is breached by a contracting party, the Court will sanction the violation and the state is obliged to implement the Court's decision.

The International Covenant on Civil and Political Rights (ICCPR) follows, more or less, the structure and nomotechnics of the ECHR. Article 19 of the Covenant combines Freedom of expression together with the right to hold opinion without interference, as well as freedom to seek, receive and impart information and ideas of all kinds, regardless of the frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. Also, the article imposes several restrictions, which are much more in favour of the citizens compared to the ECHR: *"1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds,*

regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."

The last international document which must be mentioned regarding the Freedom of expression, is the Charter of Fundamental Rights of the European Union (CFREU). Enacted at the beginning of the 21st century, and cemented in the founding treaties of the EU, the Charter positions the Freedom of expression in Article 11, together with the Freedom of information, the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The Charter is following the legal writing of the UDHR, trying to make a statement that the protection of human rights is one of the main pillars upon which the EU is founded: *"Freedom of expression and information: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."*

II. FREEDOM OF EXPRESSION IN MACEDONIA

Freedom of expression in Macedonia is guaranteed by the Macedonian Constitution, and by several laws and bylaws such as the Law on Media, Law on Audio and Audiovisual Media Services, Law on Civil Liability for Defamation and Insult, and the Anti-Discrimination

Law. All of these legal acts treat a different dimension of the Freedom of expression.

The Macedonian Constitution was enacted on November 17th 1991, labelled by the Badinter Commission as one of the best modern liberal constitutions in the former communist countries. One of the characteristics of the Macedonian Constitution is the high level of protection regarding the rights and freedoms of citizens. The Freedom of expression is treated in Article 16 of the Constitution, with several other rights and freedoms, such as the freedom of personal conviction, conscience, thought and public expression of thought, the freedom of public address, public information, and the free access to public information. Also, a part from this article are the right to reply via mass media, and the right to correction in mass media, as well as the protection of source information and the prohibition of censorship: *"The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited."*

Another provision in the Constitution is also dedicated to the Freedom of expression. Article 110, Paragraph 1, Line 3 stipulates that the Constitutional Court has the competencies to protect, among other rights and freedoms, the Freedom of expression: *"(...The Constitutional Court...) Protects the freedoms and rights of the individual and citizen relating to the*

freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation”.

The Law on Media dedicates an extensive Article 3 to the Freedom of expression: *“Freedom of Expression and Freedom of the Media: (1) The freedom of expression and the freedom of the media shall be guaranteed. (2) The freedom of the media shall particularly include: freedom to express opinions, independence of the media, freedom to collect, research, publish, select and transmit information for the purpose of informing the public, pluralism and media diversity, freedom of flow of information and openness of the media towards various opinions, beliefs and content, access to public information, respect of human individuality, privacy and dignity, freedom to establish legal persons for providing public information, publishing and distributing printed media and other domestic and foreign media, production and broadcasting of audio/audiovisual programs, as well as other electronic media, independence of the editor, the journalist, the authors or creators of contents or program associates and other persons in accordance with rules of the profession. (3) The freedom of the media may be limited only in accordance with the Constitution of Republic of Macedonia. (4) The media publisher shall be independent in the editorial policy, i.e. in the implementation of the program concept of the medium and is responsible for his/her work in accordance with this law and other laws.”* The main point, and guarantees for the Freedom of expression are the provisions stating that the freedom of the media may be limited only in accordance with the Constitution of Republic of Macedonia.

Unlike the Law on Media, the Law on Audio and Audiovisual Media Services, just superficially mentions the Freedom of expression. It is mentioned only in Article 2, Paragraph 2: *“Purpose of the Law: Promoting freedom of expression”*, as one of the main purposes of the Law, without further explanation, and in Article 6, Paragraph 2: *“Agency competencies: Encourages freedom of expression”*, as one of the main competencies of the Agency for Audio and Audiovisual Media Services (The Agency).

III. ENACTING NEW MEDIA LEGISLATION IN MACEDONIA AND CONTINUOUS AMENDING OF THE LAWS

The new Macedonian media laws were enacted in December 2013. The process of drafting and adoption of the laws was conducted in a very controversial and opaque manner, under the veil of secrecy. The media organizations in Macedonia, such as the Media Development Centre, the Association of Journalists of Macedonia, the Independent Trade Union of Journalists and Media Workers, and the Macedonian Institute for Media, conducted analysis of the draft legislation, presented amendments, raised the alarm within the international community and the international media organizations, and continuously stood firm on the position that the proposed laws are harmful for the media freedom and the Freedom of expression in Macedonia. The media organizations advocated that Macedonia doesn't need a Law on Media, and that many issues could be resolved by intervention in the existing legislation, while some of the issues should be left to the media to be resolved with self-regulatory instruments. Many international governmental and non-governmental organizations as OSCE, EU, Article 19 and Reporters without Borders

also voiced strong criticism to the proposed laws. Despite the efforts, both laws were smoothly enacted in Parliament.

Following the adoption of the laws, several amendments to the law followed during 2014. The Law on Media was amended in January 2014, while the Law on Audio and Audiovisual Media Services was adopted several times – in January 2014 together with the Law on Media, in March, in July and in September 2014. All amendments to both laws were made without consultation with journalists, media owners, media organizations, and without any public debate. Regarding the legislative procedure, all amendments were adopted in a shortened procedure for law adoption.

IV. GENERAL SHORTCOMINGS REGARDING THE MACEDONIAN MEDIA LEGISLATION

The first detected shortcoming is the definition of “journalist”. It is not common to define the profession journalist, due to the fact that journalism is treated as a free profession. Any definition of “journalist” can only restrict and harm Freedom of expression and journalism in general.

Both laws give the permission to the Agency to control print and online media which are subject to administrative control by the Agency. It is a subtle way of endangering media freedom and Freedom of expression.

The extensive list of competencies of the Director of the Agency put him in a very strong position vis-à-vis the Council of the Agency, although, as an “executive branch” of the Agency, he is organizationally and functionally dependant of the Council.

Both laws lack appropriate legal provisions that would ensure the independence of the public

broadcaster – the Macedonian Radio and Television (MRT). All recent researches have shown that MRT is the most politicized body within the Macedonian media system.

Strong political influence is detected over the Council of the Agency and the Programming Council of MRT. If we analyse the election procedures we can see great political influence by the both ruling parties.

Unlike the previous Broadcasting Law which prescribed the position “Member of the Broadcasting Council” as a full time professional position, the new law deprofessionalises the position “Member of the Council of the Agency”. This seriously influences the quality of the performance of the Agency activities.

The detected lack of transparency and accountability of the Agency, adds to the general perception that the Macedonian media institutions are closed and unresponsive.

The current legislation enables Governments donations for media institutions, especially for the public broadcaster, from the state budget. This practice seriously influences the political impartiality of the public broadcaster.

It is a matter of great concern that the composition of the Programming Council of MRT doesn't reflect the diversity of Macedonian society, and instead of being dominated by civil society representatives, it is dominated by political influence, primarily through the Parliamentary Committee of the Macedonian Assembly.

The public broadcaster is the less transparent institution in the Macedonian media system, which is a great disappointment.

Lastly, the authorised nominators of members for the Council of the Agency, are continuously nominating persons from extremely different professional backgrounds.

V. SHORTCOMINGS REGARDING VIOLATION OF FREEDOM OF EXPRESSION

The obligations for journalist associations to submit membership registries, with complete information on its members, to the Ministry of Information Society and Administration, opens the space for pressure on journalists.

Agency Council sessions are not defined as “open to the public” with the Law on Audio and Audiovisual Media Services. This issue is left open to be defined with the Rulebook of the Agency. The previous Broadcasting Law guaranteed the public sessions of the Council.

The fully dependant and completely politicized public broadcaster is a serious threat to media freedom and Freedom of expression.

The Law on Audio and Audiovisual Media Services includes provisions which oblige private broadcasters to broadcast certain amounts (quotas) of domestic music, movies and documentaries. This is a serious intrusion in the editorial policy of the private broadcasters.

VI. GENERAL RECOMMENDATIONS REGARDING THE MEDIA LEGISLATION

Members of the Council of the Agency should be appointed with the two-thirds majority of the total number of MP's in the Macedonian Parliament. In this way, the legitimacy of the elected Council members would be much greater.

Agency Council members should perform their office in a professional capacity. This would contribute towards a more professional and responsible Agency.

The Agency must improve its level of transparency and accountability. A more transparent Agency will create a two way communication channel between the stakeholders and the Agency.

Government donations from the state budget for the public broadcaster must be strictly and clearly forbidden. This measure will strengthen the position of the MRT and depoliticize the public broadcaster.

The composition of the Programming Council of the public broadcaster must be dominated by civil society representatives. This will give a more objective lens of the Council and diminish the party influence.

The public broadcaster must significantly improve its transparency and accountability.

Legal interventions are needed to impose an obligation to the authorised nominators of members of the Council of the Agency, to nominate persons from their own professions or, at least, a similar or related profession.

VII. RECOMMENDATIONS REGARDING PROTECTION OF FREEDOM OF EXPRESSION IN MACEDONIA

Complete annulment of the Law on Media will dramatically enhance media freedom and Freedom of expression in Macedonia.

Additionally, major amendments to the Law on Audio and Audiovisual Media Services is needed.

Amendment of provisions regarding the obligation for journalist associations to submit membership registries, with complete information on its members, to the Ministry of Information Society and Administration, will strengthen the position of journalists and independent media, and relieve the pressure off critical and investigative journalism. On the other hand, this measure will significantly limit the

authority of the Ministry of Information Society and Administration.

Agency Council sessions must be made open for public, based on clear legal provisions, and not on the will of Agency officials. This will make the Agency more open and transparent both towards the general and the professional public.

The Government must propose immediate amendments to the Law on Audio and Audiovisual Media Services, which will assure independence of the public broadcaster.

Provisions on domestic music, movies and documentaries constitute a form of direct interference in the editorial policies of the private broadcasters.

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