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## 9. Failure of the Audiovisual Media Law and the contradiction that holds public interest hostage

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**ABSTRACT:** Democratic transitions of Eastern countries brought about the need to shifting from eastern into western paradigms. Transitioning into western models of media, more specifically to the public system of broadcasting became a prerequisite for achieving the EU status for Eastern European transitioning countries. It has been twelve years since Albania entered the process of transformation from being a State TV towards becoming a Public Television. The article aims to provide a theoretical framework of public television networks in western countries pointing to the pertaining relationships with their political systems. Using this methodology, the article evaluates the developmental process of RTSH, and traces the evolution of certain fundamental laws to determine that political elites have not put forth any efforts to reform laws to establish self-regulatory instruments and guarantee the media independence as a self regulated institution. Despite international recommendations and internal pressures for change, the practices in the area of public network television services have served the private interest of political parliamentary forces .Using the Hallin and Mancini comparative models for media, we established that efforts towards reformation, the changes of Albanian public television are not guided towards a liberal democratic model; instead they resemble a Mediterranean or polarized system. Political arbitration in choosing key institutions that ensure self regulation and the direction of public service broadcasting reflects similarities with the Italian model of Lottizzazione. However, the design of hybrid laws whose structures and functions do not serve public interests, but instead ensure the interest of political elites, is not a formula that guarantees public service broadcasting. By choosing to pursue the old trend of TVSH's broadcasting methods, politics is channeling the future of public service broadcasting towards a polarizing model. The approach that would allow a liberalization of Public Service Broadcasting, demands a political emancipation and consensus on this particular issue. For now, the sings of consensus are nowhere to be seen, and as such the fate of public service broadcasting remains in a pending status. One of the main consequences in this process, remains the under informed public that is a vital element in a viable democracy. In this case, society becomes the victim of an autocratic system, perpetually stuck in a vicious cycle against democratic interest.

Keywords: Public interest, Albanian society, the rule of law, Audiovisual Media Law

## FULL TEXT

Albanian society is still finding it difficult to take the right path towards the European perspective and internal contradictions have taken hostage the will to take actions to establish a state that serves the rule of law. The law “On Audiovisual Media,” approved several weeks ago, has been a true test for the people's representatives in the parliament. They proved they failed to pass the test. As a result, the law did not manage to give meaning to the solemnity that the Albanian Constitution bestows upon the Albanians' right to information, where freedom of expression is guaranteed by law.

Albanian politicians of both parties have failed again. The 14-year engagement to reform the existing law and bring it in line with the norms required by European institutions has shown a weak political will. The most disputed articles have been those on AMA, the regulatory council, and those of the Steering Council of RTSH. The two main parties have found themselves in different trenches on the formulas of these institutions. The MPs offered a newly-designed suit, but made up of scarce quality. Both sides agreed on 135 articles out of 147 articles of the draft law. Hence, 12 articles divided the ruling majority and the opposition.

This paper will focus on two of the articles that were not approved by consensus. It is impressive to note the lack of consensus on these two articles (regarding the formula of election of the two councils elected by the parliament, the regulatory authority AMA and the Steering Council of the Albanian Public Radio and Television,) against the backdrop of general consensus achieved by political parties on drafting the rest of the law. We are inclined to think that the achieved consensus, in its essence against the recommendations of experts, in both articles has legitimized the intervention of politics as in the past, through the formula of the partisan composition of the two afore-mentioned councils.

The long process of the law reform has widened the gap of trust between media and the public. The long expectation has resulted in guidelines of low credibility in terms of protection of public interest. Even more so when considering that the public notion seems to be serving the law, not the other way around. The two big, strong players have divided the public in two extreme trenches, abandoning reason and dialogue.

These people, who united in 1990 their aspiration towards Europe with their political efforts, after 22 years are divided and have given up, choosing to be part of the herd of sheep of one party or the other, as the only way to survive. The aspiration for a state that respects fundamental rights and freedoms as their guarantee has faded, and along with it so has the hope to establish European-like institutions.

**The question emerges naturally, why do politicians avoid the continuous recommendations of foreign experts, are we Albanians so unique and different in our model?**

While the new law on Audiovisual Media was approved, the Parliament of Albania notified the citizens that the law had managed to reflect the revolution that the services and mission of Albanian electronic media has experienced, along with the technology process, sidestepping what has been and will be EU's key concern: harmonization with required standards and the independence of the authority that regulates audiovisual media and the Albanian Public Radio and Television. In November 2012, EU's progress report noted that: "The preparations in the field of information society and media are not advanced. The adoption of the law on Audiovisual Media Services from the parliament has been delayed. There are still concerns on the independence of the regulator. Editorial independence of public service broadcaster has not been strengthened."<sup>1</sup>

This notification of the Parliament neglects the key concern, such as the independence of regulatory authorities AMA and KDRTSH. It was precisely the articles on these authorities that delayed the law, even before the revolution took place, legitimizing indirectly the political control and influence of power on its own institutions. Meanwhile, politicians of the whole spectrum pledged they were working on the consolidation of democratic institutions in the country. The efforts to liberalize audiovisual media for a free and independent information, as enshrined in the constitution, seems to be alienated in the last years, in a relation where politics- business binom has overtaken media ownership, becoming in this way a license provider for information and free speech.

**Is Albania the only case facing this challenge and what is the source of the generated conflict?**

The process of reforming the television from state to public is still in transition and remains a challenge vis-a-vis political tradition in all transition countries. This is because politicians have showed little inclination to respect the independence of public service broadcasters. Even in those countries that consider themselves as post-transition, public service broadcasters are mainly in transition and have not progressed significantly in this aspect.<sup>2</sup>The system of public broadcasting and regulatory agencies responsible for overseeing commercial broadcasting is visibly linked to political system. These links vary, but they reflect different levels and forms of political parallelism.<sup>3</sup>In this landscape, the public service broadcaster in Europe's young democracies remains insecure.

**At the same time, its existence is inevitably related to the development of democracy and civil society.**

No approach on its own can guarantee a balanced and stable “dualist system” of broadcasting or independent regulation. Similarly, there is not one single model of successful public service broadcasting.<sup>4</sup>Television's roots lay deep into political experience of a society, in its institutions, and media tradition – in this way every society has to work in order to build its own model.

Daniel Hallin and Paolo Mancini in their comparative study on the media systems: “Comparing media systems” examine 18 Western democratic countries and identify three models of media systems: Mediterranean model or Polarized Pluralist,<sup>5</sup>Corporatist Democratic model or Northern/Central Europe,<sup>6</sup>and the Liberal model or North-Atlantic.<sup>7</sup>Based on this study, for post-communist countries, including Albania, it is typical to have a “public broadcaster” controlled by the government or ruling majority, even though a classification cannot be made as in the study, due to the different levels of democratic tradition. However, we can orient ourselves on the main trends of the process in developing media system in Albania by referring to development trends of political system. These trends tend to be similar to the Mediterranean Model or Polarized Pluralist model.<sup>8</sup>Main characteristics of this model include high political parallelism, comment-oriented journalism, model of TV influence (parliamentary or governmental); relations with politics (over broadcasting), weak professionalism, instrumentalisation of the media and strong state intervention.<sup>9</sup>



If we return to the law on audiovisual media, the formula that applies the political criteria in the configuration of leading bodies of AMA and of KDRTSH is similar to the situation of our Italian neighbor, which is a model of polarized media system, as well as a media system that has led to greater disputes in Western European countries. First it came “Lottizzazione” or “party lots,” which was used by Italian politics in restructuring public television RAI in 1969. Then, in the 90s it was Berlusconi's empire. As a prime minister he enjoyed a certain power on public and commercial television. This was the first such precedent in a developed European democracy.<sup>10</sup> “A main historical reason that explains RAI's dependence on political elite is that at the roots of the relation of public broadcaster to the political system there is very little familiarity with institutions of liberal democracies.”<sup>11</sup>

Italian media historian Paolo Murialdi states that “criticism on *Lottizzazione* stems from its trust on the role of public TV, especially on the need to guarantee “freedom, prestige, and professionalism” for the journalists of public television. *Lottizzazione*, according to him is a deviation from public service journalism that the public broadcaster must fulfill. *Lottizzazione* is a historical and central disease for the Italian public broadcaster and for its journalists.”<sup>12</sup> Meanwhile, for Hallin and Mancini the gap between the ideal and reality is much wider in countries like Italy and Spain, where journalists pledge their devotion to the liberal model and to objectivity, while the current practice of journalism is deeply in the traces of partisan advocacy.<sup>13</sup>

The controversy here is on the challenge to fulfill the aim for the public broadcaster or the regulatory authority to be free of influence from stronger political forces, failing in this way to serve a politically diverse society.

**The approval of the Albanian law on audiovisual media, while, at the same time, preserving the same formula of election of the two councils, AMA and KDRTSH, proved that Albanian politics tends to follow a polarized pluralist model.** Politicians from both sides not only have not made any progress in renegotiating a non-partisan formula of the two councils, but they have turned into advocates of this formula, which is supposed to guarantee client list behavior and the status quo for current politicians and their heirs. This refractoriness in protecting the overdue formula of the two articles, which also compromises the European perspective, changes this objective from a motto for action into a slogan of political communication and marketing.

The current opposition has blamed the ruling majority for these articles and has voted against the approval of the law, disagreeing on approval of regulatory authorities through simple majority of votes. In this respect, the opposition seems to stand one step ahead of the ruling majority, but only at first sight. This is because the drafting of the article that was approved by both sides has legitimized the partisan composure of the two councils, showing bigotry of the two political forces to protect the fore-mentioned formula.

Repeatedly experts of European institutions such as OSCE, CoE, and EU have argued the reason and manner for steering councils of the regulator and public broadcaster to achieve independence and guarantee protection of editorial independence. Individually, politicians of both forces have acknowledged the absurd situation that has surrounded discussions on the audiovisual media law for years, but collectively it was impossible to overcome the party's collective will.

A retrospective on what was the hot spot on the law of radio and television allows us to understand the history on the law of audiovisual media in relation to its independence from political influence and support to public interest, when it comes to articles that guarantee such a thing, as in the case of the councils of AMA and KDRTSH.

Musa Ulqini, former socialist MP, who has followed the process of the drafting of the law since its beginning, has blamed politics, stating that politics bowed over to business interests. "Politics has its own sins towards Albanian public television. Its interests led to bankruptcy of this television, while the day that private media emerged, they left Albanian Television in misery."<sup>14</sup> Even though the approval of the law on Radio and Television in 1998<sup>15</sup> changed the name of RTSH from a state institution to a public one, de facto Albanian Television did not enjoy in these 14 years the attributes of a public television, as it was named in the law and it was propagated through television advertising of RTSH. Academic Artan Fuga, in its concern on RTSH states that "Albanian public Radio and Television can be viewed everywhere. It has an international public, which, in all cases would note beyond any doubt its extreme politicization, to the limits of sycophancy, vis-a-vis any government and government official."<sup>16</sup>

Dependence from the state and politics, both in law, and in practice, is legitimized in the articles 64-67 of the Law on Radio and Television,<sup>17</sup> which did not define the statute, role and obligations for programs of RTSH as those of a broadcaster representing public

interests, as it would be in a democratic society of Western European countries.<sup>18</sup> Some articles of this law were regarded by international experts as failing to secure the dispositions that would trust the mission of public service to RTSH. These articles were later not complemented by the Statute of RTSH either. The recommendations in this regard, such as “inclusion in the law or in instruments that regulate public broadcaster organisms of the dispositions that guarantee independence” were voiced. In his analysis, Karol Jakubowicz explains that the lack of these mechanisms enables potential external interference and pressure on RTSH. An addition to the recommendations made in 2004 cites that the legal framework regulating public broadcasting mechanisms must clearly determine their editorial independence and institutional autonomy.<sup>19</sup> “Article 66,” analyzes Jakubowicz, “aims for an unbiased coverage of news in the country and abroad, but does not describe RTSH as an independent broadcaster and does not state that RTSH must enjoy editorial independence and institutional autonomy.” The history of some amendments that were made to the law never reflected the changes that aimed to strengthen public character of RTSH. RTSH and KKRT practices testify to this. The legal vacuum, also present in the RTSH statute, led to problems. The law and the statute were unable to stop politics from interfering in editorial independence.

Jakubowicz<sup>20</sup> in his analysis cites the request of the Committee of Ministers of Council of Europe that the rules on the status of supervisory bodies of public broadcaster, especially regarding their membership, should be defined in such a way as to avoid endangering these bodies from political or other interferences. “Having in mind that the members of the Steering Council of RTSH are politically nominated and that they have a clear majority in the Council, it is difficult to state that these criteria have been met in Albania. The manner of nomination in the Council is only partially open and pluralistic. The members do not fully represent common society interests and there is the possibility that at least some of the members are influenced from political instructions. The system is built in such a way that each party represented in the parliament has its own representative in the Council, turning the Council into an extension of the parliament and the RTSH potentially into a ‘parliamentary’ broadcaster rather than a public one, where general public interest is little represented.”<sup>21</sup>

The OSCE Representative for Media Freedom has repeatedly addressed their concerns on this. In October 2008 Miklos Harasti reviews the reformed law and then concludes that:

“The draft does not guarantee the independence of the National Council of Radio and Television and of the Albanian Radio and Television. The law does not solve the problems that exist in the current law, which have been highlighted in previous recommendations of my Office, as well as from other international organizations. These problems have remained unchanged in the new bill. As a result, this draft does not meet the relevant OSCE recommendations.”

What is visible in the annual reports of KDRTSH to the Parliament in the last 12 years is the ambiguous and controversial language when reporting on news quality. This ambiguity goes from advocacy for newsroom's professionalism, to the complaints against political interference, including attempts to find a solution that favors ruling majority at the expense of information for the public. “It is still a necessity to solve problems related to the vacuum in the current law, or its incorrect implementation, such as the separation of broadcasting from the political world,”<sup>22</sup> the KKRT 2007 report stated.

KDRTSH also expresses its concern over political bias in its annual reports, noting that: “In 2008 the Current Affairs Directorate has attempted to implement without any bias the right to information. However, similarly to other media, this remains still a significant problem. KDRTSH has debated repeatedly on cases of political bias of news editions, on lack of professionalism, but also on cases of political pressure from all political wings in the country. The Steering Council has expressed the concern that the tradition of this institution, yesterday and today, in its relations with politics, has continued to emerge time after time.”<sup>23</sup>

Meanwhile, in the annual report of KKRT in 2008 there is a sub-chapter titled “Legal pitfalls,” where the KKRT directors regard as a deadlock the time devoted to the Prime Minister and to government ministers in favor of the parties they represent, perhaps similarly to the treatment of this problem in the Electoral Code, which addresses problems of electronic media monitoring during electoral campaigns. The report cites that the law does not determine in any article in favor of which actor should the time on coverage of the prime minister or particular ministers in periods that are not related to electoral campaigns.”<sup>24</sup>

Article 41 of the law No.8410, date 30.9.1998, “On Public Radio and Television in Albania” states that: “The news and information broadcast by the radio and television operators in

their news bulletins, present facts and events in a fair and unbiased manner, encourage the free formation of opinions, and shall not serve in a biased way the interests of any political party or organization, economic group, religious association, or community.” “In electoral periods, regarding the broadcasting time of prime minister or other ministers, the Electoral Code determines that the time of coverage of government activities, related to electoral campaign, is included in the time of coverage of the party of the official that is organizing the activity. (Law No. 10019, date 29.12.2008, Art.81, paragraph 3, Art. 84, paragraph 2b.) The KKRT report raises the question: “Through an analogy, can a similar obligation be also imposed in periods outside the electoral campaign? For this KKRT proposes that the full time for political parties of the ruling majority, including activity of government and prime minister, be 20% or 30% more than the time given to opposition parties. According to the report this is reasonable:” ...having in mind that the activity of the prime ministers and ministers not always is related to the political activity in the country, and also due to the fact that there are other legal practices that apply such a form.”<sup>25</sup>The questions and proposals of KKRT in relation to the so-called “legal pitfalls” result from the supervisory authority's evading the responsibility or failing to react towards public television's failure to respect the law. On the other hand, the proposal to include in the law a coverage time dedicated to politics in broadcasting even outside electoral campaign remains sycophantic attempt in the name of “Western models, ”which in essence does not contribute to any progress in strengthening editorial independence.” Quite the opposite, it infringes upon independence even when the law clearly guarantees it.

The sycophancy and controversy of this attitude is visible in the Annual Report of RTSH, presented to the Parliament in 2009, citing that: “News editions and other programs of the Current Affairs Directorate have gained audience and public sympathy for credibility, wide topical coverage and representation of all interest groups.”<sup>26</sup> “Directorate of Current Affairs – continues the report – has been continuously prejudiced and contested in public statements of the opposition for bias in news editions. The meetings of Steering Council have concluded that there is a need for a clearer legal definition of the way of realizing balance between ruling majority and opposition in the manner of calculating the time of activities of the Prime Minister and Speaker of the Parliament of Albania.”<sup>27</sup> Both KKRT and KDRTSH are concerned in their reports on the service they have to make to politics by legitimizing and including in the law additional time (time which in practice is given to politics,)<sup>28</sup> rather than with observing the law, which speaks of coverage of news and facts, with the service to public interest as the only criterion.

This evasive relation media-politics has resulted to bias in information.<sup>29</sup> The media academic Mc Quail observes that media have the tendency to reproduce news selectively according to criteria that meet the aims and interests of the media itself.<sup>30</sup> The application of this criterion in the decision-making process leads to a situation where the pre-meditated influence in content and form is preferable to the diversity, uniqueness and unpredictability, which come in second.<sup>31</sup>

Referring to reports of monitoring news editions completed by KKRT, in implementing the law, it is clear that there is a dis-balance of time in political topics in ratio to other topics of public interest, such as social topics or those related to politics and reformation of health system, economic issues or education. This bias in news editions is also visible in monitoring activities of politicians, again by KKRT. The time of political actors in power is calculated separately from their party activity, allowing the dis-balance in coverage between opposition leader and that of the ruling majority. Again, the new law on audiovisual media in its obligations seems to have sidestepped this issue. Article 33 formulates evasively the obligations of providers of media services. Paragraph 2 of the article states that "The definitions of points "a" and "b" of paragraph 1 of this article do not stop the media service provider from broadcasting activities of political forces. In this broadcasting the media service provider should not show any political bias.<sup>32</sup> The law does not stipulate how this lack of bias will be guaranteed. Due also to the ambiguity and contradictions that have surrounded the two councils, both KKRT and KDRTSH never managed to have a credible, professional, ethical orientation, based on integrity.

In the consultations for the new draft law<sup>33</sup> OSCE addressed again last year the concerns and recommendations regarding articles related to the functioning of the regulatory body KKRT and the Steering Council of RTSH as independent bodies. However, it seems that even this time the members of parliament, in spite of the lip service, thought it more reasonable to impose the political criteria as the foundation of the law, by legitimizing the formula of election of candidates from the political factions. The articles on the elections of KKRT, named as AMA in the new law, along with the articles on KDRTSH, bring again indirectly the political criterion through the formula of election of candidates mainly from associations and NGOs in the areas of media, electronics, the law, human rights, and public university academia. These candidates are supported half by one wing and half by the other, and out of 11 members only one will be elected through consensus.



To academician Artan Fuga an alternative would be for KDRTSH to be part of the public administration, composed exclusively of individuals without any interests in social and professional groups that are affected by their activity. Otherwise KDRTSH would face the logic of self-censorship, stemming from past psychology.<sup>34</sup>

This scheme, applied from politicians of the two wings in Albania, stems from the culture of administration of this television and its history. The history has recycled itself and while the management of the broadcaster has changed through the years, the mentality that state institutions cannot be independent and autonomous due to the very protection that the state has to show for public interest has turned into a taboo. Today it sounds equally paradoxical and dangerous when thinking that the law is sold as a “European” one, while the content and quality is similar to those of imported Chinese goods, which copycat European brands.

**The drafting of the audiovisual media law proved in fact that 14 years were not sufficient for an emancipation that would reform the law by overcoming the legitimacy of party lots of public institutions.** The drafting of a hybrid model of the law that in the key structures and mechanisms does not guarantee public interest, while safeguarding interests of political elites, is not the formula that will give us a Public Service Broadcaster. The politics, by following the traces of TVSH tradition, has legalized the future of the public broadcaster towards a polarized model. The approach that would allow stronger media professionalism, with a solid public broadcaster, demands emancipation and consensus of politics on this matter. This test failed. Therefore the perspective to develop a public service broadcaster more similar to the liberal model seems to be absorbed by the quest for power. One of the grave consequences of this process is the development of a well-informed public, which is a key element in a developed democracy. In this case society will continue to remain victim of an autocrat system, enclosed in a vicious circle, in the contradiction between the private and the public, at the expense of democratic interests.

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