

THE PROCESS OF DIGITALIZATION OF AUDIOVISUAL MEDIA IN ALBANIA. LEGAL LIMITATIONS OF OWNERSHIP AND THEIR CONSEQUENCES IN THE MARKET

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Abstract

Digital transmissions in Albania began in July 2004. Despite developing outside of any legal framework, terrestrial digital television quickly became an important aspect of the Albanian media market. Albania ratified the 2006 Geneva Convention on the digitalization of terrestrial TV broadcasters, and efforts to regulate the digitalization of audiovisual media began in 2007 with the approval of the first law for digital transmissions. The process of digitalization faced strong opposition due to pressure from existing television operators and their political connections. These obstacles caused significant delays, so the June 2015 deadline for the switchover was missed, and the finalization of the process failed to address the issues of illegality and concentration that plagued the Albanian audiovisual media market. Despite the existence of simple and enforceable legal ownership restrictions under the 2013 media law, the close connections between audiovisual operators, politics, and the justice system, allowed the market to become concentrated in the hands of a few owners, damaging media pluralism in the country and hindering the development of democracy.

According to the European Commission's 2022 annual report on Albania, the country is moderately prepared in the field of freedom of expression and media independence. The quality of journalism is hampered by the intersection of business and political interests, as well as the concentration and lack of transparency of media funding. The report notes that the lack of

independence of the regulatory authority undermines media freedom in the country and calls on Albania to ensure compliance with European standards on transparency and limitation of media ownership, state advertisements, and other related issues.

The purpose of this article is to highlight the issues and analyze the problems that arose during the digitalization process and the implementation of the law on audiovisual media in Albania. By providing a clear overview of the situation in the Albanian audiovisual media market, this article aims to address the challenges that the legislature must confront in the future, by the obligations arising from Albania's negotiations for membership in the European Union.

Keywords: *media, freedom, pluralism, ownership, beauty contest, digitalization, Albania*

1. INTRODUCTION

The audiovisual policy sector is particularly important for Albania's integration into the EU, given the significant obligations arising from the Stabilization and Association Agreement (SAA). Article 102 of the SAA, "Cooperation in the audio-visual", provides direction for cooperation in this field. Other documents that monitored the process of Albania's EU membership, such as the European Partnership or the European Commission's annual reports on the situation in Albania, also prioritized the harmonization of audiovisual legislation with the *acquis communautaire* and European standards.

Despite numerous legal and institutional efforts, the audiovisual media market in Albania continues to be dominated by informality and concentration, even ten years after the last law aimed at regulating the market was enacted. Various factors contribute to this situation, including a legal vacuum during the early development of private television, the close connection between media and politics, a weak regulatory authority that is often under strong political pressure, and dominant operators. In addition, rapid technological developments, electronic communication convergence, and the use of electronic equipment have made the spectrum an increasingly important source for broadcasting.

The digitalization process was expected to provide more opportunities for pluralism and diversity in the broadcasting field, as the spectrum provides more users than the analog system. However, it was recognized from the outset that digitalization carried the risk of monopolization and the cementing of pre-existing problems in the field of broadcasting.

The lack of systematic surveys and research on audiences made it difficult to evaluate the position occupied by different Albanian operators in the market, as well as their territorial coverage (Londo, 2012). In 2013, the coverage of the

Public Radio-Television (RTSH) was estimated to be approximately 80% of the territory (AMA, 2013). The private TV sector has grown rapidly, but in the absence of regulation, it became characterized by a disregard for the law. Even after the rules were established, the regulatory body has not always succeeded in establishing its authority over audiovisual media, despite achieving some important successes. The significance of private television increased due to the poor performance of public broadcasting, which has failed to reform itself into a true public broadcaster (Goga, 2017). On the other hand, commercial television stations, mostly located in Tirana, have benefited from large investments, particularly in equipment, becoming popular and important in the public eye (Kikia, 2012). There were two private national analog television stations, TV Klan and Top Channel, which covered approximately 40% of the territory of Albania, as well as two private national radio stations, which cover about 75% of the territory.

Digital broadcasting in Albania originated in July 2004 (Ramaj, 2012). Although the situation developed beyond any legal framework, digital terrestrial television was a reality in Albania in 2013, with nine digital unlicensed operators in the market (AMA, 2013).

Before 2007, Albania did not have any legal provisions in place to regulate digital broadcasting. Despite this, two broadcasters, DIGITALB and TRING, operated in the field of digital broadcasting without a legal basis and licenses from the National Council of Radio Television (now known as the Audiovisual Media Authority). Law no. 9742, dated 28.05.2007, "On Digital Broadcasting in the Republic of Albania", was drafted to regulate the operation of digital broadcasting in the Republic of Albania. The law addressed ownership issues through the inclusion of articles on media pluralism, which stipulated that a legal entity could not possess more than one terrestrial digital network (Londo, 2012). Despite the innovation, this law was considered insufficient to regulate the audiovisual media sector and to ensure the success of the digital transition in Albania. Due to the legal vacuum, lawlessness prevailed in the market, and the law remained essentially on paper, with little practical impact or enforcement. As a result, the situation in the market has been almost a monopoly, where besides the Public Broadcaster, DIGITALB owned almost the entire market, through five digital terrestrial networks.

The Strategy for Transitioning from Analog to Digital Broadcasting was approved by Decision No. 292 of the Council of Ministers on May 2, 2012 (Vrioni, 2018). This strategy outlined the main objectives and principles of the transition, formulated the role of the state and relevant government structures in creating the conditions for the switch to the digital system, assessed the existing technical and legal landscape of the Albanian audiovisual industry, and established the steps, procedures, and deadlines for the transition by June 17, 2015 (AMA, 2013).

A new integrated media law was, therefore, necessary, and after six years of work, technical assistance, and public consultation, the Albanian Parliament approved the new media law in March 2013. Before it entered into force, the audiovisual environment in Albania was remarkably rich, with about 56 radio

and 90 television analogue operators, 64 cable TV providers, and 5 satellite networks.

The process of digitalization in Central and Eastern Europe has been a subject of significant debate and has faced numerous challenges (Lengyel, 2006). Despite variations in the experiences of these countries (Danov, 2006; Vladkov, 2006), as of June 17, 2015, only a few countries in Southeast Europe and the Balkan Peninsula had not completed the analog switch-off process and fully transitioned to digital transmissions. Among them was Albania, even though digital television had been a reality in the country since 2004 (Kalaja, 2016, pp. 62-63).

Albania drafted its initial version of the digital switchover strategy in 2008, and the final approval of the strategy occurred in May 2012, making it one of the last countries in the region to do so (with Kosovo being the last country to approve it in 2015). Consequently, while many Central and Eastern European countries had already completed the process, Albania had yet to commence it.

2. THE PROCESS OF LICENSING OF NATIONAL OPERATORS IN ALBANIA

The process of formulating and drafting the Digitalization Strategy and the new media law in Albania received significant technical assistance primarily from the OSCE, CoE, and EU (OSCE, 2010). Various approaches have been adopted in Europe concerning the distribution of the digital spectrum and the licensing process. However, Albania opted for a digitalization model that diverged from the European experience. While European countries allocated a limited number of frequencies for terrestrial digital networks and reserved a larger digital dividend for other services, such as internet and mobile services, Albania adopted a different approach by constructing separate terrestrial digital networks for each channel instead of integrating existing analog channels into the planned digital networks (Bido, 2015). Law 97/2013, "On Audiovisual Media in the Republic of Albania," was unanimously adopted by all parliamentary parties in March 2013 and became effective on April 4, 2013. Articles 70 and 71 of the law acknowledge the frequency as a limited natural resource, a public property, and establish provisions for competitive licensing to access digital terrestrial networks.

The Strategy for transitioning from analog to digital broadcasting in Albania planned two national networks for the Public Broadcaster (RTSH) and three national private networks. This allocation was based on the capacities outlined in the National Plan for Digital Broadcasting, approved in GE-06. The second network for the Public Broadcaster was planned to carry local television (AMA, 2013, pp. 50-68). Under the law, the Public Broadcaster was granted two multiplexes. The government held a bid for approximately 24 million euros, which was won by the well-known company Rohde-Shwarz (Monitor, 2013). By the predetermined procedures, a contract was scheduled to be signed with the winning bidder on May 31, 2013. However, due to ongoing legal proceedings, the procedure experienced delays. Meanwhile, the newly formed

government following the 2013 parliamentary elections, which belonged to an opposition party, decided to reevaluate the contract to reallocate a network, initially planned for the public broadcaster, to private operators. Extensive debates and a protracted process revealed political actors' involvement in promoting the interests of private operators. Due to the legal obligation to comply with a court decision in favor of the German company, the Ministry of Innovation finalized the contract on March 19, 2015, with Rohde-Schwarz for the construction of the transmission platforms for RTSH networks (Kalaja, 2016, p. 93). Following the contract signing, albeit with some delays, the construction of the multiplexes commenced.

The law also included transitional provisions (articles 139-140) for the licensing of digital networks and programs during the transitional period for the implementation of full digital transmissions, following international agreements ratified by Albania. These provisions granted a privilege to the pre-existing operators in the market, with a procedure known as the "*beauty contest*." The procedure for the digitalization of the analog terrestrial networks of national private operators was provided for in Article 139 of Law no. 97/2013. This legal provision stipulated that "*b) based on developments in the audiovisual transmission market, AMA (Audiovisual Media Authority) identifies national historical private operators, as well as existing operators with experience in digital transmissions, who are invited to participate in the selection procedure, according to a beauty contest format for national digital networks. Within three months of the entry into force of this law, AMA makes a public announcement and invites operators to participate in the selection process.*"

By the aforementioned provisions, the Regulation "On Licensing of Digital Networks and their Programs through the Procedure of Beauty Contest" was approved by AMA Decision no. 10, dated 02.07.2013. This regulation outlined the criteria, including legal, financial, technical, and programmatic aspects, that applicants needed to fulfill to be invited by AMA for licensing in national digital broadcasting (AMA, 2013, p. 70). The private operators, "Top Channel" and "Digitalb", opposed the continuation of the licensing process publicly and consistently, both during the consultation process and after the approval of this regulation. They made proposals in which they suggested: "*suspending the regulation for a several-month period and conducting a full review by the Parliamentary Commission after the resumption of work by the Parliament of Albania in the next legislative term*". Such suggestions exceeded the jurisdiction of the Audiovisual Media Authority, which conducted its activities in compliance with and implementation of the legal framework (AMA, 2013, p. 71). Additionally, AMA Decision no. 12, dated 02.07.2013, titled "For the opening of the procedure of granting licenses to three national private digital audiovisual broadcasting by a beauty contest," invited the following entities to apply for a national license, encompassing both network and content provision: Digitalb, Media 6, Media Vision, Top Channel, and Tring TV. Based on the decisions above, the procedure for granting private national digital broadcasting

licenses was publicly opened on July 5, 2013. Some of the operators that were invited, specifically "Digitalb," "Media 6," and "Top Channel," filed lawsuits with the Tirana District Court, formally requesting the annulment of the administrative acts issued by AMA and the suspension of their enforcement. The court granted their request through Decision No. Act 16090, dated 31.07.2013, declared the acts of AMA null and consequently suspended the licensing process for national private digital networks (MOM Albania, 2018). Article 136 of the law specified that the deadline for the full transition to digital TV broadcasting was June 17, 2015. Article 139 outlined the "*beauty contest*" procedure, which granted privileges to national historical operators and existing operators with experience in digital broadcasting for a maximum transition period of 6 months. Following this transition period, AMA would be responsible for licensing digital networks, following the licensing procedures defined by law, through an open competition. Unlicensed operators were legally required to cease transmission within 30 days following the completion of the licensing procedure outlined in Article 139 of the law, but no later than 6 months from the law's entry into force. In the event of non-compliance with this obligation, AMA was authorized to initiate legal procedures and take necessary measures to free all frequencies occupied unlawfully. This 6-month transitional period concluded in October 2013. As a result, after October 2013, AMA had no legal basis to conduct the "*beauty contest*" procedure exclusively designed for this transitional period. Subsequently, the licensing of digital terrestrial networks, as per Articles 70 and 71 of the law, should be conducted through an open competition for each applicant.

After the left-wing parties assumed power in 2013, there was a change in leadership at AMA. In November 2014, a new head, who had previously been employed by Digitalb, was appointed.

Under the strong influence of Digitalb, the Minister of State for Innovation and Public Administration issued Order No. 4086 on December 3, 2013, establishing a technical working group titled "For the study of the possibility of increasing the coverage of terrestrial digital networks by and without compromising the plan of digital frequency bands approved by the GE-06 Agreement" (AMA, 2014, pp. 15-18). The study, titled "For the optimization of frequencies for DVB-T2 networks," was prepared by Digitalb and submitted to the Ministry of Innovation and Public Administration and the Audiovisual Media Authority for evaluation. It was also sent to the ITU Telecommunication Bureau for assessment (AMA, 2014, pp. 15-18). The purpose of this study, approved by AMA, was to increase the number of national networks from the original five allowed in the national plan to a total of nine networks. Due to the negative response from the ITU administration and the need for technical coordination of frequencies with neighboring countries within a distance of 1000 km, the Government abandoned the idea proposed in this study (AMA, Annual Report 2014, pp. 15-18).

On April 16, 2015, AMA announced a decision to open a procedure for granting private national licenses for digital audiovisual broadcasting through another "*beauty contest*" approach. AMA had no legal basis to carry out the "*beauty*

contest" procedure provided only for the transitional period until October 4, 2013. Afterward, the licensing of digital terrestrial networks, as outlined in Articles 70 and 71 of the law, should have been conducted through an open competition for each applicant. However, the AMA's decision had several other legal violations, particularly in terms of ownership restrictions, as four of the five companies invited to obtain national broadcasting licenses violated Article 62 of the law. If AMA had reached such licensing, it would have violated the law and created a pure monopoly, contrary to the principle of media pluralism. Due to the lack of the necessary legal quorum (5/7 members of the AMA), the AMA was unable to reach a licensing decision, and as a result, the affected subjects filed a claim with the Administrative Court of Tirana to address the issue. In February 2016, the Administrative Court of First Instance of Tirana (Decision no. 80-2016-1028, dated March 7, 2016) granted national broadcasting licenses to "Digit-Alb" sh.a., "Tv Klan" sh.a., and "Top Channel" sh. a. through a legally questionable decision. The court's decision did not address the issue of ownership restrictions but focused solely on the procedural aspects of the subjects' license applications.

In January 2017, two additional national broadcasting licenses were granted to "Media Vizion" sh. a. and "ADTN" sh.a., thereby concluding the process of licensing seven national digital networks. Among these networks, two licenses were awarded to RTSH, while "Tv Klan" sh.a., "Digit-Alb" sh.a., "Top-Channel" sh.a., "Media Vizion" sh.a., and "ADTN" sh. a. each received one license (AMA, 2016, pp. 12-13). Notably, data published by the National Business Center of the Republic of Albania reveals that the companies Digitalb, Top Channel, and ADTN are owned by a family with a major ownership stake of over 50% (MOM, 2018). Similarly, "Tv Klan" and "Media Vizion" are fully owned by two other families. These findings suggest that the entire licensing process violated Article 62 of the law, which imposed ownership restrictions.

Article 62 of the media law, in its entirety, constituted the legal safeguard aimed at preventing market concentration or monopolization by restricting ownership within broadcasting companies holding national digital licenses. During this period, a member of the parliamentary majority proposed repealing Article 62 of Law 97/2013, arguing that it impeded market competition (Zguri, 2017). However, this proposal faced strong criticism from official representatives of OSCE, CoE, and the EU, who expressed concerns about its potential impact on media pluralism and the risk of undue concentration.

Upon the conclusion of the licensing process, Albania allocated a larger number of frequencies for terrestrial digital transmissions compared to countries with significantly larger populations, such as Britain and France (Bido, 2015). This allocation undermined the public interest in maximizing frequency utilization for other services. Consequently, this licensing approach resulted in an initial concentration of media ownership, posing a threat to pluralism and democratic values (Kapri, 2015).

3. LEGAL LIMITATIONS OF OWNERSHIP: CONSTITUTIONAL COURT DECISION NO.56/2016 IN ALBANIA AND ITS CONSEQUENCES

3.1. European Approaches to media ownership

Media pluralism is considered one of the essential pillars of the democratic system and the rule of law, encompassing a broad concept (Brogi, 2020). In its 2007 Staff Working Document titled "Media Pluralism in the Member States of the European Union," the European Commission describes "*media pluralism*" as a concept that includes various aspects, such as diversity of ownership, variety in the sources of information, and the range of contents available in different Member States. Many authors and researchers associate media pluralism primarily with the plurality of ownership. The concentration of media ownership is perceived as a significant threat to freedom of expression and democracy, as it hampers the media's ability to represent diverse ideas and opinions and limits the representation of various political, cultural, and social groups. Media pluralism, as such, has been widely explored by legislation and case law both at the national and European levels. However, recent research studies have highlighted that the plurality of media owners does not necessarily result in diversity and pluralism of media output (Brogi et al., 2018, 2020).

The issue of media ownership and control, as well as its regulation, is highly complex from both legal and political perspectives. Media pluralism and competition are closely intertwined, often leading to debates and misunderstandings (Zaccaria, Valastro, & Albanesi, 2013). A key source of misunderstanding arises from the perceived dichotomy between *ex-ante* and *ex-post* interventions, as well as between regulation and competition. Regulatory interventions frequently aim to protect competition, thereby regulating the market. The ultimate goal of safeguarding competition is to prevent concentration within the audiovisual sector (Camanzi, Maglione, Bassan, & Venturini, 2012, pp. 15-18, 129-133).

At the core of media "regulation" in Europe lies Article 10 of the European Convention on Human Rights (ECHR), which safeguards fundamental rights as interpreted by the European Court of Human Rights. This provision has been incorporated into EU law through Article 6 of the Treaty on the European Union. The importance of preserving media pluralism is explicitly recognized at the EU level in Article 11(2) of the Charter of Fundamental Rights. However, EU law does not currently include media-specific regulations on diversity, and there are no Council of Europe conventions that specifically address the protection of media diversity. Nevertheless, there exists a longstanding tradition of Council of Europe recommendations and resolutions aimed at safeguarding media diversity.¹ Over the course of many years, the Council of

¹ Recommendation No. R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism

Europe has addressed various aspects of media pluralism and media concentration through numerous recommendations and declarations, either directly or indirectly. One of the most significant documents in this regard is Recommendation CM/Rec (2018)¹ of the Committee of Ministers to member States, focusing on media pluralism and transparency of media ownership. In this document, the Council of Europe emphasizes the utmost importance of the media and media pluralism in a democratic system (Cappello, 2016). It acknowledges the specific risks posed in the online environment and underscores the need to tackle growing concerns regarding political and economic pressures that seek to influence public opinion or compromise media independence.

According to the Council of Europe, the adoption and effective implementation of media-ownership regulations can play a crucial role in addressing these issues. Such regulations may involve restrictions on horizontal, vertical, and cross-media ownership, incorporating various criteria such as capital shares, voting rights, circulation, revenues, audience share, or audience reach to determine ownership thresholds (Cappello, 2021).

Many European countries have implemented specific rules to address media concentration, employing anti-monopoly regulations and imposing restrictions on ownership influence and diversity (Cappello, 2021). The substantive rules aimed at limiting undue concentration of media ownership should be designed to prevent any single individual or entity from exerting excessive control over a media market. At the same time, these rules should allow for the commercial development of the media industry and protect the rights of media owners. The criteria used to establish these rules can vary, depending on the media sector and local context, and may include metrics such as audience share, revenues, or the number of outlets. In addition to the concentration of ownership rules, it is suggested that other measures be implemented to promote media diversity. These may include must-carry rules, infrastructure-sharing obligations, content production quotas, and support for public and community broadcasters (Brogi, 2022). The application of these rules should be overseen by independent bodies with sufficient powers and capacity to monitor compliance and enforce the regulations. In Western Europe, efforts have been made to establish clearer limits on ownership concentration. However, some countries have loosened their regulations due to lobbying pressures (Cappello, 2016). Indicators of a plural and diverse media environment include regulations that prevent ownership concentration, transparency in ownership disclosure, licensing processes that promote diversity, compliance with international standards, and active monitoring of media concentration.

There have been numerous studies monitoring these indicators (Cappello, 2016). Studies conducted by the Centre for Media Pluralism and Media

Recommendation CM/Rec(2007)² of the Committee of Ministers to member states on media pluralism and diversity of media content

The Parliamentary Assembly of the Council of Europe Recommendation 2074 (2015) and Resolution 2065 (2015) Increasing transparency of media ownership

Freedom (CMPF) of the European University Institute in Florence have shown that a high concentration of ownership is considered a high risk if the four major owners in a country hold a market share above 50%. If their market share ranges between 25% and 49%, the risk is considered medium. Conversely, if their market share is below 25%, the risk of a high concentration of ownership is deemed low (CMPF, 2017).

These findings highlight the persistent and significant concerns regarding media ownership concentration, casting doubt on the assumption that media pluralism naturally emerges from digital technologies. While implementing ownership restrictions can address some issues associated with concentration, it is worth noting that related rules, such as limits on the number of licenses held by a single entity or market share thresholds, do not fully capture the qualitative aspect of media diversity.

The European Media Freedom Act (EMFA), the most recent development², which proposes new rules to protect media pluralism and independence in the European Union is another step forward in this direction (Borges, Carlini, 2022). It discusses the role of information as a public good, the transparency of media ownership and editorial independence, and the issue of media market concentration. The proposal addresses market concentration and editorial independence by establishing evaluation procedures for media mergers and introducing a supra-national body for supervision. The proposed law also sets criteria for assessing the impact of mergers on media pluralism beyond economic evaluation.

Transparency of media ownership is emphasized as a precondition for implementing these measures, enabling citizens to understand media content orientation. Licensing processes should also consider media ownership diversity and avoid consolidating undue concentration of ownership. Regulatory authorities should be empowered to address situations of undue concentration and take actions such as refusal of authorization or licenses, divestment of media properties, and imposition of sanctions if necessary. The digital switchover is highlighted as a context where special considerations are needed to prevent further concentration of media ownership. The EMFA has been widely praised by media pluralism researchers as a step forward with certain shortcomings (Cabrera Blazquez, 2022).

3.2. Albanian law on media ownership

Albania has also seen fierce debates on ownership restrictions in audiovisual media. Law 97/2013 "On Audiovisual Media in the Republic of Albania" was approved with the consensus of all political parties and had simple and clear rules related to media ownership at the time of approval. Compared to previous

² European Commission, 16/09/2022, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

legal regulations, this law presented improvements in terms of media ownership by addressing the shortcomings observed in the practical implementation of previous laws (Bushati, Leskoviku, 2016). Article 62, at the time of approval of the law, provided for ownership limitations on national and local audiovisual broadcasting licensing. This article stated that the national license for audio and audiovisual broadcasting is granted only to joint-stock companies registered in the Republic of Albania, which have audiovisual activity as their exclusive object. No natural or legal person, local or foreign, could own more than 40% of the total capital of the joint-stock company that holds a national license. A person who holds shares in a company that has a national license cannot own more than 20% of the total capital in a second company that has a national license. For analog audio broadcasts, participation of up to 10% in a third national company is allowed. Such a person is not allowed to obtain a local or regional audio broadcasting license or a local or regional audiovisual broadcasting license.

The law also distinguishes between two types of licenses for audiovisual broadcasts: a broadcast license that includes a license for the network and as a program operator and a license for the audiovisual program service provider. Point 10 of Article 62 regulates the "fictivity" encountered in practice from previous legal regulations (Bushati, Leskoviku, 2016). A shareholder is considered the holder of the shares and the persons related to them up to the second-degree family connection. Point 12 of the article contains another important limitation. No holder of national broadcasting licenses can broadcast more than 30 percent of advertisements in the audiovisual broadcasting market. The legal definition of the use of the multiplex provided by Article 63 of the law is another aspect that guarantees pluralism and fair competition (Bregu, 2017). In conclusion, Articles 62 and 63 of the law clearly and simply regulated the issue of limiting ownership in audiovisual media and issues related to the broad concept of media pluralism (Bushati, Leskoviku, 2016).

This type of legal regulation opposed the interests of private operators that had been operating without licenses in Albania since 2004. To maintain their status quo in the market and secure national licenses for digital transmission, they undertook a series of steps. After the failure of a legislative amendment aimed at repealing Article 62 of the law, initiated by a member of the majority, private operators turned to the Constitutional Court, successfully overturning Point 3 of Article 62 (The decision of the Constitutional Court will be analyzed below). In conclusion, the situation of media ownership concentration in Albania consistently receives criticism from international organizations. In 2021, Albania dropped 20 places in the media freedom index (WPI, 2021), reaching its lowest historical ranking. This deterioration is attributed to threats against editorial independence, violations of journalists' physical integrity, and the failure of the Albanian state to protect journalists from police violence.

The OSCE/ODIHR Report on the June 30th, 2019 elections, includes 20 recommendations, five of which pertain to the media field. It highlights the need for amendments to the audiovisual media law to effectively limit media ownership in the audiovisual broadcasting sector (OSCE/ODIHR, 2019).

According to the 2021 CMPF Report, the media landscape in Albania suffers from several challenges, including a lack of market diversity, heavy reliance on state-related financial flows, unclear regulations regarding unlawful concentration, undisclosed ownership, and non-transparent trading of media shares (Çibuku, 2022). A small group of individuals owns the majority of conventional media in Albania, leading to concerns that the concentration of ownership undermines freedom of speech by censoring journalists. The available data indicate a lack of media pluralism, compounded by a weak legal framework and institutions that blur the boundaries between media, politics, and business (Çibuku, 2022).

3.3. Decision no.56, date 27.7.2016 of Albanian Constitutional Court

In April 2016, the Albanian Electronic Media Association (AEMA) submitted a request to the Constitutional Court to declare paragraph 3 of Article 62 of law no. 97/2013 incompatible with the Constitution. The Albanian Electronic Media Association (AEMA) has requested the repeal of paragraph 3 of article 62 of Law No. 97/2013, dated 03.04.2013, "On audiovisual media in the Republic of Albania." The paragraph in question stated that "*No natural or legal person, local or foreign, may have more than 40 percent of the total capital of the joint-stock company that owns a national audio broadcasting license or a national audiovisual broadcasting license.*"

The petitioner argued that public interest is not protected through restriction but through alternative forms such as mixed ownership or restrictions based on real market data, which is being done within the European Community through the *acquis communautaire*. They also claimed that such a restriction is not found in areas of strong public interest such as education, health, security, and pharmaceuticals. The restriction on ownership puts citizens who dedicate themselves to media activity in a different position than those who choose to dedicate themselves to other legal economic activities, according to AEMA.

The interested party, the Parliament, has argued: "*The purpose of the limitation is to guarantee effectively the diversity and variety of programming content in the audiovisual field by preventing a powerful political or economic group in society from having a dominant position over these media, through the restriction of ownership concentration on media that hold a national license for audio or audiovisual transmissions. ...State intervention in economic freedom through the object of judgment provision is dictated by the situation in which press freedom is located in the country, assessed as "partially free" according to authoritative reports in this direction over the years. ...Entities exercising their economic freedom in the media field, who hold a national license for audio or audiovisual transmissions, are not in the same or similar conditions as other persons exercising their economic freedom in other fields, as the exercise of economic freedom, in this case, is through the use of radio and television frequencies, which are national assets of the country. Therefore,*

the claim of discrimination does not hold, as the entities are not in the same conditions."³

The Parliament argued that the state's intervention in economic freedom, as provided by the law, is necessary due to the country's situation of a "partially free" press, as assessed by authoritative reports. The Parliament maintains that it has acted within its authority to restrict media ownership, as necessary and appropriate for the Albanian context. The interference is proportionate because it only affects media with a national license for audio or audiovisual broadcasts, which have a stronger and more immediate impact due to their use of sound and image.

The Audiovisual Media Authority (AMA) summarized these arguments by stating that the limiting criterion established in paragraph 3 of article 62 of the law on media for the percentage of share participation is not coherent with changes in the media market. The restriction had as its necessity the guarantee of variety in the audio and audiovisual market, which is already guaranteed through other mechanisms such as limiting the number of licenses and programs and the percentage of advertisements. AMA also argued that the law provides for other measures that already guarantee the public interest that the restriction aims at, which is the avoidance of monopoly and concentrations, making the restriction unnecessary.

The court noted that the interests of both parties must be balanced, and the legislative mechanism must prove the real need for intervention in limiting shares in the general capital for natural or legal persons. The legislature must demonstrate that the goal cannot be achieved by other means and that the least harmful means have been used for subjects whose economic freedom is limited. The intervention tool must also be efficient and have brought the expected and desired effects in practice.

The Constitutional Court assessed the claim for infringement of the freedom of economic activity due to the lack of public interest and disproportionate intervention of the legislature, and it referred to its jurisprudence on economic freedom. The Court considered that the exercise of the activity in the field of media by natural or legal persons is an economic activity of general/public interest, protected by Articles 11 and 17 of the Albanian Constitution. Therefore, paragraph 3 of Article 62 of the law, which limits the percentage of shares owned by natural or legal persons in the capital of joint-stock companies, holders of national licenses for audio or audiovisual broadcasts, constitutes a restriction of economic freedom. Regarding the claim for the violation of the principle of proportionality, the petitioner argued that the limitation on the ownership of shareholders is harsh, exceeds the legislature's goal of a variety of information, and does not respond to this goal. It brings unwanted consequences in terms of the violation of the right of ownership of shares, the freedom of entrepreneurship, the deformation of the regular way of functioning

³ Constitutional Court, Decision no.56, date 27.7.2016 "On declaration as unconstitutional of paragraph 3 of Article 62 of Law No. 97/2013, dated 04.03.2013, "On audiovisual media in the Republic of Albania.", retrieved: gjk.gov.al, pp.4-5.

of relevant companies in terms of decision-making, as well as the distribution of shares of media companies.

The court recognized that AMA, as a monitoring and law-enforcing body, has extensive powers related to guaranteeing the variety of information and the lack of concentration of shares and the media market. Strengthening the monitoring and punitive powers of this institution and finding different ways and instruments of an administrative nature would be a more effective approach to guaranteeing the variety of information, as the final goal of the legislator.

The argument that AMA lacks control capacities and efficiency cannot be a sufficient reason for limiting the economic freedom of AEMA, according to the CC. The court assessed that even if the situation in practice is as claimed, the non-application of the law cannot be a reason for limiting the applicant's economic freedom. The court considered that even without the limitation of paragraph 3, the entirety of Article 62 of the law meets the constitutional interests of the legislature to avoid monopolies and concentrations in the media market.

The court has determined that the legislature's choice of using the most severe tool, that of limitation by law, is not based on an analysis of data, statistics, or studies of a factual, economic, political, sociological, and legal nature, and arguments provided by the executive/lawmaker to justify the chosen tool over others, the available alternatives, and the positive effects of the implemented tool. The court noted that in some other cases, legal norms were abolished due to non-compliance with the principle of proportionality (Bushati, 2017).

The court emphasized that although the objective of the provisions in question is a legal goal, the legislature is obligated to objectively evaluate and balance the interests involved, select appropriate means for their realization, and choose the restrictive means necessary to achieve the goal in accordance with the national context. Even in comparison with other European regional legislations, the court found that the restrictive model selected by the Albanian legislature is not found in any other legal framework and is, therefore, a counter-tendency. The court appreciated that, while the legislature's objective is essential and serves the public interest in a media system based on the variety of information, it is imperative for proportional legislative intervention to avoid conflict and select appropriate means for their realization. In this case, the envisaged restrictive measure does not serve the legislature's objective, and it is an inappropriate and unnecessary tool. In conclusion, the court found that the legislature's means of limiting the ownership shares of media companies is not reasonably and proportionally connected to the legitimate goal of ensuring a variety of information. As a result, the court deemed that the legislature's intervention is not in accordance with the principle of proportionality, and paragraph 3 of Article 62 of the Media Law should be repealed.

It is noteworthy to highlight the minority opinion on this decision, which emphasized the constitutional principle of proportionality (Bushati, 2017). According to this opinion, in cases where human rights are restricted, it is the legislature's responsibility to determine the legal goal and the means to achieve it, while the court controls the restriction and severity of the measure. This

control is based on compatibility with the goal and legitimate interest that the legislature aims to achieve and whether the measure significantly exceeds this goal as a coercive measure. The court does not check whether the measure is opportune or not, as it falls within the discretion and scope of the legislature's assessment. In this case, the legislature's interest in media transparency and information plurality has been significant enough to intervene in Article 62 of the media law through paragraph 3, subject to judgment. Even the majority has accepted that the goal sought to be achieved by the provisions subject to judgment is a legal goal. Disagreeing with this conclusion, the minority believed that the applicant did not present sufficient arguments to support the position that there were less harsh means to achieve the required goal, which would lead the Court to conclude that this restriction is unnecessary. Contrary to the majority's argument, the limitation established by paragraph 3 of article 62 of the law cannot be separated from the limitations provided by paragraph 4 of this article, according to this opinion. The abrogation of paragraph 3 of the law brings, as a direct and immediate consequence, the possibility of doubling the ownership in the media that own a national license for audio or audiovisual transmissions, making the ownership in these media even more concentrated. Therefore, even in this perspective, the comparative approach between paragraph 3 and paragraph 4 of Article 62 should have led the majority to the conclusion of the necessity of this restriction and not the other way around.

Based on the above analysis and arguments, the minority believed that the position of the majority, which concluded that the restriction is unnecessary, is based on assessments related to the adequacy and opportunity of the restriction, which belongs to the space and discretion of the legislature, rather than constitutional arguments. Along the same line, similar cases have emphasized that the Constitutional Court does not have the competence to assess whether the legal regulation is the fairest or the most suitable for achieving the goal expressed by the legislature. The Constitutional Court must assess whether the outer limits of the legislature's evaluation space have been exceeded or not.

This decision of the Constitutional Court of the Republic of Albania is controversial and contrary to the recommendations of the OSCE, the Council of Europe, and the EU on the non-repeal of Article 62 of the media law that deals with the issue of ownership restrictions, had its effects on the entire digitalization process and the distribution of licenses, concentrating the five national licenses in three families, and three of the five national licenses in a single family (Bushati, 2017). The inaction of the AMA and the lack of will of the Albanian Parliament to fix the legal gap created after the abolition of ownership restrictions have cemented the previous problems, concentration, and a situation contrary to the law in many aspects. Thus, in addition to the aspect of ownership, the distribution of national licenses has also led to violations of the law in terms of the operators' programs, the limitation of their legal number, their content, and the advertising market. Another important aspect of the violation of the law in this regard is that, despite the legal provision, local television stations were not allowed to be equipped with local network licenses, but due to the procedure followed by AMA, they were forced

to rely either on the Public Television networks or on the networks of the above-mentioned private operators, often at unaffordable costs for a local television station.

4. CONCLUSIONS

Officially, the year 2020 marked the completion of the digitalization of audiovisual transmissions in Albania, a difficult and time-consuming process associated with numerous challenges, fulfilling a national and international obligation as well as the growing demands of citizens (AMA, 2020, pp.73-74). The digitalization of audiovisual transmissions is considered one of the main achievements in the field of media, as the benefits of this important process are numerous and tangible for the Albanian public. The increase in the number of free television channels, the improvement of service quality, the increase in interaction, and the wide range of new services are some of these benefits. At the time of drafting the Digitalization Strategy, there was a fear that if the process was not carried out according to legal criteria and in the interest of the public for democracy and media pluralism, it would risk cementing pre-existing problems in the market. This situation could not be prevented, as noted in the latest 2022 European Commission Report on Albania.

The digitalization of broadcasting brought about various practical, legal, technical, and economic challenges. However, it did not address other issues in the broadcasting field, such as the lack of diversity, weak public service broadcasting, weak regulation, and pluralism. These issues should have been tackled beforehand, ideally before the digitalization process, or at the very least, during the early planning phases. Unfortunately, in Albania, the digitalization process inherited all the pre-existing problems.

From the first law in 1997 to the recent law, the Albanian legislature was careful to comply with European recommendations by adopting restrictive regulations for shareholders in the company holding an audiovisual license or other restrictions on secondary audio or audiovisual licenses. It is widely accepted that for countries with fragile democracies like Albania, having clear and simple rules that leave little room for interpretation and abuse is the best way to ensure competition in the audiovisual media market.

Despite this, the issue was only fully addressed in Article 62 of Law 97/2013. However, a proposal during the process of digitalization, by a majority member of parliament in 2016 to abolish Article 62 endangered not only the enforcement of this law but also jeopardized democratic standards and contributed to the creation of a background for media market monopoly. The Decision of the Constitutional Court no.56/2016 declaring paragraph 3 of Article 62 of the Media Law as incompatible further complicated the situation in the Albanian audiovisual media market. The decision not only seems confusing from a legal-constitutional analysis perspective but also infringes on the discretion of the Parliament to establish rules that are deemed useful to prevent media concentration.

Moreover, the decision did not consider the recommendations of the EU, OSCE, and CoE given for Article 62, in which the principle of editorial independence, which guarantees freedom of expression and media diversity, is guaranteed through ownership restrictions within the commercial company holding the audiovisual license. The decision caused a distorted situation in the audiovisual market, bringing about even greater concentration, and infringing further on media freedom in the country.

These problems are highlighted in every annual report of the European Commission for Albania since 2016. However, since the repeal of paragraph 3 by the Constitutional Court, no initiative has been undertaken by the Albanian Assembly to complete Article 62. The lack of will to address this issue is proof of the influence of large media groups on the Albanian legislature.

In July 2022, formal negotiations between Albania and the EU were opened, marking a crucial moment in the integration process of Albania into the EU. In the 2022 annual report for Albania, the European Commission underlined that Albania is moderately prepared in the field of freedom of expression and media independence. With the start of membership talks, resolving this problem becomes binding for the Albanian state. Following the steps defined by the EU Media Freedom Act, which will soon be adopted by Member States, would be a proper way to solve several problems in the Albanian audiovisual media market and accelerate Albania's accession to the European Union.

To guarantee a diverse and plural media environment in Albania, the legislation must incorporate clear and enforceable rules. These rules should include ownership restrictions, metrics such as audience share and revenues, limitations on the number of outlets, must-carry rules, infrastructure-sharing obligations, and content production quotas. By implementing such measures, the Albanian audiovisual market can ensure media diversity and contribute to the promotion of a democratic society.

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