

A Brief Analysis of the Impact of State Action (Legislative and Non Legislative) and the Challenges Facing Albania for the Establishment of a Coherent System to Protect Freedom of Expression on the Internet

Monika MEÇA¹

Abstract

This article seeks to analyze the Albanian legal framework on freedom of expression on the Internet, the legislative and institutional steps taken from Albanian government for creating an enabling environment for the exercise of human rights and fundamental freedoms online. The internet is a global resource which integrity, universality and openness should be protected and managed in the public interest. Internet holds enormous potential for development and is of critical value for democracy. It provides an unprecedented volume of resources for information and knowledge, the opportunities for the inclusion and participation of all people without discrimination and also helps for bridging the gaps in dialogue between states and citizens. The increasing popularity of the Internet social networking applications, raises new challenges of applying fundamental human rights like privacy protection and freedom of expression as interdependent in the discrepancy of the legal frameworks between online territory and the real one, given Internet's transnational diffusion.

Keywords: internet, freedom of expression, cyber, Albanian government, online.

An Enabling Environment for Internet Freedom

The Internet is increasingly becoming indispensable for Albanian citizens to take part in cultural, social and political discourse and life. Under Council of Europe jurisprudence it should be a safe, secure, open and enabling environment for everyone without discrimination². Everyone should be able to exercise their human rights and fundamental freedoms on the Internet, in certain cases, to narrowly circumscribed restrictions. The number of Internet users in Albania is increased several times over the recent years. According to the data published by the International Telecommunication Union, the penetration of internet in Albania over the last ten years has increased from 2,42 % in 2004 to over 60% in 2014.

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
2,42	6,04	9,61	15,04	23,86	41,20	45,00	49,00	54,66	57,20	60,10

In Albania during the recent years the use of the Internet has increased significantly and informatisation of the society is advancing very quickly. The Internet has now become a universal communications space in which individuals exercise their right to freedom of expression and information participating in activities and discussions concerning political issues and issues of general interest.

¹Ph.D. Student, Legal Expert, Department of Legislation, Monitoring of Programs and Anticorruption, Office of Prime Minister, Tirana, Albania,

²They must not be discriminated against on any grounds such as gender, race, color, language, religion or belief, political or other opinion, national or social origin, association with a national minority, property, birth or other status, including ethnicity, age or sexual orientation (Para 4 of the Appendix to CM Recommendation on the Guide to Human Rights for Internet Users).

Internet is very much part of the fabric of our most fundamental rights, ranging from freedom of expression, access to education, privacy or freedom of association and has a double-edge: it can either promote and expand our rights, or be used in ways that undermine them.

The positive effect of the internet and social networks on the freedom of expression is pointed out by the fact that many citizens express their views freely in these networks. As everyone has a right to say what they think, it is a way for some people to vent their anger without feeling self-conscious, nervous, or upset without resorting to violent actions. While a number of human rights have been identified as relevant with regard to the Internet, this global public good should be accessible to all and respectful of the rights of others. The Internet has a tremendous impact on the existing balance between rights as a result of its enabling power in favour of free information flow and has created new tensions as part of the complex relationship between freedom of expression, privacy and security. Several countries have adopted laws that require the state to work to ensure that Internet access is broadly available and/or preventing the state from unreasonably restricting an individual's access to information and the Internet³.

Legal environment

Freedom of expression is protected by Albania's legislation and by the country's obligations as an EU candidate country. The Albanian Constitution and supportive legal frameworks protect the freedom of expression and have existed in the country for many years. The basic laws that protect the right to freedom of expression and freedom of the press, the law on public broadcasters, and the law on the right to information reflect the jurisprudence of the European Court of Human Rights, which outlines clear standards on freedom of expression and further guarantee the rights of Albanian citizens. Although freedom of expression is recognized as a "basic human rights" there are some restrictions on the freedom of expression. In any system of international and national human rights, it is recognized that freedom of expression can be restricted only to a very limited criteria, and should be made with great care and must be in accordance with the International Covenant on Civil and Political Rights (ICCPR). 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 reputation of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

As many other researchers I believe that human rights online are essential. Freedom and security in cyberspace should co-exist to the extent that we can enjoy both. The cyber world has a major role in the stand-up for human rights, especially the rights of opinion implemented by expression through cyberspace. The cyberspace is a means to communicate without limits, thus it is grant to create a sense of justice and the protection in the freedom of opinion only if the user rights or user service is regulated in order to implement their right without any fear. However the implementations of these freedoms have to be concerned of other human rights so as not to cause disadvantage to others. Restrictions to the freedom of expression in the cyber world are needed to give protections to the human rights.

Restrictions are necessary to respect other rights and freedom of others, restrictions are made to meet the demand of fairness in accordance with morality consideration, religion values, security, and public order, as well as needed in a democratic country. Despite the fact that the right to freedom of expression includes all forms of electronic and Internet-based modes of expression, restrictions on ICTs, including the Internet, are on the rise, particularly legal restrictions that attempt to closely control the flow of information online. The cyber space should be considered as a multidimensional area, with several layers and territories, beyond the national borders. Limited access and/or lack of access to Internet and the digital illiteracy constitute a disadvantage for citizens, taking into account that the digital world characterizes the activity within the society. Every human being should be able to access Internet and have an unlimited information flow. The integrity and security of Internet should be guaranteed in order to provide safe access to all.

³Costa Rica; Estonia; Finland; France; Greece; Spain etc

National legislation and state action plan

In Albania the right to access the Internet is guaranteed by specific laws and regulations. One of the most important laws is the law On Electronic Communications⁴ which is approved in 2008, and a number of amendments have been added to help, develop and promote a free market and fair competition in electronic communications services. This law stipulates the establishment of a regulatory unit in the sector of electronic communication, “Authority of Postal and Electronic Communication (APEC)” which has the legal obligation to observe the principles of net neutrality in the field of electronic communication in order to prevent the deformations of competitions and to achieve the objectives of this law. Anonymity is unrestricted, and there have been extensive public discussions on anonymity and the respectful use of the internet. The Personal Data Protection Act (PDPA)⁵, first passed in 1999, restricts the collection and public dissemination of an individual’s personal data. No personal information that is considered sensitive—such as political opinions, religious or philosophical beliefs, ethnic or racial origin, sexual behavior, health, or criminal convictions—can be processed without the consent of the individual. The Commissioner for the Protection of Personal Data is the supervisory authority for the PDPA, tasked with “state supervision of the processing of personal data, management of databases and access to public information.” The current legislation on personal data (PDPA)⁶ was approved in 2008.

The E-Commerce Law⁷ which strengthens the protection of consumers (further to the Consumer Protection Law No. 9902, dated 17 April 2008) and imposes, among other requirements the obligation of the providers of information to give to the recipient of their service all information regarding their trading name, address, e-mail account, registration number, etc. The law further states that providing false or incorrect information shall be considered to be an administrative offence, and as such punishable by penalties. This law covers a chapter on electronic contracts whereby it explicitly states that offer and acceptance can be done electronically, but in any cases the contract is nevertheless deemed valid if it complies with the contract general principles and the form conditions provided in the Albanian Civil Code⁸.

As a result of the development of electronic media services, technological developments in the field of electronic communications and information society, in March 2013, the Albanian Parliament adopted the Law “For audio-visual media in the Republic of Albania”⁹, which aims to regulate broadcasting activity in the Republic of Albania, in accordance with democratic functioning of electronic media. Some provisions of the law prohibit broadcasting content and advertisements which promote hatred on the grounds of race, religion, ethnic origin, citizenship and other grounds of discrimination.

Previous legislation in this area despite constant changes, didn’t respond as needed to technological developments and convergence of services offered in electronic communications networks. In this Law, which guarantees freedom of expression for the press applies to online publication, are reflected the provisions of the European Convention on Human Rights and the Council of Europe recommendations in relation to freedom of opinion and expression (arts. 8 and 10 of the European Convention on Human Rights). The Law aims to extend the protections for press freedom online but also allows people to take legal action for libellous or hate speech online, including on blogs posts, tweets and Facebook comments. Law “On electronic identification and trust services”¹⁰ constitutes the legal framework for electronic identification, electronic seals, electronic delivery service and authentication of websites in the Republic Albania. The legislator aims to enhance trust in electronic transactions in the internal market by providing a common ground for secure electronic interaction between citizens, businesses and public authorities, thereby increasing the effectiveness of public and private online services and of electronic commerce in Albania.

⁴Law no. 9918, dated 19.05.2008, “ On Electronic Communications in the Republic of Albania”

⁵Law no. 8517, dated 22.07.1999 “On the protection of personal data”

⁶Law no. 9887, dated 10.03.2008, as amended “On Protection of Personal Data”

⁷Law no. 10128, dated 11.05.2009, amended by the Law 135/2013

⁸ Law no. 7850, date 29.07.1994

⁹ Law no. 97/2013

¹⁰Law no. 107/2015

The use of secure electronic means will enable public and private sector electronic identification and authentication in the portals of public services. There are some laws that regulate the criminal prosecution of computer crimes in the Republic of Albania, such as the law "On Ratification of the Convention on Cyber Crime"¹¹, which is reflected in the Criminal Code and the law "On ratification of Additional Protocol of the Convention on Cyber Crime, for the criminalization of acts of racist and xenophobic nature that are committed via computer systems"¹², which is reflected also in the Albanian Criminal Code¹³. Under Albanian Criminal Code are provided as penal acts those behaviours (defined as such from the Protocol of the Convention on Cybercrime), that refer to computer deliverance of materials that has to do with genocide, crimes against humanity, racism or xenophobia. In this law there are provided some provisions that make sanctions for illegal acts performed through computer, electronic devices, electronic networks etc, where the most widespread ones will be illustrated with examples from the court practices.

Actually, the Albanian penal legislation foresees provisions for the following criminal offences:

- Computer dissemination of materials in favor of genocide or crimes against humanity;
- Motifs intimidation, racism and xenophobia through computer systems;
- The distribution of racist or xenophobic material through computer systems;

These changes in substantive law are also supported with legal provisions of procedural nature¹⁴ by providing some procedural moments, as the obligation to submit the computer data, sequestration of computer data, expedited preservation of stored computer data, expedited preservation and partial disclosure of computer data. To protect the country from cyber-attacks in 2015 the Albanian government adopted a three-year Cyber Security Policy Paper¹⁵ that focuses on the development and implementation of new security measures, increasing competence in cyber security, improving the legal framework, bolstering international cooperation, and raising public awareness. All stakeholders from the public and private sectors are consulted in order to draft this document and assistance is provided also by the European Union experts.

The Government of Albania approved in April 2015 the Cross-Cutting Strategy "Digital Agenda of Albania 2015, which takes into consideration the objectives of the regional development specified in the Strategy SEE-2020 and supports the EU Digital Agenda. This document sets out the vision and development objectives for the period 2015-2020, as well as the main directions of policies that will be followed to fulfill these objectives. The Action Plan for the Broadband Development¹⁶ offers a vision of how access to the internet will develop by being utilized to the maximum by the Albanian families, even in the most remote areas. In consequence Albanian government continue to promote the introduction of ICTs in various sectors and has decided to use ICT in all the administrative institutions not only for the internal day to day work, but mainly in offering direct online services to the citizens and businesses.

Conclusions

As the Internet is by its very nature borderless offers great potential for the exercise of the right to freedom of expression and it can be used in good and in bad ways. Open and affordable internet access that is also secure and reliable is a prerequisite for online freedom. Therefore, states can significantly influence the free flow of information within their territories. In furthering internet freedom, states also have a duty to protect the rights and interests include cyber security, the right to privacy, protection against speech that incites violence, and the dignity of individuals. Albanian government is involved to foster and encourage access for all to internet communication and information services on a non-discriminatory basis.

¹¹ Law no. 8888, dated 25.04.2002

¹² Law no. 9262, dated 29.07.2004

¹³ respectively in the Law no. 9859, dated 21.1.2008; Law No. 10023, dated 27.11.2008; Law no. 10054, dated 29.12.2008

¹⁴ Law no. 10054, dated 29.12.2008, "On some additions and amendments to the Law No.7905, dated 21.3.1995 "Criminal Procedure Code of the Republic of Albania".

¹⁵ Decision of the Council of Ministers no. 973, dated 2.12.2015

¹⁶ Decision of the Council of Ministers no. 468, dated 30.5.2013

More initiatives must be undertaken on modernization of the legislation and reviewing it periodically, in order to address cyber security connected to the developments of cyber space in Albania and harmonization with the international legislation. The government also is engaged to encourage the use of qualified electronic signatures in electronic transactions as well as legal initiatives for the use of safe electronic identification, electronic seals in electronic government services, banking services, etc. in order to ensure the identity in the virtual world, being it for natural or legal persons. On the other hand ensuring openness online is not a matter that can be left to state alone. Internet service providers and companies have a key role to play in keeping the Internet open and accessible to all. The Albanian Government must support and take the necessary encouraging measures to strengthen the cooperation with the private sector regarding exchange of information on the vulnerabilities of ICT products and technologies, the new types of attacks, institutionalization of relations, developing plans of measures and coordinated actions and the mutual exchange of information regarding cyber attacks.

Although Albanian's involvement with internet freedom is nothing new, few people are familiar with what we do as a country in terms of advocacy for online freedom of expression. Albania is not very actively involved to affirm the importance of human rights and rights to freedom of expression on the internet although there are some political attempts to regulate online comments and a bill on cyber security is on the process of drafting. Albanian government will be engaged through review of the new national Strategy on Information Society and its concrete principles and actions to support internet policies which maximize the protection of human rights.

The problems related to the implementation of the Directive on data storage for prosecution purposes are also present in Albania's respective law. In this sense, it is necessary to consider the possibility of a revision of the law in order to achieve an approach which best guarantees individual's right to privacy and protection of personal data, in accordance with the standards established in international instruments and domestic laws that specifically protect such rights. The decisions issued by the European Court of Justice should be taken as a landmark in assessing current problems that the European model, used for the enactment and the implementation of Albanian law on data retention for prosecution purposes, presents.

Actually there is a need to continue tracking an expanded range of policies and regulatory issues of the Internet, and explore the relationships between freedom of expression and other key values and rights. More efforts need to be made in order to promote wider citizens' involvement and company's responsibility in Internet governance. Representatives of the Internet service providers online, media owners, readers, journalists should work together to ensure transparency, promote a multi-stakeholder approach and protect freedom of expression on internet as a fundamental human right.

References

- Appendix to Recommendation CM/Rec (2014)6 on the Guide to Human Rights for Internet Users. World Telecommunication/ICT Indicators Database online 2015.
- Law no. 9918, dated 19.05.2008, "On Electronic Communications in the Republic of Albania".
- Law no. 8517, dated 22.07.1999, "On the protection of personal data".
- Law no. 10128, dated 11.05.2009, "On E-Commerce".
- Law no.7850, dated 29.07.1994,"On the Civil Code of the Republic of Albania".
- Law no. 97/2013, "On the Audiovisual Media in the Republic of Albania".
- Law no. 107/2015 "On electronic identification and trust services"
- Law no. 8888, date 25.04.2002 "For ratification of "Convention for Crime in the Cybernetic Area""
- Law no.7905, dated 21.3.1995 " The Criminal Procedure Code of the Republic of Albania"