

Ivo Ivanovski

Minister of Information Society and Administration, the
Former Yugoslav Republic of Macedonia

London, 12 August 2013

Dear Minister Ivanovski,

I am writing to you on behalf of ARTICLE 19, an international freedom of expression organization, to raise our concerns with the draft Audio and Audiovisual Law (the Draft Law) and to call on you to bring it in compliance with international freedom of expression standards.

ARTICLE 19 is particularly concerned about the following provisions of the Draft Law:

- **Objectives of the Draft Law:** We note with a concern that the promotion of the right to freedom of expression is not among the purposes of the Draft Law (Article 2). This is a serious shortcoming because both the interpretation and enforcement of any media legislation should ensure respect and protection of the right to freedom of expression.
- **The independence of the Council of the Agency of Audio and Audiovisual Media Services** (the Council and the Agency respectively): We are serious concerned that the Draft Law lacks the safeguards for the independence of the Council of the Agency. Because the decisions by the Parliamentary Committee for Elections and Appointments and the Parliament are to be taken by an ordinary majority, the Draft Law allows for the ruling party to exert political influence over the appointment of the Council members. Moreover, members of political parties can become members of the Council. The Draft Law also does not ban the Council members from receiving instructions from other persons.
- **The nomination process of the Council:** We are concerned that the process of nominating the members of the Council (Article 14) is not transparent and civil society organisations are excluded from it. The Draft Law provides that only specific bodies could make such nominations. It also does not guarantee that the sessions of the nominating bodies and the Parliamentary Committee for Elections and Appointments are open to the public.
- **The responsibilities of the Agency:** According to Article 6 of the Draft Law, most responsibilities of the Agency are directed at media accountability. We note with regret that the Agency is not responsible for the protection of the right to freedom of expression. Additionally, we are sceptical that the Agency with a Council consisting of 7 members will be able to deal with so many different issues such as determination of illegal media concentration, pluralism, protection of minors and licenses, and others.
- **The funding of the Agency:** the Draft Law does not guarantee that the Agency has a sufficient budget and does not prescribe how the budget shall be determined. In the absence of clear provisions on determination of the budget, the Agency lacks financial and operational independence, as required by international standards.
- **The independence of the Director of the Agency:** we observe that the Draft Law contains no safeguards for the independence of the Agency's director; especially:
 - There is no prohibition of conflict of interest and no rules on incompatibility to ensure that the Director is not under influence of political powers or economic interests;
 - The director can be dismissed easily "for any violation of the law determined from the annual report" (under Article 21 para 1 e))
 - The director has no explicit right to appeal the decision against his/her dismissal.

- **Unclear competencies of the director:** Some competencies of the director and the council are identical. For example, Article 20 (2) provides that the director can issue resolutions on issues under the competence of the Council. The failure to differentiate the competencies will have a negative effect on the effectiveness and the independence of the Agency.
- **Content prohibitions:** We note that Article 48 of the Draft Law provides for blanket prohibition on programmes that, *inter alia*, “threaten the national safety”, “call for violent destruction of the constitutional order”, or “call for military aggression or armed conflict.” We recall that all restrictions on freedom of expression including content prohibitions must be prescribed by law, and pursue a legitimate aim and be also necessary and proportionate, in accordance with Article 10 (2) of the ECHR. Article 38 of the Draft Law does not provide that the programmes whose content is prohibited must meet the test of necessity and proportionality. The overbroad prohibition in Article 48 will have a chilling effect on the media and may lead to arbitrary restriction on legitimate expression.
- **No public consultations on frequency utilisation plans:** We are concerned that Article 69 of the Draft Law does not envision any public consultations on adoption of frequency utilisation plans and does not contain clear and objective criteria regarding the plans.
- **Licensing process** set by the Draft Law violates the international and regional freedom of expression standards for the following reasons:
 - There are no set objectives of the Agency when awarding licences such as maximising the overall public interest, or diversity of opinions.
 - The license procedure does not guarantee open hearings allowing the candidates to present their applications.
 - The Draft Law (Article 82) does not envision any hearings in cases when the Agency initiates a procedure for revoking licences and thus fail to guarantee due process in the proceedings.
- **The funding of the public broadcaster (MRT) and its independence:** The Draft Law does not guarantee that the MRT will have adequate funding to accomplish its mission and allowing a long term planning. Moreover, the determination of the licence fee is not made in consultation with the MRT. The candidates for the MRT Programme Council are shortlisted and appointed with ordinary majority by the Parliamentary Committee for Elections and Appointments and Parliament. This makes it possible for the party which dominates the committee and Parliament to choose their favourite candidate. Moreover, the draft Law does not ban the MRT staff from taking instructions from individuals or bodies outside the organisation and does not prohibit a priori control over MRT programmes. Finally the criteria for appointment and dismissal of the MRT director are not defined.
- **The sanctions:** The Draft Law fails to provide that the sanctions should be proportionate.

In order to address these shortcomings, ARTICLE 19 calls on you to revise the Draft Law as follows:

- The promotion of freedom of expression must be included among the purposes of the Draft Law (Article 2);
- The Parliamentary Committee for Elections and Appointments and the Parliament should decide on the nominations of the Council members of the Agency with a qualified majority;
- The Council members must be prohibited from receiving any mandate or taking any instructions from any person or body and from making any statement or undertaking any action which may prejudice the independence of their functions;
- Media organisations and civil society should be able to nominate Council members;
- Interviews with candidates for Agency’s membership should be public;
- The Agency should be responsible for ensuring protection of media freedom and freedom of expression as one of its functions;

- The Draft Law should set out a mechanism for determination of the cost of the Agency's activities and ensure that the latter has sufficient budget to function fully and independently;
- The independence of the director of the Agency should be guaranteed. In particular, it should add the provisions prohibiting conflict of interest, set out rules on incompatibility and require that interviews with the candidates are public. The dismissal of the director should be possible in serious instances only. The director should be able to appeal the decision for his/her dismissal to a court;
- The Draft Law should clearly distinguish the competencies of the director and the Council. The director should be responsible for the day-to-day management of the Agency only;
- Article 48 of the Draft Law should require that all content restrictions be necessary and proportionate to the aim sought in view of the circumstances of the specific case.
- The Draft Law should set out the criteria for license awards and guarantee the hearings are open and with the participation of the licence candidates. Licenses should be revoked only after a hearing with participation of the broadcaster whose license revocation is being considered
- The Draft Law should guarantee that the MRT have adequate funding to accomplish its mission and allow for long term planning. It should ensure that the determination of the licence fee is not made in consultation with the MRT, and that the candidates for the MRT Programme Council are shortlisted and appointed with qualified majority by the Parliamentary Committee for Elections and Appointments and Parliament. Moreover, it should ban the MRT staff from taking any instructions whatsoever from individuals or bodies outside the organization and prohibit a priori control over MRT programmes. The criteria for the appointment and dismissal of the MRT director should also be clearly defined.
- The Agency should be able to determine the type and size of sanctions in consideration of the particular circumstances of any case. The Draft Law should set out that sanctions must be proportionate.

We hope you will be able to consider these issues. ARTICLE 19 stands ready to provide you and other stakeholders in Macedonia with further support in the process of bringing the Draft Law in line with international freedom of expression standards.

Thank you for your attention to this urgent matter.



Dr. Agnès Callamard
Executive Director
ARTICLE 19

CC:

The Assembly of the Former Yugoslav Republic of Macedonia
The Parliamentary Commission on Transport, Communications and Environment,
The Secretariat for European Affairs of the Government of the Former Yugoslav Republic of Macedonia,
Delegation of the European Union in Skopje,
OSCE Mission to Skopje,
The Association of Journalists of Macedonia, Media Development Centre,
Macedonian Institute for the Media,
Independent Union of Journalists of Macedonia