**DRAFT LAW**

**No.\_\_\_\_\_\_/2018**

**ON**

**CHANGES AND ADDITIONS TO LAW NO. 97/2013 “ON AUDIOVISUAL MEDIA IN THE REPUBLIC OF ALBANIA”, AS AMENDED**

Pursuant to article 78 and point 1 of article 83 of the Constitution, and upon a proposal of the Council of Ministers, the Assembly of the Republic of Albania

**DECIDED:**

To make the following changes and additions to Law No.97/2013, “On audiovisual media in the Republic of Albania”, as amended:

**Article 1**

The title of the law shall change and shall become “On audiovisual and electronic media in the Republic of Albania”.

**Article 2**

Article 2 shall be amended as follows:

**“Article 2**

**The scope**

This law shall apply to audio-visual linear broadcasts, audiovisual non-linear broadcasts, and their support services and electronic publication services. This law shall not be applicable to the print media.”

**Article 3**

The following changes shall be made to article 3:

1. Point 17/1shall be added after point 17 as follows:

“17/1. Provider of electronic publication services refers to "natural or legal persons, who are registered with the register of providers of electronic publications, and provide electronic publication services.”.

2. Point 26/1shall be added after point 26 as follows:

“26/1 “Electronic publication” shall include, but shall not be limited to programs/publications, whose content is broadcast/published through the internet on a daily or periodical basis by providers of electronic publications for purposes of public information, entertainment, and education.

**Article 4**

In point 2 of article 4, after the word “... audiovisual ...”, the following words shall be added “... and providers of electronic publication services ... ”.

**Article 5**

The following changes shall be made to article 20:

1. In point 2, after the word “... audiovisual ...” the following words shall be added “... and the content of the providers of electronic publication services”.

1. The following changes shall be made to point 3:

1. In letter “a”, after the words “... providers of audio-visual media services...”shall be added “... providers of electronic publication services (PEPS) -...”

b) letter “b” is amended, as follows:

“b) review complaints according to articles 51, 51/1, 52, 53, and 53/1 of this law.”

**Article 6**

In letter “ë” of point 1 of Article 33, the words “…broadcasting, re-broadcasting…” shall be added after the words “copyright”.

**Article 7**

Article 33/1 shall be added after Article 33, as follows:

**“Article 33/1**

**Obligations of PEPSs**

1. Providers of electronic publications services shall:

1. ensure that publications are shown in a realistic, impartial, and objective manner;
2. ensure that the coverage of events, including issues, that are subject to public debate, is fair for all those interested in such issues, and that they are presented in a realistic and impartial manner;
3. take protection measures so that they are not used for criminal purposes;

ç)   ensure that they do not violatethe human dignity and fundamental rights;

1. serve equally to all their users, without any discrimination based on sex, race, religion, ethnicity or opinion of the people receiving them;

dh) ensure that they do not affect the national security and public safety;

1. ensure that they do not affect public health;

ë)   respect the rules of ethics and public moral and prohibit publications that may incite criminal offences;

1. respect copyright in compliance with the legislation in force on copyright and other rights related to it;
2. ensure protection of consumer rights;”
3. publish the following information in a clear and distinguishable manner:
   * 1. name and address\in case of legal persons, and name and address of its authorized representative;
     2. a window/an option, where a complaint may be made against published news.
4. assign a person(s) responsible for the respectivesector(s) of publications, whose name(s) and address(es) shall be clearly published. In assigning these responsible persons, the providers of electronic publication services shall take into account their professional, ethical, and moral qualities.

**Article 8**

Point 6/1 shall be added after point 6 of Article 42, as follows:

“6/1. All forms of communications of a commercial nature in audio-visual broadcasting and electronic publications regarding gambling, sport bets, casinos, and TV bingos shall be prohibited.”.

**Article 9**

Article 51/1 shall be added after Article 51, as follows:

**“Article 51/1**

**Procedures for treatment and review of complaints**

1. PEPSsshall be obliged to review every justified complaint made in writingby anyone regarding its published programs in relation to compliance with the requirements of Article 33/1 of this law.

1. Complaints shall be presented to PEPSsno later than 30 (thirty) days from the date the content was broadcast/published, while in case of two or more related publications, from the date the latest broadcast/publication occurred.

1. The person, who alleges a violation, shall ask the provider of electronic publication services, presenting the reasons and facts supporting his allegation, to remove the content in question.

1. The provider of the electronic publication service shall, within 24 hours upon receipt of the complaint, review the complaint and inform the complainant thereof.

1. When PEPS rejects the complaint, or fails to reply within 24 hours upon its receipt, the person [complainant] shall have the right to complain to the Complaint Council. The Complaint Council shall, within 72 hours upon the filing of the complaint, decide on the complaint, or on the claims presented by PEPSin case point 6 of this Article is applied.

1. When it deems it necessary, the Complaint Council shall refer the presented complaintto therespective PEPS for it to present its claims within 48 hours.

1. Following the review of the complaint and/or the claims of PEPS, the Complaint Council shall, in case violations are found, take appropriate measures, including sanctions in compliance with this law. In any case, the Complaint Council shall inform in writing both the person who made the complaint and the respective PEPS of its conclusions and measures.

1. The PEPSshall publish the conclusions of the Complaint Council when such conclusions are in favor of the person who had made the complaint within 24 hours upon receipt of notification; in the same form the publication against which the complaint is filed was made”.

**Article 10**

Article 53/1 shall be added after Article 53, as follows:

**“Article 53/1**

**The right of PEPS to reply**

1. Anyone, whose dignity or reputation is affected by the publication of inaccurate facts or information by PEPS,shall have the right to reply.

2.   The person, who exercises the right to reply, shall present a request in writing to the provider of the electronic publication, explaining the reasons and facts in support of his request.

3.   The request for the right of replymust be submitted to PEPS, within 7 (seven) days from the publication of the allegedly inaccurate facts or information.

1. The PEPS shall, within 24 hours upon receipt of such request, decide whether to exercise or reject the right of reply and shall inform the requester thereof.

1. When a provider of electronic publication services decides to exercise such right, it shall publish the reply of the person or institution affected/mentioned by its publication without any financial costs for the affected/mentioned person. The reply must be published in full, be visible and on the same page with the contested publication. If the publication is removed from the page/portal before the reply of the affected/mentioned person is published, his reply must be placed on a position comparable to, and for the same duration as, the previous publication.
2. Providers of electronic publication services shall not be obliged to publish the reply provided for under point 1 of this article when:

a. the affected/mentioned party does not have a legitimate interest in giving a reply;

b. the reply unduly exceeds the level of affirmation of the contested facts;

c. the reply is not limited to factual information only or includes content related with the process of criminal proceedings;

Providers of electronic publication services shall not be obliged to publish any reply to contested news/information in relation to live reportson open sessions of the parliamentary bodies or any other state bodies.

6.   If the requester does not receive a reply within the deadline provided for in point 3 of this article, it is assumed that the PEPShas rejected his request.

7.   The Complaint Council shall, within 72 hours upon receipt of a complaint about the rejection of a PEPS, review the complaint and ask PEPS to correct the facts and information regarding the person concerned, in the same form and duration with that of the publication subject to the complaint, within 48 hours upon receipt of the notification:

1. At the beginning of the complaint review, the Complaint Council shall ask the PEPS, to which the complaint is addressed, to provide explanations regarding the complaint.

1. The Complaint Council shall send to the complainant and the respective PEPS its justified conclusions on the case.

1. The Complaint Council may reject a complaint when:

a)  it finds it abusive, not grounded, or made in bad faith;

b)  the right to ask for a replyis the personal opinion of the person and has nothing to with the correction of any news of factual or informative character;

c) the right to ask for a replycontains false facts and information;

ç)  the right to ask for a replyis requested in order to prevent acts that may be expected or that have not yet taken place

d) the fulfillment of the right to replyincludes a punishment, exceeds rules of good behavior, or leads to the punishment of the provider of the media service in a civil judicial process;

dh) the person affected by the contested information has no legitimate interest at the time he requests to exercise his right to reply;

 e) the contested publication contains such a statement or declaration by the affected person that is considered equivalent to the requested replyitself, or when the person has given his formal preliminary consent regarding the content of the publication;

ë) an equivalent correction of the contested information is already made and the affected person is notified thereof;

f)  the content of the requested replyviolates the rights of a third party;

g)  the case subject to the complaint is related with statements made during parliamentary activities, conduct of court hearings, or broadcasting of activities of political entities;

gj)  the publication of the right to replyis not in the public interest;

h)   the request is submitted after the deadline [for submitting requests] has expired.”

**Article 11**

The following changes shall be made to Article 132:

1. In the first sentence of point 1, after the words “... of this law..”, the following words shall be added “... except for Articles 33/1, 51/1 and 53/1 ...”.

1. Under point 3, the following paragraph shall be added:

“For violations committed by providers of electronic publication services, AMA shall ask the Postal and Electronic Communications Authority (PECA)[[1]](#footnote-2)to take the following complementary measures:

1. For PEPSs registered with PECA:

a) suspend/block access to internet for a deadline of 24 hours if it has committed 3 (three) administrative contraventions foreseen by this law within one calendar year;

1. suspend/block access to internet for a deadline of 7 (seven) days, if it has committed not less than 4 (four) administrative contraventions foreseen by this law within one calendar year;
2. suspend/block access to internet for a deadline of one year, if it has committed not less than 5 (five) administrative contraventions foreseen by this law within one calendar year.

1. For providers of electronic publication services, which are not registered with PECA:

1. Block access to services of electronic publications in the territory of the Republic of Albania for a deadline of 24 hours, if they do not review the complaints referred to them by the Complaint Council, more than three times during a calendar year;
2. Block access to services of electronic publications permanently in the territory of the Republic of Albania for a deadline of 24 hours, if they do not review the complaints referred to them by the Complaint Council, more than four times during a calendar year.”

**Article 12**

After Article 132, Article 132/1 shall be added as follows:

**“Article 132/1**

**Measures for violations by PEPSs**

1. In case of failure to comply with the legal obligations foreseen by Articles 33/1, 51/1 and 53/1 of this law, the Complaint Council shall impose a fine and oblige the PEPSto publish the apology formula according to the decision corresponding to the violation found.

1. A complaint may be made against the decision of the Complaint Council according to point 4 of Article 132 of this law. The complaint shall not suspend the execution of the decision of the Complaint Council.”

**Article 13**

The following changes shall be made to Article 133:

1. After point 8, the following paragraph shall be added:

“Unless the following violations made by PEPSs constitute criminal offences, they shall be considered administrative contraventions and shall be punishable as follows:

a)  By a fine varying from 100 000 (one hundred thousand) lekë up to 1 000 000 (one million) lekë in case of failure to comply with the requirements of Article 33/1 of this law;

b)  By a fine varying from 800 000 (eight hundred thousand) lekë in case of failure to comply with the decision of the Complaint Council or the right to reply, according to Article 53/1 of this law.”.

2.   Under point 10, before the word “... inspectors ...” the phrase “... Complaint Council ...” shall be added.

**Article 14**

This law shall enter into force 15 days upon its publication on the “Official Journal”

**CHAIR**

**GRAMOZ RUÇI**

1. AKEP, as it is better known by its Albanian acronym. [↑](#footnote-ref-2)