

LSE MEDIA POLICY PROJECT

When Formally Independent Regulators are not Actually Independent

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The National Council of Audiovisual (CNA), which functions as the sole regulatory authority in the Romanian audiovisual sector, has been under serious public scrutiny in recent years. Several media monitoring associations and media analysts have publicly condemned the repeated violations of basic journalistic principles evident in the reporting on the recent elections broadcasted by two private television stations: Romania TV and Antena 3 (both owned by people with notorious political ties). Nevertheless the CNA failed to give any warnings, recommendations or sanctions at the time.

This controversial case provides an excellent example of the larger problems related to the independence of regulatory authorities. This paper draws on lessons from this case to make recommendations for policy to address lack of de facto independence in such institutions.

De Facto Political Influence

Current Romanian legislation is in line with EU standards (the current Audiovisual Law includes provisions of the AVMS directive and the CNA's internal code of conduct was revised as part of the EU integration process), and seemingly ensures the de jure independence of the CNA from political or media industry interference. However, there is significant evidence from analysis and monitoring undertaken by competent bodies that de facto independence is often lacking:

- A comprehensive report on the independence and efficient functioning of audiovisual media services regulatory bodies across Europe (INDIREG, 2011)¹ found that although CNA members should by law not be politically

involved, “in practice they always have a political affiliation”.

- The report on Progress in Romania, issued by the Commission in January 2013 under the Co-operation and Verification Mechanism (CVM), expressed “particular doubts whether the National Audiovisual Council is proving an effective watchdog” of the media sector, and explicitly said that the entity “should be assured of its effective independence, and play fully its role by establishing and enforcing a Code of Conduct in this regard”².
- The annual report on freedom of expression issued in 2013 by ActiveWatch, a media monitoring NGO which is part of the Reporters Without Borders network, stated that Romania's CNA is an institution “particularly exposed to political aggressions”³, claiming that both the party in Government and the party leading the opposition have applied pressure preventing CNA from doing its job properly.

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—VALENTIN JUCAN, CNA BOARD MEMBER

These problems have even been admitted by some within the CNA. “CNA is led by a majority which shows solidarity with the political party currently in power and which, by the decisions it took in the past 2 years, has favoured the misleading and manipulation of the Romanian public”, says Valentin Jucan, a board member of CNA who has repeatedly criticised the institution.

Critical Case: Inaction During the Elections

As prescribed by the Audiovisual Law, before the start of the campaign for Romania's 2014 presidential elections, the CNA issued a set of rules for audiovisual channels, binding them to fair and balanced representation of all political candidates, including providing equal space for all opinions, not promoting hate speech, and other requirements. However, the institution failed to react when these rules were repeatedly infringed.

Several NGOs, including ActiveWatch and the Center for Independent Journalism, media analysts and other stakeholders expressed public concerns in connection to how the presidential elections were reported in the Romanian media, particularly on Romania TV and Antena 3, and called upon the CNA to react. The response, however, was weak and belated: on 15 January 2015, the CNA only issued Antena 3 a symbolic fine for one of its election reports, the equivalent of approximately 2200 euros.


Complaints about the lack of independence of the CNA and the special, overly-lenient treatment of Romania TV and Antena 3 during the elections were reinforced in recent months. In two leaked recordings, Laura Georgescu, the leader of CNA's board, admitted that she protects Romania TV, whose owner, Sebastian Ghita, has until recently represented the governing party PSD in the Chamber of Deputies, from CNA sanctions. Moreover, Georgescu is currently under investigation by the National Anti-Corruption Department (DNA), for (1) falsifying complaints sent by viewers, leading to the repeated sanctioning of some TV stations and, (2) unlawful intervention in the process of granting a broadcasting license.

Conclusion and Policy Recommendations

Though the current Romanian Audiovisual Law does create the legal foundations for the independence of the CNA, evidence shows it is often not de facto independent. The EU's Audiovisual Media Service Directive in article 30 assumes the existence of "competent" indepen-

dent regulators, but as the Romanian case demonstrates, this can be a misplaced assumption, particularly in post-communist countries in which there is a poorly developed "culture of independence", a strong tradition of "political clientelism", and chronic corruption⁴.

The Commission should revise the AVMSD to include more concrete and binding measures to ensure the independence of regulators. More efforts could be made for fostering actual independence by:

- (1) Requiring that civil society organisations, professional organisations, and various other non-political stakeholders have a role in appointing members of national regulatory authorities (NRAs);
- (2) Encouraging cooperation between NRAs and independently financed think-tanks and/or media monitoring groups, which can be quicker to notice and denounce instances in which de facto independence is compromised;
- (3) Institutionalising cooperation, and exchanging of best practices among European NRAs. 

¹ INDIREG. Final Report (2011). "Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive" (SMART 2009/0001). Available at http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf. Accessed on January 20, 2015.

² EC (2013). "Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism". Available at http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf. Accessed on January 20, 2015.

³ ActiveWatch (2013). Raportul FreeEx. Libertatea presei in Romania. 2012. Available at [http://www.activewatch.ro/Assets/Upload/files/Raport%20FreeEx%202012\(1\).pdf](http://www.activewatch.ro/Assets/Upload/files/Raport%20FreeEx%202012(1).pdf). Accessed on January 20, 2015.

⁴ See, among others: Downey, J. and Mihelj, S. Surrey (2012) "Central and Eastern European Media in Comparative Perspective: politics, economy and culture". England: Ashgate. ; Hallin, D. and Macini, P. (2012) "Comparing Media Systems Beyond the Western World". Cambridge: CUP.