



**REPUBLIC OF MACEDONIA
AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICES**

(Courtesy translation)

To: Ministry of Justice of the Republic of Macedonia
Attn: Mr. Adnan Jashari, Minister
Subject: Information about the weaknesses detected in the Electoral Code's provisions concerning media representation

Dear Mr. Minister,

Based on the experience gained during the monitoring of media coverage of the 2014 election processes, which were carried out within a considerably changed legal framework when it comes to media representation, the Agency for Audio and Audiovisual Media Services would like to inform you about certain weaknesses detected in the provisions of the Electoral Code concerning media representation, hoping that you will take these into account in the current, or some future, revision of the Electoral Code.

We deem it important to point out to you our findings now, considering that:

- For some time, as a result of the Przino Agreement, the political entities have been discussing amendment of the Electoral Code, among other things;
- The working group of the Ministry of Justice which surveyed the Action Plan for amending the electoral legislation in tune with the OSCE/ODIHR recommendations concerning the 2014 presidential and early parliamentary elections (in which the Agency took part), did not discuss other problems detected in the electoral regulations;
- The latest amendments to the Electoral Code, which also covered the regulations concerning the media, were made on the eve of the 2014 election processes.

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1. There is a difference in the principles of balanced coverage of the elections in the news between the commercial media and the Public Broadcasting Service. For instance, according to Article 75-a, commercial media have an obligation during parliamentary elections to distribute the news time among the participants in the election campaign based on the number of their lists with verified MP candidates. This practically means that all participants in the election campaign (regardless of whether they are well-established or totally new political entities) that will have verified lists in all 6 election units, should be given nearly the same chunks of time in the news. All entities with verified lists in 5 election units should also share among them approximately equal chunks of time in the news which will be proportionally shorter than the chunks of time dedicated to the participants in the election campaign with lists in 6 election units. This formula should apply all the way down to the participants with only one list of verified candidates. For the presidential elections, the principle of equality applies, where all candidates, regardless of whose candidates they are (supported by a party, coalition, group of voters), have the right to equal time in the news.

The provision under Article 75-a that defines how the broadcasters should ensure balanced coverage of the elections for all kinds of election processes and in all types of programmes, i.e. forms of election media representation, and not only in the news, refers to the Public Broadcasting Service as well. However, Article 76-a stipulates a specific obligation for the newscasts of the Public Broadcaster (MRT), which is totally different from that of Article 75-a and refers to all election processes. According to this article, the MRT has an obligation to divide the news time into three thirds, where one third should be dedicated to the daily events in the country and the world, another third is dedicated to the campaigning activities of the ruling political parties, and the last third is dedicated to the campaigning activities of the opposition political parties. The reporting time concerning the campaigning activities of the ruling and the opposition parties should be distributed according to the results gained at the last parliamentary elections. In the case of presidential elections, this means that only the presidential candidates proposed by the political parties in power and in opposition who have won MP seats in the previous parliamentary elections have the right to news reports about their activities.

2. The specific obligation for the MRT news under Article 76-a contains in itself a number of shortcomings:
 - It does not provide equal opportunities for access to the broadcasters' programmes for all participants in the election campaign, i.e. it does not envisage time for covering the activities of the non-parliamentary parties or independent candidates at all, which is contrary to the general requirement of Article 75, Para 2;



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- It is not entirely applicable to presidential and local elections (mayoral elections). It is inappropriate to distribute the time for covering the activities of the presidential and local election candidates based on the “results from the last parliamentary elections”; in the case of these election processes, it is more logical to abide by the principle of equality of all candidates;
 - In practice, there are problems with the interpretation of the term “results from the last parliamentary elections, since: a) there are parties that have participated in the previous elections but have not won any MP seats; b) the situation concerning the number of MP seats right after the elections is different from the one before holding the next elections, due to transfers of MPs from one MP group into another or due to the appearance of independent MPs;
 - How the specific obligation referring to the MRT news under Article 76-a (the three-thirds rule) will be implemented in the MRT 2 news for the ethnic communities living in the Republic of Macedonia, is a separate issue, as, traditionally, these news report more on the activities of the parties and candidates of the ethnic communities. During the 2014 election processes, MRT 2 implemented an inverse model of time distribution compared to MRT 1, but this was not regulated by the Electoral Code.
3. The provision ensuring free political representation on the Parliamentary Channel (Article 76-a, Para 8) revealed a number of flaws during the last election processes, dilemmas about the manner of implementation and everyday problems for the Editorial Board of this channel when planning the programme, due to the uncertainty about how much of the time would be used on a daily basis:
- The provision envisages time for free political representation of only the ruling and opposition parties based on the results of the previous parliamentary elections, which is contrary to the requirement to ensure equal access conditions to all forms of media representation of all participants in the election campaign (Article 75, Para 2);
 - The distribution of time based on the results of the previous parliamentary elections is inapplicable in the case of presidential and local elections (as explained above);
 - The formulation ‘three hours of free political representation for each’ is not quite clear – does it mean three hours for the ruling parties and three hours for the opposition parties throughout the entire election campaign, or a total of three hours for the government and the parliamentary opposition each day throughout the entire period of election campaigning, divided in half (90 minutes for the government and 90 minutes for the opposition, daily).
4. During the election processes in 2014, paid political advertising appeared from non-governmental organizations in favour of certain participants in the election process. This



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advertising is not covered by the definition of paid political advertising (direct access for the participants in the election campaign to the electors) and, therefore, it cannot be calculated into the permitted advertising limits for one participant in a campaign per real hour (8 minutes), however, it provides greater visibility for certain political standpoints and should, as such, be regulated.

5. In accordance with Article 76, Para 7, the SEC's (State Election Commission) campaigns are not considered as paid political advertising (PPA) and, hence, are not calculated into the allowed PPA limits of 12 minutes per real hour. As spots by non-governmental organizations calling for fair and democratic elections are also broadcasted during campaigns, these should be excluded from the PPA limits as well and be broadcasted within the frameworks of the regular 12 minutes of advertising per every hour.
6. There is a difference in the amounts of fines for non-balanced coverage of the election campaign in the news for MRT and the commercial media, respectively. According to Article 181, Para 1, Indent 6, the fine that MRT should pay in case it does not ensure equal access to its informative programme ranges from 1,500 to 3,000 Euros in denar counter-value, and from 300 to 1,000 Euros for the responsible person within the legal entity (MRT). According to Article 181, Para 1, Indent 1, fines ranging from 3,000 to 5,000 Euros in denar counter-value will be imposed on the legal entity should it fail to ensure coverage of the elections in a just, balanced and unbiased manner, and from 500 to 1,500 Euros in denar counter-value on the responsible person, respectively.
7. The Agency also considers that thought should be given to the following:
 - Determining different amounts of fine for different categories of media – at the local, regional and national levels, and
 - Increasing the amount of fines for non-balanced and biased coverage of the election campaign and exceeding the limits for paid political advertising, as a measure that would lead to reducing the Electoral Code violations.

The stance of the Agency for Audio and Audiovisual Media Services is that the Electoral Code provisions referring to media representation should be consolidated and advanced, so as to avoid their frequent amending, and increase the legal security of the media during election processes, as well as that of the participants in the election campaigns. With regard to these provisions of the Electoral Code, as well as its Methodology for Monitoring Media Coverage of Elections, the Agency has sought an opinion from the international organization *IDEA International* (Institute for Democracy



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and Electoral Assistance), and is prepared to cooperate with the Ministry through ideas and proposals for their revision.

Yours faithfully,

Agency for Audio and Audiovisual Media Services
Director,

(original signed and stamped)

Zoran TRAJCEVSKI, Ph. D.