



REPUBLIC OF MACEDONIA
AGENCY FOR AUDIO AND AUDIOVISUAL MEDIA SERVICE

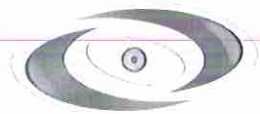
To: H.E. Dunja Mijatovic,
The Representative on Freedom of Media, OSCE

No. 03-7052/1

Skopje 16.12.2015

Subject: Media Laws negotiations

Dear Ms. Mijatovic,



We are certain that You are closely following the media related developments in Macedonia. Whatever the political outcome, we rest assured the legislative framework was impeccable.

Agency for Audio and
Audiovisual Media
Services

Given the special role Your office played in the process of the creation and adoption of the media laws, we feel obliged to inform you on the ongoing political negotiations. With no public debates or any other transparency aspects respected during their adoption, any political outcome leading towards potential amendments can jeopardize the content of media legislation, as freedom of expression is non-negotiable.

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The current state of affairs is the following:

www.avmu.org.mk
www.avmu.mk
contact@avmu.mk

1. The opposition political party negotiators have come out with proposals that they demand to be adopted as amendments (please find enclosed the English version of the proposals).
2. The governing political party negotiators have not submitted any text and suggest in case the current laws are overruled, that the media law of any EU member state shall be copy-pasted.

If there are more documents on the way and during the process of these political negotiations, I will make sure to provide them, bearing in mind the OSCE's expertise provided and its active role in the entire process.

Best regards,



Agency for Audio and Audiovisual
Media Services

Director

Zoran Trajcevski, PhD

LAW AMENDING THE LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES

Article 1

In the Law on Audio and Audiovisual Media Services (*Official Gazette of the Republic of Macedonia* No. 184/2013, 13/2014, 44/2014, 101/2014 and 132/2014), Article 14, Paragraph (2) shall be amended to read as follows:

“Authorized nominators of the members of the Council shall be:

- the two associations of journalists of the Republic of Macedonia with the largest memberships, each of which shall nominate one member to the Council, and
- the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia, which shall nominate candidates for the seven members of the Council, as follows: three candidates on the proposal of the opposition and two candidates on the proposal of the government.

“In nominating members to the Council, the authorized nominators shall abide by the principles of professionalism, equitable representation and competency of the nominated candidates, as well as the recommendations of OSCE/ODIHR and the Council of Europe contained in their reports on the 2014 electoral process.

“The members of the Agency Council should reflect the diversity of Macedonian society.”

Article 2

In Article 19, Paragraphs (1) and (2) shall be amended to read as follows:

“The director of the Agency shall be elected by the Assembly of the Republic of Macedonia, on the proposal of the opposition.

“The candidate must have a university degree and over five years of work experience at a managerial position in the field of audio and audiovisual media services, i.e. the sphere of communications, journalism, culture or law. The provision under Article 16, Paragraph 2 of this Law shall be applied accordingly to the director of the Agency.”

Article 3

In Article 21, Paragraph 1, after Indent f), a new, Indent g), shall be added to read as follows:

- e) by force of law

Article 4

Article 23 shall be amended to read as follows:

Measures in case of violation of the regulations

(1) If a print media publisher, a provider of on-demand audiovisual services or an operator of public electronic communication networks that retransmits programme services is found to have disregarded the provisions of this Law and the bylaws adopted thereof, or the terms and obligations laid down in the license and other Agency acts, the director of the Agency may undertake the following measures against them:

- adopt a decision to warn them;
- file a request for initiating a misdemeanour procedure;
- impose a temporary ban on advertising or teleshopping for up to 30 days;
- revoke the license, or
- adopt a decision to erase them from the Register, in accordance with this Law.

(2) The director of the Agency may undertake any of the measures under Paragraph (1) of this Article, depending on the gravity of the established violation of the provisions of this Law.

(3) The Agency shall publish the measures undertaken under Paragraph (1) of this Article, along with a detailed rationale, on its website, within three days from their adoption.

Article 5

In Article 24, a new Paragraph shall be added to read as follows:

(4) The charges brought to initiate an administrative dispute do not delay the execution of the decisions and motions adopted in case of violation of the provisions of this Law.

Article 6

In Article 82, after Indent 8, a new, Indent 9, shall be added to read as follows:

“- if, in performing the activity, the license holder acts contrary to the principles laid down in Article 61 of this Law.”

Article 7

In Article 84, after Paragraph (1), a new, Paragraph (2), shall be added to read as follows:

“(2) The charges shall not delay the execution of the decision.”

Paragraph (2) shall become Paragraph (3).

Article 8

In Article 117, Paragraph (1) shall be amended to read as follows:

“The members of the MRT Programme Council shall be appointed and may be dismissed by the Assembly of the Republic of Macedonia, on the proposal of the following nominators:

- the two associations of journalists in the Republic of Macedonia with the largest memberships, each of which shall nominate one member, and
- the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia, which shall nominate candidates for eleven members, as follows: six candidates on the proposal of the opposition and five candidates on the proposal of the government.”

Paragraph (3) shall be amended to read as follows:

“(3) The authorized nominators referred to Paragraph (1), when nominating members to the Programme Council, shall abide by the principles of professionalism, equitable representation and competency of the nominated candidates.”

Article 9

In Article 118, Paragraphs (3), (4) and (5) shall be deleted.

Paragraph (6) shall become Paragraph (3).

Article 10

In Article 124, Paragraph (1), in Indent 5, the following words shall be added at the end of the sentence:

“on the proposal of the opposition.”

Article 11

In Article 130, Paragraph (4) shall be amended to read as follows:

“Apart from the terms of Paragraph (3) of this Article, the director and deputy director of the MRT should also have university degrees and above 10 years of work experience in the media, i.e. the sphere of communicology, journalism, culture or law. The provision under Article 119, Paragraph 1, of this Law shall apply accordingly to the director and deputy director of the MRT “.

Article 12

In Article 132, Paragraph (1), Indent 8, the words ‘acquired the consent’ shall be deleted.

Article 13

In Article 147, Paragraph (1) shall be amended to read as follows:

(1) “A fine ranging from 10,000 to 20,000 Euros in denar countervalue shall be imposed on a legal entity, if the latter: “

In Paragraph (1), after Point 10), two new points, 11) and 12), shall be added to read as follows:

“11) disregards the prohibitions specified in Article 48 of this Law;

“12) disregards the principles laid down in Article 61 of this Law.”

Points 11), 12), 13), 14), 15), 16), 17) and 18) shall become Points 13), 14), 15), 16), 17), 18) 19) and 20).

Three new points, 21), 22) and 23), shall be added after Point 20), to read as follows:

“21) disregards the obligations defined by Article 92, Paragraphs (4), (5), (6), (8) and (9) of this Law.

“22) fails to act in accordance with the obligations of Article 110 of this Law;

“23) disregards the standards and principles laid down in Article 111 of this Law.”

Paragraph 2 shall be amended to read as follows:

“(2) A fine ranging from 10,000 to 20,000 Euros in denar countervalue shall also be imposed on the person responsible for the programme of the legal entity or a sole proprietor, for an offence committed under Paragraph (1) of this Article.”

Paragraph 3 shall be amended to read as follows:

“(3) A fine ranging from 10,000 to 20,000 Euros in denar countervalue shall also be imposed on the natural person for an offence committed under Paragraph (1), Point 12, of this Article.”

Article 14

Articles 145 and 146 of this Law shall be deleted.

Article 15

In Article 150, Paragraph 2 shall be amended to read as follows:

“(2) Apart from the fine, a misdemeanor sanction prohibiting performance of one’s profession, activity or duty for a period from three months up to a year must also be imposed on the person responsible for the programme of the legal entity or a sole proprietor, for an offence committed under Articles 145, 146, 147, 148 and 149 of this Law.”

Article 16

The authorized nominators shall submit to the Assembly of the Republic of Macedonia the proposals nominating candidates within 3 days from the day of entry into force of this Law.

The Assembly shall elect the candidates within three days from the day of submitting the proposals on the part of the authorized proposers.

With the election of the members of the Council and the director of the Agency, as well as the members of the Programme Council and the director and deputy director of the MRT, in accordance with this Law, the mandates of the current members of the Council and the director of the Agency, as well as the members of the MRT Programme Council and the director and deputy director of MRT, shall be terminated by the force of this Law.

The mandates of the members of the Council and the director of the Agency, as well as the members of the MRT Programme Council and the director and deputy director of MRT, elected in accordance with this Law, shall cease on the day of election of new members, in accordance with the applicable regulations.

Article 17

This Law shall enter into force on the day following the day of its publication in the *Official Gazette of the Republic of Macedonia*.

RATIONALE

The proposed amendments and supplements to the Law on Audio and Audiovisual Media services (*Official Gazette of the Republic of Macedonia*, No. 184/2013, 13/2014, 44/2014, 101/2014 and 132/2014), shall regulate the work of the Agency for Audio and Audiovisual Media Services and the Macedonian Radio and Television, in the period from the adoption of this Law until the election of new members, in accordance with the applicable regulations. The goal of the proposed amendments and supplements to the Law is to ensure a transparent, independent, efficient and accountable regulatory authority in the sphere of audio and audiovisual media services, as well as a transparent, independent, efficient and accountable public broadcasting service, during the transitional period until the holding of early parliamentary elections, which are to take place in April 2016, and the election of new members, in accordance with the applicable regulations.

Considering the effort to rationalize punishments, especially at a time when enormous funds are allocated from the Budget of the Republic of Macedonia for the broadcasters to produce and broadcast domestic documentary programme, and yet they meet this obligation only formally, while their programmes are overflowed with "foreign soap operas" at the prime times, it is evident that the high fine envisaged for violating the legal obligation laid down in Article 92, Paragraphs (8) and (9) does not contribute to initiating production of high-quality domestic programme, and that other systemic changes are required. These will be proposed in the new media-related regulation that will be adopted after the elections, which will be held in April 2016.

On the other hand, the failure to specify penal regulations concerning the crucial obligations laid down in Article 110 with regard to the programmes and programme services broadcasted by the MRT, as well as the standards and principles that are to be respected, and are regulated in Articles 61 and 111, has contributed to their total devaluation, due to which penal regulations are proposed for disregarding the same.

Provisions of the Law on Audio and Audiovisual Media Services to be amended:

Article 14

Nominating of members to the Council

(2) Authorized nominators of the members of the Council shall be:

- the two associations of journalists of the Republic of Macedonia with the largest memberships, each of which shall nominate one member to the Council;
- the Interuniversity Conference, which shall nominate one member to the Council;

- the Bar Association of the Republic of Macedonia, which shall nominate one member to the Council;
- the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia, which shall nominate two members to the Council, and
- the Association of the Local Self-government Units of the Republic of Macedonia, which shall nominate two members to the Council.

Article 19

Director of the Agency

- (1) The Council shall elect the director of the Agency via public competition. The candidate must have a university degree and over five years of work experience in the field of communicology, journalism, electronic communications, information technology, culture, economy or law.
- (2) The Council shall be obliged to elect the director of the Agency no later than 30 days prior to the expiry of his/her predecessor's term of office.

Article 21

Dismissal of the director

- (1) The director may be dismissed by the Council only in the following cases:
 - a) upon his/her request;
 - b) in case of incapacity to perform his/her duties due to illness for a period longer than six months;
 - c) if he/she accepts a position or a job that is incompatible with his/her position as director;
 - d) if he/she has been sentenced for a criminal offence to imprisonment longer than six months or a security measure has been pronounced against him/her prohibiting his/her performance of profession, activity or duty for a period longer than six months;
 - e) if he/she acts in violation of the provisions of this Law or the regulations thereof, which may be established on the basis of the Agency's annual report on its operations; or

f) if he/she abuses his/her position according to the audit report referred to in Article 8 of this Law.

Article 23

Measures in case of violation of the regulations

(1) If a print media publisher, a provider of on-demand audiovisual services or an operator of public electronic communication networks that retransmits programme services is found to have disregarded the provisions of this Law and the bylaws adopted thereof, or the terms and obligations laid down in the license and other Agency acts, the director of the Agency may undertake the following measures:

- adopt a decision to warn them;
- file a request for initiating a misdemeanour procedure in cases where, despite the adopted warning decision, the former continue to commit the same violation for which they were warned, throughout the year;
- submit a proposal to the Council to revoke their license, or
- adopt a decision to erase them from the registry in accordance with this Law.

(2) With the exception of the provision under Paragraph (1), Indent 2 of this Article, in case of disregard for the provisions of Articles 91 and 92, Paragraphs (8) and (9) of this Law, the director of the Agency shall file a request to initiate a misdemeanor procedure without previously adopting a warning measure.

(3) The Agency shall publish the measures undertaken under Paragraph (1) of this Article, along with a detailed rationale, on its web-site, within three days from their adoption.

Article 24

Right to court protection

(1) The decisions and resolutions adopted in cases of violation of the provisions of this Law, or the licenses, issued registration certificates, by-laws and other Agency acts, shall be final.

(2) Charges may be brought against the decisions and resolutions under Paragraph (1) of this Article to initiate an administrative dispute before a competent court.

(3) The charges brought to initiate an administrative dispute shall be filed within a period of 30 days from the receipt of the decision or resolution.

Article 82

Revoking a television or radio broadcasting license

The Agency shall revoke a television or radio broadcasting license prior to its expiry date and shall delete the broadcaster from the Register of Broadcasters, upon prior written notice, in the following cases:

- if the license holder does not commence performing the business activity within the deadline specified in the license;
- if the license holder has ceased to broadcast the programme service for more than 30 days due to technical, financial or other reasons;
- if the license holder has not met the technical, spatial, financial and staffing requirements it offered in the license-awarding procedure for more than 30 days since the day of commencement of the business activity set in the license, as found by expert supervision performed in accordance with Article 30 of this Law;
- if the license holder has furnished incorrect data of relevance to the decision to award the license;
- if, once the license is granted, circumstances posing legal obstacles for the license holder to perform its business activity occur;
- if the license holder does not pay the fee within the deadline set in the law;
- if covert media consolidation is not remedied in accordance with this Law, and
- if the broadcaster is banned by an effective court decision from performing business activity.

Article 84

Right to judicial protection against the decision to revoke a license

(1) The decision to revoke a television or radio broadcasting license is final, and the license holder has the right to file charges before the competent court within 30 days from the day of its receipt.

(2) The procedure before the competent court shall be urgent.

Article 117

Authorized nominators of members to the MRT Programme Council

(1) The members of the MRT Programme Council shall be appointed and may be dismissed by the Assembly of the Republic of Macedonia, on the proposal of the following authorized nominators:

- the Interuniversity Conference, which shall nominate a candidate for one member;

- the national institution of the Albanian Theater, which shall nominate a candidate for one member;
 - the national institution of the Turkish Theater, which shall nominate a candidate for one member;
 - the two associations of journalists of the Republic of Macedonia with the largest memberships, each of which shall nominate one member;
 - the Association of the Local Self-government Units of the Republic of Macedonia, which shall nominate candidates for three members, and
 - the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia, which shall nominate candidates for five members.
- (3) The authorized nominators referred to in Paragraph (1), Indents 1, 2, 3 and 4 of this Article, shall determine their proposals from their own ranks based on a previously announced internal competition.

Article 118

Appointing members to the MRT Programme Council

- (3) The Assembly of the Republic of Macedonia shall send out a public call to the authorized nominators, referred to in Article 128 of this Law, to submit their proposals with candidates for members of the MRT Programme Council, at least 60 days before the expiry of the mandate of the MRT Programme Council.
- (4) The authorized nominators referred to in Article 117 of this Law shall be obliged to submit the proposals to the Assembly of the Republic of Macedonia within 30 days from the day of sending the public call. On the basis of the proposals submitted by the authorized nominators, the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia shall compose a proposal with candidates for the MRT Programme Council within 15 days.
- (5) The Assembly of the Republic of Macedonia shall appoint the new members to the MRT Programme Council no later than 15 days before the expiry of the mandate of the MRT Programme Council.

Article 124

Competencies of the MRT Programme Council

(1) The MRT Programme Council shall have the following competencies:

- elect and dismiss the director and the deputy director of the MRT;

Article 130

Director and deputy director of the MRT

(4) Apart from the terms of Paragraph (3) of this Article, the director and deputy director of the MRT should also have university degrees and above five years of work experience in the field of communicology, journalism, electronic communications, information technology, culture, economy or law.

Article 132

Competencies of the director of the MRT

(1) The director of the MRT shall have the following competencies:

- appoint and dismiss the editors-in-chief of the programme services, having previously obtained the opinions of the MRT editorial boards and acquired the consent of the MRT Programme Council;

Article 145

(1) A fine amounting to 100,000 Euros in denar countervalue shall be imposed on a legal entity for disregarding the obligations under Article 92, Paragraphs (8) and (9) of this Law.

(2) A fine ranging from 3,000 to 5,000 Euros in denar countervalue shall be imposed on the person responsible for the programme of the legal entity, for a violation committed under Paragraph (1) of this Article.

Article 146

(1) A fine amounting of 20,000 Euros in denar countervalue shall be imposed on a legal entity for disregarding the obligations under Article 92, Paragraphs (4), (5), (6) and (13) of this Law.

(2) A fine ranging from 1,000 to 3,000 Euros in denar countervalue shall be imposed on the person responsible for the programme of the legal entity, for a violation committed under Paragraph (1) of this Article.

IX. PENALTY PROVISIONS

Article 147

(1) A fine ranging from 10,000 to 20,000 Euros in denar countervalue shall be imposed on a legal entity if the latter:

- 1) fails to enable conducting of expert monitoring in accordance with Article 32 of this Law;
- 2) has a covert co-owner in accordance with Article 34 of this Law;
- 3) is subsequently found to have as one of the founders of the broadcaster the legal entity referred to in Article 35, Paragraph (2) of this Law;
- 4) acquires property contrary to Articles 37 and 38 of this Law;
- 5) exercises covert media consolidation contrary to the provisions of Article 39 of this Law;
- 6) fails to notify the Agency about a change in the ownership structure (Article 41, Paragraph (1));
- 7) changes the ownership structure prior to obtaining an approval from the Agency (Article 41, Paragraph (2));
- 8) fails to furnish data to the Agency, upon its request, which are of relevance to the decision making (Article 41, Paragraph (5));
- 9) fails to provide the Agency with data of relevance to the decision making in the procedure for establishing covert media consolidation as the latter's official duty (Article 43, Paragraph (2));
- 10) fails to comply with the rules for protecting juvenile audience (Article 50);
- 11) provides television or radio broadcasting without a television or radio broadcasting license (Article 62, Paragraph (2));
- 12) provides television or radio broadcasting in an area not covered by the television or radio broadcasting license (Article 62, Paragraph (3));
- 13) provides use of language contrary to Article 64 of this Law;
- 14) fails to implement at least 80% of the programming concept defined by the license issued to it in the course of one week (Article 67, Paragraph (6));
- 15) changes or supplements more than 10% of the programming concept of the broadcaster for which the latter has obtained the television or radio broadcasting license, without prior approval from the Agency (Article 67, Paragraph (7));

- 16) fails to comply with the provisions of Article 77, Paragraphs (5) or (6) of this Law;
- 17) transfers the television or radio broadcasting license to another entity (Article 79, Paragraph (4)), and
- 18) fails to comply with the obligations to broadcast European works and works by independent producers, as specified in Article 91 of this Law.
- (2) A fine ranging between 1,000 and 3,000 Euros in denar countervalue shall also be imposed on the person responsible for the programme of the legal entity and the sole proprietor, for an offence committed under Paragraph (1) of this Article.
- (3) A fine ranging between 1,000 and 3,000 Euros in denar countervalue shall also be imposed on a physical person, for an offence committed under Paragraph (1), Point 11 of this Article.

Article 150

Misdemeanor sanctions

- (1) Apart from the fine, a misdemeanor sanction prohibiting performance of one's business activity for a period from six months to three years may be imposed on the legal entity for an offence committed under Articles 145, 146, 147, 148 and 149 of this Law.
- (2) Apart from the fine, a misdemeanor sanction prohibiting performance of one's profession, business activity or duty for a period from three months to a year may be imposed on the person responsible for the programme of the legal entity for an offence committed under Articles 145, 146, 147, 148 and 149 of this Law.
- (3) Apart from the fine, a misdemeanor sanction prohibiting performance of one's profession, business activity or duty for a period from three months to a year may be imposed on the sole proprietor for an offence committed under Articles 145, 146, 147, 148 and 149 of this Law.