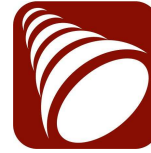




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**MEDIA IN ELECTION CYCLES AND THE NEED FOR CHANGES  
OF ELECTORAL CODE OF THE REPUBLIC OF MACEDONIA**

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## **INTRODUCTION**

Democratic elections are impossible without media. Free elections are not just about freedom to elect and be elected, but they also refer to the participatory process in which the voters take part in the debate and have available proper and adequate information on the political parties, candidates, their policies and the electoral process in general. In that regard, the media play the role of a watch-dog of democracy that ought to ensure the transparency of the electoral process.

The regulation of media coverage of elections is a matter of choice of each individual country. It refers to both the selection of acts of regulation, and the scope and manner of regulation. What is important is to ensure the freedom of expression and the right to receive and impart information, and the right of the citizens to participate in governance of the state through their elected representatives.

The Republic of Macedonia belongs to the group of countries that regulate the media coverage of elections with both laws and delegated (secondary) legislation.<sup>1</sup> Therefore, the provisions referring to our subject matter are contained in the Law on Broadcasting Activity (LBA)<sup>2</sup>, the Electoral Code<sup>3</sup> and the by-laws adopted by the Broadcasting Council (BC).<sup>4</sup>

The latest opinions by the Venice Commission and OSCE remain on the position that it is necessary to incorporate the rules of media presentation in the Electoral Code rather than defining them in by-laws, to synchronize the provisions on the allowed time for paid political advertising in the Election Law with the similar provisions in the LBA and to provide a precise definition for the term “equitable

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<sup>1</sup> At the time of preparation of this Policy Paper, the Parliament is considering the Draft-Law on Audio and Audiovisual Media Services, which fully leaves the regulation of media presentation in electoral processes to the Electoral Code. However, if that bill is adopted, we should, nevertheless, bear to mind the past solutions and experiences in the area of regulation of media presentation during elections.

<sup>2</sup> The Law on Broadcasting Activity, (the Official Gazette of RM” Nos. 100/2005, 19/2007, 8/2008, 103/2008, 152/2008, 6/10, 145/10, 97/1 and 13/2012)

<sup>3</sup> Electoral Code of the RM (consolidated text) (Official Gazette of RM, No. 54 of April 14, 2011) and the Laws on changes and amendments of the Electoral Code (Official Gazette of RM, Nos. 142/2012, 31/2013 and 34/2013)

<sup>4</sup> Rulebook for the Conduct of the Broadcasters in the period before the start of the election campaign and Rulebook for equitable access to the media presentation during the election campaign, (The Official Gazette of RM” No. 60, of April 27, 2011)

access to media presentation during election campaigns”.<sup>5</sup> The European Commission, in its reports, also emphasizes the need for additional steps to be taken towards full synchronisation with the recommendations of OCSE/ODIHR.<sup>6</sup>

This policy paper supports the recommendations made by OSCE and the Venice Commission, and the process of its preparation and drafting included consultations with representatives of political parties and non-governmental organisations and associations.<sup>7</sup> This document elaborates on the need for serious change in the rules of media presentation and offers recommendations for future interventions in the election legislation of the Republic of Macedonia.

## **I. THE LAW ON BROADCASTING ACTIVITY vis-à-vis THE ELECTORAL CODE**

The Electoral Code prescribes, in Article 75 paragraph 2, that the competence to adopt rules of media presentation shall lie with the BC, which is in collision with another regulation. Namely, the LBA, adopted in 2005, one year before the adoption of the Electoral Code, prescribes that the Parliament shall hold the competence to adopt the rules of media presentation.<sup>8</sup> On the other hand, the Electoral Code authorizes the Parliament to adopt the rules of media presentation, only for Presidential Elections held after the incumbent completed his or her term in office.<sup>9</sup> In this case, it is clear that the

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<sup>5</sup> Venice Commission and OSCE/ODIHR, Joint Opinion on the revised Electoral Code of “the former Yugoslav Republic of Macedonia”, (18 June 2013; CDL-AD(2013)020), p.8,

Venice Commission and OSCE/ODIHR, Joint Opinion on the revised Electoral Code of “the former Yugoslav Republic of Macedonia”, (14-15 October 2011; CDL-AD(2011)027),.

OSCE/ODIHR Final Report on the 5 June 2011 early parliamentary elections

<sup>6</sup> European Commission, 2012 Progress Report, SWD(2012) 332 final, Brussels, 10.10.2012, p.7

<sup>7</sup> VMRO-DPMNE, SDSM, DOM and LP responded to our invitation. MDC also held meetings with the Association of Journalists of Macedonia, the Macedonian Institute for the Media, the Independent Trade Union of Journalists and Media Workers, NGO Civil - Centre for Freedom, the NGO Infocentre, the Helsinki Committee of Human Rights.

<sup>8</sup> Article 80, paragraph 5 of the Law on Broadcasting Activity prescribes that the “Parliament of the Republic of Macedonia, upon a proposal of the Broadcasting Council, shall adopt decisions on the rules of media presentation in the election campaign via the broadcasters”.

<sup>9</sup> Article 145 of the Electoral Code prescribes: „(1) The Broadcasting Council shall submit a proposed decision about the rules for equal presentation in the media during the election for President of the Republic of

rules shall apply only to the election campaign, but not to the period of time between the day the elections were called and the official start of the election campaign.

The two-folded approach of the Electoral Code which delegates certain rules on the Broadcasting Council and others on the Parliament, and the fact that it provides a general regulation for the period between the day an election is called and the start of the election campaign - the period is exempted in elections of president called after the completion of term in office of the incumbent - clearly demonstrates the need for review and reconsideration of legal provisions that define the rules of media presentation.

Another matter on which different regulations collide is the duration of the additional time for paid political programmes. The LBA<sup>10</sup> allows a maximum of 20% or 12 minutes of additional time for paid political programmes per clock hour.<sup>11</sup> On the other hand, the Electoral Code allows 15 minutes of additional advertising time,<sup>12</sup> a solution adopted by the Rulebook on Equitable Access to the Media Presentation During the Elections Campaign.<sup>13</sup>

When synchronising the provisions on the duration of the paid political advertising, we should bear to mind the fact that the Convention on Transfrontier Television defines precise the advertising time that can't exceed 20% of an hour of broadcasts.<sup>14</sup> The same 20% threshold is prescribed by the EU

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Macedonia due to cessation of the mandate in the Parliament of the Republic of Macedonia, at the latest 15 days after elections are called. The Parliament shall adopt the decision within two days after receiving it. (2) The decision of paragraph 1 of this article shall be published immediately, at the latest within 24 hours, in the "Official Gazette of the Republic of Macedonia".

<sup>10</sup> Article 95 of the LBA states: „In the course of an election campaign, by means of a special Decision, the Broadcasting Council may license up to 20% additional time for paid political advertising daily, i.e., 20% or 12 minutes additional time for broadcasting paid political advertising for one clock hour”.

<sup>11</sup> The proposed Law on Audio and Audiovisual Media Services, in Article 100, prescribes that the total advertising time shall not exceed 12 minutes for one clock hour.

<sup>12</sup> Article 75a, Paragraph 1 of the Electoral Code prescribes „(1) During the election campaign, the broadcasters covering the elections can broadcast additional 15 minutes of advertising on every real hour broadcasted program, exclusively allocated for paid political advertising whereas only 10 minutes can be allocated to a single participant in the election campaign.“

<sup>13</sup> Articles 22 and 23

<sup>14</sup> The Law on Ratification of the European Convention on Transfrontier Television and the Protocol on changes of the European Convention on Transfrontier Television, Article 12

Directive.<sup>15</sup> The existing legal solution in the Electoral Code is a violation of accepted international obligations and also brings about the constitutionality of that provision.

## **II. MEDIA PRESENTATION AND ELECTION CYCLES IN DELEGATED LEGISLATION**

The first recommendation of OSCE and the Council of Europe refers to the need for the rules of media presentation in election processes to be regulated with law, not with delegated regulations. That recommendation has its own justification. Namely, the two by-laws on the rules of media presentation are the adopted by the Broadcasting Council, after securing a prior opinion by the State Elections Commission (SEC). The existing situation is that the by-laws<sup>16</sup> were adopted without the necessary prior opinion of the SEC<sup>17</sup>, which brings about the question about the legality of the procedure of adoption of the acts and, by extension, the legality of the acts themselves. On the other hand, there is a danger, should SEC postpone and hesitate with providing its opinions, that BC won't be able to adopt the rules.

Another reason for the recommended regulation of rules of media presentation in a law lies in the fact that the by-laws have many omissions and inconsistencies. Below, we discuss a number of issues that are problematic or raise legitimate questions.

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<sup>15</sup> Article 23 of the EU Directive, in: European Union, Directive 2010/13/EU of the Parliament and of the Council of 10 March 2010 (Audiovisual Media Services Directive)

<sup>16</sup> Rulebook for the Conduct of the Broadcasters in the period before the start of the election campaign and Rulebook for equitable access to the media presentation during the election campaign

<sup>17</sup> SEC reported, in its Information No.03-1107-3 of July 10, 2013, that it has not issued an opinion on the said Rulebooks, while the Minutes of the 9th Session of the BC of April 10.07.2013, 2011, state on p.6 that: "The members of the Council discussed the letter sent by the SEC informing the Council that it can't give an opinion on the Council's rulebooks and demanding additional information on the public debate on those documents. The Council members agreed that such an approach constitutes interference in the competences of the Council and that the adoption of the rulebooks can't be delayed any longer..."

## **Rules on Media Presentation Before the Start of Election Campaign**

The Electoral Code prescribes the adoption of rules for the conduct of the broadcasters in the period before the start of the election campaign. The aim to ensure healthy political debate imposes the need to reconsider this matter. In that regard, it should be noted that the Council of Europe recommends that the "during election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions". The recommendations of the Council of Europe don't mention rules for the media before the start of election campaign. Rather, CoE recommends that the legal framework should introduce an obligation to cover election campaign in a fair, balanced and impartial manner in the overall programmes of all broadcasters, public and commercial likewise.<sup>18</sup> The international expertise, too, recommends that the regulation should cover the period of election campaign alone, while regular media practices should apply to the period before the campaign.<sup>19</sup>

The fact is that the general prohibition for election-related media presentation before the start of an election campaign, which is broadly defined in the by-laws adopted by the BC<sup>20</sup>, represents a restriction of freedom of expression. At the same time, we should bear to mind the length of time that is covered by the by-law, a period much longer than the actual election campaign.<sup>21</sup>

Moreover, the doors to abuses are opened, i.e. giving preference to the activities of public authorities, in a situation in which it is allowed to report the regular activities of state bodies, bodies of municipalities and the City of Skopje.<sup>22</sup> The Broadcasting Council confirms that, in practice, the

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<sup>18</sup> Council of Europe, Recommendation CM/rec(2007)15 of the Committee of Ministers to Member States on measures concerning media coverage of election campaigns, Part II

<sup>19</sup> ACE Electoral Knowledge Project, The ACE Encyclopedia: Media and Elections, available at: <http://aceproject.org/ace-en/topics/me/onePage>, accessed on August 15, 2013, p.82

<sup>20</sup> Article 2 of the Rulebook for the conduct of the broadcasters in the period before the start of the election campaign defines the electoral media presentation as: "promotion (direct or indirect) of the views, programmes, platforms, achievements and activities of political parties, coalitions, groups of voters and their representatives".

<sup>21</sup> Article 12, paragraph 4 of the Electoral Code prescribes that a period of no more than 90 days and no less than 70 days shall pass from the day of calling the elections to the day of holding the elections. Thus, the rules of media presentation before the start of election campaign shall cover no more than 70 and no less than 50 days, which is much longer period than the 20 days election campaign.

<sup>22</sup> Rulebook for the conduct of the broadcasters in the period before the start of the election campaign, article 12

broadcasters find it difficult to make the distinction between reporting on regular activities of officials running as candidates and the information on campaign functions.<sup>23</sup>

Also, special information programmes with appearances of representatives of political parties are allowed<sup>24</sup>, unless they don't include candidates whose candidacy was officially confirmed by competent electoral bodies.<sup>25</sup> The decision to tie the election media presentation with the confirmed candidacy by competent electoral bodies (Article 69-a of the Electoral Code) has proved to be a source of problems in practice.<sup>26</sup> Simply said, it evades the rules of the game because of the fact that, once the elections are called, the political parties immediately join the race, especially after the publicly announce the names of their candidates.

In view of everything said above, it would be prudent to reconsider the need for rules that would cover the period before the official start of the election campaign. Only a ban of specific activities, for example, the paid political advertising, seems to be justified.<sup>27</sup>

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<sup>23</sup> "Another practical problem for radio and television broadcasters, related to the legal framework on this period, is the reporting in the cases when confirmed candidates also appear as holders of offices", Report on media coverage of election campaign in the Local Elections 2013, p.5

<sup>24</sup> Rulebook for the conduct of the broadcasters in the period before the start of the election campaign, article 14

<sup>25</sup> For example, Vladimir Todorović appeared in the "Jadi Burek" show, aired on SITEL 3 TV, on February 18, 2013, before the official announcement of candidate lists by the SEC. Todorović was the incumbent Mayor and candidate for Mayor of Centar Municipality. His participation in the show was in accordance with the Law, yet, in opinion of many people, it represented a *de facto* presentation of Mr. Todorović as a candidate for the office of Mayor of Centar.

<sup>26</sup> "That created practical problems in the first days after the expiration of the legal deadline for confirmation of candidacies, when the broadcasters and the Broadcasting Council found themselves in unenviable situation, knowing that it was difficult to find information which candidate lists were confirmed", BC, Report on media coverage of election campaign in the Local Elections 2013, p.4

<sup>27</sup> The Civic Association MOST recommends "To define the period from the calling of elections to the confirmation of candidate lists and to prescribe precisely which actions shall be allowed for that period of time and which are not", in MOST, Final Report: Domestic Monitoring of 2013 Local Elections, July 2013, available at [http://www.most.org.mk/images/MOST/Final%20Report\\_Local%20Elections%202013\\_MKD.PDF](http://www.most.org.mk/images/MOST/Final%20Report_Local%20Elections%202013_MKD.PDF), accessed on August 30, 2013, p.31

## **Rules on Media Presentation During Election Campaign**

The by-law that lists to rules on media presentation during election campaigns should offer clear operationalization of the principle of equitable access to the media presentation through definition of clear criteria necessary to ensure fair, balanced and impartial access to media presentation.<sup>28</sup>

However, the Rulebook for equitable access to the media presentation during the election campaign (hereinafter the Rulebook for election campaign) raises several important issues.<sup>29</sup> First, Article 1 states that the Rulebook shall apply to election campaign, including, among others, the elections for President of the Republic of Macedonia. That provision is clearly in collision with Article 145 of the Electoral Code which names the Parliament of the Republic of Macedonia as the competent body. Furthermore, the definitions of terms don't correspond to the definitions provided by the Electoral Code.<sup>30</sup> The lack of precise definition of the "other programmes" that can be used for election coverage, in addition to the forms of electoral media presentation<sup>31</sup>, Article 5<sup>32</sup> of the Rulebook for election campaign opens the room to actually use all programmes to provide election coverage.

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<sup>28</sup> Rulebook for equitable access to the media presentation during the election campaign

<sup>29</sup> Article 7 of the Rulebook for election campaign is a fine solution which is justified from the point of view of true political contest, and the recommendation is to incorporate it in the Election Code. It prescribes that „ During the period of election campaign and the election silence, broadcasters are not allowed to broadcast announcements and advertisements financed from the Budget of the Republic of Macedonia, the municipal budgets and from the budget of the City of Skopje, and of all other entities authorized to perform public activities by law.“

<sup>30</sup> The term “organizers of election campaign” doesn’t correspond to the definitions of terms in the Election Code, which defines, in Article 2, point 14, the organizer of election campaign as “a person authorized by a political party, coalition or group of voters that organizes the election campaign”. The Rulebook extends the meaning of that term to cover “candidates, political parties, coalitions or groups of voters that organize and/or participation in election campaign”. Thus, all entities and persons participating in an election campaign are considered to be organizers of election campaign, without being a concrete authorized person.

<sup>31</sup> Article 2 Point 2 of the Rulebook defines the “Forms of electoral media presentation are: the daily informative programs, programs that enable direct access of organizers of the election campaign to the audience/voters and the specialized informative programs”.

<sup>32</sup> Article 5 of the Electoral Code prescribes: “In addition to the forms of the electoral media presentation outlined in this Rulebook, broadcasters will retain their editorial policy freedom to use their other programs for election purposes. In such case, they must respect the principal of balanced coverage, and to provide equal access to media to all organizers of election campaign. Programs aimed to the minors are exception to this rule“



We should also mention the recommendation of the Council of Europe that the reporting in the news, daily political programmes, including interviews and debate shows should be conducted in a fair, balanced and impartial way. At the same time, it emphasizes that public authorities should not be given privileged or preferential treatment in the coverage.<sup>33</sup> On the other hand, the practice of media presentation in the Republic of Macedonia exhibits tendencies opposed to the recommendations of international organisations.<sup>34</sup> In the last Local Elections, the broadcasters proved to be unable to make the distinction between the regular activities of state officials and activities that are part of the election campaign.<sup>35</sup>

The Rulebook for election campaign elaborates the obligation of the broadcasters to ensure equitable access to election media presentation, yet, it does it with definition of additional principles.<sup>36</sup> The logical question is, first, whether the authority to adopt rulebooks includes the discretionary right of the BC to define additional principles, which are of crucial importance in the presentation of political parties and candidates running in elections.<sup>37</sup>

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<sup>33</sup> Council of Europe, Recommendation CM/rec(2007)15 of the Committee of Ministers to Member States on measures concerning media coverage of election campaigns, Part II, point 2

<sup>34</sup> "In view of the above and the results of the coverage in the first 10 days, it can be concluded that the majority of the media didn't manage to distinct between the regular activities of the government and those that serve the purpose to promote projects and achievements as a part of election campaign activities", in: Broadcasting Council, Report from the Media Coverage of Election Campaign for the 2013 Local Elections, p.11

<sup>35</sup> OSCE/ODIHR, International Election Observation Mission, Republic of Macedonia, Municipal Elections 24 March 2013, Statement of Preliminary Findings and Conclusions, p.7

<sup>36</sup> Article 6 of the Rulebook for election campaign prescribes that, for presidential and mayoral elections, media presentation needs to be conducted in accordance with the principle of equality, while in elections for members of parliament and municipal councils, the principle that applies is the proportionality in accordance with the number of confirmed lists of candidates. The obligation for the broadcasters to inform and report in accordance with the principles of proportionality and equality is regulated in articles 13, 18 and 28. Article 13 defines the obligation for the broadcasters to ensure, in the reporting in daily-information programmes, balanced coverage of activities in accordance with the principle of proportionality, while Article 18 provides an obligation for the public broadcasting service to provide free-of-charge political presentation in accordance with the principle of proportionality. The same principle applies for the special information programmes, in accordance with Article 28 of the Rulebook.

<sup>37</sup> Comparatively, there are two principles of direct broadcasting presentation: Equality, when each party or candidate is given the same airtime and treatment (as in France, Denmark, Norway, Armenia, Japan and the Netherlands) and equity, when political parties are given access on basis of their popularity, i.e. the number of parliamentary seats they won in the previous elections. See in: ACE Electoral Knowledge Project, The ACE

Furthermore, Article 27 of the Rulebook prohibits the paid political advertising only in “live broadcasts of religious, sports, cultural, entertainment and other events” while the Electoral Code places a ban on all broadcasts, live or delayed (Article 76, paragraph 4). The wording of the provision in the Rulebook opens enough space for abuses and violations of legal provisions.

Regarding the campaign silence period, the Rulebook for election campaign, in Article 33<sup>38</sup>, further restricts the length of the silence period as defined in the Electoral Code.<sup>39</sup> In a situation of absence of the exact definition in the Electoral Code of the hour in which the campaign silence ends, such a set-up undoubtedly influences the behaviour and conduct of broadcasters. We also have to bear to mind that the regular shortening of the campaign silence amounts actually to five hours, but if there are incidents and if polling stations close early, the campaign silence will end for those polling stations before 19:00 hours on ballot day. The problems with the precise definition of the length of election campaign and the campaign silence are evident in practice<sup>40</sup>, bringing about the need for reconsideration and precise definition of the length of election campaigns and campaign silence periods.<sup>41</sup>

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Encyclopedia: Media and Elections, available at: <http://aceproject.org/ace-en/topics/me/onePage>, accessed on August 15, 2013, pp.105-109

<sup>38</sup> Article 33 of the Rulebook prescribes that “During the election silence, which starts 24 hours prior to the Election Day and ends at 19:00 on the Election Day i.e. with the closing of the polling stations, all the forms of electoral media presentations of the organizers of the election campaign should stop.”

<sup>39</sup> Article 69a, paragraph 2 of the Electoral Code states “The election campaign commences 20 days prior the Election Day and in the first and the second round of election cannot continue 24 hours before elections and on the Election Day.”

<sup>40</sup> The BC concludes that “The course of the 2013 Elections, as the first local elections held under the existing legal framework, demonstrated the need for the Code to precisely define the deadlines for the election campaign for the second round of elections. The start and the conclusion of campaign activities and silence are defined for the first, but not for the second round. The duration of the election silence may be defined by analogy, but the lack of definition for the start of the campaign after the conclusion of first round vote raises several issues”, in: Broadcasting Council, Report from the Media Coverage of Election Campaign for the 2013 Local Elections, p.8

<sup>41</sup> The BC Report indicates that the campaign activities were not monitored in the first two days (March 25 and March 26) after the first round of Local Elections, in: Broadcasting Council, Report from the Media Coverage of Election Campaign for the 2013 Local Elections, p.8

### **III. MEDIA PRESENTATION IN THE ELECTORAL CODE**

Several of the existing provisions on media presentation in the Electoral Code attract special attention. The procedure of adoption of the by-laws by the BC raised the question of SEC's competence and authority to request data and information from the other bodies involved in the election process (see footnote 17). It clearly points out at the need to reconsider the legal positioning of state bodies that hold competences in the conduct of the election process. In that regard, it is recommended to provide for clearer positioning of the SEC in relation to the other bodies involved in the election process.<sup>42</sup> From the view point of the media, it is recommended to prescribe an obligation for mandatory reporting on detected irregularities and implemented actions by BC to SEC, in order to allow SEC to use its legal capacity to initiate misdemeanour procedures.<sup>43</sup> This recommendation is supported by the fact that, in spite of the fact that Article 76b, paragraph 2 of the Electoral Code states that "after establishing irregularities, the Broadcasting Council is required to institute misdemeanour procedure", the Broadcasting Council chooses to apply the more lenient legislation, i.e. the LBA in the cases of detected violations in election campaigns and to issues warnings.<sup>44</sup>

Regarding the issue of donations to election campaigns, the media should be exempted from the possibility to appear as donors. The argument for this recommendation lies in the social role played by the media in terms of impartial informing of the citizens on the election contest<sup>45</sup>, and with the aim

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<sup>42</sup> Knowing that the proposed Law on Media prescribes that the regulatory body shall have competences over the print media, and if it is adopted, that fact should be taken into account in view of the fact that the existing legislation places the competences over print media in the hands of SEC.

<sup>43</sup> The Helsinki Committee for Human Rights in the Republic of Macedonia proposes that SEC and BC should form an *ad hoc* working group during the elections that would ensure close cooperation and daily exchange of information.

<sup>44</sup> The BC report on media coverage of election campaign in the 2013 Local Elections, in pages 5 and 6, states that a total of 25 violations, on five different grounds (Article 75, paragraph 2 of the Electoral Code and articles 7, 12, 5 and 14, paragraph 3 of the Rulebook) were detected during the election campaign and warnings were issued for all of them. The Electoral Code prescribes, in Article 181, misdemeanour procedures and fines for the violations of article 75. 23 warnings were issued, and 33 decision to start misdemeanour procedures were adopted for violations committed during the election campaign. Of the total of 33 misdemeanour procedures, 20 were settled (Article 75, paragraph 3 of the Electoral Code) and there were 2 settlements and 6 misdemeanour procedures for violations of Article 75, paragraph 5 of the Electoral Code (pp.12 and 13 of the BC Report).

<sup>45</sup> Civic Association MOST also recommends reconsideration and review of the possibility for media to appear as donors because "it evades the right of the participants to equitable access to paid political advertising", in:

to prevent the possibility for the media to engage in corruption-generating activities which have extremely degrading effect on the democratic processes. In that regard, emphasis is put on the great amounts of "government advertising"<sup>46</sup> directed at certain media outlets, noted by several relevant actors<sup>47</sup>, which raised suspicions and concern about the possible political influence on the media which, in view of some people, reflects negatively especially on electoral processes.<sup>48</sup>

For the purpose of transparency and confidence that the media didn't donate to election campaigns, we have to bear to mind the provisions that obligate the broadcasting and print media to present financial reports on the collected payments for advertising and outstanding invoiced claims that are to be paid (Article 85-a of the Electoral Code). Unfortunately, the possibility to determine if the claims were paid, when and by whom, is missed. In view of the fact that huge amounts of claims are involved, such an intervention proves to be more than necessary.<sup>49</sup>

Knowing that such reports don't offer a complete picture of the actual situation – whether the claims were paid at all and by whom, a legislative intervention is recommended to introduce an obligation to present final reports after collection of all invoiced claims. That intervention is in accordance with the 2012 changes and amendments of the Electoral Code, which deleted the provision on termination of campaign accounts and allowed the *post festum* donations, within 30 days from the day of conclusion

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MOST, Final Report: Domestic Monitoring of Local Elections 2013, July 2013, available at [http://www.most.org.mk/images/MOST/Final%20Report\\_Local%20Elections%202013\\_MKD.PDF](http://www.most.org.mk/images/MOST/Final%20Report_Local%20Elections%202013_MKD.PDF), accessed on August 30, 2013

<sup>46</sup> A Report of the European Commission states that the Government is the leading advertiser in the country with annual advertising budget exceeding €20 million, in: European Commission, Western Balkans and Turkey Media and Freedom of Expression Fact Finding and Scoping Study, April 2013, p.23

<sup>47</sup> „There continues to be concern that a large share of government-funded advertising campaigns is being directed to media supportive of the government“, European Commission, 2012 Progress Report, SWD (2012)332 final, Brussels, October 10, 2012, p.14. The U.S. Department of State, in its 2012 Human Rights Report, also concluded that: „The government was the largest purchaser of advertising in the country and favored outlets and journalists it perceived as friendly,“ in: US State Department, Macedonia 2012 Human Rights Report, достапно на <http://www.state.gov/documents/organization/204523.pdf>, p.10

<sup>48</sup> See: NGO Infocentre's Media Mirror Reports at [www.nvoinfocentar.org.mk](http://www.nvoinfocentar.org.mk), Transparency Macedonia Reports at [www.transparentnost-mk.org.mk](http://www.transparentnost-mk.org.mk)

<sup>49</sup> According to the media reports published on the website of the State Commission for Prevention of Corruption, more than 70% of the total value of media services commission for the 2013 Local Elections were not paid. Total claims of 51,476,818.00 MKD (approximately €840,000.00) remain unpaid.

of election campaign<sup>50</sup>, which is a longer deadline than the deadline given to the media to file their reports.<sup>51</sup>

#### **IV. THE PUBLIC BROADCASTING SERVICE**

In the Republic of Macedonia, the Electoral Code prescribes an obligation for the public broadcasting service to provide free-of-charge media presentation. In that regard, the Council of Europe recommends that, if national legal frameworks provide for free airtime for media presentation, it should be implemented in a fair and non-discriminatory manner, on basis of transparent and objective criteria.<sup>52</sup>

In the case of the Republic of Macedonia, the setting of precise criteria is left to the secondary legislation. However, the Rulebook for election campaign doesn't define precise rules for the public broadcasting service. It only reiterates the legally defined obligations for coverage of election process and informing the citizens about the electoral process<sup>53</sup>, as well as the obligation to broadcast free political presentations, in accordance to principles of proportionality and equality.<sup>54</sup>

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<sup>50</sup> Articles 10 and 15 of the Law on Changes and Amendments to the Electoral Code (Official Gazette of RM, No. 142 of November 13, 2012)

<sup>51</sup> According to Article 85a of the Electoral Code, the media file their reports within 15 days from the day of conclusion of the election campaign.

<sup>52</sup> Council of Europe, Recommendation CM/rec(2007)15 of the Committee of Ministers to Member States on measures concerning media coverage of election campaigns, Part II, point 4

<sup>53</sup> Article 12 of the Rulebook states "The public broadcaster (MRT) is obliged to follow the election campaign, i.e. to publish information about the entirety of the election process, the electoral legislation, activities of all participants in the election process as well as the course of the voting and the results of citizens' balloting. The public broadcaster is obliged to inform the citizens about the manner and the technique of voting, free of charge in cooperation with SEC. MRT is also obliged to provide regular informing about the election process for persons with impaired hearing"

<sup>54</sup> Article 18, Paragraph 1 of the Rulebook states: "The public broadcaster is obliged to air free political presentation providing balanced time for the organizers of the election campaigns, according to the principles of proportionality or equality as determined in Article 6 of this Rulebook".

The practice shows that the public broadcasting service in Macedonia<sup>55</sup> is, unfortunately, a negative example in terms of ensuring equitable access to election media presentation.<sup>56</sup> That situation<sup>57</sup> brings about the need for serious reconsideration of the rules pertaining to the public broadcasting service and prescription of transparent and clear criteria for free media presentation in a fair and non-discriminatory manner. It could be achieved, for example, if it was prescribed that every political party shall have the right to a given number of 2-3 minutes long video ads which will be aired daily, in prime-time slots, in a sequence that will be defined by a draw or on basis of the principle of rotation. It could also prescribe mandatory organisation of debates, different programmes, etc.

## **V. RECOMMENDATIONS**

The first recommendation regarding the rules of media presentation in electoral cycles is to eliminate the opportunities for restrictions of freedom of expression in the period between the day the elections are being called and the official start of the election campaign. The only acceptable solution would be to review and reconsider a number of specific activities that could be banned, for example, the paid political advertising, seems to be justified.

In view of the existing situation in which a part of the media rules are adopted by the Broadcasting Council and others are adopted by the Parliament, clearly, there is a need to adopt a unified approach to the regulation of media presentation. The existing practice of adoption and

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<sup>55</sup> The BC findings show that, during the 2013 Local Elections, the "greater discrepancies were registered with MRT1, the Macedonian Radio – First Programming Service and Sitel TV", in: Broadcasting Council, Report from the Media Coverage of Election Campaign for the 2013 Local Elections, p.11

<sup>56</sup> Among other things, in the last Local Elections, the BC determined the existence of disproportionate presence of different entities in reports and programmes aired by MRT - between government and opposition parties, the Government and the local self-governments. It also finds that there were no-debates engaging the candidates and that free political advertising was aired in non-prime-time slots (13:30 – 14:00 hours). Also, it found overwhelming presence of officials of the ruling coalition in the interview, debate and information programmes, in: Broadcasting Council, Report from the Media Coverage of Election Campaign for the 2013 Local Elections, pp.19-21

<sup>57</sup> The OSCE/ODIHR shares that conclusion, in: OSCE/ODIHR, International Election Observation Mission, Republic of Macedonia, Municipal Elections 24 March 2013, Statement of Preliminary Findings and Conclusions, p.7

implementation of rules and regulations demonstrates the necessity for full implementation of OSCE's recommendation for the rules of media presentation in election campaigns to be regulated by a law.

In that regard, it is necessary to define clear criteria to ensure equitable access to election media presentation. It is recommended to reconsider the provisions on the length of election campaign and campaign silence period, especially for the second round of elections. The relations between BC and SEC need to be clarified, and to prescribe mandatory on detected irregularities and implemented actions.

It is necessary to synchronize the provisions on the additional advertising time in the Electoral Code with the accepted international obligations. In terms of paid political advertising, regardless of the maximum allowed amounts of donations by legal entities, the media should be exempted from the possibility to appear as donors, considering their social role and responsibilities. Also, to ensure consistent financial transparency, it is recommended to introduce an obligation for the media to present final reports on collected claims for used advertising time.

It is necessary to define clear criteria to ensure equitable access to the public broadcasting service, in view of its role in the securing of free political presentation. Finally, the rules on media presentation need to be implemented consistently by the competent bodies, i.e. to eliminate the selective approach to the rules, which rules will apply and when.

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