



**USAID PROJECT FOR MEDIA
LEGAL REFORM AND
RESPONSIBLE MEDIA**



MONITORING: ELECTIONS 2014 – IMPLEMENTATION OF ELECTORAL CODE’S PROVISIONS ON MEDIA ELECTORAL COVERAGE

SKOPJE, MAY 2014

USAID PROGRAM FOR STRENGTHENING INDEPENDENT MEDIA IN MACEDONIA,
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MONITORING: ELECTIONS 2014 – IMPLEMENTATION OF ELECTORAL CODE'S PROVISIONS ON MEDIA ELECTORAL COVERAGE

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INTRODUCTION

The Media Development Centre (MDC), under the auspices of the USAID Programme for Strengthening of Independent Media in the Republic of Macedonia and the Project for Media Legal Reform and Responsible Media, during the 2014 Presidential Elections and the 2014 Early Parliamentary Elections¹, conducted a monitoring of the work of the Agency for Audio and Audiovisual Media Services (AVMS) and the State Electoral Commission (SEC). MDC's monitoring team followed the sessions of AVMS and SEC², with focus on those points on the agendas referring to broadcast media and the electoral process. The monitoring activities aimed to

provide a clear picture of the manner in which AVMS and SEC implement the provisions of the Electoral Code (EC) and the Law on Audio and Audiovisual Media Services (LAMS) that directly regulate the media coverage of elections and election campaigns, but also to gain a picture about the quality of the legal provisions, whether they are good or if there is room for improvement, and their influence on the work of the media during elections. In view of the importance and the role played by the public broadcasting service, a special segment of the monitoring programme was dedicated to the Macedonian Radio and Television (MRT).

1 Presidential Elections were called on February 1, 2014, and the Early Parliamentary Elections were called on March 6, 2014. The first round of the Presidential Elections was held on April 13, and the second round of Presidential Elections was held on April 27, together with the Early Parliamentary Elections.

2 With exception of those sessions of the Council of AVMS which MDC could not observe because of the arbitrary ban for MDC representatives who were prevented to sit in and observe the proceedings. See more at <http://mdc.org.mk/wp-content/uploads/2014/04/Monitoring-na-novoto-mediumsko-zakonodavstvo-MKD.pdf>, crp. 4



AGENCY OF AUDIO AND AUDIOVISUAL MEDIA SERVICES

The adoption of the changes and amendments of the Electoral Code of January 2014, terminated the provisions of the 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, adopted by the former Broadcasting Council of the Republic of Macedonia. The provisions and rules on the media coverage of Elections by broadcasters are incorporated in the Electoral Code. In accordance with the Electoral Code, the AVMS, as an independent regulatory body, adopted several documents which elaborate, in further detail, the rules of media presentation, list directions and instructions for the commercial broadcasters and a set of recommendations for the public broadcasting service (MRT). AVMS's documents are not legally binding for the commercial broadcasters or the public broadcasting service. The Council of AVMS, in its 4th Session of January 28, 2014, before Presidential Elections were officially called, adopted the Concept for Monitoring of Radio and Television Programme Services for the 2014 Elections (hereafter "the Concept") and the Methodology for Monitoring Election Media Coverage through Radio and Television Programming Services during the Election Processes (hereafter, "the Methodology").

The Concept lists the periods of time that will be covered by AVMS monitoring activities, the scope of its coverage in terms of the media and the programming segments that will be subject to monitoring, the manner of its implementation and the number of external associ-

ates that will need to be engaged and the terms and conditions of their engagement³.

The Methodology, on the other hand, defines the legal framework of the monitoring, its aims and goals, subject and methods. The Methodology includes the legal framework that explains the new provisions of the Electoral Code; the goals and aims of the monitoring (fair, balanced and impartial media presentation, equal access, on equal terms, to all forms of media presentation for all participants of the electoral process, respect for the qualitative and quantitative principles of balanced reporting in the news and information programmes, etc.); the subject of the monitoring (the division of electoral period into two distinct parts - the period before the start of the election campaign and the period during the election campaign); and its method⁴, the essential and the most important part of the Methodology. That segment prescribes the operational plan for the monitoring of the work and operations of the broadcasters. It provides for monitoring of special information programmes, all forms of direct access to the audi-

3 See more in the Concept for Monitoring of Radio and Television Programming Services during Elections 2014 http://www.avmu.mk/images/Koncept_zamonitoring_na_radio_i_televiziski_programski_servisi.pdf

4 See more in the Methodology for Monitoring of Election Media Coverage through Radio and Television Programme Services During Election Processes: http://www.avmu.mk/images/Methodologija_zamonitoring_na_izbornoto_mediumsko_pretstavuvanje_preku_radio_i_TV_programskite_servisi_zavreme_na_izbornite_procesi_-_precisten_tekst.pdf

ences/the voters, and the rules of the campaign silence period.

In view of the need to overcome certain omissions of the Electoral Code, referring to the equal access to the presentation for the political parties in the information and news programmes of the public broadcasting services, AVMS changed and amended its Methodology⁵. The Electoral Code, in Article 76-a (paragraphs 2 and 3), prescribes that during the election campaign, MRT shall secure equal access to its news and information programmes by allocating one third of the total duration of the news to daily events in the country and abroad, one third of the time to the campaign activities of the ruling parties, and one third for the campaign activities of the opposition. The EC prescribes that the time within the individual thirds shall be distributed in accordance with the number of seats individual parties won in the previous parliamentary elections⁶. The provisions are not sufficiently precise and don't ensure equal presentation in the news programmes of MRT for candidates of groups of voters, candidates of political parties that didn't run in the last Parliamentary Elections, parties that emerged after the last Parliamentary Elections, and the parties that did run in the last Parliamentary Elections but didn't win any seats in the Assembly of the Republic of Macedonia. For the reasons listed above, AVMS - first in the Methodology and then, in a more precise fashion, in the Specific Aspects of the Methodology for Monitoring of Election Media Coverage during 2014 Elections⁷, recommended to the public broadcasting service to secure additional time (additional five minutes) for presentation of candidates not covered by the provisions of the Electoral Code that

divide its news programmes in equal thirds⁸. The said defects in the Electoral Code were also noted by the OSCE/ODIHR Monitoring Mission in its Statement on Preliminary Findings and Conclusions, Presidential and Early Parliamentary Elections, of April 28, 2014⁹. According to ODIHR, the provisions of the Electoral Code dedicated to media presentation are not in line with provisions of Paragraph 7.8 of the OSCE Copenhagen Document, which states that the countries that are parties to the Document shall "provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process"¹⁰.

MDC also believes that the provisions of the Electoral Code, the definitions for the terms "position" (the ruling parties) and "opposition" (in Article 2, paragraph 1, indents 9 and 10), and several provisions on media presentation (Article 76a, paragraphs 2 and 3) are not sufficiently precise and leave space for different interpretations. In view of the above, and the fact that all political entities need to be provided, by Law, with a fair and equal treatment in the electoral process, MDC proposes that changes and amendments are made to the Electoral Code. Those changes and amendments should allocate additional minutes of airtime in MRT newscasts and news programmes for the candidates of groups of voters, candidates of political parties that didn't run in the last Parliamentary Elections, parties that emerged after the last Parliamentary Elections, and the parties that did run in the last Parliamentary Elections but

5 The Methodology was amended in the 7th Session of the Council of AVMS, held on February 7, 2014

6 The Electoral Code (consolidated text), the Official Gazette of RM" No. 6p.32/2014, of February 12, 2011

7 The Specific Aspects of the Methodology for Monitoring of Election Media Coverage during 2014 Elections, adopted in the 16th Session of the Council of AVMS of March 21, 2014, is the third by-law adopted by AVMS in order to further elaborate the rules of media presentation

8 See more in http://www.avmu.mk/images/Metodoloski_specifik_i.pdf and http://www.avmu.mk/images/Metodologija_za_monitoring_na_izbornoto_mediumsko_pretstavuvanje_preku_radio_i_TV_programskite_servisi_za_vreme_na_izbornite_procesi_-_precisten_tekst.pdf

9 See more in Statement of Preliminary Findings and Conclusions <http://www.osce.org/odihr/elections/fyrom/118078?download=true> p. 8

10 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE <http://www.osce.org/odihr/elections/14304?download=true> p. 6



didn't win any seats in the Assembly of the Republic of Macedonia.

According to the Electoral Code, during elections, the AVMS is obligated to conduct a programming supervision of the work and operations of broadcasters. AVMS is obligated to follow the election campaign media presentations in the programmes of the public broadcasting services and commercial broadcasters from the day elections are called to the conclusion of voting on Election Day (Article 76c, paragraph 1). Although AVMS follows the work of the broadcasters, upon its request, the broadcasters are obligated, within 48 hours from the moment they received the request, to present to AVMS recordings of the sought broadcasts, as well as other information and data related to electoral media coverage (Article 75d, paragraph 2). The broadcaster are also obligated, within 5 days from the day on which elections were called (Article 75f, paragraph 4), to present to AVMS their price lists for paid political advertising. If it detects violations of legal provisions, AVMS shall, within three days from the day on which the violation occurred, file misdemeanour charges against the offending broadcaster in front of a competent court (Article 76c, paragraph 2)¹¹. During the Elections, the Agency launched 34 procedures against broadcasters for violations of provisions of the Electoral Code. Four procedures were started for violations of provisions of the Electoral Code referring to the period before the start of the election campaign¹², 23

11 It should be noted that, before it files charges at the competent court, the Agency should implement a procedure to settle the dispute with the offenders out of court. If the settlement procedure fails, the Agency files misdemeanour charges at the competent court. MDC has no information how many broadcasters were offered the opportunity to settle the charges, in accordance with the Law on Misdemeanours, and against how many of them misdemeanour charges were filed. For that reason, we shall use the phrase "initiate procedure in cases of violations" of the given provision of the Electoral Code.

12 Two procedures were initiated against TV Boem – Kičevo, for violations of Article 75e, paragraph 2 (the broadcaster aired an ad for the petition to support a candidacy for the office of the President of the

procedures were started for violations committed during the election campaign¹³, and two procedures were started for violations of the campaign silence period¹⁴. The remaining five

Republic of Macedonia outside a properly marked advertising bloc and without clear indication who commissioned the ad) and for violations of Article 75e, paragraph 3 (the broadcaster aired an ad for a petition to support a candidacy for the office of the President of the Republic of Macedonia which, in addition to basic information - where the petition can be signed and whom it supports - offers additional information on the candidate); one procedure was initiated against Sitel TV for violation of Article 77, paragraph 2 (the broadcaster aired results of a public opinion poll on the participants in the election process, and didn't provide the information on the size and structure of the polled sample or the period during which the poll was conducted); and, one procedure was initiated against MRT2, also for violation of Article 77, paragraph 2

13 13 procedures were initiated for violations of provisions of Article 75e, paragraph 1 (exceeding allowed limits for paid political advertising. Two procedures were initiated against Alfa TV, Šutel TV VTV Toni, and one procedure was initiated against each of the following broadcasters: Sitel TV, AlsatM TV, Kiss TV, Nezavisna TV, TV Tikvešija, Kanal 3 TV, and Cobra TV. One procedure was initiated against Telma TV for violation of Article 76, paragraph 2 (paid political advertising without clear identification of the entity that commissioned the ad). Eight procedures were initiated for violations of Article 76, paragraph 4 (airing paid political advertising in news and other daily informative programming; special informative programs; children, school and educational programming; live broadcast of religious, sports, cultural, entertainment and other events). Of that total, two procedures were initiated against Kanal 5 TV, and one procedure was initiated against each of the following broadcasters: Sitel TV, Alfa TV, AlsatM TV, Šutel TV, Kiss TV and Sonce TV. One procedure was initiated against Kanal 5 TV, for violation of Article 77, paragraph 1 (airing results of a public opinion poll after the start of the five day period before ballot day during which no results of opinion polls can be aired and reported).

14 One procedure each was initiated against 24 Vesti TV and Era TV for violations of Article 76b, paragraph 3 which states: "The following shall be considered to constitute violations of the campaign silence period: broadcasting, i.e. publication of any information, photographs, audio and audiovisual material related to or which depict participants in the elections, all forms of media reporting which are openly or surreptitiously in favour of one's election campaign and could influence the decision of the

procedures were started after the conclusion of the electoral process, and they refer to the general balance (or the lack thereof) in the electoral coverage of individual broadcasters.

AVMS started a procedure against “24 Vesti” TV for violation of the campaign silence period. During the campaign silence period, the “24 Vesti” TV aired a report which contained a statement by the Mayor of Kumanovo Zoran Damjanovski-Cic, who was called in for an informative talk at the local police station on the day before Election Day. In his statement, mayor Damjanovski explained that his car was pulled over by the police and that they searched his vehicle without a valid search warrant¹⁵. Although, in accordance with the Law, he is a “...holder of office in a government body...”, Damjanovski didn’t run as a candidate in the Elections, his statement didn’t influence the electoral processes in any way or fashion, nor he attempted to promote any candidate or actor running in the Elections. MDC believes that this is a case of overly strict and restrictive implementation of the provisions of the Electoral Code (Article 76b, paragraph 76-6) which constitutes a restriction of the freedom of expression and principles of timely and objective reporting. MDC believes that there is a need to review the provisions of Article 76b of the Electoral Code to provide a more precise definition of the campaign silence period, and will allow the media to inform the citizens, during the campaign silence period, of all matters and issues of public interest.

At the same time, a public debate is necessary to discuss the very purpose of the campaign silence period and its influence on the freedom of media and freedom of information,

voters, information and data that disclose the identity of political entities and/or individuals involved in incidents and other irregularities on Election Day, as well as statements of candidates running in the elections, participants in campaign activities, representatives of political parties and holders of offices in governing bodies”.

15 The statement by Mayor Damjanovski is available for viewing on the following link: <http://24vesti.mk/priveden-gradonachalnikot-na-kumano-vo-zoran-damjanovski>

especially in the context of new technologies (social networks, new media), which render the observation of the campaign silence rules increasingly difficult.

In accordance with the Electoral Code, the Methodology and the Specific Aspects of the Methodology, AVMS is obligated to come forward with an evaluation and assessment of the coverage of the electoral processes by MRT and the commercial broadcasters. In line with that obligation, the Agency prepared and released two reports from the monitoring of the media after the conclusion of the first round of the Presidential Elections and after the conclusion of the 2nd Round of Presidential Elections and the Early Parliamentary Elections. The report on the first round of the Presidential Elections was divided in two parts. The first part covered the monitoring of the programmes of MRT, and the second part covered the monitoring of the privately-owned commercial broadcasters.

The analysis of the Reports from the monitoring of media coverage of the 1st Round of Presidential Elections in the programmes of the public broadcasting services and commercial media shows that AVMS applied a selective approach to the implementation of the monitoring Methodology, while the conclusions on “Telma” TV and “24 Vesti” TV doesn’t connect with the actual contents of the Report. The monitoring report was dominated by quantitative elements, while the qualitative analysis of media coverage was reduced to bare minimum. There was little, if any, analysis of the overall tone of reporting of the media; the frames they use in the reporting on individual political entities; the manipulative use of video and sound footage and images; the choice of words used to report on political entities and in the presentation of information; the respect for and adherence to professional standards of journalism; the presence of hate-speech in the coverage; etc. The absence of in-depth and detailed qualitative analysis of the media coverage and the total domination of quantitative elements in the Report result in an incomplete, distorted picture of the manner in which the media reported on the campaign and the 1st



Round of Presidential Elections. Although the Agency states in its Methodology that *“...the elements that will be used to evaluate the quality of the coverage rely on the Guidelines for Media Analysis During Election Observation Missions, prepared in 2005 by the OSCE Office of Democratic Institutions and Human Rights (ODIHR), the Directorate of Human Rights, the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe and the European Commission, as well as the Guidelines for Election Broadcasting of the Article 19”*, it didn’t adhere to those documents fully and prevented the public from getting a full and clear picture whether the media covered the first round of elections in a balanced and impartial manner.

Another omission was made in the quantitative segment of the monitoring, with the lack of sanctions against Sitel TV for the violations of the provisions of the Electoral Code on balanced presentation. The broadcaster dedicated more airtime to the presidential candidate of the ruling parties Gorge Ivanov than the total airtime given to the remaining three candidates combined. AVMS explains in the report that it was a matter of the strategic approach by the coalition led by VMRO-DPMNE. That omission of the Agency is noted in ODIHR’s Statement of Preliminary Findings and Conclusions¹⁶. An additional cause of concern is the insistence of the President of the AVMS Council, without any basis in the Methodology, that a paragraph should be added to the first report referring to Telma TV and 24 Vesti TV, which amounted to an arbitrary political attack on the two broadcasters.

Several members of AVMS noted the problems and omissions of the monitoring at the presentation session of the Council and, as a result, the report was adopted with six members of the Council abstaining from voting, while eight members voted in favour of the report.

In view of the legal obligations of AVMS and the exceptional importance of the monitoring of media coverage, MDC appealed in the period between the two rounds of elections to the

Agency to include in its analysis the qualitative components of the monitoring and reaffirm its professional, independent and impartial position as a regulatory body¹⁷.

After the session of AVMS Council in which the report was presented, several members of the Council came forward with public statements. They told the media that it was a “precedent in the history of the regulatory body” and presented their reasons why they refused to support the report. The member of the Council of AVMR Zamir Mehmeti said, in a statement for 24 Vesti TV and Telma TV, that this was the first report in the history of the Agency that directly labels individual media outlets. Mehmeti wouldn’t get into the reasons for such actions, but noted that he could never support such a report. Mehmeti also noted that the Agency has made a serious contribution to several election cycles in the past, but, regardless of who sat on the Council and who was its president, there were no attempts to label, attack or directly meddle in the editorial policies of the media¹⁸. In the next session of the Agency’s Council, the Council member Alma Masovic directly addressed the journalist of Telma TV covering the session with the following comments: *“You next report in any newscast should be... you should not present the personal views of some member or members of the Council as official positions of the Agency and some members of the Council. You can freely name them, present and explain your points. Nobody can forbid to anybody to give statement for any media, but to abuse the office of the president of the Agency, certain members of the Council and, should I say, higher offices of the state, the Prime Minister, the President of the country, that goes against any, dare I say, unprofessional editorial policy”*.¹⁹

MDC believes that any form of selective

¹⁶ <http://www.osce.org/mk/odihr/elections/fyrom/118079?download=true> p.9

¹⁷ See <http://www.time.mk/c/5c72f53435/crm-agencijata-za-mediumi-selektivno-gi-nabljuduva-radiodifuzerite.html>

¹⁸ See <http://www.time.mk/c/c3753e96e9/zamir-mehmeti-izvestajot-na-agencijata-za-mediumi-e-sramen.html>

¹⁹ http://www.avmu.mk/images/usvoen_zapisnik.pdf

monitoring, excluding the qualitative elements, creates a distorted picture about the media reporting and coverage of elections, and any labelling of media outlets, regardless of whether it was done in an official report or was a case of an individual statement of a member of AVMS Council, and constitutes a form of direct pressure and attack on the media and the freedom of information.

The Agency presented its Second Report from the Monitoring of Media Coverage of Election Process²⁰ in the 29th Session of its Council, held on May 9, 2014. The Report presents a cumulative assessment on the reporting of the broadcasters in the two rounds of Presidential Elections and the Early Parliamentary Elections. The second Report is more detailed and offers more qualitative elements and findings. It offers qualitative analysis of the tone of reporting used by the media in several instances. Yet, again, the components of, for example, the frame of reporting on the relevant subject, the choice of words used to report on individual political entities, the manipulative use of images, video and sound footage are missing. The section dedicated to the public broadcasting service offer less qualitative analysis than the section on the commercial broadcasters. As far as the

presentation of the second Report is concerned, it has to be noted that there was no debate by the Members of the Agency in the session. Unlike the presentation of the first report, when the AVMS Council members openly debated the positive and negative aspects of the Report, this time they offered no comments or remarks.

In the same session of the Council, an analysis was presented and sanctions were issued for general violation of the provision of Article 75, paragraph 1 of the Electoral Code which prescribes that the broadcasters shall cover the elections in a fair, balanced and impartial manner. Initiatives to file misdemeanour charges against Alfa TV, AlsatM TV, Kanal 5 TV, Sitel Tv and Telma TV²¹ were adopted. The Electoral Code prescribes fines of €3000 to €5000, to be paid in Denars, for those violations. In spite of the fact that AVMS's Report clearly indicates that some broadcasters, for example Telma TV, were borderline (im)partial, while Alfa TV, AlsatM TV, Kanal 5 TV and Sitel TV were openly biased in favour of the ruling coalition, the prescribed fines are equal for all.

With that in mind, MDC proposes changes in the Electoral Code to ensure gradual sanctions and wider range of sanctions for violations of those provisions.

²⁰ See http://www.avmu.mk/images/Finalen_Izvestaj_Izbori_2014_-_nacionalni_mediumi.pdf

²¹ See http://avmu.mk/index.php?option=com_content&view=article&id=1322%3A-29-&catid=145%3A2014-&Itemid=474&lang=mk



MACEDONIAN RADIO AND TELEVISION

The public broadcasting services should act as the engine of democratic processes in the country and, with that role in mind, it has a legal obligation²² to promote and contribute to the creation and development of freedom of thought and public information in its programming contents. Therefore, the Macedonian Radio and Television (MRT), as a public broadcasting services, plays an important and specific role in every electoral process.

The Electoral Code obligates all broadcasters to offer fair, balanced and impartial media coverage and presentation of campaigns of candidates and political parties running in elections. However, MRT is subject to specific rules that arise from its special role as a public information services for the citizens. Therefore, MRT has an obligation to inform the citizens, in a timely fashion and free of charge, about the procedure and technology of voting, can't air paid political advertisements, should provide free-of-charge, impartial and balanced political presentation of the candidates, secure regular information about the electoral process for persons with impaired hearing, and should also ensure equal access to its information programmes and newscasts. The legislator divided the total airtime of MRT's news programmes into equal thirds - one for the current events and affairs, one third for the activities of the political parties of the ruling coalition, and one third for the activities of the political parties of the opposition. As we noted earlier, in the section dedicated to AVMS, the Electoral Code doesn't reserve any airtime for the non-parliamentary and new political parties that emerged after

the last Parliamentary Elections. The Agency for Audio Visual Media Services made an effort with a recommendation to MRT to secure additional five minutes in its news programmes for such political parties and entities.

According to AVMS's monitoring reports, MRT accepted the recommendation of the Agency to provide, simultaneously, both free airtime for media presentation of the candidates running in the elections and free and continuous reporting on the technology and methods of voting. AVMS's Report offers an abundance of detailed data and graphic presentations for all programming services of the public broadcaster, and it also includes quantitative and technical indicators compiled in a detailed quantitative analysis. Of special note, however, is the absence of a comprehensive and detailed analysis of the qualitative aspects of MRT's coverage. The report is focused solely on the distribution of airtime within the information and news programmes, therefore, AVMS concludes that MRT *"met its obligation to ensure equal access for the participants in the election campaign through allocation of airtime"*²³ and that *"it met the obligations regarding the free political presentation"*²⁴.

AVMS's report makes special note of the broadcast of the pre-recorded debate of the four presidential candidates on April 5, 2014, as well as the "Open Studio" talk-show style political debate programme that was aired immediately after the debate. Again, the form is noted, but without a more thorough qualitative analysis of the realisation of the debate or the selection of

²² Law on audio and audiovisual media services, Official Gazette of the Republic of Macedonia No. 184/2013, No. 13/2014, and No. 44/2014, article 110

²³ The Report from the Monitoring of Media Coverage of Presidential and Early Parliamentary Elections 2014, AVMS, http://avmu.mk/images/Finalen_Izvestaj_Izbori_2014_-_nacionalni_mediumi.pdf

²⁴ Ibid

guests that appeared in the “Open Studio” show, i.e. it doesn’t offer an analysis of the tone of the discussion after the presidential debate, which was predominantly negative towards the presidential candidate of the opposition SDSM party.

Unlike AVMS, the monitoring conducted by OSCE/ODIHR focused less on quantitative elements and more on the analysis of the contents of MRT’s coverage. Therefore, OSCE/ODIHR concludes that *“the ruling parties were covered in a more positive manner on MRT. While all contestants were covered largely in a neutral manner, the VMRO-DPMNE had an advantage by receiving positive coverage highlighting its achievements and future projects. MRT-2 displayed a similar approach by providing positive and neutral coverage to DUI activities, and mainly neutral coverage to other election contestants.”*

The avoiding of qualitative analysis and the emphasis on quantitative indicators by AVMS, as well as the direct and clear conclusions presented by OSCE/ODIHR on MRT’s coverage of the election process, indicate that MRT remains biased in favour of the government and that it has not yet started functioning as a service for the citizens, i.e. a modern, impartial and professional public broadcasting service.



STATE ELECTION COMMISSION

The State Election Commission (SEC) is the institution that is the pillar of the system for implementation of the election process. It is charged to make sure that the preparation and conduct of elections proceed in a legal manner, in accordance with the Electoral Code and supervises the work and operations of the electoral bodies²⁵. The team of the Media Development Centre observed the work of the SEC only in terms of the manner in which it processed and deliberated on matters directly related to the media.

The SEC has the authority to review complaints filed for violations of the provisions of Article 69a of the Electoral Code, which regulates the conduct of election campaign²⁶. It is evident from the minutes recorded in the 71st Session of the SEC that the Commission adopted a decision to create a working group that will review and process the filed complaints and submissions. It doesn't however, clearly name the members of the working group and the decision

was not published on SEC's website²⁷. Although the website otherwise offers an abundance of information on the election process, the Commission could invest greater effort to improve its transparency. Alternatively, the legislators could introduce a legal obligation for SECE to publish all of its decisions on the website, just as it is obligated to publish the recorded minutes no later than 48 hours from the moment they were adopted²⁸.

The findings of the monitoring and the analysis of the minutes lead to the conclusion that the members of the Commission don't pay sufficient attention to the violations of Electoral Code committed by broadcasters, believing that AVMS has a direct competence over their actions. That approach opens the room for legal loopholes and ambiguities, as well as possibility for a given entity to violate the election process and escape proper sanctions. We would list the example of the complaint filed by SDSM, complaining of early start of the election campaign activities by VMRO-DPMNE's presidential candidate Gjorge Ivanov. Although it concluded, after a long debate, that provisions of Article 69a of the EC were violated, AVMS didn't sanction any of the broadcasters that covered the event²⁹. This example raises the question if better coordination between SEC and AVMS wasn't necessary.

Another point in favour of that argument are the submissions filed by political parties

25 Article 31, paragraph 1 of the Electoral Code; SEC's competences are defined in Article 31, paragraph 2 of the Electoral Code

26 Article 69a of the Electoral Code states: "(1) The election campaign shall cover all public gatherings and other public events organized by a participant in an election campaign, public exhibit of posters, video presentations in the public space, electoral media and internet presentation, distribution of print materials and public presentation of confirmed candidates and their programmes by the competent electoral bodies. (2) The election campaign starts 20 days before election day, in the first and the second round of elections, and no campaign activities shall be allowed 24 hours before and on election day. (3) In cases of filed objections and complaints for violations of provisions of paragraphs (1) and (2) of this Article, the State Election Commission shall be obligated to investigate the allegations and act on the complain within seven days from the day the complaint was filed."

27 See Minutes of the 71st Session of SEC http://www.sec.mk/files/izbori2014/zapisnici/Zapisnik_od_71.pdf

28 See Article 31, paragraph 2, indent 43b of the Electoral Code

29 For more information on this case, see the Minutes of the 78th Session of SEC http://www.sec.mk/files/izbori2014/zapisnici/Zapisnik_od_78.pdf, p. 2-9

SDSM and APM in the 92nd Session of SEC. The two submissions were filed to the Commission, instead of the correct instances – AVMS and the competent court. Regarding the submission that charged Kanal 5 TV of violations of provisions of Article 77 of the EC, SEC's working group and then the members of the Commission concluded that the submission should be referred to AVMS³⁰.

In these elections, SEC faced several questions and dilemmas related to the issue of candidates' presentations on the internet. In its 86th Session, SEC considered several complaints related to internet presentation, mentioned in the definition for the election campaign offered in Article 69a of the Electoral Code. Similar questions were raised in the 97th Session which considered a number of complaints related to provisions of Articles 69a and 77 of the Electoral Code. Although the text of Article 69a explicitly mentions the internet presentation as a part of an election campaign³¹, the chapter of the Electoral Code that lists the definitions of terms used by the Code³² lacks a proper definition of "internet presentation". The points mentioned above explain the dissonance among SEC members on the filed objections and complaints³³.

Other emerging questions arising from MDC's monitoring activities include the question if social networking sites should be considered media and whether the publication of contents on the internet during the campaign silence period constitutes a violation of the campaign silence rules?

In view of the above, MDC believes that an inclusive and wide public and expert debate is necessary on the issue whether, in what manner

and to what extent the internet presentation should be regulated.

³⁰ For more information on this case, see the Minutes of the 92nd Session of SEC http://www.sec.mk/files/izbori2014/zapisnici/Zapisnik_od_92.pdf, p. 2-4

³¹ See Footnote 26 above

³² See Article 2, paragraph 1 of the Electoral Code

³³ For more information on this case, see the Minutes of the 92nd Session of SEC <http://www.sec.mk/files/izbori2014/zapisnici/Zapisnik86.pdf>, p. 4-13 and the Minutes of the 97th session of the SEC http://www.sec.mk/files/izbori2014/zapisnici/Zapisnik_od_97.pdf, p. 8-16



CONCLUSIONS AND RECOMMENDATIONS

- The Agency for Audio and Audiovisual Media Services made an effort to overcome the omission of the Electoral Code, in the provisions on equal presentation in the news programmes of MRT for candidates of groups of voters, candidates of political parties that didn't run in the last Parliamentary Elections, parties that didn't exist at the time of the last Parliamentary Elections, and the parties that did run in the last Parliamentary Elections but didn't win any seats in the Assembly of the Republic of Macedonia. For that purpose, AVMS - first in the Methodology and then, in a more precise fashion, in the Specific Aspects of the Methodology for Monitoring of Election Media Coverage during 2014 Elections, recommended to the public broadcasting service to secure additional five minutes of airtime in its news programmes for the presentation of candidates not covered by the provisions of the Electoral Code.

MDC also believes that the provisions of the Electoral Code, the definitions for the terms "position" (the ruling parties) and "opposition" (in Article 2, paragraph 1, indents 9 and 10), and several provisions on media presentation (Article 76a, paragraphs 2 and 3) are not sufficiently precise and leave room for different interpretations. In view of the above, and the fact that all political entities need to be provided, by Law, with a fair and equal treatment in the electoral process, MDC proposes that changes and amendments are made to the Electoral Code.

The analysis of the Reports from the monitoring of media coverage in the programmes of the public broadcasting services and commercial media shows that AVMS applied a selective approach to the implementation of

the monitoring Methodology. The monitoring report was dominated by quantitative elements, while the qualitative analysis of media coverage was reduced to bare minimum, especially after the first round of Presidential Elections. There was little, if any, analysis of the overall tone of reporting of the media; the frames they use in the reporting on individual political entities; the manipulative use of video and sound footage and images; the choice of words used to report on political entities and in the presentation of information; the respect for and adherence to professional standards of journalism; the presence of hate-speech in the coverage; etc. The absence of in-depth and detailed qualitative analysis of the media coverage and the total domination of quantitative elements in the Report result in an incomplete, distorted picture of the manner in which the media reported on the campaign and the 1st Round of Presidential Elections.

Another omission was made in the quantitative segment of the monitoring, with the lack of sanctions against Sitel TV for the violations of the provisions of the Electoral Code on balanced presentation. The broadcaster dedicated more airtime to the presidential candidate of the ruling parties Gjorge Ivanov than the total airtime given to the remaining three candidates combined. AVMS explains in the report that it was a matter of the strategic approach by the coalition led by VM-RO-DPMNE.

An additional cause of concern is the insistence of the President of the AVMS Council, without any basis in the Methodology, that a paragraph should be added to the first report referring to Telma TV and 24 Vesti TV,

which amounted to an arbitrary politically motivate attack on the two broadcasters.

MDC believes that any form of selective monitoring, excluding the qualitative elements, creates a distorted picture about the media reporting and coverage of elections, and any labelling of media outlets, regardless of whether it was done in an official report or was a case of an individual statement of a member of AVMS Council, and constitutes a form of direct pressure and attack on the media and the freedom of information.

MDC recommends to AVMS, in monitoring of future elections, to pay greater attention to the analysis of the qualitative elements of the media coverage. Such an approach should ensure a more objective picture of the overall media coverage of the election processes. Also, MDC believes that the members of AVMS Council should refrain from statements and activities that constitute attacks, attempts at political labelling, or any form of pressure on the broadcasters.

- The avoiding of qualitative analysis and the emphasis on quantitative indicators by AVMS, as well as the direct and clear conclusions presented by OSCE/ODIHR regarding MRT's coverage of the election process, indicate that MRT remains biased in favour of the government and that it has not yet started functioning as a service for the citizens, i.e. a modern, impartial and professional public broadcasting service.
- AVMS started a procedure for violation of campaign silence rules against 24 Vesti TV, after it aired the statement by the Mayor of Kumanovo Zoran Damjanovski-Cic, who was called in for an informative talk at the local police station on the day before Election Day.

MDC believes that this is a case of overly strict and restrictive implementation of the provisions of the Electoral Code (Article 76b, paragraph 76-6) which constitutes a restriction of the freedom of expression and principles of timely and objective reporting. MDC believes that there is a need to review the provisions of Article 76b of the Electoral

Code to provide a more precise definition of the campaign silence period, and will allow the media to inform the citizens, during the campaign silence period, of all matters and issues of public interest.

At the same time, a public debate is necessary to discuss the very purpose of the campaign silence period and its influence on the freedom of the media and freedom of information, especially in the context of new technologies, which render the observation of the campaign silence rules increasingly difficult and impossible.

- AVMS also filed misdemeanour charges against Alfa TV, AlsatM TV, Kanal 5 TV, Sitel TV and Telma TV, for general disrespect of the provisions of Article 75, paragraph 1 of the Electoral Code which prescribes that the broadcasters shall cover the elections in a fair, balanced and impartial manner. The Electoral Code prescribes fines of €3000 to €5000, to be paid in Denars, for those violations. In spite of the fact that AVMS's Report clearly indicates that some broadcasters, for example Telma TV, were borderline (im)partial, while Alfa TV, AlsatM TV, Kanal 5 TV and Sitel TV were openly biased in favour of the ruling coalition, the prescribed fines are equal for all.

MDC proposes that the provisions of Article 181 of the Electoral Code should be amended to ensure graded sanctions for violations of Article 75, paragraph 1 of the Electoral Code. Those changes should provide for greater fairness of sanctions.

- In these Elections, SEC faces several questions and dilemmas related to the issue of presentation of candidates on the internet, as well as the question of its competence to rule on such matters as the central body that is charged with the proper conduct of elections. Other emerging questions arising from MDC's monitoring activities include the question if social networking sites should be considered media and whether the publication of contents on the internet during the campaign



silence period constitutes a violation of the campaign silence rules?

In view of the above, MDC believes that an inclusive and wide public and expert debate is necessary on the issue whether, in what manner and to what extent the internet presentation should be regulated.

