MEDIA DEVELOPMENT CENTER



INSTEAD OF SYSTEMIC, WE AGAIN GET PARTIAL SOLUTIONS

1st Quarterly report from the monitoring of the work of decision-makers, AVMS and the Programming Council of MRT, for the period January 1 – March 31, 2024

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EUROPEAN ENDOWMENT FOR DEMOCRACY

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INTRODUCTION

The Media Development Centre continuously monitors the situation in the media system and on the media scene in the Republic of North Macedonia. The monitoring focuses primarily on the work and activities of the two bodies with direct competencies for implementation of the media legislation - the regulatory authority, the Agency for Audio and Audiovisual Media Services (AVMS) and the Programming Council of MRT, the public broadcasting service. MDC also follows the activities of the competent Ministry of Information Society and Administration (MISA), especially in light of its role in the reforms (or lack thereof) of the media sector.

The reforms of the media sector in the country, while their necessity has been recognised for many years, are yet to start. The last failed attempt included an EU-led project, focused on the alignment of national legislation with EU's *acquis communautaire*, but also, in a later stage, on a comprehensive review and reform of the media legislation in the country.

This report, prepared with support of an institutional grant by the European Endowment for Democracy (EED), covers the first quarter of the year, i.e. the period from January 1 to March 31, 2024. This period was marked by the start of the elections period (although not the start of the election campaign), the vote on the new "technical" prime minister to lead the Government in the period of 100 days prior to the elections, as well as changes in the key Ministry of Information Society and Administration, caused by changes in the ruling coalition and the internal conflicts in the party that nominated the incumbent minister Aliu.

Instead of the expected comprehensive review of the media legislation, in the period covered by this report, we got two changes of the legislation, both in the Law on Audio and Audio-visual Media Services and in the Law on the Media. Those changes faced different levels of oposition and discontent in the media community.

I. DECISION AND POLICY MAKING BODIES

In the first quarter of 2024, the Parliament of the Republic of North Macedonia adopted two changes to the media legislation. First, on February 28, 2024, the Parliament adopted the Law on Changes and Amendments to the Law on Audio and Audiovisual Media Services (LAAMS)[1]. Two weeks later, on March 13, 2024, the Parliament adopted the Law on Changes and Amendments to the Law on the Media[2].

Those were not new proposals. The draft-law on changes and amendments to LAAMS was first submitted to the Parliament for adoption in 2022, with some minor differences to the ultimately adopted version, while the discussions on the changes to the Law on the Media have been going on for several years.

Both interventions in the media legislation faced strong opposition in the journalist community and among the CSOs working in the field of media.

The first grounds for the opposition relied on the understanding that the media legislation needs a thorough and comprehensive review and updating. That need is evident primarily in the case of LAAMS, which contains whole chapters that are outdated and ill-suited to the challenges presented by the new media environment emerging with the digital disruption. In 2023, the European Union implemented a project which, in addition to the task of aligning the national legislation with the new Audiovisual Media Services Directive, in a later stage ought to have focused on the matter of comprehensive review of the existing legislation.

The changed to the legislation were also criticised over the fact that they were adopted in summary, “European Flag” procedure, preventing a process of adequate public consultations and debate on the proposed bills, including in the Parliament. On the other hand, it should be noted that the Ministry of Information Society and Administration (MISA) organized a series of working meetings involving different stakeholders in the summer of 2023, its aim being to produce the best possible solutions. At the same time, MISA completely dismissed the possibility to accept the requests coming from the media community to terminate the procedure (as noted above, the EU’s project for review of the media legislation was under way) and insisted that the proposed changes have to be adopted.

1. See on the following link
2. See on the following link

As a result, the CSOs working in the field of the media, including the professional associations and trade unions of journalists and media professionals who insist on the creation of a public fund to support quality journalism and contents, refused to participate in those working meetings.

The public discussion on the adopted changes to the Law on the Media was held in the previous years, starting in 2018 when the discussion on renewal of the programme of direct subsidies for the print media started. Those changes are a result of the active lobbying efforts of the association of print media.

Following is a brief overview and comments on the adopted changes to the LAAMS and the Law on the Media.

The Law on Changes and Amendments to the LAAMS

The Law on changes and amendments to LAAMS introduces several important interventions. The most important of them is the abolition of the prohibition (article 102) for state bodies, bodies of the state administration, public enterprises, units of local self-government, public institutions and legal entities performing public competences, as well as commercial companies fully owned by the state to plan funds for purchase of air-time from privately owned broadcasters for public information and promotion of their services or activities. The changes, therefore, reintroduce the possibility for government/state advertising.

In addition, the changes to the Law obligate the Agency to renew the permits to broadcast programmes to the broadcasters, at their request, with exception of a limited number of cases. Also, a significant novelty is the introduction, in a correct manner, of the “must offer” obligation for the national terrestrial broadcasters regarding re-transmission of their programming services by the operators of public electronic communication networks (OPECN), which should help regulate their strained relations. New obligations are imposed on the OPECNs related to regulation of copyrights and associated rights, an issue that is already well regulated in the Law on Copyright and Associated rights. The changes to the law introduce several more minor and less significant interventions.

Following is an overview of the amendments with short commentary.

A. State Campaigns/State Advertising

It is that segment of the changes that caused the greatest opposition in the public. The negative experiences with the abuses of funds for state and government advertising during the term in office of VMRO-DPMNE (led by Nikola Gruevski), are cause for caution and provoke fears about similar abuses of such funds as an instrument for pressure in a possible bid to establish control over the media. It has to be noted, however, that the sources of funds and their distribution are so minutely defined in such a fashion as to greatly limit the opportunities for such abuses (although we shouldn't underestimate the ability of all stakeholders to circumvent the legal provisions if they wish so).

The Media Development Centre has already commented on this matter extensively, but we shall use this opportunity to briefly note the reasons why we believe it is a bad legal solution.

First of all, although it formally regulates the issue of funding of production and distribution of state advertising (the law uses the term "state campaigns", although the first version of the proposal two years ago operated with the term "public interest campaigns" which is better suited to the purpose than "state campaigns"), the conclusion is that the primary intention was to introduce a system of indirect subsidies in the field of broadcasting. That is evident from the solutions that prescribe a linear distribution of ear-marked production/distribution funds; that the law prescribes fixed allocations from the budgets (0.1 percent of the realized tax revenue for the state Budget and 0.5 percent of the realized tax revenue of the local self-governments) for variable number of campaigns (for government institutions at least one, compared to no more than four for the local self-governments); the fact that, contrary to global trends of growing production costs and shrinking distribution costs (due to the new and inexpensive digital platforms), a lion's share of the total costs are prescribed to cover the distribution and not for production of campaign materials; absence of mandatory instruction on adequate audience surveys to determine which are the media that the target audience consumes in order to ensure maximum efficiency and effectiveness of a given campaign.

The most important issue, as noted, is the abolition of Article 102, while all the new provisions refer solely to the Government and the municipal councils (Article 101). The prohibition of article 102, in addition to state bodies and bodies of the state administration and the local self-governments, also covered the public enterprises, public institutions and legal entities performing public competences, as well as commercial companies fully owned by the state. The changes to the low contain no provisions or instruction for those entities, apart from the Government and the municipal councils. The

logical assumption is that they can now freely, without any regulation, rules or limitations, start media buying in privately owned broadcasters, opening the door to abuses similar to those we witnessed before the introduction of the Article 102, back in 2018.

The definition of "state campaign" doesn't list the subject matters and the areas for which a "state campaign" can be produced and disseminated. By excluding the promotion of services and policies of the state and/or local administrations, automatically limits the number of allowed subjects and issues for which a campaign can be implemented - for instance, environmental protection, public health, public safety, etc. come to mind. This brings about the question what kinds of campaign shall be designed and implemented by the local self-governments, knowing that such public interest issues are mostly remain the domain of the central government.

It is also unclear why the definition excludes the promotion of services provided by the bodies of state or local government, especially knowing that the operational term "state campaigns" is much wider in its scope and coverage than "public interest campaigns". If the intent was to regulate state advertising, as increasingly important source of advertising revenue for the broadcast media, the Law should aim to regulate it in a manner to ensure fair access and transparency of media buying procedures, not to limit the possibility for promotion of services. The exclusion of political and party propaganda, on the other hand, is fully acceptable and adequate solution.

The terms "state campaign" raises other questions. For instance, the "state campaign on state level" looks like a tautology. On the other hand, "state campaign on local level" sounds like an oxymoron, connecting matters that can't be connected, especially if we know that they should be funded from the local budgets. For that reason, we believe that the initially proposed term "public interest campaigns" if far better suited and far clearer than the ultimately adopted "state campaigns".

Also, this referring to regulation of advertising practices (production and distribution of information and promotion campaigns through procurement of ad time in the broadcast media), it should be noted that, in advertising, the phrases "national campaign" and "local campaign" don't refer to the position of the entity that commissioned a campaign, but to its scope and coverage, i.e. whether it was intended for all citizens/consumers or for the population of a smaller area or a region of a state. These issues and the related provisions need to be corrected.

In fact, the question is why we don't accept the newly adopted European legislation in the area - the Media Freedom Act (MFA). The MFA dedicates a full chapter to the issue of state advertising and ensuring it would be conducted in a manner that provides for fair access and transparency of procedures. On the other hand, it is not clear how North Macedonia, as a country candidate for EU membership, should act in

this case? The regulation is not an act that requires the member-states (but also the candidate-countries) to align their national legislations with it, but is implemented as adopted. The question, in fact, is whether North Macedonia, as a candidate country obligated to align its legislation with EU's *acquis* even before it gained full membership should start, following the same principle, the implementation of the Media Freedom Act? If yes, that makes these changes to the law void and redundant.

The proposed bodies that will decide which topics and issues shall be selected for information or education campaigns, and the bodies that will decide on the implementation (production and dissemination) of the campaigns also met with disagreement in the civil society and journalistic (not necessarily in the media) community.

The commission on state campaigns on state (national) level (Article 101b), which will work within the MISA, is composed of representatives of political parties in the government and in opposition. First question is, if it is the Government that implements the "state campaign on state level" (Article 101a, paragraph 1), why is it that the commission is not working at Government level instead under the auspices of MISA? While we are at it, why is it MISA that will adopt the decisions on implementation of campaigns and not the Government itself, knowing that the competencies on different issues that can be covered by the campaigns are held by other ministries and government bodies and offices? Second, the fact that the Commission will be composed, among other members, by active MPs is an issue, having in mind the fact that formally, in a representative parliamentary democracy, the ministry is subordinated to the Parliament and it can't be that they will prepare proposals to be adopted by MISA, but quite the opposite, MISA should prepare proposals to be adopted or approved by the Parliament.

We believe that such a body should also include representatives of different social groups, stakeholders that are well versed in the issues and topics for which "state campaigns" would be commissioned and implemented. Of course, it doesn't mean exclusion of politics and political representatives from participation in such a body. Second, that body should function under the auspices of the Government cabinet (whoever holds the power at the time).

Regarding the matter of securing funds for implementation of campaigns, several issues emerge. First, why are they set as fixed percentage of the state budget and the budgets of local self-governments - 0.1 and 0.5 percent, respectively - and why the different percentages, knowing that local self-governments face constant problems with financing of their core services and activities and, almost without exception, depend on grants from the state budget to balance their budgets. It is equally unclear why the difference in the number of campaigns listed in the Law, i.e., the Government is obligated to organize and implement at least one, while the local self-governments should implement at most four campaigns.

Also, in view of the possibility for the competent Commission to propose and adopt different number of campaigns to be funded and implemented in a year ("at least one"), the changes of the Law lack any instruction or provision on what shall happen to the remainder of the mandatory 0.1% of the realized tax revenue? For example, if a single campaign is selected to be implemented for a given year, will it have to be four times more expensive than the campaigns in years in which there will be four of them? What effect shall that have on the fixed prices for a second of ad time noted in Article 101d? Will broadcasters be allowed a larger increase of prices of ad time than the maximum 80% prescribed in paragraph 4 of that article?

The provisions of Article 101-c, paragraph 2, on distribution of funds for broadcasting of state campaigns, mean that, for all practical purposes, the Government will have to implement at least four campaigns per year. Namely, the indents (1) to (4) of that paragraph prescribes the corresponding percentages of the total allocated funds to distributed, for example, "for state campaigns on state level to be broadcast ONLY on television that broadcast on national level over an operator of a digital terrestrial multiplex (and further, "ONLY on televisions that broadcast on national level over an operator of a public electronic communication network", "ONLY on televisions... and radios" on regional and local level", and "ONLY on radios broadcasting on national level". The intention, as presented at the start of the limited discussion of these changes to the Law, was for every campaign to be broadcast at different levels of coverage and over different platforms. If that was the case, the law should state that clearly. The existing solution would further complicate the planning of the campaigns, together with the decision which campaign shall be considered of lesser significance, thus relegating it to broadcasts over regional and local TV and radio stations which, according to AVMS's surveys of media consumer habits, command much smaller audiences than the broadcasters with national coverage.'

As far as allocation of funds for broadcasting of "state campaigns on local level" is concerned, the local self-government will have to try hard, in addition to local campaign aimed at the local population, to design and plan national campaigns in order to justify the relatively high costs of broadcasting that result from the obligation of Article 101-I, paragraph (2), indent 2, which prescribes that at least a quarter of the allocated funds shall be spent on media buying on national terrestrial televisions.

In the working meetings organized by MISA, we repeated on several occasions that such campaigns are generally planned and implemented if necessary, that the focus should be on ensuring transparency and accountability of the media buying practices, as well as on the actual needs of central and local governments to implement information or education campaigns. The former of the two issues is in the focus of EU's new Media Freedom Act, after it was recognized that even in EU member-states, governments have abused "government advertising" as an instrument of pressure on the media.

Again, in view of the division of competences and the limited number of competences held by the local self-governments, especially in the fields in which the need for information or education campaigns could be expected to arise (security, healthcare, environmental protection, etc.), the best solutions would be to invest the competences to implement such an information or education campaign with the competent government ministries or other competent institutions.

B. Renewal of Permits to Broadcast Programmes

The changes to Article 79 (Article 5 of the Law on Changes and Amendments to the LAAMS) that introduce an obligation to the Council of AVMS to renew the permits to broadcast radio or television programmes for another nine-year term, at a request filed by the holder of the permit. The Council may dismiss the request for renewal only if it found repeated violations of the special prohibitions of Article 48 (hate speech, war propaganda, undermining the constitutional order, national security, etc.) (Article 5, paragraph 4, indent 1); or violations of the rules for fair, balanced and impartial coverage of electoral cycles (Article 5, paragraph 4, indent 2). The opposition to this solution prior to their adoption came on two grounds.

First, as noted by several media law experts, one can't tie the grounds for renewal of permits to acts that if performed, and confirmed with valid court verdict, invokes the possibility for revocation of the permit. That is especially the case with multiple violations of provisions of article 48.

Second, and even more important, is that those provisions practically deny the regulatory authority its core function, the very reason for which it was established - to decide on distribution of frequencies (now the capacities of the digital multiplexes) as a limited public good. Providers of audiovisual media services should, of course, be able to file for renewal of their permits to broadcast programmes, but the regulatory body should have the freedom to decide, at its discretion, how many broadcasters shall air programmes over the terrestrial digital multiplexes. Naturally, such decisions should be backed by proper quality analyses of capacities of media and advertising market, the available resources and the needs of the audiences.

The regulation on allocation of permits for cable or satellite broadcasting is far less strict. There are countries in Europe that don't even require from a broadcaster to hold a permit to broadcast programmes over cable or satellite. The domination of the broadcasting over public electronic communication networks (cable and IPTV) and satellite as main points access to television contents (over 90% of the population uses cable, IPTV or satellite television, compared to less than 5% accessing television via the digital multiplexes) makes the whole obligation for mandatory renewal of permits rather moot, knowing that the "privilege" to broadcast terrestrially is largely non-existent now.

Knowing that our broadcasting sector is overcrowded and unsustainable and the need for consolidation, especially in the segment of terrestrial broadcasting, AVMS should not have such an obstacle in the way if it chooses to move in that direction. The new changes to the law turn AVMS almost completely into a body that should simply administer the procedures, without any ability for independent policy making, especially in the area of planning and distribution of broadcasting capacities in a manner that will ensure that the citizens and media consumers shall have access to higher quality media services. MDC recommends a full review of the existing plans for distribution of capacities of the digital multiplexes through reduction of the number of broadcasters that broadcast programmes free-to-air.

That review should be preceded by a review of several chapters of the LAAMS, for instance, the provisions on media concentration, the obligations of the broadcasters, redefinition of areas of coverage, etc. Again, it brings us to the position that our media legislation needs an overhaul, to modernize it and adapt it to the changes brought about by the digital disruption.

C. Operators of public electronic communication networks, copyrights and associated rights

The changes to the LAAMS introducing new obligations for operators of public electronic communication networks in the area of copyrights and associated rights are redundant. The matter is already regulated with the existing copyrights legislation, but also in the LAAMS. The Law on Copyrights and Associated Rights[3] is aligned with the Directive on Cable and Satellite (although the provisions of Article 131, paragraph 10 of that Law need to be more precise for clarity of definitions regarding the right to re-transmit programmes of radio-television organisation).

One exception is the new article 141-a, on re-broadcasting of programming services aired over the digital terrestrial multiplex. The new provisions finally make the necessary distinction between the “must carry” and “must offer” instruments. Namely, must carry is an obligation imposed on the operators of public electronic communications networks, and in those jurisdictions that have it, it mainly covers the programming services of the public broadcasting service (but also other programming services, of course, in view of an existing public interest). The must offer obligation, on the other hand, is traditionally imposed on terrestrial broadcasters, although here we always believed that it should be an obligation of the cable operators to make an offer to the broadcasters.

3. See on the following link

Another positive aspect is that the new provisions (Article 141a, paragraph 4) leave the decision on re-transmission to be adopted by the involved parties, without special obligations on any of them, and to regulate their relations with an adequate agreement, in accordance with existing rules and regulations.

This should help resolve and old low intensity dispute, focused primarily on the question whether the broadcasters should receive some financial compensation for the re-transmission of their programming services by the operators of public communication networks, as well as the issue if the networks are obligated to re-transmit the programming services of the terrestrial broadcasters or not.

D. Other provisions

The other changes in the Law, such as the addition of the word “audio” in Article 48, the additional more specific obligations for providers of on-demand services are minimal and acceptable.

The new penal provisions that refer to the changes in the chapter on “state campaigns” and the relations between the operators of public electronic communication networks, copyrights and associated rights should be deleted together with the related provisions.

THE LAW ON THE MEDIA

The changes to the Law on the Media[4], adopted on March 13, 2024, cover the system of financial support for the print media. In practical terms, it is materialisation of an old initiative of the publishers of print media to transfer the existing subsidies programme that was allocated by decisions of the Government, adopted annually, into a legal text.

It is the same solution, i.e., it prescribes covering part of the costs of printing and distribution for the print media (50% for the print media published in Macedonian, and 70% for the print media published in a language spoken by at least 20% of the citizens that speak a language different from Macedonian). The Law provides more precise provisions, establishes a Commission for Support of the Print Media in which the Association of Journalists of Macedonia and the Association for Protection of the National Print Media (AZNPM) will be represented.

In addition, the changes introduce an upper limit on the funds that can be allocated as financial support under this programme (not more than 0.03% of the realized tax revenue according to the last annual balance sheet for the Budget), although, essentially, the amount that will be allocated will depend on a decision of the Government.

MDC still holds the position that the print media need to be assisted, but that the support should not be used to preserve the print on paper as an outdated platform for placement of information and other contents. We believe that the support should focus on preservation of the newsrooms (usually larger, better staffed and better structured, with established professional standards that allow them to provide higher quality contents of all types) and to support quality journalistic products, and not to print copy on paper that fewer and fewer people buy with every passing day.

The solution should be sought in a more comprehensive solution for support to quality journalism, with an adequate fund that will provide equal access to all journalists, regardless of the platform on which they publish, separate from the funds for support of production of quality audiovisual contents (which is a totally separate matter that needs to be discussed properly).

The changes to the Law on the Media also met fierce reaction in the online publishing domain. The negative reactions mainly came from the publishers of online media that pursue serious journalism (online newspapers), gathered in the Association for Protection and Advancement of Internet Media “Onlinemedia.mk”. They demanded that the Law on the Media ultimately incorporate the online news media, in the same

4. See on the following link

form of soft regulation that covers the print media - mandatory publication of masthead information (impressum), official registry of publishers of online news media, transparency of ownership and financial operations, etc.

While MDC stands on the position that the existing definition of media, while not mentioning them explicitly, also covers the online news sites, we are not against such a solution. Furthermore, the other demands for soft regulation of the online media, in accordance with the recommendations of the Council of Europe, are completely acceptable.

Recommendations

For the reasons listed above, and other deficiencies and contradiction in the latest changes to the media legislation, the Media Development Centre believes that:

1. The matter of the public interest campaigns (or state advertising as a whole), because of the objective and real need for the state to engage in that type of communication with the public, should be regulated in detail. The regulation needs to be conducted with a special law, or at least in the Law on the Media, in order to cover the other platforms and possibilities for placement of advertising and public interest campaigns (print, radio, internet, "Out of Home" ads (OOH)).
2. The regulation should focus on the issues of transparency and accountability, as well as fair access in the placement of the corresponding funds intended for production and distribution of public interest campaigns (and state advertising). The regulation should use as foundation, until such a moment when the Republic of North Macedonia is full member of the European Union, on the provisions of the Media Freedom Act.
3. The regulation should cover all entities that were listed in the now deleted Article 102, and not just the Government and municipal councils, which is the case now, in order to prevent and avoid possible abuses of their public information budgets to pressure or influence the media.
4. In general, it would be better to cover all issues related to the media reforms with a single comprehensive efforts, instead of such *ad hoc* solutions for individual aspects of functioning of broadcast media. We propose that the country should implement the existing EU legislation, i.e. the EU's Media Freedom Act.
5. The issue of allocation, renewal and revocation of permits to broadcast programmes should be reviewed under the auspices of the necessary (and hopefully coming) reforms of the LAAMS, including such issues as consolidation of the broadcasting sector, its sustainability and the need to secure quality audiovisual media services for the citizens.
6. The issues related to the copyrights and associated rights are already covered in the special legislation on copyrights and there is no need to repeat them in the LAAMS. Those provisions need to be deleted.
7. The issue of subsidies and support for the media should also be addressed in a single, comprehensive solution. That solution should focus on support for quality, well-staffed newsrooms and production of quality contents, and not to keep afloat individual publishing platforms, such as the print paper.

2. AGENCY FOR AUDIO AND AUDIO-VISUAL MEDIA SERVICES

For a fifth year in a row after the adoption of the changes to the LAAMS that entered into force at the start of 2019, the Agency for Audio and Audiovisual Media Services awaits for the implementation of the provisions that prescribed for early change of the composition of its steering body, the Council of AVSM (but also the Programming Council of MRT). Therefore, the Council of AVMS has functioned as "caretaker" body for the past five years, and it should be noted that their term in office ended three years ago (the current composition was elected in June 2014).

The reasons for the failure to implement those legal obligations (articles 42 and 43 of the Law on Changes and Amendments to the LAAMS of December 31, 2018), are obvious. The main reason lies in the fact that the members of the two bodies need to be elected with a qualified, two-thirds majority of the MPs in the Parliament. That threshold, in a situation of deep polarisation in which the political parties view it as an opportunity for political horse-trading and conditioning the support for the candidate with appointment of "their people" (there is anecdotal evidence for such behaviour), expectedly proved to be set too high.

MDC was against such a solution from the very beginning. We believed and we still believe that the threshold for appointment of the two bodies is set unnecessarily high. For that reason, we continue to advocate a change in the LAAMS to the effect that the appointment of the Council of AVMS and the Programming Council of MRT should be done with an absolute majority vote in the Parliament. In addition, an intervention is needed in the provisions requiring mandatory support and endorsement from various organisations and bodies. Such endorsement is welcome as additional evidence of the expertise or the integrity of the candidates, but on the other hand, if it is mandatory for the candidates to present endorsement letters, an opportunity emerges for external influence on the members of the two bodies.

A. The Lawsuit against MISA

Major issues for the implementation of the LAAMS are noted in the financing of the work of the public broadcasting service, the regulatory body and the public enterprise "Macedonian Broadcasting" ("Makedonska Radiodifuzija"), from the moment of the abolition of the broadcasting tax, when it was replaced by funding from the budget as the main source of funding for the three entities.

Due to the failure, or a very conscious decision by MISA never to transfer the full amounts of the prescribed funds (1 percent of the realized tax revenue according to the last available annual balance sheet of the state Budget), the Agency announced, on January 15, that it filed a lawsuit[5] against the Ministry of Information Society and Administration, noting that it "continuously violates the provisions of the LAAMS, undermining the functioning of the whole audiovisual sector".

It is a fact that AVMS and MRT have never received the full amounts of prescribed funds since the abolition of the broadcasting tax in 2017. The actual payments, according to the analyses of the audiovisual media services market, prepared by the Agency, and the annual balance sheets of the RSM Budget, indicate that, at best, never exceeded 50-60 percent of the total prescribed funds. Although the AVMS Director noted, in the conference for the press in which he informed the public about the lawsuit, that MRT intends to take legal action against MISA, too, there was no information to that effect as of the moment of writing of this report.

B. Annual Fees for Permits to Broadcast Programmes

During the period covered by this monitoring, just as in every first quarter of any given year, AVMS was mostly dealing with starting (and then stopping) procedures related to the payment of annual compensation fees for the permits for television and radio broadcasting. Namely, it has become a tradition for a number of broadcasters to either wait until the last possible moment, or to be late with the payments of the annual fees. AVMS is forced to open procedures for revocation of permits, and then retract such decisions after broadcasters manage to pay the fee. It sometimes happens for the Council to retract decisions for revocation of permits after the expiration of all legal deadlines and the decision was already adopted.

During this period, the AVMS organized the required public sessions, six in total, to allow the broadcasters an opportunity to present the reasons for their late payments. It was evident that a number of broadcasters chose not to use that opportunity and didn't appear in those sessions to present their cases.

It was also noted - and it was repeated on several occasions by members of the Council of AVMS – that broadcast media, especially those that work and cover the smaller local communities, face great difficulties to continue operations due to dire financial situation they find themselves in. Therefore, the number of active broadcasters is constantly shrinking (although not at the expected rate). Among those that folded was one of the four non-profit radio stations, the "Univerzum" Student Radio that functioned under the auspices of the Skopje University.

5. See on the following link

For all practical purposes, AVMS has been reduced to a position in which it just waits to confirm a decision of a broadcaster to give up, on their own free will, further operations and cease broadcasting.

C. By-Laws

In the first quarter of 2024, AVMS continue to work on the implementation of the changes to the LAAMS resulting from the aligning of the Law with the new Audio-visual Media Services Directive (AMSD). In its 9th session[6], the Council adopted the drafts of two by-laws, the Draft-Rulebook on Accessibility of Media Services and the Draft-Guidelines on changes and amendments to the Guidelines on implementation of provisions on product placement, and launched the process of public consultations with the stakeholders.

The first by-law regulates the manner in which the providers of audiovisual media services shall make their contents more accessible to persons with disabilities (sign language interpretation, special forms of sub-titling for persons with impaired hearing, etc.). The second by-law covers the new, much more liberal rules on product placement in audiovisual programmes and the manner those rules shall be implemented by the providers of audiovisual media services.

Within its competences regarding the elections, the Council of the Agency also adopted the Guidelines for Broadcasters for 2024 Presidential and Parliamentary Elections. It should be noted that the Agency was extremely careful in the preparation of the Guidelines and sought additional explanations from the other competent bodies (the SEC, the Parliament) in order to regulate precisely the conduct of the broadcaster during the elections. That approach is commendable, having in mind the complicated formulas for distribution of time for paid political advertising[7] for different categories of participants in the elections (government, opposition, parliamentary parties without an MP club, parties not represented in the Parliament, independent lists, etc.).

6. See the Minutes of the 9th Session (available only in Macedonian) on the following link
7. MDC stands at the position that the practice in which the tax-payers should fully subsidize the paid political advertising in election campaigns should be abolished.

D. Public Meetings

AVMS held the first public meeting for 2024[8] on March 28, to present the activities of the Agency in the first quarter and the findings of the Survey on the manner of reporting of gender-based violence in the newscasts of the television broadcasters with national coverage in 2023[9].

E. Support for critical media voices

At the end of January 2024, the Agency announced that it secured a donation of 5 million MKD to support the activities and the contents of the Investigative Reporting Laboratory (IRL)[10]. The decision is welcome, on one hand, knowing that we have few, if any, domestic sources of support for quality journalism, in the context of the deteriorating financial situation of the media.

On the other hand, we have to raise several issues that arise from the decision of the Agency to award such a donation.

First, while we don't dispute the view that, should there be public funds available to support quality journalism in the audiovisual media sector, the AVMS is the most qualified institution to manage such funds, we have to note that, at the time being, there are no legal opportunities for such a thing.

Second, if AVMS does have funds for support of quality journalism or for production of quality audiovisual contents, it should then develop and adopt clear rules and procedures for allocation of such funds, and make them accessible to all possible beneficiaries. At the moment, we couldn't find anything of the kind on its website.

To reiterate, should we decide that we need such a programme for support of quality journalism in the audiovisual sector, the AVMS should take the lead in the decisions on the allocation of such funds, but under clear terms and conditions defined and established in advance.

F. Other Activities

Thanks to the agility and quality of its staff, AVMS remains especially active in the areas of development and promotion of media literacy, promotion of gender-balanced approach in the contents of the provisions of audiovisual media services, etc. Those activities are always more visible and better promoted than the core activities

8. See on the following link
9. The research, commissioned by AVMS, was prepared by the Institute for Sociological, Political and Juridical Research from Skopje.
10. See on the following link

of AVMS – the decisions on the distribution of available resources for broadcasting of programmes, especially in terrestrial broadcasting, and the regulation of the audiovisual media services market.

The tendency for AVMS to be most open to the public and for cooperation with the civil sector in the implementation of those activities should be noted and commended. On the other hand, while not questioning its best intentions, it happens for the Agency to engage in activities or initiatives that are outside of its scope of competences.

A prime example for that is the initiative for the Code of Conduct in the Online Domain during Electoral Processes and Referenda[11]. It is a fine initiative, knowing the pertinent need for self-regulatory organisation of the actors engaged in public communication in the online domain. The implementation, on the other hand, had several questionable aspects.

First of all, it's coverage was too wide, involving simultaneously diverse entities - political parties, online extensions of broadcasters and traditional mainstream media, the internet-native news media, fact-checkers, influencers, and others. They all have the common trait of being engaged in public communication on the internet, but they all play different roles – some produce events and engage in political propaganda, others report those events and transmit the propaganda (in the form of paid political advertising or with supportive coverage), yet others check the quality, veracity and credibility of information. All of those actors need separate self-regulation instruments, and we shouldn't spare an effort in that area. For instance, the press already has a self-regulation system in place.

Second, the initiative and the preparation of the Code of Conduct didn't involve all stakeholders, something that should be an integral element of any similar self-regulatory initiative. The Code was drafted with participation of several CSOs that work in the area of media, and to the extent that we know, without the presence of political parties, the media (excepting the participation of the Association of Journalists of Macedonia) or associations of publishers of mainstream or new, online media. For such instruments to function as self-regulatory in the real sense of the word, the entities they cover need to participate in all stages of preparation and drafting of the self-regulatory documents. It is, in fact, a matter of principle. If we insist that the media and the journalistic profession should be left alone to self-regulate their conduct and professional standards, we have to demand the same for all the other professions or entities, including the political parties.

11. See on the following link

The drafting of a code of conduct that would later be offered to the target entities to join is rather a co-regulatory than self-regulatory solution, and such an action would require an established institutional or legal competence. The competences for such a solution, having in mind that this initiative is focused on elections, election campaigns and political promotion, lie with the State Election Commission.

Third, although the initiative, as ultimately realized, was better suited for monitoring and informing the public about the adherence to and eventual violations of ethical and other rules (including matters regulated by law), it resulted in a system for submission of citizens' complaints. The first such submission was considered in the period covered by this report. It remains unclear if the decisions of the Coordination Body of the initiative, which considers the submissions and complaints, shall produce some action, knowing that this is not a self-regulatory or co-regulatory body. It proves, again, that the initiative should have functioned as a monitoring and reporting instrument, leaving the self-regulation in that area to the different groups of entities covered by it.

3. THE PROGRAMMING COUNCIL OF MRT

The public broadcasting service MRT faced similar problems to those of AVMS. The Programming Council, just like the Council of AVMS, performs its duties as a "caretaker" body, due to the failure of political parties to implement the provisions (through some form of agreement) on the selection of new compositions of the two bodies, in accordance with the Law on Changes and Amendments to the LAAMS of December 31, 2018.

While there is a possibility for the new government (this report was prepared at a time when the results of the 2024 Parliamentary Elections were known) to secure the two-thirds majority, in its essence it is impractical (while much desired) solution. We shall repeat here that there was no real reason to set such a high threshold for selection of the members of the Programming Council of MRT and that the law should be changed to set the threshold at absolute majority vote in the Parliament.

The Programming Council continues, regardless of the situation, to perform the routine tasks – adoption of annual reports, MRT working plans and programmes, etc. What remains an issue in its functioning is its openness to the public, or the lack thereof, contrary to the legal provisions that define its work, sessions and decisions as public.

For instance, the provisions of the its Rules of Procedure that require from the representatives of the public (journalists, CSOs, interested citizens, etc.) that want to be present in its sessions to announce their interest in advance may be logical, considering the need to secure proper venue that would hold all the interested parties. On the other hand, the sessions of the Programming Council (and the corresponding agendas) are not announced on the website or in the programmes of MRT, making those provisions redundant. It makes the request for the interested parties to announce their presence in advance and to state which item of the agenda they are interested in, completely impossible to implement. A proper approach would require that the MRT website has a special section dedicated to the Programming Council and its work, to announce the scheduled sessions (complete with an agenda) and minutes recorded in the sessions. At the moment, the minutes are published in the section "Info", without any particular systemic approach or presentation.

The Programming Council doesn't communicate with the public (or the diverse publics in Macedonian society), although it is the public it is supposed to represent in the public broadcasting service. MRT does have an e-mail account (korisnici@mrt.com.mk) that the citizens can use to submit their ideas, comments, criticism, suggestions and proposals and thus take part in the creation of the programming schedule and offer of

the public broadcasting service, but that e-mail account is intended primarily for the editorial office of the First Programming Service (MRT1). The Programming Council should establish a structured approach to maintain contact and consultations with the public (in all of its diversity), such as public meetings, debates, and other forms of involvement of the citizens in the discussion of the present and the future of the public broadcasting service and the manners in which it can respond to their needs for quality information, entertainment/cultural and educational television and radio contents.

One positive development is that the Programming Council also recognizes the need to discuss the future of the public broadcasting service and the necessary reforms (in the 248th Session of the Council[12]). On the other hand, in the discussion on the Report on the Implementation of PBE MRT Working Programme for 2023, the chairwoman of the Programming Council noted that "MRT should also be a Macedonian and European television, not just a public service", without additional explanation what those words imply and mean.

MRT also continues to face the problem of insufficient funding and the fact that, after the abolition of the broadcasting tax and its replacement with financing from the Budget, the competent ministry has never transferred the full amount of the funds prescribed by the LAAMS. So far, MRT has not followed the example of AVMS to file a lawsuit against MISA, although representatives of the Agency, when informing the public about their own legal action against the Ministry, indicated that the public broadcasting service also planned to seek protection for its rights in court.

12. Minutes are available on the following link

RECOMMENDATIONS FOR AMVS AND MRT

1. Finding solution for the selection of the members of the Council of AVMS and the Programming Council of MRT is a matter of utmost urgency. While many consider the qualified, two-thirds majority an ideal, because it need consensus and, in theory, promotes the expertise and the qualifications of the candidates, it proved to be impractical and impracticable in a situation of deep political polarisation in which the parties in the Parliament seem interested how to use it to ensure that they will maintain their influence in those bodies. We believe that the selection threshold should be lowered to an absolute majority vote, but to install stricter criteria that need to be met by the candidates (qualifications, expertise, etc.).
2. An adequate solution for the funding of the two institutions (but also the PE "Macedonian Broadcasting") needs to be identified to secure that, at the least, MISA will transfer all prescribed funds each year, without any delays. In an ideal situation, we should reinstate a direct charge to be paid by the citizens, not necessarily in the form of broadcasting tax but, following existing practices in Europe, as some form of "media tax".
3. The future reforms of the legislation should include a review of provisions covering the competences and obligations of AVMS, with the aim to transform it into a true regulatory body that designs and implements policies in audiovisual media services, including especially the policies and decisions for allocation of available resources for terrestrial broadcasting.
4. MRT needs to start and lead the process of reforms that will result in its transformation into a proper public broadcasting service that will offer the citizens quality audiovisual media services and contents – information, education, entertainment/culture.

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