





# **Media and Elections: Case Studies**

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## **Introduction**

*This book was prepared at the request of the European Institute for the Media, as an aid to government officials and citizens interested in strengthening the positive role of the media in democratic processes, and especially in relation to free and fair elections. It provides information on the role assigned to, or played by the media during election periods. This is achieved through a collection of documents from various sources and at different levels. These documents are originated by international organizations, national legislatures, including regulatory frameworks from state and other authorities, non-governmental organisations and professional bodies. The focus of attention are cases from European Union member states and candidate countries. At the same time, examples from third countries complete the picture.*

*Media regulation connected with elections departs from a perception about a role of the media in society and particularly a qualitative link between media and democracy. It is viewed in relation to a number of fundamental principles organised around two basic axes: freedom of expression and the right to participate in government.*

*The media system and specific concepts, such as pluralism, transparency in ownership, freedom of political debate and others of this kind form the necessary foundations and prerequisites for the media to have a positive role in society. Governments are initially the agent responsible but also the guarantor of the maintenance of these principles vis-à-vis the media, and the general public. These roles should be discharged with special care for specific groups that should enjoy their rights without discrimination.*

*Thus, the main objective of any attempt at media regulation is not to subject those media to control as many may think.; The core of the challenge is to guarantee the freedom of the media and freedom of expression. To this end governments are called to strike a balance in the exercise of these rights by the media and all the social and other actors.*

*A natural reaction to this challenge would be “if so, why now?, Why is media regulation itself only about 20 years old?”*

*The radio and television landscape has changed dramatically over the last twenty years. This is marked by a real explosion in numbers of new broadcasters and the volume of information available. This breaks with the traditional public service monopoly. Satellite communications and the Internet have added new dimensions to the flow of information. Among the consequences has been de-regulation, and existing legal frameworks proving inadequate to respond to new needs that emerged.*

*As a result of the new landscape, and for other reasons we are witnessing a shift in political communication, at least in volume and intensity, from traditional forms, where*

*physical presence of the actors was the dominant feature, to a mediated one, where the broadcaster has a voice of its own and is also a platform for opinions and ideas of third parties. Radio and television are by far the sought after and effective places for politics.*

*The perception of a power-to-influence, eventually held by the broadcasters, created the need, among others, for establishing rules and setting norms and standards of media behaviour at all times, with special emphasis on their activity in election periods. The acknowledgment of the media potential for spreading information and ideas to the largest possible number of people requires that the media act as an "honest broker" in the service of democracy.*

*Simultaneous to the multiplication of channels in the media scene over the last 20 years were major changes on the international stage. These were precipitated by the collapse of the Soviet Union and the former socialist countries. New needs and challenges emerged, all related to the road to democracy. Democratisation of the media and establishing genuine electoral processes have been priority targets of international and regional organisations that provide assistance to these and other emerging democracies.*

*These factors, the expansion and the fragmentation of the media landscape and the emergence of fledgling democracies together created a need for more explicit frameworks for media behaviour. They explain also the variety and disparity of these documents which is why this collection should be of interest to those concerned with the strengthening of democracy.*

***In the first part of the book*** a number of documents describe the context in which the reader should locate the subject. These cover the legal foundations of the basic rights including, texts defining, the fundamental rights that all democratic societies should respect (. freedom of expression, right to participate in the government (in person or through elected representatives), gender equality, prohibitions on racism and incitement to racial hatred.). These rights are enshrined among others in United Nations legal instruments, and elsewhere.

*The special role of the media in society and all the tasks that they carry out at all stages of the electoral process are presented to highlight the need for special treatment. On one hand there should be no constraints upon the media in discharging their various roles in the electoral process. That is to say that there should be, no negative action by or on behalf of the authorities that would impede the roles of the media. In particular their action as a social watchdog and a privileged means of political dialogue, where criticism may be expressed freely and without fear should not be impeded. On the other hand the limits within which the above tasks can be fulfilled go beyond the accepted boundaries of criticism directed at ordinary people. Helpfully the case-law of the European Court for Human Rights (ECHR) has established standards and interpretations through numerous verdicts. The Court has recognised and assigned a special role to the media and journalists, particularly in subjecting*

politicians and governments to more scrutiny and more severe criticism than non-public figures.

**The second part** contains documents from international and regional bodies, including non-governmental organisations (NGOs). Through these documents, the reader has an overview of the legal and other frameworks dealing with elections. Particularly attention is directed to those articles covering freedom of expression, in connection to the media. Over time, and particularly since the 1980s, there have been many initiatives to develop international instruments dealing with these issues. These instruments establish the norms and standards for democratic elections. In most cases, these instruments include specific reference to the need for respect of media freedoms and to means and measures that may ensure a free and fair election campaign. These principles are not self-implementing. Further steps and legal mechanisms are required to ensure and guarantee their respect. Governments and media professionals should act in accordance with the guidelines established by these various bodies. The documents included here give fair examples of normative approaches in international legal instruments, and others originating in media professional organisations and NGOs. They show both side's (government and media) perception of their respective roles and obligations.

Examples of national law and other frameworks in **Chapters 3, 4 and 5** provide an extensive overview of efforts of authorities and media professionals responding to their obligation to safeguard the rights of media and social agents and ensure fairness and balance. The selection demonstrates that the set of principles to respect is the same for all. However the options available with regard to ways, means and measures to choose from vary between different countries to such an extent that no two systems are exactly similar. This is a warning to all interested in finding a model system: No existing regulatory framework can constitute the ideal response to any other country's needs. This is such a complex subject, where numerous parameters are involved and many more issues have to be treated and resolved. The real challenge rests with devising effective arrangements that respond to the specific needs, the context, tradition and culture of each country.

**Chapter 6** is discursive. It provides a round table on the major issues raised in the previous chapters, from a different perspective. This is achieved through texts from various sources and points of view, and covering many issues. These include the form, length and other features of party political broadcasts, the arguments on whether paid political advertising is desirable, or whether its prohibition constitutes a violation of human rights. The focus of attention is also on opinion polls considered as a threat in some countries; who impose restrictions to the dissemination of survey results. Decisions by national courts consider these restrictions as a violation of human rights. Finally, this last chapter explores the issues of campaign funding, the use of new

*technologies in election campaigns, and monitoring implementation of election legislation in European countries.*

*I wish to thank Dominique Tsouris and Flora Alexandrou for the tedious work of translating from French and Italian. I am in debt to Peter Flood who reviewed the draft for his valuable comments and suggestions. My special thanks go to the European Institute for the Media and Elena Chernyavska for entrusting me with this challenging project.*

## CHAPTER I

### THE FOUNDING PRINCIPLES AND THE FRAMEWORK

*This first chapter deals with the major aspects of elections and the role of the media. The reader is presented with a general view, starting from elections as a democratic process and proceeding to specific areas. Foremost among these is freedom of expression as a basic requirement for genuine elections and the media as an active participant in the electoral campaign.*

*We present a number of component elements of elections, and the founding principles that should guide governments and all those involved in the process. This is especially true of the media activity during the campaign. These elements will contribute to an understanding of the spirit in which one should approach the various issues and deal with the participants in the electoral campaign; citizens, groups, parties, candidates and others. The reasoning and the purpose of regulatory frameworks at national level included in this publication will thus be better perceived by the reader.*

*The reader should see that the fundamental element connected with elections is that of respect for human rights. This respect must be guaranteed for elections to be meaningful and produce genuine results. The basic United Nations texts (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and from Conventions, as well as excerpts from a UNESCO Declaration on the role of the media) have been selected as the starting point of this publication. This is done because they are the foundations on which states should build their policies. For a full understanding of the principles set by these documents we have chosen to present excerpts from a United Nations publication, a handbook on "Human Rights and Elections". In this publication these rights are enumerated and explained. through a description of ways and measures that can create the conditions necessary for the free expression of the will of the people. There is special emphasis in the selected excerpts on the role of free communication and of the media as vehicles for the exchange of information, and as a platform for exchange of opinions and ideas.*

*The specific role, that is the part played by the media and their eventual use, is presented through excerpts from a most useful website, [www.aceproject.org](http://www.aceproject.org)<sup>1</sup> on elections. The media take part in the various stages of the electoral process, starting even before the campaign period and ending with post-campaign reports. The text illustrates the different ways the media report, or otherwise cover, the campaign and electoral activities. These are programmes both in the form of direct and indirect access to the media by the parties and other groupings or their supporters. Brief references are made to specific cases from around the world to illustrate how different ways are chosen to serve the same objectives. That is: offering an electoral tribune, a*

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<sup>1</sup> The Ace project is promoted by the United Nations, International IDEA and the IFES. See [www.aceproject.org](http://www.aceproject.org).

forum through which parties and candidates can present their views and electoral platforms.

The different roles and activities of the media depend on many factors., The most decisive is the degree of their development and diversification. - All countries do not have the same media environment. Not all citizens have access to the same types of media and to the same extent. In western Europe the Internet and other technological advances are modifying the landscape dominated by television. In many countries, where access to television is limited or impossible for large numbers, or the number of illiterate people is very large, oral communication or radio are the dominant media. Moreover, traditions of respect for free expression and the rights of journalists and the media as a whole, will determine the qualitative characteristics of elections and democracy This is true also of the laws and regulations guaranteeing the democratic process. The situation around the world is not uniform.

In established democracies tradition and culture may be sufficient for democracy to function properly with regard to elections, sometimes without need of detailed or specific laws or regulations. In other cases more is needed. "What should be done and how?"

The reply is given as a two-sided coin. The negative side is given through excerpts from a publication by the international organization **Article XIX**, stressing all that a government **should not do** to media and journalists. This excerpt refers to all impediments to the free exercise of journalism and the functioning of the media as watchdog in the service of the society. The other side draws on the case-law of the European Court of Human Rights. These precedents establish the standards that should apply when the matter under scrutiny is about public dialogue, and the relations between governments and politicians on one hand and the media and journalists on the other. Professor Dirk Voorhoof explains in his text, (coming from the publication "Media and Democracy" by the Council of Europe), which rights are related to freedom of expression and, how and to which extent they are protected.

## 1.0 Introduction<sup>2</sup>

It is a truism that the media play an indispensable role in the proper functioning of a democracy. Discussion of the media's functions usually focuses on their "watchdog" role: by unfettered scrutiny and discussion of the successes and failures of governments, the media can inform the public of how effectively its representatives have performed and help to hold them to account. Yet the media can also play a more specific part in enabling full public participation in elections, not only by reporting on the performance of government, but also in a number of other ways:

- by educating the voters on how to exercise their democratic rights.
- by reporting on the development of the election campaign.
- by providing a platform for the political parties to communicate their message to the electorate.
- by allowing the parties to debate with each other.
- by reporting results and monitoring vote counting.

The media are not the sole source of information for voters, but in a world dominated by mass communications it is increasingly the media that determine the political agenda, even in less technologically developed corners of the globe. Thus, election observation teams, for example, now routinely comment upon media access and coverage of elections as a criterion for judging whether elections are fair. In parallel, monitoring the media during election periods has become an increasingly common practice, using a combination of statistical analysis and the techniques of media studies and discourse analysis to measure whether coverage has been fair.

At stake are three interlocking sets of rights:

- the right of the voters to make a fully informed choice.
- the right of the candidates to put their policies across.
- the right of the media to report and express their views on matters of public interest.

Of course, these rights, which are essentially all aspects of the right to freedom of expression guaranteed in Article 19 of the Universal Declaration of Human Rights, apply at all times, and not only when there is an election pending. But it is the very formality of the election process - the fact that it is conducted according to procedures that are clearly set out in law - that has stimulated the interest of those who are concerned with issues of media freedom. How far media freedom and pluralism are respected during an election period can be a fairly sensitive index of respect for freedom of expression in general - itself an essential precondition for a functioning democracy. Conversely, an election can be an ideal opportunity to educate both the authorities in their obligation to respect and nurture media freedom and the media in their responsibility to support the democratic process.

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<sup>2</sup> <http://www.aceproject.org/main/english/me/me.htm>

## 1.1 Elections and Human Rights

*Respect for human rights is a primary concern if elections are to reflect and translate the free will of the people. The right to participate in elections is enshrined in basic human rights documents emanating from the United Nations and other international or regional organisations. More rights are linked to participation in elections, especially those related to freedom of expression, non-discrimination and respect for media freedoms.*

*These principles are reiterated in international and regional conventions, treaties and other documents, presented in chapter II. However, since the United Nations Universal Declaration of Human Rights and other such documents have set standards at world level concerning the issues treated in this publication, excerpts from the original texts have been chosen and presented here mainly as the point of reference for national rules.*

*In excerpts from the United Nations publication “Human Rights and Elections – A Handbook on the Legal, Technical and Human Rights Aspects of Elections” that follow below, there is further explanation of how freedoms and the expression of the will of the people can be safeguarded and protected. At all stages of the electoral process all citizens, groups, political parties and candidates should be able to express their opinions freely, to receive and impart information, to be educated concerning elections and to be informed about the positions of the parties. They should be able to do these things without any interference or the fear of sanctions. On the contrary, no discriminatory measures should be taken against anyone, and the rights of all should be effectively and positively protected by the law and the authorities.*

### 1.1.1 The United Nations legal framework on elections<sup>3</sup>

#### **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

##### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

##### **Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.

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<sup>3</sup> <http://www.aceproject.org/main/samples/me/mex28.pdf>

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(...)

3. The State Parties to the present Covenant shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

### **Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*public*), or of public health or morals.

### **Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

## **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

### **Article 7**

State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies

## **CONVENTION ON THE POLITICAL RIGHTS OF WOMEN**

### **Article I**

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

### **Article II**

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

## **INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

### **Article 5**

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(...)

(c) Political rights, in particular the rights to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(...)

(viii) The right to freedom of opinion and expression...

## **DECLARATION ON FUNDAMENTAL PRINCIPLES CONCERNING THE CONTRIBUTION OF THE MASS MEDIA TO STRENGTHENING PEACE AND INTERNATIONAL UNDERSTANDING, TO THE PROMOTION OF HUMAN RIGHTS AND TO COUNTERING RACISM, APARTHEID AND INCITEMENT TO WAR**

(Proclaimed by the General Conference of UNESCO at its Twentieth Session in Paris, 28 November 1978)

### **Article 1**

The exercise of freedom of opinion, expression and information recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.

### **Article 2**

2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end journalists must have the freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of the peoples and individuals, thus promoting the participation of the public in the elaboration of information.

....

4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

#### **Article 11**

For this Declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existence of favourable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

#### **1.1.2 The United Nations, human rights and elections<sup>4</sup>**

***“Human Rights and Elections – A Handbook on the Legal, Technical and Human Rights Aspects of Elections”, Center for Human Rights Geneva, United Nations, New York and Geneva, 1994***

(...)

27. **International human rights standards** contain a number of **fundamental criteria for free and fair elections**. This chapter will review those criteria in detail.

##### **A. Free elections**

##### **1. The will of the people**

28. The Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives (art. 21). The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights state that, by virtue of their right to self-determination, all peoples have the right freely to determine their political status (common art. 1). This right is echoed in the Declaration on the Granting of Independence to Colonial Countries and Peoples (art. 5), which also provides that the freely expressed will and desire of the people is to guide the transfer of power to them.

29. The Charter of the United Nations reflects identical concerns, particularly in regard to Trust and Non-Self-Governing Territories. The Charter mandates assistance to peoples in Non-Self-Governing Territories in the development of free political institutions (Art. 73 (b)). As regards Trust Territories, the Charter established as a basic objective of the Trusteeship System the promotion of self-government in such Territories, based, *inter alia*, upon the freely expressed wishes of the peoples concerned (Art. 76 (b)). While expressly addressing Trust and Non-Self-Governing Territories, these notions of freedom have survived as guiding principles in the work of the Organization in the field of elections, which is now principally directed to assisting independent States.

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<sup>4</sup> <http://www.unhchr.ch/pdf/hrelections.pdf>

## **2. Assuring freedom**

30. International instruments for the promotion and protection of human rights within the United Nations system are thus replete with admonitions that popular political participation must be “free”. While such instruments do not (indeed, could not) describe a particular methodology for ensuring such freedom, its essence is clear. To be free, participation in elections must be conducted in an atmosphere characterized by the absence of intimidation and the presence of a wide range of fundamental human rights. To that end, obstacles to full participation must be removed and the citizenry must be confident that no personal harm will befall them as a result of their participation. The particular formula for assuring such an atmosphere is set out, article by article, in the International Bill of Human Rights.

## **3. Prerequisite rights**

31. While each of the rights enunciated in the Universal Declaration, and elaborated upon in the two International Covenants, will contribute to the required atmosphere, some of those rights take on additional importance for election purposes. Worthy of individual mention in this regard are the rights to free opinion, free expression, information, assembly and association, independent judicial procedures, and protection from discrimination. Political propaganda, voter education activities, political meetings and rallies, and partisan organizations are all common elements of the electoral process, and each must operate without unreasonable interference for the conduct of elections to be free.

32. Similarly, judicial procedures must be insulated from corruption and partisan influence if they are to accommodate the necessary electoral functions of hearing petitions, objections and complaints. Furthermore, elections cannot be fair if equal participation is not assured through non-discriminatory measures. Finally, laws in force which might have the effect of discouraging political participation should be repealed or suspended. The prevailing atmosphere should be one of respect for human rights and fundamental freedoms, and should be characterized by an absence of intimidating factors. Respect for a wide range of human rights, as enumerated in the Universal Declaration and the two International Covenants, is crucial to the conduct of free and fair elections.

### *(a) Freedom of opinion*

33. The rights to free opinion, free expression and information are protected by article 19 of the International Covenant on Civil and Political Rights, which reads:

#### *Article 19*

*1. Everyone shall have the right to hold opinions without interference.*

*2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

*3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

34. The right to freedom of opinion is guaranteed in paragraph 1 of article 19. This right is absolute and cannot be restricted or interfered with in any manner. The unconditional freedom to hold a political opinion is imperative in the context of elections, since the authentic assertion of popular will is impossible in an environment where such freedom is absent or restricted in any way.

*(b) Freedom of expression and information*

35. The rights to freedom of expression and information are guaranteed in paragraph 2 of article 19. In terms of content, every form of subjective idea or opinion capable of transmission is protected by this article. Furthermore, while the scope of the article is not confined to one medium of expression (it includes cultural, artistic and other forms of expression), its importance for political expression should be evident. The electoral process is a mechanism whose very purpose is the expression of the political will of the people. The right to express partisan ideas must, therefore, be firmly guarded during election periods.

36. The right to freedom of expression is, however, partially limited by paragraph 3 of article 19. Nevertheless, in order to avail itself of the limiting factors enumerated in paragraph 3, a State cannot merely assert that it was necessary to restrict freedom of expression for reasons of national security or for any of the other specified reasons. In other words, the limitations were not included in the article to provide States with an excuse for placing restrictions upon free expression. Any impediment to free expression must be provided by law and be necessary in order to protect one of the purposes cited in the article. In reviewing such cases, the Human Rights Committee has held that a State under review must provide concrete evidence, including details of alleged charges and copies of court proceedings, that there was indeed a genuine and serious threat to national security or public order. Limitations on a State's ability to avail itself of paragraph 3 are of paramount importance in the context of elections, where the dissemination of all information must be permitted to the maximum extent possible in order to ensure that the electorate is fully informed. Without a well-informed electorate, it is impossible to guarantee that elections genuinely reflect the will of the people.

37. With regard to protection of public morals, States are afforded a bigger margin of discretion. This is due to the absence of any universally applicable common standard. However, this should not pose a threat during election periods, since peaceful political participation, in any fair reading, cannot be said to jeopardize public morals.

38. Especially important, however, is a State's increased power to regulate expression when the activity or expression in question seeks to destroy other rights recognized in the International Covenant on Civil and Political Rights. For example, it is permissible for States to regulate speech advocating racial, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. It is similarly permissible for States to regulate the activities of political parties whose policies conflict with any of the human rights enumerated in the Covenant. Restraints upon

activities of this nature are, in fact, vital during an election period in order to ensure that the political environment is free of any forces that may seek to intimidate the electorate or any political actors, or to violate the fundamental rights of any group.

39. In short, unless all persons feel free to express themselves and are, in fact, able to disseminate, without fear, all legitimate political information into the national dialogue, there can be no guarantee that elections are a true manifestation of the will of the people.

40. The requirements of freedom of expression and information will, of course, have important implications for fair media access and responsible media use as well. These implications are discussed in section D.5 (An informed choice) and chapter IV, section 1 (Media access and regulation), below. (...)

#### **5. An informed choice**

87. Implicit in the concept of free choice is that of an informed choice. As has been seen, if elections are to be genuine, they must reflect the political will of the people. Voters can neither formulate nor express that will without access to information about the candidates, the parties and the process. Well-organized, non-partisan voter information programmes and unhindered distribution of political propaganda are therefore critical elements of genuine elections.

88. Non-partisan civic education should aim to inform voters as to the “who, what, when, where and how” of registration and voting. It should also help to inform the public on issues such as why they should participate, and what guarantees are in place to protect their right to participate confidently in the process.

89. Voter information should be accessible to all members of society, regardless of their language or level of literacy. As such, voter education materials should be multimedia and multilingual, and culturally appropriate for various social groups.

90. Civic education activities should also include specially targeted training for certain professional groups, in order to prepare them for their respective roles in the electoral process. These may include such groups as registration and polling officials, police and security personnel, the media, political parties, etc.

91. Access to the mass media should also be guaranteed to political parties and candidates, and such access should be fairly distributed. Fair media access implies not only allocation of broadcast time or print space to all parties and candidates, but also fairness in the placement or timing of such access (i.e. prime-time versus late-night broadcasts, or front-page versus back-page publication).

92. In addition, use of the media for campaign purposes should be responsible in terms of content, such that no party makes statements which are false, slanderous or racist, or which constitute incitement to violence. Nor should unrealistic or disingenuous promises be made, nor false expectations be fostered by partisan use of the mass media. Further information on media access and regulation is provided in chapter IV below. (...)

#### **G. Respect for fundamental human rights**

115. Guarantees of free speech, opinion, information, assembly, movement and association take on greater significance during elections. The prevailing atmosphere should be one of respect for human rights and fundamental freedoms and be characterized by an absence of intimidating factors.

116. Laws in force which might have the effect of discouraging political participation should be repealed or suspended. Emergency or other exceptional legislation restricting fundamental rights should be repealed or suspended. Exceptional measures must not be imposed unless strictly required by the exigencies of the situation, and must not be calculated to corrupt or unnecessarily delay the political process.

117. Respect for a wide range of human rights, as enumerated in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, is crucial to the conduct of free and fair elections. (...)

#### **I. Media access and regulation**

120. Arrangements for fair media access by candidates and parties are an important focus of electoral law. This is especially evident where the major information media are government-controlled. Media regulations should provide for safeguards against political censorship, unfair government advantage and unequal access during the campaign period.

121. Fair media access implies not only equality of time and space allotted, but also attention to the hour of broadcasting (i.e. prime-time versus late broadcasting) and the placement of printed advertisements (i.e. front page versus back page). Fair media use implies responsibility on the part of all persons or parties delivering messages or imparting information via the mass media (i.e. truthfulness, professionalism and abstaining from false promises or the building of false expectations).

122. A valuable mechanism for assuring fair and responsible broadcasting during election periods is an independent body charged with monitoring political broadcasts, broadcast civic education programmes and allocation of time to various political parties, as well as receiving and acting upon complaints regarding media access, fairness and responsibility. This function might be discharged by representative transitional bodies, by the electoral administration, or by a separately constituted media commission.

123. Securing responsible electoral broadcasting and publication in the media can, in part, be served by agreement on a code of conduct for the media. Such codes may be preferable as a method of media regulation (i.e. self-regulation) to legislative or governmental action, which might raise the issue of impermissible censorship and interference with the human rights of freedom of information and expression.

#### **J. Public information and voter education**

124. Funding and administration should be provided for objective, non-partisan voter education and information campaigns. Such civic education is especially critical for populations with little or no experience with democratic elections. The public should be well informed as to where, when and how to vote, as well as to why voting is important. They must be confident in the integrity of the process and in their right to participate in it.

125. Literature should be widely available and should be published in the various national languages to help ensure the meaningful participation of all eligible voters. Multimedia methods should be employed to provide effective civic education to people

with various levels of literacy. Voter education campaigns should extend throughout the territory of the country, including to rural and outlying areas.

#### **K. Observation and verification**

126. The observation and verification of election preparations, voting and counting by representatives of political parties and candidates should be widely provided for in election legislation. In addition, the presence of non-partisan election observers from national nongovernmental organizations and international organizations can help secure public confidence in the electoral process.

127. If observers are to be invited, their presence must be expressly permitted by the electoral laws and procedures, and their role should be clearly described in public information materials. Whether drawn from the United Nations system, from regional intergovernmental organizations, from non-governmental organizations or from official missions from other States, observers should be afforded free movement and access and be protected from harm or interference with their official duties.

128. It is important to allow for a sufficient number of observers to ensure their presence at an adequate number of polling places and election events. Effective, independent coordination of observer activities enhances their positive value. The meaningful involvement of observers also requires their presence from the beginning of the process, their adequate training and measures to ensure that they are informed as to the local culture.

#### **L. Legal authority and structure**

129. Guarantees for the fundamental right of periodic free and fair elections with universal, equal and non-discriminatory suffrage and secret balloting, and for the right to be elected and to have access to the public service on equal terms, should be enshrined in the Constitution or other high organic law of the State.

130. The legal authority for the rights of free expression, opinion, information, assembly and association should also rest in the highest law of the land. Statutory language should be clear, concise and adequately specific, in order to forestall potential abuse of discretion, discriminatory application, or impingement upon the rights of free expression or full participation. Such language should also be gender-neutral, to encourage participation by women, and should be translated into the languages of all voting groups.

131. Subsidiary legislation, including clear and detailed regulations and administrative instructions, should also be promulgated and should respect these general requirements.

## 1.2 The Role of the Media During Elections

*In most cases and in most countries the media have become the major source of information for the public at large. This is particularly true of everything that refers to the views and the activities of political parties. All year round they report on the activities of the government, the opposition, and other groupings or individual politicians. During elections they are present at all stages from the pre-campaign period until the installation of the new government or other elected officials.*

*Media activity is often regulated in respect of specific requirements set by the electoral law. Examples of such regulations concern the duration of the campaign, the existence of a campaign period or a period of silence or reflection, and the rights of parties or candidates. These requirements differ from one country to another but in all cases the media are there to report, to inform and educate.*

*The tasks assumed by the media and the forms of their participation in elections cover a wide spectrum. Some programmes offer the airwaves for a direct communication between the political community and the citizens. In other programmes there are debates and interviews with candidates and others or reports and comments on their activities. Politicians may also seek access to other types of programmes, not directly linked to the campaign, because they attract large audiences.*

*For fairness and balance in treatment to be effected all such broadcasts need regulation. One can notice both the multitude of issues that call for regulation and the variety of approaches that exist not only all over the world but within western Europe alone.*

### **Media and elections<sup>5</sup>**

The topic area goes on to look at the various issues arising out of media coverage of the successive stages of the electoral process, from the pre-campaign period of voter education, through the campaign itself, to voting day, the count and the announcement of results. It explores the different types of media coverage - such as voter education, direct access by political parties, news and current affairs and other types of special election coverage. It discusses a number of specialized issues such as professional standards for reporting opinion polls, how to distinguish between reporting the functions of government and the activities of incumbent office holders as candidates, and the legal and ethical obligations of the media when reporting provocative statements by political figures.

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<sup>5</sup> <http://www.aceproject.org/main/english/me/me.htm>

### ***Pre-Campaign Issues***

The notion of Pre-Campaign Issues of course presupposes that there is a specified campaign period. Some countries, such as the United States, effectively impose no limits on the time of campaigning. (...) Of course, in many systems there may be little gap between different sets of elections: presidential, legislative, local or provincial - even, in the case of the European Union, international.

But under any electoral system there are issues that relate to elections and the media that occur, essentially, outside election periods. These are primarily:

- Voter education
- Discussion of the electoral system

In media coverage the two are clearly related. Informed debate about the workings of the electoral system can take place only in the context of thorough public education on how the system works.

(...) [P]re-campaign voter education is likely to focus on a number of issues, depending on the electoral system and the political context:

- Who is eligible to vote
- Why it is important to be on the voters' roll
- How to register to vote
- Where to register to vote
- How constituencies are divided up

(...)

Another important question is what systems exist for ensuring fair coverage and access by political parties outside election campaign periods. Many countries have systems that allow political parties regular opportunities to put their views to the electorate in direct access programmes. Many of the same considerations apply in devising such systems as are used in allocating direct access slots during elections (...). These will, of course, be issues for legislators and broadcasting regulators more than for election administrators. But they do have an important bearing on the question of how level is the playing field when an election comes round.

Yet another fundamental issue - although again one for legislators and broadcasting regulators - is how far publicly-funded media are independent of the government of the day and the ruling party. The opportunity for direct access during an election campaign is helpful up to a point, but if the general tenor of broadcasting outside campaign periods is strongly biased then it is difficult to regard the playing field as level.

### ***Campaign Issues***

For the media themselves the start of the campaign period is when election coverage really takes off. By contrast the smooth operation of the regulatory process will depend very largely on the system that has been put in place before the elections. By this stage the fundamental questions should already have been answered, with the media and political parties clearly understanding their roles and responsibilities:

- What laws or regulations govern media coverage of the campaign? (...)
- Who is responsible for implementing these? (...)
- What are the regulations governing direct access broadcasting? (...)
- What are the regulations governing paid political advertising? (...)

- What are the Policies on Hate Speech and Defamation, and any miscellaneous provisions on issues such as News Blackouts or Opinion Polls?
- What is the mechanism if any member of the public, a political party or the media themselves have a complaint? (...)

At this point the process of Accreditation of journalists can be started.

It cannot be stressed too strongly that these issues should be determined in advance of the campaign. Determining these important questions of policy on an *ad hoc* basis will diminish the authority of the supervisory body in relation to the media and create the impression that some media are not receiving equal treatment.

If this preparation has been completed effectively, the operation of the supervisory/regulatory body towards the media during the campaign period will be twofold:

- To monitor adherence to the agreed laws, regulations and procedures, and to take whatever action is necessary to secure this (...).
- To provide the media with whatever information they need to report the electoral process and the campaign effectively and accurately (...).

#### *Keeping the Media Informed*

In a well-managed election the supervisory body has every interest in ensuring the maximum flow of information to the media. There are fundamentally two reasons for this:

- First, because informing the media is informing the public - and a constant flow of information enables the electorate to exercise their democratic rights, as well as retaining their confidence in the whole election process.
- Second, because the media will write about the election, whether the supervisory body likes it or not. It is in everyone's interest if the material that appears in the media is as accurate as possible.

Consequently, the electoral supervisory body will have to devote some resources to information management, above and beyond the role that it plays in media regulation.

The fundamental principles of media management in an election situation are these:

- *The election administration will make available the maximum amount of information, barring only that information whose disclosure would compromise the integrity of the election process.*
- *All information that the election administration releases will be accurate, to the best of its knowledge.*
- *Information will be released on a non-discriminatory basis to all media, regardless of their ownership or political loyalty.*

The significance of these principles is that if they are breached, the objectives of informing the electorate and maintaining its confidence in the process will be damaged, sometimes irreparably. In new democracies, with a history of tight government censorship or control over the flow of information, these principles may represent a break with old habits. But the temptation to hold back information, or to provide it selectively to favoured journalists, is one that electoral officials must resist.

A practical problem, whether in a new democracy or an old one, is ensuring the consistency of information emanating from the electoral supervisory body. The appointment of a press officer, or creation of a media department, will be a way of

ensuring both that the authority speaks with a single voice and that the media know where to go to find the information that they need.

The main techniques that can be used to keep the media informed are these:

- **Journalist Training**
- **Press Releases**
- **Media Briefings or Press Conferences**
- **Briefing Packs**
- **Media Centre**
- **Internet**

#### *Voter Information*

One important function of the media during a campaign period will be a constant process of voter information. This includes formal voter education material, but might be said more broadly to encompass most of what the media do during an election.

(...)Voter education through the mass media can be very expensive and consequently may assume a low priority where cost is a major consideration. However, on occasions the media themselves may undertake to produce their own voter education materials or to offer their services at cost price to the electoral authorities. The scope of these materials can extend beyond more traditional methods - advertisements telling people how to vote - to educational soap operas.

Voter education will need to be targeted at those who are traditionally disadvantaged and therefore less likely to register to vote and to participate in elections. These may include women, racial, ethnic or national minorities, or people with disabilities. With special programming, such as in minority languages, the media (especially broadcasters) can play a vital role in this area.

However, voter information extends more broadly than voter education. This is the rationale for the investment of time and resources that the electoral administration should make in keeping the media well briefed on developments (...). However, the media also have a proper role to play in scrutinizing the election arrangements and exposing any shortcomings. This is an important aspect of the transparency and accountability of the election process.

#### **Promoting Professional Coverage**

The responsibility for promoting professional coverage of elections in the media lies primarily with media organizations themselves. The role of the electoral administration is mainly to create an environment in which this can happen.

However, there are a number of aspects of editorial coverage where there may be specific regulations covering what the media may or may not say and consequently the direct involvement of the regulatory body. These areas include:

#### **Coverage of Opinion Polls**

Many countries have explicit regulations governing how opinion polls may be reported - indeed in some cases, notably France, reporting of opinion poll findings is prohibited altogether. However, as France is discovering, total prohibition of opinion poll reporting is no longer a practical proposition. The argument in favour of some form of regulation is that, especially in a new democracy, the public may not be aware of the limitations of opinion polling and be unduly influenced by their findings. On the other hand, developing professional coverage in this area is probably best achieved by

disseminating guidelines on how to report opinion polls (...) rather than by prohibiting their misreporting.

### **Special Information Programming**

The one area of coverage where some form of regulation is usually considered necessary is "special programming" - usually consisting of candidate debates and panel interviews. Some countries with a long history in this area have developed standard formats for this sort of programme without any external regulation. Others, especially newer democracies, have developed detailed rules to ensure that all participants in the debate have fair access.

### **Government Activities and Campaigning**

One way in which election coverage is commonly abused is by manipulation of government functions for campaign purposes. Hence, senior officials standing for re-election contrive to place themselves in the public eye through their official functions. This happens in democracies the world over and is, to a large extent, a matter that should be left to the good professional judgment of the media themselves. However, especially where the public media are accustomed to slavish reporting of government Ministers' every function, it may be necessary to establish guidelines to prevent abuse.

### **News Blackouts/"Reflection Period"**

Many countries operate a statutory or voluntary blackout on election news at some point. Most often this take place once voting has started, to avoid misleading and abusive last-minute campaigning. But sometimes the blackout can extend for some days before the election to create a "reflection period" when voters can digest all the information they have received during the campaign.

### **Special Information Programming**

The most common form of "special information programming" during election campaigns is the candidate debate. A variant of this is the panel interview.

These special formats are unusual in that they fall somewhere between regular editorial programming and direct access slots. Indeed, in some countries the only form of direct access available comes as an interview or debate.

This unusual and hybrid nature of "special programming" means that in most places where they are conducted a special set of rules has emerged. Sometimes these rules are established by law, sometimes by self-regulation and sometimes by custom and practice. (...)

The most famous examples of this type of programming have been the presidential debates in the United States, dating from 1960 when a perceived debate victory by John F. Kennedy has always been credited with securing a narrow election win over Richard Nixon shortly afterwards. (One of the peculiarities of these events is that the participants are always anxious to claim victory in the debates, while pundits score them, rather like judges in a boxing contest. To the lay audience it is not always so clear who has won.) Received wisdom now has it that Nixon, with his five o'clock shadow, looked shifty and untrustworthy - a judgement that at least has the support of subsequent history. But those who listened to the debate on the radio thought that Nixon had won - it was his appearance that was decisive. This was caused at least in part by the fact that he was in pain from a knee injury.

In the United States the rules governing these debates have evolved by convention. However, the broadcasters must still abide by the equal opportunities rule made under the Federal Communication Act. This stipulates (among other things) that a broadcaster may choose which candidates are invited to take part in a debate, but that those candidates who are chosen must then be afforded equal opportunities. Effectively this allows broadcasters to exclude minor candidates from debates, which are usually confined to the two main Democrat and Republican presidential candidates. This has led, in 2000, to two other candidates announcing plans to take legal action after they were excluded from televised debates.

Not everyone agrees that candidate debates are a good thing. The main arguments against them are these:

- Debates can create artificial discord - perhaps a significant consideration where countries have recently emerged from violent strife.
- Political discourse becomes too personalized - head-to-head debates underline the "horse-race" nature of political campaigning, all style and no substance.
- Candidates will not agree on the need for a debate - challengers are always more likely to favour them than incumbents.

None of these arguments is overwhelming. It is not acceptable to refrain from vigorous discussion just because this spilt into violence in the past. And 20-second advertising slots do more to degrade the quality of political discourse than a lengthy live debate. Nevertheless, many countries manage happily without them. The debate is particularly suited to presidential campaigning. Broader campaigns in legislative elections do not lend themselves to that type of format, although there will often be other forms of special programming in which leading candidates will be questioned about their policies.

Candidates are often interviewed, sometimes in a special formalized setting. Sometimes, as in the 2000 elections in Zimbabwe, special interviews are almost the only opportunity that parties have to speak directly to the electorate about their policies. In these circumstances it is advisable to have an agreed format, although this would not normally be set down in laws or regulations. The aim would be to have a balance of political allegiances among the journalists conducting the interview, as well as a balance of issues that did not reflect the agenda of one or other party.

Often broadcasters will have phone-in discussions in which the electorate can address questions directly to politicians. Such programmes can suffer the deficiencies of all phone-ins - rambling, self-important and ill-informed callers. But they can also offer sensationally effective examination of politicians' policies. No British Prime Minister, for example, has dared to submit him or herself to such questioning since 1983, when Margaret Thatcher was interrogated with great forensic skill on the British sinking of an Argentinian warship in the South Atlantic. The caller, a Mrs Gould from Bristol, not only infuriated the Prime Minister by exposing the inconsistencies in her explanation. She also shamed the professional journalists whose job was to hold government accountable.

### ***Allocation of Time to Candidates and Parties***

Almost invariably the public media are thought to have a duty to publish or broadcast election statements by competing parties. It is generally accepted that the publicly

funded media have some obligation to allow parties and candidates to communicate directly with the electorate.

Beyond that, however, there are many issues to be determined.

### **Paid Advertising, Free Access, or a Mixture of the Two?**

It will have to be determined whether direct access by political parties will be free or paid or, as is often the case, a mixture of the two. Different rules are often adopted for print and broadcast media. Sometimes all parties are allocated free direct access but can top this up with paid advertising. (...)

### **How Is the Time or Space Divided?**

In a system of paid advertising this may not be an issue - time is simply allocated to those who can pay. (Many would argue that this is why paid advertising is an unfair option.) But if direct access broadcasts are to be allocated by a regulatory body, how will this be done? What criteria have to be taken into account to divide up the available time? Is it to be done on the basis of equality - so that every party gets the same time - or equitability (fairness), whereby parties are allocated time according to the degree of popular support they enjoy. If the latter, then how is that determined? Should time be allocated on the basis of past electoral support (the number of seats currently held in parliament), opinion polls, the number of candidates standing - or some other criterion or a mixture of all of them? Different countries have adopted widely varying systems. (...)

### **Timing of Slots**

Will there be regulation about the times that slots are broadcast? If everyone is to get a chance to broadcast in peak time, how can slots be allocated? What order will the parties be allowed to broadcast in? (...)

### **Who Pays - and Who Makes the Programme?**

Will the party be responsible for making its own broadcast or will facilities be made available by the public broadcaster? And who foots the bill? (...)

### **Who Decides What is Broadcast?**

Does the regulatory body have any say in the content of direct access broadcasts or political advertising? Can the parties say what they like? What are the limits? (...)

### ***Paid Political Advertising***

Whether or not a country allows paid political advertising in broadcasting is likely to depend heavily on the traditions in its style and ownership of broadcasting and consequently the type of regulatory system that has evolved.

Some may regard it as curious that the issue of paid advertising for political parties or candidates in newspapers is scarcely controversial. The practice worldwide is almost universally the same: advertising is permitted, subject only to other limitations such as campaign spending ceilings and sometimes restrictions on content.

However, the fact that many countries have followed a different course with regard to political advertising on radio and television can be put down to two factors:

- First, the cost of advertising on radio or, especially, television is usually much greater than in the print media.
- Second, broadcasters are either publicly owned or receive their share of the frequency spectrum from a public body.

Of course, neither of these factors in itself automatically leads to a prohibition on political advertising over the airwaves. But they do perhaps explain why the approach has been different.

Broadly speaking, countries with a long tradition of public ownership of broadcasting, such as France, Britain and Denmark, have tended to be hostile to paid political advertising. Those with a stronger commercial broadcasting tradition - the United States represents the extreme - have tended to regard political advertising as natural (...). It is notable that the European country where commercial broadcasting is most dominant - Finland - should also be the one where unrestricted political advertising is permitted.

This is the rough tendency, but there are many exceptions. Canada, for example, which has a public broadcasting tradition similar to the British, has an approach to political advertising much closer to its southern neighbour. Nor is the issue necessarily to do with whether a public broadcaster accepts commercial advertising. The British Broadcasting Corporation has always maintained a strict prohibition on commercial advertising, but French public broadcasting has permitted it since the 1960s. Each maintains an equally strict embargo on political advertising.

A common pattern, of course, is for the public broadcaster to give free direct access slots according to predetermined criteria, while private broadcasters sell advertising slots to parties and candidates, often according to different criteria. This is the case, for example, in Germany, and was too in Italy immediately after the legalization of private commercial broadcasting.

(...)

### ***Government Activities and Campaigning***

Incumbent candidates for elective office will usually try to use their official position to their own advantage. A president up for re-election will schedule an important international summit to underline his importance as an international statesman. This is an inevitably, if slightly unsavoury, aspect of democratic campaigning.

However, there is a line to be drawn. If a government minister were to use his official telephone or car for campaign activities that would be denounced (and perhaps prosecuted) as an abuse of public funds. Sometimes the media, wittingly or unwittingly, may abet a minister or other official in using official functions as a means of campaigning.

Often the corrective action should be directed against the official rather than the media. Journalists rather need to be educated into making judgements about what is the real news value of Minister X opening a new pig farm - or whatever. In the case of the state media - funded out of public money - a firmer hand may be needed. This is perfectly appropriate. It is not censorship or an interference in editorial freedom, but ensuring the proper use of public funds.

Montenegro, for example, has laid down specific rules for coverage of official functions during an election campaign:

Contact programs or special programs featuring state officials or using their engagements for the purpose of election campaign shall not be produced prior to the termination of the election.

The reporting on the activities of state officials performing their regular official engagements shall not be used for a party's election campaign. (...)

In the Malawi elections of 1999, the High Court made an important judgement relating to broadcast coverage of presidential functions. It found that this was a perfectly normal and proper role of the public broadcaster, but that if campaign messages were included in such broadcasts then the broadcaster was duty bound to give equivalent opportunity to the opposition to convey its views on the air. (...)

Such regulations may also apply to direct access material. France, for example usually applies rules that prohibit presidential candidates from showing their "usual place of work" in their election broadcasts. This is intended to stop the incumbent president from showing himself at the Elysee Palace or meeting visiting dignitaries.

It might be felt that such prescriptions go a little too far. But few, whether in the media or in election administration, would want to go in the direction of Venezuela. There, there is specific provision for election advertising by the incumbent government. This is not allowed specifically to call for a vote for one party, but in practice these are scheduled alongside the advertising slots for the ruling party.

### ***Election Day Reporting***

Once the polls have opened, the role of the media changes from what it was during the campaign period - and specific rules may be devised to govern this shift. In practice, the shift may have taken place earlier (...), with an embargo placed on political campaign reporting, opinion poll reporting, direct access broadcasts or advertisements - or all of these.

The issues posed by a ban on reporting during the poll become proportionally more complex depending on how long the voting takes, as well as how large the country is. In the later case, if the electorate is voting across several time zones, this poses especially complex issues since results in one zone may become available before voting has finished in another.

In essence there are two issues at stake:

- Preserving the integrity of the electoral process and the security of the vote
- Ensuring that the untimely release of information does not influence the vote in any way

The first of these is more straightforward than the second. It is usually not difficult to strike a balance between allowing the media some sort of special access to report on the voting process, but ensuring that voters' secrecy and security is not breached. (...) However, ensuring the maximum transparency and flow of information without improperly interfering with the process is more difficult, and a greater variety of approaches have been adopted. (...)

### ***Promoting Professional Coverage of Results***

Reporting results sounds in principle like the least complicated part of the whole election reporting process. Yet it is remarkable how often it is very poorly carried out. In the Zimbabwe referendum of 2000, not a single newspaper or broadcasting station succeeded in reporting the correct results as issued by the Registrar General's Office! A major part of the problem lies with the media themselves - if they cannot correctly copy a column of figures, there is little that the election administrator can do about it.

But there is much that can be done to promote accurate and professional results reporting.

Provision of a Media Centre will enormously facilitate media access to results. The mechanisms of counting will vary enormously between centralized and decentralized systems. For the purposes of media reporting, the significant point is whether results are released centrally or locally. If the latter, then media reporting is also likely to be decentralized.

When the latter system of local counts prevails, as in the United Kingdom, a massive media bandwagon has developed for projecting final results out of available results. Provided that no results or projections are released before the end of voting, this is essentially harmless fun (although dressed up in great statistical seriousness). The worst that can be said about it is that it encourages the treatment of an election as a horse race rather than a democratic choice.

What is particularly important, however, when results emerge gradually - especially true of a first-past-the-post constituency system - is that all results are reported promptly and accurately. This is a means of public scrutiny of the counting process and lessens the possibility of manipulation of the count. It is therefore a potentially important media function.

A rather different aspect of results reporting is media coverage of projected results in the form of Exit Polls and Quick Counts.

### ***Post-Election Reporting***

Media interest in an election does not stop with the announcement of the result. For them it is a continuing story, leading on to the inauguration of those who are newly elected, the selection of a new government and so on.

For the election authority, however, any formal regulation of the media ends with the announcement of the result. There is one area, however, where a formal media involvement may continue. If there are challenges to the results, this will be a legitimate story that media will no doubt cover. It should do this in accordance with the usual professional standards governing reporting of court proceedings.

An important twist, however, will be if the behaviour of the media itself forms a dimension of a challenge to results. This has been the case in some recent elections, such as Kenya in 1997. Findings of media monitoring projects may be used as evidence and the regulatory methods of the supervisory body may come under scrutiny.

### 1.3 Constraints on the Media Affecting their Role

**Article XIX**, a non-governmental organisation has produced a guide<sup>6</sup> to assist with efforts at enhancing democracy in many parts of the world. Such guidance is particularly helpful in countries falling within a special category, the group of “transitional democracies”. A variety of factors in these countries can contribute to an environment in which the media and journalists are not let or allowed to freely fulfil their roles. In particular their function as watchdogs of the government and of all the power holders can be obstructed. The examples given below can best be described under a collective title: “What a democratic government should never do”.

**Guidelines for election broadcasting in transitional democracies, Article 19, 1994, ISBN 1 870798 12 0**<sup>7</sup>

#### **PROBLEMS AFFECTING THE MEDIA'S ABILITY TO CRITICIZE, INVESTIGATE AND OPERATE FREELY IN THE ELECTION PROCESS**

##### **Introduction**

The media's right to function freely during the electoral process is circumscribed by restrictions on their ability to criticize activities or inaction by the government and the political parties, to investigate corruption and to operate independently of political pressures. In a significant number of transitional democracies, broadcast and print media face government intervention through direct censorship and threats of censorship. They also face government-sponsored or government-tolerated physical threats and attacks. In these circumstances, censorship may significantly inhibit free and fair election campaign broadcasting.

Censorship includes a range of government-supported actions from direct censorship to murder. The term "direct censorship" refers to improper and unlawful prior restraints on publication. It also is used to refer to communications from government officials that explicitly or implicitly threaten direct censorship or some other consequence for publishing items unfavourable to the government.

Government action or inaction that places journalists in fear for their personal safety or the safety of their professional equipment constitutes a form of censorship which, though "indirect", is often even more powerful than the measures which are more traditionally viewed as censorship. Often measures of intimidation are coupled with more direct forms of censorship, such as detention of journalists, in order to drive home their meaning.

Media outlets that are subject to, or threatened with, measures of direct censorship or intimidation are likely to exercise a degree of what could be termed as self-censorship in order to avoid the sanctions of government or the violence of government-tolerated groups. Such self-censorship is not exercised willingly.

<sup>6</sup> The authors of the publication are Patrick Merloe and Sandra Coliver.

<sup>7</sup> <http://www.article19.org/docimages/516.htm>

Self-censorship also may be exercised by media outlets which are controlled by interests that are closely allied with the government and which impose censorship within their media outlets owing to support for, rather than fear of, the government.

## **2.1 Direct Government Censorship and Intervention**

### ***Censorship by Government-Controlled Media***

Censorship may take a number of forms in the election context. In Zambia's 1991 elections, for example, political advertising was allowed, but the government-controlled Zambian National Broadcasting Company (ZNBC) refused to air the opposition's advertisements, apparently on grounds that they violated advertising ethics and could put ZNBC at risk of an action for libel. The Zambian High Court issued an injunction ordering ZNBC to run the advertisements but reversed its decision several days later. The opposition then agreed to delete portions of the advertisements which ZNBC considered inappropriate.

Former United States President Jimmy Carter criticized ZNBC for censorship at a press conference in Lusaka six weeks before the elections, stating: "I can understand why [ZNBC] will not want to publish advertisements that [are] scurrilous in nature or might encompass a slander or would have immoral or filthy words in them ... . But they are also maintaining to have the right to decide what is truth and what is not truth in a heated political campaign." The Zambian Voting Observation Team (Z-Vote), an international election observer delegation of which Jimmy Carter was a member, reviewed transcripts of the advertisements and deletions provided by ZNBC. The team argued in a letter to the ZNBC that its deletion of the claim that the ruling party had engaged in "27 years of mismanagement" appeared indefensible and that such claims clearly were legitimate campaign issues.

### ***Censorship by Government Agencies***

The 1991 Taiwan election provides an example of government censorship of political broadcast advertising. Taiwan's Central Election Commission officials reviewed television campaign advertisements in advance and prohibited references to the independence issue. In the 1986 Philippine election, broadcast advertising was censored, and the opposition was forced to petition the Movie and Television Review and Classification Board before their unpaid advertisements were allowed.

### ***Banning Access for Certain Political Parties***

During the 1991 election campaign in Bangladesh, the Jatiya Party, and other parties that took part in the 1988 election, were excluded from coverage by television and radio. They also were not allowed to present a half-hour political broadcast, an opportunity which was granted to other parties.

### ***Media Closures***

Censorship, including closure of media outlets, was part of the context of the 1989 Panamanian elections. All three daily opposition newspapers (La Prensa, El Extra and El Siglo), were closed by the government in 1988 and remained closed during the election campaign. Three radio stations (Radio KW Continente, Radio Noticias and Radio Mundial), which had been shut down by the government, remained closed during the campaign. Television Channel 5, which was owned by President Delvalle, was closed when he was ousted from office in 1988, although it later reopened under pro-government leadership. One month before the vote, Channel 4, the most

independent television station, received a notice that it faced prosecution for US\$2 million in back taxes. The station interpreted this as an attempt to pressure it to reduce the access it provided to opposition parties.

### ***Government Confiscations and Sedition Charges***

In the period leading up to the December 1992 elections in Kenya, the government seized publications that were particularly critical of its activities and imprisoned journalists. The government also used the law of sedition to harass media critics. On 5 January 1992, for example, police officers impounded over 30,000 copies of Society magazine and obtained a permanent injunction against its distribution on grounds that statements alleging government complicity in the murder of Foreign Minister Robert Ouko were seditious. In April five Society journalists were detained for nine days on sedition charges and in August the editor of Finance magazine was held for 13 days on sedition charges related to allegations of government involvement in tribal violence. These actions helped to create an atmosphere of self-censorship affecting all media.

### ***Threats of Censorship***

During the 1989 election campaign in El Salvador, officials at the Ministry of Culture and Communications reportedly made threatening telephone calls to journalists who ran stories that were not to the government's liking. These actions reinforced the climate of self-censorship. A state of siege existed in El Salvador for most of 1980 to early 1987. During that period freedom of expression was curtailed, and journalists feared violent reprisals from political extremists, including death squads. Although the situation for the press had improved by the 1989 election campaign, a high degree of repression remained. Government political pressure on the broadcast media in an election period is often more subtle than direct censorship. The Republic of Korea's 1988 elections illustrate these circumstances. Television and radio outlets were all controlled or restricted by the government. A week before the elections, the General Federation of Korean Broadcasters Organizations (GFKBO) was formed with members from the government-owned Korean Broadcasting System (KBS), the government-controlled Munhwa Broadcasting Corporation (MBC), and the Christian Broadcasting System (CBS). The GFKBO called for an end to outside pressure and intervention during the election period. In addition, six days before the election, more than 20 reporters at the Pusan KBS outlet initiated a boycott of news operations, charging that their reports on the election campaign had been distorted when broadcast. Without such actions, it could have been difficult to detect government pressure on the broadcast media.

Martial Law and States of Siege Governments may make use of, or threaten to make use of, extraordinary powers to censor the media during election campaigns. A blatant example of censorship was demonstrated by the 1990 elections in Burma (Myanmar), where martial law imposed by the government permitted it to censor or forbid communications by political parties and candidates simply by labelling criticism of the government or defence forces as divisive. The political parties were only allowed one 10-minute television slot and one 15-minute radio slot. Even then, their statements required the government's prior approval.

Applications to the Election Commission were required, together with a copy of the script of the speech at least seven days in advance. Both the script and the tape of the speech were reviewed before a permit was granted.

The shadow of the military loomed over the 1983 Argentinian elections because a nine-year state of emergency continued throughout the campaign. While the state of emergency was suspended the day before the vote, the government gave no assurance that it would not be reimposed following the elections. Further, the absence of a specific commitment to the transfer of power added to the uncertainty surrounding the elections.

## **2.2 Intimidation, Attacks, and Failure of the Government to Protect the Media**

Attacks on journalists or media offices are a powerful form of censorship. Such attacks may be committed by government agents or by non-governmental entities which may even include other competing political parties. In all cases, the government is obliged to thoroughly investigate the crimes, prosecute the perpetrators and punish those found to be guilty — the same obligation that it owes to all people within its jurisdiction. In addition, the government arguably has a particular duty to condemn, prosecute and punish such crimes because of the injury they inflict on media freedom. While direct methods of censorship violate Article 19 of the International Covenant on Civil and Political Rights and other provisions of human rights treaties which protect freedom of expression, a government's support for, or failure to prosecute, attacks on journalists in addition violates the rights to security of the person and to an effective remedy guaranteed by all of the general human rights treaties.

### **Government Attacks on Journalists**

Domestic and foreign journalists were intimidated and attacked by security forces during Haiti's 1987 election campaign. The incidents included an army attack on a radio station; the confiscation of cameras, film and tape recorders; and the detention, beating and shooting of journalists. According to foreign observers, in a period of two months 14 journalists fell victim to such incidents.

### **Detention of Journalists**

Intimidation sometimes takes the form of the arrest of journalists. During the 1984 Uruguayan election campaign, for example, two journalists and the publisher of a newspaper were detained by police approximately eight weeks before the election and questioned about a story they published on torture of political prisoners, which cast the government in a negative light.

During the election campaign period in Kenya, police seized thousands of copies of Finance magazine from its printers in November and again in December 1992. Police detained the magazine's editor on charges of sedition in December, less than three weeks prior to the elections. Earlier that month, the police detained the editor of another opposition magazine on sedition charges.

### **Prosecution of Journalists**

Threats, violence and the effect of government prosecutions and economic pressures on the media all contributed to the climate of intimidation in the campaign leading to Chile's 1988 national plebiscite. During 1987 and 1988, at least 30 journalists faced prosecution on charges such as "insulting the armed forces". Some charges resulted in imprisonment. The heads of independent and opposition media, including radio and

the press, were among those subjected to such intimidation. Threats, including death threats, from unidentified groups believed to be linked to the military were common.

In the 15 months between the October 1988 national plebiscite and the December 1989 general elections in Chile, international observers reported a decrease in censorship and harassment of the media but that a continued atmosphere of intimidation prevailed. Cases against journalists abounded in the military courts, as did violent acts and death threats by unknown groups. In the month before the general elections, for example, a journalist who had received death threats and an editor of an opposition weekly were the target of arson attacks.

***Failure to Protect Journalists from Attack***

During Pakistan's 1990 election campaign, political parties attempted to intimidate the press through threats and disruption of distribution. The police often failed to protect the press. Attacks on the press usually occurred after negative stories appeared concerning particular parties or party leaders. In Korea's 1987 election campaign, the offices of *Don- A Ilbo*, an independent daily newspaper, were attacked by supporters of the ruling party a week before the vote. Romania's 1990 election campaign was marred in both January and February by organized groups of coal miners and other government supporters attacking opposition political parties and their press. No prosecutions resulted from these attacks.

Such actions undoubtedly hinder broadcast coverage of election campaigns. At a minimum they contribute to a chilling of the media's freedom to investigate government abuses as well as to criticize the actions and omissions of the political forces at play in the country.

During the 1985 elections in Guatemala, intimidation over the preceding years created by numerous death threats and murders of journalists — 47 journalists were killed between 1978 and 1985 — constituted the most powerful form of censorship. Not only did the government fail to investigate or prosecute these attacks, but it was widely believed that government forces had encouraged or supported them.

In the face of such conditions, it is imperative to counter invidious actions against the media in order to ensure and promote internationally-recognized standards protective of freedom of expression as well as the security of the person. Election campaign broadcasting standards must address such serious human rights abuses as part of an effort to secure the broadcast media's role in promoting transitions to democracy. The government's failure to protect the media or to hold accountable those responsible for such abuses undermines the potential for free and fair elections.

## 1.4 The Extended Role of the Media

*Article 10 of the European Convention on Human Rights guaranteeing freedom of expression has given rise to frequent recourse to the European Court of Human Rights. As a result the Court has further elaborated on freedom of expression, and set the standards that Council of Europe member states should follow in their internal law and practice.*

*The media and journalists hold a privileged position in this context. They are recognised as a “public watchdog”, having the right to be more critical and even offensive vis-à-vis governments and politicians. Drawing on the Court’s case-law, Professor Dirk Voorhoof explains in detail the role acknowledged to the media and journalists and how they should be viewed and treated by courts and governments.*

*These fundamental guidelines are of paramount importance during elections. At such times the power race is often accompanied by high tension and the media can easily be viewed as enemies; consequently they can be the targets of attacks and other forms of intimidation by fanatics, by the government or individual politicians.*

Dirk Voorhoof, Guaranteeing the freedom and independence of the media, *in Media and Democracy*, Council of Europe Publishing, 1998

(...)

### **3. Europe’s First Amendment: Article 10 of the European Convention on Human Rights**

#### **3.1 Article 10, paragraph 1: the principle**

##### **The relevance of Article 10 for journalists and the media**

Article 10 of the European Convention guarantees freedom of expression and information to everyone. Individuals, non-governmental organisations or groups of individuals can invoke the protection of Article 10 of the Convention. On several occasions the Court has held that Article 10 is applicable to individuals as well as to private or commercial mass media.

The case-law of the European Court of Human Rights (ECHR) clearly recognises the importance of the application of Article 10 towards journalism and the media. According to the Court’s case-law, the press is considered to have an important role as a purveyor of information and as a “public watchdog”. Journalists are considered to contribute in an important way to public debate which legitimates a high standard of protection of their freedom of expression and information. In the *Lingens* case for example, the Court expressed the opinion that the penalty imposed on a journalist due to the criticism he published and his critical attack on an important politician reveal the danger of a kind of censure which would be likely to discourage the journalist from publishing criticism of that kind in the future. According to the Court, in the context of public debate, such a sentence would be likely “to deter journalists from contributing to public discussion of issues affecting the life of the community” (ECHR, 8 July 1986, *Lingens*). This was one of the considerations which led to the conclusion that the conviction of a journalist was a violation of Article 10 of the Convention.

\* *The Lingens case* CECHR, 8 July 1986)

In 1975 the applicant journalist was fined for criminal defamation of Bruno Kreisky, the Chancellor of Austria at that time. Lingens had published two articles in the Vienna magazine *Profil* in which he had criticised Kreisky for having protected former members of the SS for political reasons and for his accommodating attitude towards former Nazis in Austrian politics. Lingens was convicted because he had used certain very negative expressions apropos Mr. Kreisky, such as “basest opportunism”, “immoral” and “undignified”. These articles were published in the context of a post-election political controversy.

According to the European Court however, Lingens’ conviction was a breach of Article 10 of the Convention.

The Court reiterated the crucial importance of freedom of political debate and press freedom in a democratic society:

“Whilst the press must not overstep the bounds set, *inter alia*, for the protection of the reputation of others, It is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them’.

And: “Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by journalists and the public at large, and he must consequently display a greater degree of tolerance’.

In the Court’s view, the facts on which Lingens founded his negative value judgments vis-à-vis Kreisky were undisputed, as was also the journalist’s good faith. According to the Court, the requirement of the Austrian Criminal Code that the journalist had to prove the truth of his statements was impossible to fulfil and infringed the freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof.

#### **Facts and value judgments**

Article 10 of the Convention gives protection to ideas as well as to all kinds of information. Not only opinions, philosophical ideas or political speech are protected by Article 10, but also facts and news or even factual data. In the Courts view, a careful distinction needs to be made between facts and value judgments. As was mentioned in the Lingens judgment, the existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof, which gives these opinions and value judgments an even larger scope of protection within the framework of Article 10. In the Thorgeirson judgment the Court decided that in so far as the applicant was required to establish the truth of his statements, he was faced with an unreasonable, if not impossible task (ECHR, 25 June 1992, Thorgeirson). The Court was of the opinion that the applicant was essentially reporting what was being said by others about police brutality. The allegations of policy brutality by some members of the Reykjavik police force were so similar and numerous that they could hardly be treated as mere lies.

\* *The Thorgeirson case* (ECHR, 25 June 1992)

Thorgier Thorgeirson is the author of two articles published in the Reykjavik daily newspaper Morgunbladid. In these articles Thorgeirson commented on alleged police brutality by the metropolitan police. He was convicted for defamation.

According to the European Court of Human Rights, this conviction and sentence for defamation was a violation of Article 10 of the Convention.

The Court once more referred to the “pre-eminent role of the press in a state governed by the rule of law and to the vital role of the press as a ‘public watchdog. The Court emphasised that Article 10 gives protection to freedom of expression in the context of political discussion, as well as in discussion of other matters of public concern. The Court was of the opinion that the critical articles published by the applicant were not aimed at damaging the reputation of the Reykjavik police: it was Thorgeirson’s intention to urge the Minister of Justice to set up an independent and impartial body to investigate complaints of police brutality. The Court admitted that the articles were “framed in particularly strong terms”, but regarding their purpose and intention, the Court was of the opinion that the language used could not be estimated as excessive. Finally, the Court considered that the conviction and sentence were capable of discouraging open discussion of matters of public concern.

#### **The freedom of public debate**

Information and ideas are especially given a high level of protection when they are related to political debate. Public speech is accorded a high degree of protection, It has been emphasised several times by the Court that freedom of expression constitutes one of the essential foundations of a democratic society, in particular freedom of political and public debate.

\* *The Oberschlick case (ECHR, 23 May 1991)*

The applicant is an Austrian journalist, residing in Vienna. In the periodical Forum he published the full text of a criminal complaint which he and other persons had laid against an Austrian politician, Mr Graber-Meyer. In an election campaign, this politician had made certain discriminatory or even racist statements concerning migrant workers and family allowances. Oberschlick expressed the opinion that the statements of Graber-Meyer corresponded to the philosophy and the aims of National Socialism. The politician thereupon instituted a private prosecution for defamation. Oberschlick was convicted and fined and the seizure of the relevant issue of Forum was ordered.

According to the European Court, the task of the media is to impart information and ideas on political issues and on other matters of general interest. It is underlined that the freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention. The Court notes that a politician must display a greater degree of tolerance with regard to criticism, especially when he himself makes public statements that are susceptible of criticism: “A politician is certainly entitled to have his reputation protected, even when he is not acting in his private capacity, but the requirements of that protection have to be weighed against the interest of open discussion of political issues.” Court is of the opinion that “the insertion of the text of the said information in Forum contributed to a public debate on a political question of general importance. In particular, the issue of different treatment of nationals and foreigners in the social field has given rise to considerable discussion not only in Austria but also in other member states of the Council of Europe. Mr

Oberschlick's criticism (...) sought to draw the public's attention in a provocative manner to a proposal made by a politician which was likely to shock the people. A politician who expresses himself in such terms exposes himself to a strong reaction on the part of journalists and the public."

(See also ECHR, 1 July 1997, Oberschlick no. 2.)

(...)

### **The protection of critical and offensive speech**

Article 10 envisages the protection of every kind of expression and information, but the effect of Article 10 of the Convention is, especially important for the protection of critical and non-conformist speech. The freedom of expression and information as guaranteed by Article 10 is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also "to those that offend, shock or disturb the state or any sector of the population". According to the European Court "such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'". This means that Article 10 has to be interpreted from a perspective of a high level of protection of freedom of expression, even if this information is harmful to the state or some groups, enterprises or organisations and public figures, such as politicians and even judges.

\* *The De Haes and Gijssels case (ECHR, 24 February 1997)*

In Belgium, two journalists of the weekly magazine Humo were convicted by a civil court for abuse of freedom of the press and for having exceeded the limits of acceptable criticism by insulting or defaming four members of the judiciary. In several articles, De Haes Gijssels had accused three judges and an Advocate-General of marked bias and cowardice. The two journalists especially expressed the opinion that the judges had not been impartial in their handling of a case on the custody and sexual abuse of children (case of Mr. X).

The Court, however, is of the opinion that the conviction of the two journalists on account of their accusations of bias and lack of independence against the judges and the Advocate-General is a breach of Article 10 of the Convention.

The Court considers that "the articles contain a mass of detailed information about the circumstances in which the decisions and the custody of Mr. X's children were taken. That information was based on thorough research into the allegations against Mr. X and the opinions of several experts who were said to have advised the applicants to disclose them in the interests of the children (..)." Hence the journalists "cannot be accused of having failed their professional obligations by publishing what they had learned about the case. It is incumbent on the press to impart information and ideas of public interest."

Even the revelation by the journalists of the political sympathies of the judges in itself was not to be seen as defamatory. As the Court notes: "the facts which they believed they were in a position to allege concerning those persons' political sympathies could be regarded as potentially lending credibility to the idea that those sympathies were not irrelevant to the decisions in question."

The Court also decides: "Looked at against the background of the case, the accusations in question amount to an opinion, whose truth, by definition, is not susceptible of proof. Such an opinion may, however, be excessive, in particular in the absence of any factual basis, but it was not so in this instance (..) Although Mr. De

Haes and Mr. Gijssels' comments were without doubt severely critical, they nevertheless appear proportionate to the stir and indignation caused by the matters alleged in their articles. As to the journalists' polemical and even aggressive tone, which the Court should not be taken to approve, it must be remembered that Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed." And the Court added to this: "Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation."

(...)

### **Protection of the integral process of communication**

One of the main characteristics of Article 10 consists in its general and far-reaching protection of the different aspects of the process of freedom of communication. This means that Article 10 gives protection to the freedom of expression, that is the freedom of speech, the freedom to impart information and ideas, to the freedom of distribution and transmission of information and ideas and also the right for the citizen to receive information CECHR, 28 March 1990, Groppera Radio; ECHR, 22 May 1990, Autronic; ECHR, 9 February 1995, Vereniging Weekblad B/u if).

In several judgments the Court expressed the view that the media not only have the task of imparting information and ideas on areas of public interest, but that "the public also has a right to receive them". Article 10 not only guarantees the freedom to inform the public but also the right of the public to be properly informed. Not only the individual has the right to express his opinion, the public also has the right to be informed. Not only the source, the communicator is the subject of the right of freedom of expression and information, but also the citizen as a receiver of information, the individual as part of the public opinion, is the subject of this freedom (ECHR, 26 April 1979, Sunday Times).

Activities of newsgathering which have a direct effect on the freedom of expression are also protected under Article 10 of the Convention. In two recent judgments of the Court it is recognised that the journalist's sources are protected by Article 10 as otherwise sources of information may dry up. In a judgment of 24 February 1997 the Court considered that "the journalists' concern not to risk compromising their sources of information by lodging [before the tribunal or the court] the documents in question themselves was legitimate." The argument of the importance for journalists to keep their sources secret and its protection by Article 10 of the Convention was based on the Court's judgment in the Goodwin case.

\* *The Goodwin case (ECHR, 27 March, 1996)*

In 1990 William Goodwin, a trainee-journalist working for The Engineer (London, UK) was found guilty by the House of Lords of contempt of court because he refused to disclose the identity of a person who previously supplied him with financial information derived from a confidential corporate plan of a private company. The disclosure order was estimated to be in conformity with Section 10 of the Contempt of Court Act of 1981, as the disclosure was held to be necessary in the interest of justice.

The European Court, however, is of the opinion that the impugned disclosure order is in breach of Article 10 of the Convention. The Court firmly underlines the principle that "protection of journalistic sources is one of the basic conditions for press freedom" and that "without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest". The Court emphasises that without

protection of a journalist's sources "the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected". The Court considers that a disclosure order cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest. As the Court pointed out: "In sum, limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court". The European Court *in casu* is of the opinion that the interests of the private company in eliminating, by proceedings against the source, the (residual) threat of damage through dissemination of the confidential information, are not sufficient to outweigh the vital public interest in the protection of the applicant journalist's source.

Freedom of expression and information is guaranteed by Article 10 "regardless of frontiers". Reception or retransmission of radio or television programmes from non-domestic broadcasting organisations comes within the right laid down in Article 10, paragraph 1 (ECHR, 28 March 1990, Groppera Radio and ECHR, 22 May 1990, Autronic).

#### **The application of Article 10 in the field of audiovisual media**

Paragraph 1 of Article 10 also contains a specific clause with regard to the licensing of broadcasting, television or cinema enterprises. Article 10 thus allows the member states to control the way in which broadcasting is organised in their territories — particularly where the technical aspects are concerned — by means of a licensing system. A licensing system itself must be in accordance however with paragraph 2 of Article 10 and must respect the requirements of pluralism, tolerance and broadmindedness which are essential to democratic society (ECHR, 28 March 1990, Groppera Radio and ECHR, 24 November 1993 Informationsverein Lentia; see also ECHR, 9 June 1997, Telesystem Tirol Kabeltelevision).

#### **No discrimination, no anti-democratic application**

Finally it is to be underlined that under the European Convention the enjoyment of the freedom of expression and information is secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 13 of the Convention).

Special attention also is to be drawn to Article 17 of the Convention, according to which "nothing in this Convention may be interpreted as implying, for any state, group or person, any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." The general purpose of Article 17 is to prevent totalitarian or anti-democratic groups from exploiting, in their own interests, the principles enunciated by the Convention. Groups or persons who are responsible for the publication and distribution of articles, information, books or leaflets inciting racial discrimination and whose policy clearly contains elements of racial discrimination cannot find any support in Article 10 ECHR. In such circumstances these persons or groups are essentially seeking to use Article 10 to provide a basis under the Convention for a right to engage in those activities which are contrary to the text and spirit of the Convention and the right of which, if granted, would contribute to the destruction of the rights and freedoms of the European Convention. On several occasions the European Commission has decided that the freedom of expression

enshrined in Article 10 of the Convention may not be invoked in a sense contrary to Article 17 (e.g. incitement to racism, neo-nazi propaganda, negationism). In these cases the Commission on this ground excluded the applicants from protection of Article 10.

## 1.5 Concluding Overview

*The United Nations and other international organisations have set a number of principles that should be followed by governments to make elections a genuine democratic process. Freedom of expression is the basis and an essential requirement of the electoral process. Non-discrimination on the basis of gender or race, and media freedoms complete the spectrum.*

*It is clear in chapter 2 that in most cases the international documents concerning freedom of expression subsist in no more than a couple of paragraphs. However the issues derived from those few paragraphs are vast in number and complexity. For many decades, the lack of extensive, detailed and explicit frameworks suited or was convenient for many countries. These, members of the United Nations, could claim that freedom of expression during the elections they held from time to time was respected, together with the generality of the official texts.*

*The European experience has been different. Despite isolated phenomena of democratic deficits in some of the Council of Europe countries the core of democracy suffered only in rare cases. The European Court of Human Rights played a crucial role as a guarantor of the rights of the citizens. Its case-law related to article 10 added new dimensions to perceptions and views about the position and the rights of the media and journalists in a democratic society.*

*The media expansion, along with the proliferation of new democracies in the 1980's and more acutely the 1990's created a new environment that led to the need for regulatory measures. The task of regulating media activity during elections is seen by some as an obligation to put an end or impose limits to the "disastrous effects" of that activity; their influence on the electorate. It is no surprise that even today established democracies impose restrictions on freedoms of expression, of various media. A pertinent example is the prohibition on publication of the results of opinion polls related to elections.*

*The texts quoted in this chapter were selected with the aim of stressing the importance of free media and freedom of expression as core requirements for genuine elections. They also mark the boundaries of regulation and the spirit in which it should be conducted. Without this starting point, understanding the meaning and the aims served by the regulatory texts that will follow in the next chapters would have been difficult.*

*The primary concern of regulation should be the protection of freedom of expression. This should be pursued by a policy that aims to balance the exercise of this freedom by all. This is the true meaning of article 10 of the European Convention on Human Rights. It provides the definition of freedom of expression and the duties and responsibilities it carries with it and also the conditions needed for this right to be*

*subject to restrictions. Striking this balance is a very delicate task that needs very cautious measures and actions.*

*Coming back to the documents quoted in chapter I, it is clear that the free expression of the will of the people in elections is only possible if a set of rights can be protected. Firstly there is the need to ensure freedom its self., This means that the general atmosphere should be felt as calling for participation in the electoral process at all stages and in all its aspects. Not only should any threat or intimidation be unthinkable but to the contrary all human rights should be protected. These rights are linked to freedom of expression, freedom to association and others. The relevant institutions and procedures guaranteeing protection of such rights should be present.*

*These prerequisite rights form a network and constitute the full web that serves as a protective shield; the citizen should be free to hold his or her own opinions, and also to express them. Freedom of expression also means that exchanges of views and ideas, as well as exchanges of information should be an activity for all without discrimination, fear, or external interference.*

*Any limitations or constraints should conform to the norms and standards set by international law and practice. Such limitations or constrains should also satisfy a triple test; they should be prescribed by law, follow a legitimate aim and be necessary in a democratic society.*

*Another aspect of the prerequisite rights arises from one of the media's roles. Freedom of expression acquires specific meaning and becomes even more significant when the media can function unhindered. This presupposes conditions of freedom in which they can fully exercise their role as public watchdog. There is more to that; the term media means that they are the mediators between the power holder and the people, between the various social and other groups, and between individuals as well. A mediator should always be fair.*

*The media routinely report on the political and other activity, on the government, the parties and the politicians. In election time they also become a platform of exchange, by reporting on activities, on views and ideas, and by commenting on them. Other specific roles are attributed to them, when they are called to inform the voters about election matters or to educate them on the procedures and other aspects of this basic democratic function. They are moreover asked by law or regulations to offer direct or indirect access to election candidates in any of a number of forms ; paid political advertising or "free airtime", debates, interviews and other special programmes.*

*The media have a role at all stages of elections. The mere fact that they report on the elections is of paramount importance since the media are present on the spot, giving details of how the administrative aspects are organised by the authorities and how the law is implemented.*

*They can report on the procedures followed for the nomination of candidates, and the criteria of eligibility. The part played by the media and the space they occupy in the*

*campaign have become more and more important. In the majority of countries television occupies the premier position among information sources concerning elections and the electoral platforms of the candidates.*

*Any irregularities during the campaign or polling day, or during the counting and the declaration of the results that are reported by the media will “colour” the whole process. The elections will either function as a legitimating process or be branded as fraudulent.*

*The ways the media cover the stages of elections vary. News and current affairs programmes, often attract large audiences. Special election programmes, where candidates are questioned by journalists or by the public enable and allow the electorate to assess the personality of the candidates.*

*A specific type of programming is that of direct access to the airwaves which is regulated in most countries. Free airtime and, sometimes free political advertising, is conceded to parties ( but rarely, to candidates) according to, two main formulae: equal allocation of time or proportional allocation. A third formula is a mixture of the two.*

*The subject is multifaceted and presents many questions that need to be answered. For example, who is the regulator, who allocates the time available, what length should the broadcasts be? How are such political broadcasts scheduled?*

*Paid political advertising is a contentious issue. Its proponents claim it is an issue of freedom of expression and it should be allowed in all countries.*

*The role described here for the media may be realised provided that conditions of freedom prevail. As observed in the non-governmental organisation Article XIX’s, publication on “Election broadcasts in transitional democracies”: the “ability of the media and of journalists to criticise, investigate and operate freely in the election process” may suffer severely because of measures taken against them by governments. Equally the failure by governments to protect the media, may have the same impact.*

*Various types of action affect that ability. These fall broadly into two main categories; those coming directly from the power holders and those actions by others. These latter take place because of allegiance or failure by governments to protect the media and journalists.*

*The first category covers matters such as censorship or threats of censorship by government-controlled media, or by government agencies that result in refusing opposition parties to broadcast advertisements or present their views and electoral platforms. . There are also cases where political parties are banned and media are closed or confiscated.*

*Intimidation and attacks on journalists may be perpetrated by government agents or by individuals. Detention and/or prosecution of journalists goes a step further. Where no measures are taken to protect journalists and the media, these attacks act as leverage against the exercise of free journalism not only by those directly targeted but also by the whole media community. The fear that the same fate is reserved to all those that do not abide to government wishes or “rules” may lead to silence or self-censorship.*

*The text by Professor Dirk Voorhoof, included here, demonstrates how cases which may constitute isolated examples of interference with the work of the media and journalists in Europe have turned into examples expanding the field of permissible action and criticism directed at politicians. The same excerpt documents aspects of freedom of expression in respect of the work of the media and journalists. The European Court of Human Rights (ECHR) considers the press as a “public watchdog” and rejects sentences of journalists that “are likely to deter them from contributing to public discussion of issues affecting the life of the community”.*

*Freedom of expression protects opinions, philosophical ideas and political speech. The Court extends the relevant rights and sees, value judgments as also protected by article 10 This protection is based on a distinction that should be made between facts and value judgments; while facts are susceptible to proof, the truth of value judgments is not susceptible to proof, the Court said.*

*In other cases the Court decided the following:*

- *The freedom of political debate should receive a higher level of protection than other issues related to freedom of expression.*
- *Freedom of expression applies not only to favourably received and inoffensive information or ideas but also to those “that offend, shock or disturb the state or any sector of the population”.*
- *The whole process of communication needs protection. This includes not only the obvious agents (sender and receiver) but also the various activities related to and having a direct effect on communication. Newsgathering is a good example of such activity.*
- *Article 10 should be applied without discrimination or antidemocratic effect.*

*Departing from the generics of elections this chapter proceeded to the rights derived from elections and examined issues related to the media as actors and mediators in the electoral process. The chapter covered the recognition of the media’s role documented in international standards and practices. It drew on examples of negative practices, that limit the ability of the media and journalists to fully assume and discharge their acknowledged role in democratic societies. The chapter concludes with selections from the European Court of Human Rights case-law establishing the norms and standards that should be followed when dealing with the media and political debate.*

## CHAPTER 2

### INTERNATIONAL TREATIES AND OTHER DOCUMENTS

*Chapter 1 presented a selection of United Nations official documents in order to set out the general framework of the issues related to elections and human rights. Here in Chapter 2, are documents adopted by other international and regional organizations. These set the principles to be respected by every democratic state or contain guidelines to assist with the shaping of appropriate regulatory frameworks. The relevant documents differ in status. Some are excerpts from international treaties that are binding for the members of the corresponding organizations. Others do not have this mandatory character.*

*In the European Convention for the Protection of Human Rights and Fundamental Freedoms, additional protocol I, protects among other rights, freedom of expression and the holding of free elections. This text is, of itself, of paramount importance for human rights in Europe. However the jurisprudence of the European Court for Human Rights, particularly concerning article 10 of the Convention has elevated it to be one of the most important texts in the protection of human rights.*

*The European Union adopted in 2000 the Charter of Fundamental Rights of the European Union. This Charter codifies in a single text the extended rights the citizens of the member states should enjoy. The rights of European citizens in their respective countries of origin are extended, enabling them for example to be candidates to the European Parliament and in local elections in the country of their permanent residence.*

*The collapse of the Soviet Union and the socialist block allowed Europe to emerge in its original form , extending to the East. At that time an important document was adopted concerning the “human dimension”. The Conference on Security and Cooperation in Europe (CSCE), which later became the Organization on Security and Cooperation in Europe (OSCE), enumerated in its final declaration of the 1990 Copenhagen meeting the principles and ways that the States participating should respect and implement to safeguard human rights. The declaration includes among other things the obligation upon States to hold free elections with unimpeded access for all to the media and to protect freedom of expression regardless of frontiers.*

*Over time international organizations recognised the need to provide assistance to new or emerging democracies. The first step was to elaborate and interpret the fundamental principles, especially those related to elections. The Declaration of Paris, adopted in 1994 by the Inter-Parliamentary Union on “Criteria for Free and Fair Elections” set out the “principles and standards that should guide Governments and Parliaments” concerning elections. The document includes detailed guidelines both on election procedures and the rights pertinent to a free campaign and access to the media. It also sets out the obligations of the States to “take the necessary legislative steps and measures (...) to guarantee the rights...”*

*This document is comprehensive concerning the various aspects of free and fair elections. The general principles in all the documents cited below do not go into such detail. The Council of Europe, in a recommendation adopted by the Council of Ministers in 1999, set the policy framework to regulate the “media coverage of election campaigns”. In that document, the aim was to ensure respect for “fairness, balance and impartiality by the media”. The media are not taken as a single homogeneous whole. Rather they are distinguished as between print and broadcast, public service and private concerns which have different obligations. The focus is on principles to be respected rather than on specific measures and ready-made solutions.*

*An organisation named after the specific clause establishing freedom of expression in the United Nations Universal Declaration on Human Rights, Article 19, has prepared a comprehensive document intended to assist transitional democracies. It may be argued that the situation in Europe has little in common with that in transitional democracies. However, there are countries in Europe which are new democracies and their tradition and experience in free elections are limited. On the other hand, it is very useful to include the specific guidelines in this publication because the fundamental principles on which they are based are the same for all. While one may not speak of Government media in the context of western Europe, - the obligations imposed on this type of media correspond in many respects to those enforced on public service media in most European countries. Both the introduction and the guidelines offer a global view and describe all the aspects of the issue. Unfortunately, it is not possible to include the commentaries with each one of them.*

*Finally, the guidelines drafted by the United Nations for Cambodia in 1991 complete the range of documents in this chapter. They merit reference because of their origin as well as their aim; the United Nations issued them to ensure “fair access to the media (...) of all the political parties”.*

## 2.1 The Principles

### **EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS<sup>8</sup>**

#### **Article 10**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are proscribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### **PROTOCOL (No. 1) TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

#### **Article 3**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

### **Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1, entered into force Dec. 7, 2000.<sup>9</sup>**

*The European Union adopted the Charter in 2000. A significant element in the chapter related to elections is the right of every European citizen to stand as a candidate in elections to the European Parliament or in local elections in his/her country of residence, independently of their country of origin.*

#### **SOLEMN PROCLAMATION**

The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of fundamental rights of the European Union.

#### *Article 11*

#### **Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

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<sup>8</sup> <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm#FN1>

<sup>9</sup> [http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/charter\\_364\\_01en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/charter_364_01en.pdf)

*Article 12*

**Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

CHAPTER III

**EQUALITY**

*Article 20*

**Equality before the law**

Everyone is equal before the law.

*Article 21*

**Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

CHAPTER V

**CITIZENS' RIGHTS**

*Article 39*

**Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article 40*

**Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

**CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (CSCE)  
DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE  
HUMAN DIMENSION<sup>10</sup>**

*In the OSCE Copenhagen declaration it is stressed that elections are the basis of the authority and the legitimacy of all government. One may also note that in point (5.1) the term free is repeated in every sentence, with regard to elections, to voting procedure and the expression of the opinion by the voters. Access to the media becomes a basic right that should be exercisable without restrictions or discrimination, except for reasons prescribed by law, in conformity with international law.*

The [participating States] recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law (...).

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe (...).

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives; (...)

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes (...).

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law; (...).

(7.8) - 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; (...).

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of

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<sup>10</sup> <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>

frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright(...).

## INTER-PARLIAMENTARY UNION DECLARATION ON CRITERIA FOR FREE AND FAIR ELECTIONS <sup>11</sup>

*The Inter-Parliamentary Union recites in its preamble the founding principles that guide the provisions of the declaration. It further reiterates the role of elections as the basis of the authority and the legitimacy of government. The rights linked to freedom of expression include those of campaigning on an equal basis, of an equal access to the media without discrimination and of seeking remedy in the case of any material violation. There is also reference to the obligations of those taking part in the campaign and their responsibilities vis-à-vis the others and the community in general. The States are urged to encourage the participants and the media to establish a code of conduct that should govern their activities during the election. Such a code should make special reference to the obligations of government and public service media.*

(Unanimously adopted by the Inter-Parliamentary Council at its 154th session - Paris, 26 March 1994)

The Inter-Parliamentary Council,

**Reaffirming** the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which establish that the authority to govern shall be based on the will of the people as expressed in periodic and genuine elections,

**Acknowledging and endorsing** the fundamental principles relating to periodic free and fair elections that have been recognized by States in universal and regional human rights instruments, including the right of everyone to take part in the government of his or her country directly or indirectly through freely chosen representatives, to vote in such elections by secret ballot, to have an equal opportunity to become a candidate for election, and to put forward his or her political views, individually or in association with others,

**Conscious** of the fact that each State has the sovereign right, in accordance with the will of its people, freely to choose and develop its own political, social, economic and cultural systems without interference by other States in strict conformity with the United Nations Charter,

**Wishing** to promote the establishment of democratic, pluralist systems of representative government throughout the world,

**Recognizing** that the establishment and strengthening of democratic processes and institutions is the common responsibility of governments, the electorate and organized political forces, that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of human rights and fundamental freedoms,

**Welcoming** the expanding role of the United Nations, the Inter-Parliamentary Union, regional organizations and parliamentary assemblies, and international and national non-governmental organizations in providing electoral assistance at the request of governments,

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<sup>11</sup> <http://www.ipu.org/cnl-e/154-free.htm>

**Therefore adopts** the following Declaration on Free and Fair Elections, and urges Governments and Parliaments throughout the world to be guided by the principles and standards set out therein :

1. Free and Fair Elections

In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

(...)

3. Candidature, Party and Campaign Rights and Responsibilities

(1) Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.

(2) Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.

(3) Everyone individually and together with others has the right:

To express political opinions without interference;

To seek, receive and impart information and to make an informed choice;

To move freely within the country in order to campaign for election;

To campaign on an equal basis with other political parties, including the party forming the existing government.

(4) Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.

(5) The right of candidates to security with respect to their lives and property shall be recognized and protected.

(6) Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.

(7) The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law. Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(8) Every individual or political party whose candidature, party or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

(9) Candidature, party and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence.

(10) Every candidate and political party competing in an election shall respect the rights and freedoms of others.

(11) Every candidate and political party competing in an election shall accept the outcome of a free and fair election.

#### 4. The Rights and Responsibilities of States

(1) States should take the necessary legislative steps and other measures, in accordance with their constitutional processes, to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international law. In particular, States should: (...)

Provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis;

Initiate or facilitate national programmes of civic education, to ensure that the population are familiar with election procedures and issues;

(2) In addition, States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters:

Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public; (...)

Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period; (...)

(3) States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure:

That freedom of movement, assembly, association and expression are respected, particularly in the context of political rallies and meetings;

That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media;

That the necessary steps are taken to guarantee non-partisan coverage in State and public-service media.

(4) In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.

(5) States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.

(6) Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.

(7) States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.

(8) States should take the necessary measures to ensure that parties, candidates and supporters enjoy equal security, and that State authorities take the necessary steps to prevent electoral violence.

(9) States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.

## 2.2 Guidelines by International Bodies

### COUNCIL OF EUROPE

*The media, and the way they should function in the course of any election campaign are at the heart of the recommendation. The issues dealt with in it are, among others, those of the role of print and broadcast media, the way the various media should deal with elections, parties and candidates. Appropriate treatments in news and current affairs programmes, allocation of free airtime, paid political advertising and the publication of opinion polls are set out. An appendix to the Recommendation describes briefly its aim and the various aspects which should be considered by regulatory authorities in order to ensure “fairness, balance and impartiality” in media coverage of elections. An explanatory memorandum (not included in this publication) elaborates on the actual meaning and interpretation of the terms used. The principles and the reasoning on which each provision is founded, the different practices and the options offered to the regulator in order to achieve the aims set by the recommendation, are also explained.*

*For further information about the aims and scope of the recommendation, please refer to the overview at the end of the present chapter.*

**RECOMMENDATION No. R (99) 15  
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES  
ON MEASURES CONCERNING MEDIA COVERAGE OF ELECTION CAMPAIGNS<sup>12</sup>**  
*(Adopted by the Committee of Ministers on 9 September 1999 at the 678<sup>th</sup> meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Noting the important role of the media in modern societies, especially at the time of elections;

Stressing that the fundamental principle of editorial independence of the media assumes a special importance in election periods;

Aware of the need to take account of the significant differences which exist between the print and the broadcast media;

Underlining that the coverage of elections by the broadcast media should be fair, balanced and impartial;

Considering that public service broadcasters have a particular responsibility in ensuring in their programmes a fair and thorough coverage of elections which may include the granting of free airtime to political parties and candidates;

Noting that particular attention should be paid to certain specific features of the coverage of election campaigns, such as the dissemination of opinion polls, paid

<sup>12</sup> <http://www.coe.fr/cm/ta/rec/1999/99r15.htm>

political advertising, the right of reply, days of reflection and provision for pre-electoral time;

Stressing the important role of self-regulatory measures by media professionals themselves - for example, in the form of codes of conduct - which set out guidelines of good practice for responsible, accurate and fair coverage of electoral campaigns;

Recognising the complementary nature of regulatory and self-regulatory measures in this area;

Convinced of the usefulness of appropriate frameworks for media coverage of elections to contribute to free and democratic elections, bearing in mind the different legal and practical approaches of member States in this area and the fact that it can be subject to different branches of law;

Acknowledging that any regulatory framework on the coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the basic principles contained in Resolution No. 2 adopted at the 4th Ministerial Conference on Mass Media Policy (Prague, December 1994) and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting,

Recommends that the governments of the member States examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law.

## **Appendix to Recommendation No. R (99) 15**

### **Scope of the Recommendation**

The principles of fairness, balance and impartiality in the coverage of election campaigns by the media should apply to all types of political elections taking place in member States, that is, presidential, legislative, regional and, where practicable, local elections and political referenda.

These principles should also apply, where relevant, to media reporting on elections taking place abroad, especially when these media address citizens of the country where the election is taking place.

### **I. Measures concerning the print media**

#### **1. Freedom of the press**

Regulatory frameworks on media coverage of elections should not interfere with the editorial independence of newspapers or magazines nor with their right to express any political preference.

#### **2. Print media outlets owned by public authorities**

Member States should adopt measures whereby print media outlets which are owned by public authorities, when covering electoral campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate.

If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

## **II. Measures concerning the broadcast media**

### **1. General framework**

During electoral campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media.

With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters as well as private broadcasters in their relevant transmission areas.

In member States where the notion of "pre-electoral time" is defined under domestic legislation, the rules on fair, balanced, and impartial coverage of electoral campaigns by the broadcast media should also apply to this period.

### **2. News and current affairs programmes**

Where self-regulation does not provide for this, member States should adopt measures whereby public and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.

No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. As appropriate, member States might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

### **3. Other programmes**

Special care should be taken with programmes other than news or current affairs which are not directly linked to the campaign but which may also have an influence on the attitude of voters.

### **4. Free airtime for political parties/candidates on public broadcast media**

Member States may examine the advisability of including in their regulatory frameworks provisions whereby free airtime is made available to political parties/candidates on public broadcasting services in electoral time.

Wherever such airtime is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

### **5. Paid political advertising**

In member States where political parties and candidates are permitted to buy advertising space for electoral purposes, regulatory frameworks should ensure that:

- the possibility of buying advertising space should be available to all contending parties, and on equal conditions and rates of payment;
- the public is aware that the message is a paid political advertisement.

Member States may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase.

### **III. Measures concerning both the print and broadcast media**

#### 1. "Day of reflection"

Member States may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting.

#### 2. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular:

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member States forbidding the publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member States may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

#### 3. The right of reply

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply under national law or systems should be able to exercise this right during the campaign period.

### **IV. Measures to protect the media at election time**

#### 1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

#### 2. Protection against attacks, intimidation or other unlawful pressures on the media

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct them in carrying out their work.

MEDIA GUIDELINES FOR CAMBODGIA: "ENSURING FAIR ACCESS TO THE MEDIA, INCLUDING PRESS, TELEVISION AND RADIO, FOR ALL POLITICAL PARTIES CONTESTING THE ELECTION," UN Doc. A/46/608 [ANNEX 1]; S/23177 [ANNEX 1] (30 October 1991)]

*In the present brief excerpt the main aspects of the issue of fair access to the media are examined. These are connected to the rights of the people related to freedom of expression and of the election candidates and parties to have access to the media. They are also dependent on the creation of an environment where no political, economic, technical or other barrier may render human rights mere words empty of meaning. Finally, it underlines the right of the media to have access to official documents with the exceptions of those deemed essential to the security of the country or to the safeguarding of personal privacy.*

(...) 2. Cambodians should enjoy the benefits of freedom of expression and opinion through all media administered by existing administrative structures as well as other media.

4. An independent and free media should have a diversity of ownership, and it should promote and safeguard democracy, while opening opportunities and avenues for economic, social and cultural development.

7. In the exercise of its responsibilities under the Agreement, UNTAC will ensure "fair access to the media, including press, television and radio, for all parties contesting the election". That means UNTAC will assure all registered and/or provisionally registered political parties the freedom and security to publish, print and broadcast their views.

8. Media outlets should give parties, groups or individuals whose views have been misrepresented or maligned by a publication or broadcast the "right of response" in the same outlet.

9. UNTAC strongly encourages the various media to present a balance of views, to solicit a wide spectrum of opinion from the Cambodian community and to publish as much information as possible about the history, finances and platform of a political party or candidate. A democratic media seeks to publish views and counterinterviews at the same time, in order to address all aspects of an issue. When opposing ideas are contained in the same broadcast or article, a "response" may not be necessary. (...)

11. The UNTAC Division of Information/Education will determine the specific implementation of fair access of political parties to radio and television.

12. UNTAC will encourage the development of a free and open media through a diversity of ownership of media outlets in Cambodia.

13. Existing administrative structures should facilitate the profusion of publications and broadcast stations by, for example, the processing without undue delay of any necessary applications for registration or assignment of broadcast frequencies. If an application has not received an answer within one month, UNTAC encourages the automatic approval of that application.

14. Existing administrative structures should not restrict distribution, sale or importation of broadcast or printed material, whether produced within or outside Cambodia, except material that incites hatred or offends public morals.

15. Recognizing that not all limits on free expression are purely political, UNTAC will assist the Cambodian media in identifying specific economic or technical barriers to free expression. UNTAC will assist in coordinating with the international community and a Cambodia Media Association to remove those obstacles where feasible.

16. In *bona fide* pursuit of their professional duties, journalists should have free access to records and documents of existing administrative structures. UNTAC will, however, restrict access to materials it deems essential to the security of Cambodia or to prevent the unwarranted invasion of personal privacy.

17. Media outlets may not harm the reputation or rights of individuals by publishing or broadcasting false material or allegations. In democracies, public figures, however, enjoy less stringent protection. Media outlets may not knowingly disregard the truth in publishing material about public figures.

18. Journalists should protect confidential sources of information.

## 2.3 Guidelines by Non-governmental Organisations

### 2.3.1 Freedom of Expression -- Article 19<sup>13</sup>

***Guidelines for election broadcasting in transitional democracies, Article 19, 1994, ISBN 1 870798 12 0***

(...)

#### **Introduction**

The following Guidelines concern broadcast coverage of election campaigns in transitional democracies. These are countries which have recently emerged from a period of non-democratic governance, characterized by, among other features, the absence of free and fair elections. The Guidelines are intended to be directly applicable only to the period of the election campaign itself and only to the government broadcast media; they may, however, also be relevant to government-controlled press during election periods, and to government media coverage of political matters during non-campaign periods.

The term "government media" is used in these Guidelines to refer to broadcasting channels that are owned, operated or controlled by the government, as well as to channels that are managed by government appointees or that are governed by boards, a majority of whose members are selected by the government or ruling party. The Guidelines also apply to public service broadcasting channels, namely, media which are supported entirely or in part by government funds but are governed by boards that are independent of government and all political interests.

Three kinds of election broadcast are discussed: (a) direct access programmes including advertising, over which the political party or candidate has complete editorial control; (b) interviews, debates, candidate forums, radio "talk-back" shows, voter education programmes and similar formats, referred to in these Guidelines as "special information programmes", over which the broadcaster has editorial control; and (c) news coverage, over which the broadcaster also has editorial control. (...)

To comply with international law, government media must fulfil the duties of impartiality and non-discrimination. As part of the transition to democracy, ARTICLE 19 strongly recommends that governments transform government broadcast media into public service media. As a first step and as a matter of urgency, editorial independence should be safeguarded.

Several of the Guidelines are phrased in mandatory terms. These are based on principles of international human rights law derived from international treaties, case-law and evolving state practice. Non-compliance with these Guidelines, regardless of various country-specific conditions, raises a presumption of unfair media practice which could taint the fairness of the election process.

Other Guidelines are phrased as highly recommended or recommended based upon the experiences of both transitional and well-established democracies. Non-

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<sup>13</sup> <http://www.article19.org/docimages/516.htm>

compliance with these Guidelines calls into question the fairness, impartiality, balance and informative content of media coverage. (...)

Private media do not carry the same responsibilities under international law as do government media. Nevertheless, ARTICLE 19 encourages private broadcasters as a matter of professional responsibility to comply with the Guidelines which apply to government media. Such voluntary implementation of the Guidelines, including for example, the requirements of balanced and impartial news coverage and the granting of direct-access air time on a non-discriminatory basis would enhance the fairness of an election. ARTICLE 19 also encourages professional associations of journalists and broadcasters to adopt relevant Guidelines and to encourage their members to adhere to them.

### **GUIDELINE 1: DUTY OF GOVERNMENT MEDIA TO INFORM THE PUBLIC ABOUT ALL MATTERS RELEVANT TO ELECTIONS**

During the period preceding an election, government media have a duty to inform the public about the political parties, candidates, campaign issues, voting processes, and other matters relevant to the election.

### **GUIDELINE 2: DUTY OF BALANCE AND IMPARTIALITY**

Government media have a duty to be balanced and impartial in their election reporting and not to discriminate against any political party or candidate in granting access to air time.

#### *Guideline 2.1*

This duty requires that news, interview and information programmes must not be biased in favour of, or against, any party or candidate.

### **GUIDELINE 3: SPECIAL OBLIGATIONS WHERE LAWS RESTRICTING FREEDOM OF EXPRESSION ARE IN FORCE**

Any laws that restrict freedom of expression in breach of international law and standards must be abolished.

### **GUIDELINE 4: GOVERNMENT OBLIGATION TO PUNISH ATTACKS AGAINST MEDIA PERSONNEL AND PROPERTY**

The Government must make special efforts to investigate all acts, or threatened acts, of violence, intimidation or harassment directed against media personnel, or any act of destruction of the property or premises of a media outlet, particularly where there is any reason to believe that the act was motivated by an intent to interfere with media freedom, and to bring those responsible to justice.

### **GUIDELINE 5: LIMITS ON PRIOR RESTRAINT**

There must be no government censorship of any election programme.

#### *Guideline 5.1*

The government should issue a clear statement to the public and all broadcast stations that the media are encouraged to broadcast election-related programmes, and that the media will not be penalized in any way for broadcasting programmes merely because they are critical of the government, its policies or the ruling party.

*Guideline 5.2*

The government or government media must not interfere with the broadcast of an election programme, unless it is absolutely certain that a restraint is necessary to prevent a substantial harm to a legitimate interest, such as an act of violence. Any decision to restrain a programme must be promptly reviewed by an independent body in order to determine whether the restraint was necessary or whether it constituted an act of censorship.

*Guideline 5.3*

The standards used by the government, or by government media, in determining whether or not to broadcast an election programme must not be vague or broadly defined.

*Guideline 5.4*

Any post-broadcast penalty must be proportionate to the harm inflicted. In particular, unless a broadcast actually and intentionally incites violence or hatred, a penalty must not include imprisonment or such an onerous fine as to force the political party out of operation; nor may it restrain all future broadcasts by the party or candidate.

**GUIDELINE 6: LIMITS ON MEDIA LIABILITY**

It is strongly recommended that the media be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, other than those which constitute clear and direct incitement to violence. The parties and speakers should be held solely responsible for any unlawful statements they make.

**GUIDELINE 7: REPLIES, CORRECTIONS AND RETRACTIONS**

Any candidate or party that makes a reasonable claim of having been defamed or otherwise injured by a broadcast should either be granted the opportunity to reply or be entitled to a correction or retraction by the broadcaster or by the person who made the allegedly defamatory statement. The reply or correction should be broadcast as soon as possible.

*Guideline 7.1*

The reply, correction or retraction should be approximately the same length, and should be broadcast in approximately the same time period, as the allegedly defamatory statement. This duty may be discharged by the allocation of direct access time pursuant to the normal allocation process.

*Guideline 7.2*

It is recommended that an impartial body be entrusted with deciding complaints that a programme violated the general laws, including laws against defamation and incitement to hatred or violence. This body should be empowered to order a right of reply, correction or retraction, and its decisions should be subject to review by the courts. (See Guidelines 13 and 14 below.)

## **GUIDELINE 8: NEWS COVERAGE**

Government media must be particularly scrupulous in complying with their obligation to provide accurate, balanced and impartial information in their reporting of news and current affairs.

### *Guideline 8.1*

The duty of balance requires that parties or candidates receive news coverage commensurate with their importance in the election and the extent of their electoral support.

### *Guideline 8.2*

Owing to the potential for editorial opinions to be confused with news, government media are urged not to broadcast editorial opinions at all. If a government channel broadcasts an editorial opinion, it is obliged also to broadcast the opinions of the major opposition parties. If a broadcaster presents his or her own views, these must be clearly identified as such, and it is recommended that they not be aired during news programmes.

### *Guideline 8.3*

News coverage of press conferences and public statements concerning matters of political controversy (as opposed to functions of state) called or made by the head of government, government ministers, or members of parliament should be subject to a right of reply or equal time rules. This obligation acquires even greater force when the person making the statement is also standing for office.

## **GUIDELINE 9: DIRECT ACCESS PROGRAMMES**

Government media must grant political parties or candidates air time for direct access programmes on a fair and non-discriminatory basis. For the first multi-party election, it is strongly recommended that all major parties or candidates receive equal time.

### *a) Allocation of Time to the Parties*

#### *Guideline 9.1*

All parties or candidates that are formally registered must be granted access to some amount of air time for a country's first multi-party election.

#### *Guideline 9.2*

Following the first election in a transitional democracy, and if there are objective criteria for establishing the levels of support for the different parties, air time may be allocated on a proportional basis. All parties should receive some air time, unless the parties are so numerous that allocation of time to all parties would seriously dilute the broadcasts' effectiveness in informing the electorate about the parties that are likely to form the government.

### *b) Decisions Regarding Amount of Time to be Allocated*

#### *Guideline 9.3*

The amount of time allocated to the parties or candidates must be sufficient for them to communicate their messages, and for the voters to inform themselves about the issues, party positions, and qualifications and character of the candidates.

### *c) Scheduling of Direct Access Broadcasts*

#### *Guideline 9.4*

Direct access programmes should be aired throughout the campaign period and at times when the broadcasts are likely to reach the largest audiences. The government

media violate their duty of balance if they air the programmes of some parties or candidates at hours (such as past midnight or during the working day) when it is inconvenient for large segments of the population to view or hear them.

*d) Process for Assigning Time Slots*

*Guideline 9.5*

Time slots for direct access programmes must be assigned to each of the registered political parties or candidates pursuant to an equitable process.

*e) Financing of Direct Access Programmes*

*Guideline 9.6*

Whatever air time is available to a political party or candidate, it must be made available on financial terms equal to those granted to other parties or candidates. At least for the first several elections of a transitional democracy, the government media must provide an amount of time adequate for effective political communication to registered parties or candidates free of charge or else for a nominal sum.

**GUIDELINE 10: SPECIAL INFORMATION PROGRAMMES**

The media should broadcast programmes that provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for candidates to debate with each other.

*Guideline 10.1*

While broadcasters have greater editorial discretion in deciding which parties, candidates and commentators should appear on such programmes than on news broadcasts, their discretion is subject to the general obligations of fairness and impartiality. At the least, representatives of all major parties should be invited to participate in such programmes.

*Guideline 10.2*

Journalists, experts and other questioners should be selected so as to ensure balance among the questions.

*Guideline 10.3*

Special information programmes should be aired during prime viewing or listening hours.

**GUIDELINE 11: VOTER EDUCATION**

Government media are obliged to broadcast voter education programmes unless the government has undertaken other information initiatives which are likely to reach as many voters as would the broadcast programmes.

*Guideline 11.1*

The programmes must be accurate and impartial and must effectively inform voters about the voting process, including how, when and where to vote, to register to vote and to verify proper registration; the secrecy of the ballot (and thus safety from retaliation); the importance of voting; the functions of the offices that are under contention; and similar matters.

*Guideline 11.2*

The government media are obliged to broadcast programmes that will reach the greatest number of voters feasible. Broadcasts should include programmes in minority languages and programmes targeted for groups that traditionally may have been

excluded from the political process, such as ethnic or religious minorities, women and indigenous groups.

#### **GUIDELINE 12: OPINION POLLS AND ELECTION PROJECTIONS**

If a broadcaster publishes the result of an opinion poll or election projection, it should strive to report the results fairly and, in particular, to publish all readily available information that would assist the listeners in understanding the poll's significance.

##### *Guideline 12.1*

A broadcaster which publishes the results of an opinion poll should identify the organization that conducted the poll, the organization or party that commissioned and paid for the poll, the methodology employed, the sample size, the margin of error, and the fieldwork dates. In addition, the broadcaster should state that the poll reflects public opinion only at the time that the poll was taken.

#### **GUIDELINE 13: MECHANISMS FOR REGULATING BROADCASTS AND TAKING ACTION ON COMPLAINTS**

Election broadcasts must be monitored and regulated by an independent, impartial body.

#### **GUIDELINE 14: JUDICIAL REVIEW**

Actions and decisions of a body charged with regulating election broadcasts must be subject to judicial review, which must be carried out on an expedited basis.

#### **GUIDELINE 15: PLEBISCITES AND REFERENDUMS**

In plebiscites and referendums, where the voters have the choice only of voting "yes" or "no" to a particular proposition, equal air time must be allocated to each side. This formula stands even if more parties support one side of the issue than the other. Guidelines 1-14, to the extent relevant, are also applicable.

#### **GUIDELINE 16: LOCAL ELECTIONS**

The preceding Guidelines should be appropriately modified and applied by local and regional government media in local, municipal and regional elections.

### 2.3.2 International Federation of Journalists<sup>14</sup>

*Election Reporting Handbook - A Media for Democracy Handbook*, International Federation of Journalists

(...)

#### **a) IFJ Principles on the Conduct of Journalists**

The Second World Congress of the International Federation of Journalists, at Bordeaux, April 25-28, 1954, adopted the following declaration; which was amended by the 18th World Congress, Helsingor, June 2-6, 1986.

*"This international Declaration is proclaimed as a standard of professional conduct for journalists engaged in gathering, transmitting, disseminating and commenting on news and information in describing events.*

- 1. Respect for truth and for the right of the public to truth is the first duty of the journalist.*
- 2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism.*
- 3. The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.*
- 4. The journalist shall use only fair methods to obtain news, photographs and documents.*
- 5. The journalist shall do the utmost to rectify any published information which is found to be harmfully inaccurate.*
- 6. The journalist shall observe professional secrecy regarding the source of information obtained in confidence.*
- 7. The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.*
- 8. The journalist shall regard as grave professional offences the following:*
  - plagiarism;*
  - malicious misrepresentation;*
  - calumny, slander, libel, unfounded accusations;*
  - the acceptance of a bribe in any form in consideration of either publication or suppression.*
- 9. Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country the journalist shall recognise in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others.*

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<sup>14</sup> <http://www.aceproject.org/main/samples/me/mex12.pdf>

*Election Reporting Handbook - A Media for Democracy Handbook*, International Federation of Journalists<sup>15</sup>

(...)

#### **b) Manifesto For a Democratic Media Culture**

The **International Federation of Journalists** looks to the future with confidence. We believe that professional journalists, organised in free and independent trade unions, play a key role in the creation and maintenance of a democratic media culture.

The **IFJ** believes that democracy depends upon the extension of freedom of expression and social justice worldwide.

The **IFJ** insists that democracy is fully respected when there is an understanding of the special and particular role of the media in democratic society.

The **IFJ** believes that the role of media in democratic society is to apply the principles of press freedom upon which the freedom of expression and opinion relies.

The **IFJ** considers that the treatment of news and information as a commodity must not override or interfere with the duty of journalists to inform their audience.

The **IFJ** believes media freedom can only be achieved when there is recognition that:

1. A free, independent media reflecting diversity of opinion is a precondition of democratic societies; 2. The free flow of information is the lifeblood of communities whether they be based on geography, ethnic origins, shared values or common language;

3. Freedom of expression and opinion can only exist where citizen's rights to freedom of information and the right to know are guaranteed;

4. The professional integrity and independent role of journalism have to be respected to ensure a democratic and pluralistic press around the world;

5. Information and cultural material of communities must not be threatened for political or economic reasons by technological developments.

The **IFJ** calls upon all governments to provide a legal framework which will ensure the freedom of information, freedom of access to sources of information, and the freedom to practise professional journalism without pressure from either political or economic interests.

The **IFJ** demands full and universal recognition of the right of freedom of association and of the right of journalists' unions to bargain collectively on behalf of their members.

The **IFJ** opposes the use of information media by governments, state authorities or proprietors for their own political or commercial or personal advantage.

The **IFJ** promotes and campaigns for the creation of material conditions for the development of freedom of expression and opinion.

The **IFJ**, therefore, reaffirms its support for the Declaration of Windhoek of May 3rd 1993 which identifies fundamental principles for the establishment, maintenance and fostering of an independent, pluralistic and free press which is essential to the development and maintenance of democracy in a nation, and for economic development.

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<sup>15</sup> <http://www.aceproject.org/main/samples/me/mex12.pdf>

The **IFJ** supports the Charter of the United Nations and strengthened international co-operation based upon universal respect for trade union and human rights.

The **IFJ** seeks endorsement at local, regional, national and international level of the IFJ Code of Principles on the Conduct of Journalism which forms the basis for universal standards of ethical conduct for the practice of professional journalism.

The **IFJ** believes media professionals, journalists and editors and publishers, both in the written and audiovisual media, should engage in dialogue internally and with governmental and intergovernmental authorities on the question of media policy. Such structures for dialogue should bring together legitimate representatives of workforce, management and consumers to discuss:

a) the economic and social development of the media, and in particular, the need to limit monopolisation which can threaten diversity of information sources necessary for the practice of democracy at all levels in society;

b) the problems of unemployment and job insecurity whether caused by concentration of mass media ownership or otherwise;

c) the practical implementation of laws, policies and standards designed to assist in the development of free and pluralistic media.

d) professional, economic and social conditions within the media including:

1. The development of openness and transparency in the business and social affairs of all media enterprises.

2. The maintenance of independent and recognised systems of professional training which reflect the need for high quality journalism, independent and distinct from political and commercial imperatives.

3. Legal recognition of mechanisms for the defence of freedom of information and independent journalism such as editorial statutes.

4. The creation of secure working conditions within media enterprises, based upon equality of opportunity and including limitations on exploitation of freelance and casual labour.

## 2.4 Concluding Overview

### 2.4.1 Standards and Practices<sup>16</sup>

Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, InterParliamentary Union, 1994

(...)

#### **International Standards**

International law sets specific objectives with respect to the holding of periodic free and fair elections, and lays down a variety of related obligations. Principally if not exclusively obligations of conduct, they leave States to decide how, in their particular political, cultural and historical context, the objectives may be best achieved. A margin of appreciation, however, is not the same as complete freedom of choice, and even where there is discretion, international law sets certain conditioning parameters. For example, the principle of non-discrimination excludes a number of disenfranchising measures, while confining and structuring choices regarding constituency delimitation and the relative weight of voting power, both considered in the light of the complementary principles of representation by population and equal suffrage. The rule with respect to the secret ballot crosses from an obligation of result to one of conduct; alternatives are *not* allowed. Instead, the State is bound to take such steps as are necessary to ensure not only that secrecy is observed and maintained, but also that the integrity of the choice so made is protected in the count that follows and in the implementation of the result.

Fundamental human rights, for example, to hold and express opinions, to receive and share information, as well as freedom of movement, association and assembly, all give specific content to, and thus limit, the choices open to States in the regulation of an electoral campaign. If the will of the people is to find expression in a genuine election involving policies and representatives, then human rights must be effectively respected and protected so as to allow an informed choice to be made; only the narrowest of limitations are permitted, commensurate with what is necessary in a democratic society and with the paramount consideration of ensuring that the election reflects the will of the people.

The choices made by the State are thus to be applied so that they are *effective*, that is, oriented to the objective of a free and fair election; and in such a way as to take account of other obligations in the field of human rights. Complementary principles of reasonableness and proportionality operate at the same time, to show when and where State choices, including omission, fail to meet international requirements.

Obligations in international law are not generally self-executing - they need *implementation* at the domestic level. The complexities and inter-relationships between electoral rights and objectives seem clearly to require a statutory framework and appropriate machinery, but neither universal nor regional human rights instruments contain any formal obligation to enact electoral legislation. The practical choices open to States in meeting their international obligations are not unlimited,

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<sup>16</sup> [http://www.democracy.ru/english/library/international/1998-18\\_a1-a44/page4.html](http://www.democracy.ru/english/library/international/1998-18_a1-a44/page4.html)

however, and certain means are increasingly preferred. Article 2(2) of the 1996 Covenant on Civil and Political Rights, for example, provides that 'Where not already provided for by existing legislative or other measures, each State Party...undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized...' The objective of free and fair elections, with its foundation both in the recognition of individual rights and in the existence of regular and open procedures, limits the range of options. Legislation can thus be considered *essential* to establish the country specific scheme of representation, to identify applicable human rights and their beneficiaries, such as who may vote, and to ensure the availability of effective remedies. It is not the final answer, however, for neither freedom nor fairness can simply be legislated into every corner of the electoral process.

From an international law perspective, what counts is what finally results, and a tradition of free and fair elections must be maintained and consolidated over the long-term. To this extent, election obligations and the goal of representative democracy have a *programmatic* dimension, anticipating progress in building democratic institutions, strengthening the confidence of the people in the democratic process, and leading to better and more democratic government. In the furtherance of these aims, therefore, States should

- Take the necessary legislative steps to establish the rights and institutional framework for periodic and genuine free and fair elections, in accordance with their obligations under international law; and
- take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals.

This review of State practice, considered together with and as contributing to the governing rules and principles, suggests (...) minimum international law standards applicable to elections which, for the purposes of summary classification, can be divided into three categories: (1) the goal or objective set by international law; (2) the rights and responsibilities of individuals and political parties or groups; and (3) the combination of specific duties, programmatic obligations, responsibilities and entitlements incumbent on the State. (...)

**Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, InterParliamentary Union, 1994**

*Media access and coverage*

Given that a choice between government and policy alternatives is central to the democratic ideal, access to the media in modern society is self-evidently crucial to the dissemination of party platforms and programmes. As the CSCE Copenhagen Document puts it, 'no legal or administrative obstacle (should stand) 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. Only if such facilities are available, will candidates effectively enjoy the right to express themselves freely, including by way of criticism, and electors take the benefit of the freedom to seek and receive information. Regrettably, the importance of these rights to the democratic and electoral process is only too well emphasized by the struggle to

control media access, and by the abuse of such control, particularly in societies in transition, where broadcasting and newspapers have long been a government monopoly.

The dangers of central control were nowhere more in evidence than in the 1990 Romanian elections. Even though the electoral law provided for television and radio time, the opposition, *suffered from limited access to programming, unpredictable placement and uneven access to recording studios and equipment... Television news coverage of the campaign was blatantly and consistently biased toward the Front...(and)... its bias constituted a major structural advantage.*

The situation with respect to newspapers was no better; the supply of materials, printing facilities and the distribution network remained in government hands, and opposition parties were regularly intimidated to discourage publication.

In other East European countries, media access and media activities were not always free from criticism, even if the margin of abuse never reached the same degree. In Hungary, for example, candidates repeatedly complained of uneven coverage, although access remained generally non-partisan. In Bulgaria, new newspapers sprang up, but opposition papers tended to suffer from limited print-runs in government controlled facilities. Both television and state-owned newspapers did provide other than the 'official line', but as one commentator observed, 'given the realities of a transition period, the opposition never achieved full equality in their ability to use the media. In Czechoslovakia, all parties were granted four hours each of free radio and television time, and placement was determined by a computer-generated random schedule.

(...)

Article 36 of the UN Electoral Law for Cambodia and UN practice leading up to the 1993 elections provide an international perspective on the principle of media access. The law stipulated that to ensure fair access to the media for all political parties contesting the election, all newspapers and broadcasting media controlled by public authorities should be made available to the UN at no cost, for the purpose of publicity and electoral education. Attempts to block access were resisted by the United Nations Transitional Authority in Cambodia (UNTAC), which also organized special television panels at which party representatives were able to air their policies. In addition, UNTAC's own radio transmitting 15 hours daily was made available on an equal basis to all parties contesting the election. An October 1993 decree in Russia provided for equal access to the mass media, especially the state-owned radio and television networks, for all candidates and parties. In the lead-in to the December elections, both networks allocated one hour per night, with the order of appearance decided by lottery. Although equal time was given, however, the news coverage was reported as generally pro-government.

The principle of equal access to the media is widely accepted in established democracies. The formulae may vary, but the underlying premise is the same: those competing in an election should have a reasonable opportunity to get their message across. Danish radio and television guidelines, for example, assure *equal access* to all registered parties, and *equal time*, regardless of the size of the party; paid advertisements on radio and television, however, are not allowed. In France, radio and television time is divided equally between majority and opposition parties, although

parties not represented in the legislature receive only seven minutes airtime. In the United Kingdom and Ireland, television and radio time is decided by committees comprising the broadcasting authorities and the parties, but again paid advertisements are not permitted, other than in the press and on hoardings. Ireland has a statutory requirement of fairness, objectivity and impartiality with respect to radio and television, but not the press. In the United Kingdom, candidates may take part in election campaign programmes about their constituencies, only if all their rival candidates either also take part or agree that the programme can go ahead.

Access and fair and balanced coverage are thus the two main issues, with the 'appropriateness' of paid advertising finding different responses, both in established and emergent democracies. In a recent decision, the Australian High Court considered different perspectives when it held that a provision prohibiting all paid political advertising in the electronic media to be unconstitutional. The prohibition violated the implicit protection of freedom of political communication because, in particular, it also allowed free airtime to be allocated to political parties in such a way as to give an unfair advantage to incumbent candidates and parties represented in the previous legislature; no provision was made for organizations and associations to have paid or unpaid access to the electronic media. In its judgment, the Court indicated that the prohibition of paid political advertisements would probably be upheld, if part of a package ensuring fair access for all political players.

(...)

#### 3.1.8.3 *Codes of Conduct*

Codes of Conduct agreed between the parties are increasingly accepted in potentially tense situations as a practical basis for contributing to a peaceful election; in the long term, such codes may also help to develop confidence in the democratic process as a mechanism for implementing representative government and effecting peaceful change. Article 7 of the Elections Annex to the *Comprehensive Settlement Agreement* for Cambodia, for example, provided that 'Adherence to a Code of Conduct established by UNTAC in consultation with the SNC (Supreme National Council of Cambodia) will be a condition for...participation' in the elections. The Code laid down the basic campaign freedoms to be enjoyed by all parties, but also repeatedly stressed the prohibition of intimidation, violence and possession of weapons at political meetings. The parties agreed to advise UNTAC of planned rallies and, in co-operation and liaison with the UN, to avoid coinciding with meetings by other parties. All parties also undertook, in effect, to educate their supporters in the meaning of democracy, for example, by emphasizing the secrecy of the ballot and that no one will ever know how an individual has voted.

Perhaps the most important element in the Code for Cambodia was the arrangement that all parties should meet at least once every two weeks with the UN Chief Electoral Officer, to discuss any matters of concern arising in the campaign. By thus establishing a regular channel of communication between the parties, the UN was able to anticipate and avoid incidents and misunderstandings that might otherwise have led to violence.

(...)

A crucial problem in transition situations is often the failure of competing parties to communicate with each other, together with a lack of confidence in the ability of the

system to produce a free and fair result. Codes of Conduct, in which the parties agree on the basic ground rules and to meet regularly during the campaign period, clearly contribute not only to the avoidance of potentially dangerous confrontation, but also to popular support for the democratic process.

## 2.4.2 The Philosophy of Regulation in Europe

### **Legal standards and norms on coverage of elections in the Council of Europe member States**

*Christophoros Christophorou. Address to a conference on “Media and Elections”, Moscow, 25-26 April 2000) (...)*

*Discussion of the legal norms and standards concerning election coverage in the Council of Europe member States, implies that there is a framework common to all member States or that they all have similar laws and practices. In fact this is not the case. Law and practice differs not only as between the old and new members but also within the group of older members. In some countries there is limited statutory provision regulating media behaviour concerning elections and parties activities during pre-electoral or normal time. In some countries there are no such statutory provisions whatever. In many countries legal terms such as “pre-electoral time” or “silence- or reflection-day” do not exist nor do any statutory provisions exist on these issues. Some countries claim that they have no need for regulation, as existing arrangements work for them. In other cases, existing provisions are not sufficient. Consequently complaints against the use and abuse of mass media particularly by those in power are not exceptional. (...)*

*There are different ways one could present this recommendation, (...). I would prefer, rather than go through the text, give an account of the questions we faced during the discussions in the drafting work. This should prove more useful as it will tend to define the philosophy of the text and its implications. (...)*

*At the Council of Europe it was felt that there was need for a framework or some kind of regulatory measure to ensure that the media play a positive role in democratic procedures, that is to say elections. The question that arises is less “WHY?” but rather “why now?” My assessment is that there are two reasons. Firstly there was the expansion of private or commercial broadcasting in Europe, a relatively recent phenomenon, dating back only to the early eighties. Secondly there are the concerns of the new democracies in central and eastern Europe. These needed an operative framework to cope with the new challenges both of free elections and private broadcasting.*

*Before defining the kind of tool we were seeking and its content we had to look into the very nature and the exact role of the media. At a certain stage of our work the wording of the first recital was as follows:*

*“Recognising that the media contribute to the shaping of public opinion, and that their role is particularly important at the time of elections;”*

*This was the result of a compromise between an approach that wanted the media to be seen to “have an influence on public opinion” and a moderate approach suggesting that “they just shape public opinion”. Even this was considered less than satisfactory because of the use of the verb “recognising”. This can imply that what follows is an*

*established fact. That is to say a reality that we admit as such while the phrase “the media contribute to the shaping of public opinion” differs in character. This may be interpreted as admitting or implying that there is a specific action by media toward a defined end. Some might believe that in all cases there is an influence that goes in the direction wanted by those operating the media. The phrase that followed, “their role is particularly important at the time of elections” might be perceived in the same way, as an undeniable fact. What is left out with this wording of the recital is not only the receiver and the way he or she reacts to the messages spread by the media, but also the circumstances, the characteristics of the original source, the content of the message and many other parameters. First not all people, not all populations react the same way, even the same person has different moods vis-à-vis the media. In respect of elections, the same message may result in one person voting for the ruling party and another voting for the opposition.*

*We adopted a more general and flexible wording, universally accepted, whilst at the same time true, which is: “noting the important role of the media in modern societies, especially at the time of elections”.*

*One might argue that all the fuss is just a philosophical dispute, rather like the theological disputes over the gender of angels. However assuming or implying that our starting point is a recognised specific influence by media on public opinion might create an image of the media as a potentially evil actor that we had to control. This was not the aim of the recommendation. The media professionals would not like it that anybody (in this case the authorities) sought to interfere with the fundamental right of free expression.*

*Once the way we see media in the context of elections is clear, the focus is on the characteristics of the recommendation and its content. The discussion was about whether it should be a strong text with specific action and measures on paper or a flexible text that focuses on principles rather than recipes.*

*The answer is not very simple. We need to take into account several factors, such as whether all countries have the same needs; whether what is true, useful and effective in one country is for all others; whether the legal system and constitutional law of all member states allow the adoption of specific clauses dictated in a certain way by the Council of Europe. On the other hand, some colleagues informed us that in some areas of this topic no legislation existed in their own country. Further they argued that this did not matter as things were functioning without problems. Why then, tell these states to adopt measures of which they had no need?*

*In fact there is a large variety of national situations and practices among the member states. The legislation and practices differ from one country to another. It is true that there is no guarantee of the same effect of any specific action in all cases, with all populations, at all times and in all circumstances.*

*There were two approaches to this issue. There were those that felt that their country needed more detailed provisions both as a guiding instrument and a safeguard against misinterpretations. Conversely there were those who believed that the inclusion of broad principles had the merit of acceptance by all and applicability to all. The latter argued, that too strong a detailed statement might generate negative reactions from media professionals.*

*The final text provides for the respect of fundamental principles. Simultaneously some extra details and guidance with reference to the purpose, the extent of action and the options available in order to attain the objectives set by the recommendation, are given in the explanatory memorandum.*

*It is useful to stress here some important points, included in the preamble of the recommendation:*

*First, any regulatory measure or framework should respect the fundamental principle of freedom of expression. This right is protected under article 10 of the European Convention on Human Rights and any interference with or restriction of that right should strictly be based on provisions clearly stipulated in law as needed in a democratic society. With regard to the media, the Council of Europe considers strengthening of freedom of expression as a way of consolidating democracy and democratic institutions. This approach is translated into stressing the special importance that their editorial independence assumes in election time as well as the important role of self-regulation. It is acknowledged that in some cases and concerning certain issues it is best for media to meet requirements of quality and professional standards through measures adopted and implemented by themselves. These take the form of codes of conduct and the like. Once the principles to be respected are defined, the media professionals may choose the best means and ways to attain the goals set.*

*The crucial question is to define the purpose of the measures sought through the recommendation. The general approach as to the way we see the media's action in the first recital of the text means that we do not consider their impact. We focus rather on their way of dealing with elections and covering the various related activities. It is requested of the media to respect these principles: fairness, balance and impartiality.*

*What does this mean and why limit the requirements only to this treatment?*

*When a party or a candidate seeks the citizen's vote, their first requirement is to make known their existence and message. In this respect, under present conditions in modern societies, the role of the media as a vehicle for information is important. That is to say that the existence or message of any party or candidate will not become widely known unless carried by the media.*

*Once this is achieved, the next question that arises is why fairness, balance and impartiality are particularly requested. Does this mean that the lack of one or an other automatically confers advantage on a party or candidate at the expense of their opponents? Our answer is neither "yes", nor "no". In some such cases advantage may*

*be conferred, in others the effect can be the opposite. In a case of poor performance excessive coverage can prove counter productive.*

*So the issue in question is one of potential advantage, rather than guaranteed advantage. Thus, suffice is to say that the three principles be respected. The ways and specific actions to achieve it are left to the member states. For example, both proportionality and equality in allocating free airtime can be accepted bases to achieve fairness of treatment of parties and candidates.*

*This consideration leads us to the next issue, relevant to specific media and their activities required by the recommendation. The criteria retained for defining the different categories were the potential for influence as defined by the type of a medium and the position of the government with regard to ownership in that medium.*

*Applying the first criterion-potential for influence- broadcasting media, whether public service or private concerns should respect the principles set by the text. By the same measure print media are free to deal with electoral issues and actors as they wish, unless these media are state owned. Ownership was chosen in preference to funding or control after long discussions. Our reasoning was that funding does not necessarily mean that the specific media are state or government dependant or controlled. There are many instances where print media in many countries receive public funds in the form of subsidies or in other ways, without this making them servants of the authorities. At the same time formally independent media may in reality be under the direct or indirect control of political or other forces. It was considered that media owned by the government should be seen as owned by the citizens in general and thus they have a special responsibility vis-à-vis the people and those considered as their representatives.*

*The next step is to see the kind of programmes that should be taken into account when seeking regulation as well as other relevant issues. It is obvious that news and current affairs programmes come first, since they are more likely to attract the public's interest and election coverage means reporting on what's going on. Pluralism and fairness in dealing with information and presenting views and comments should not be seen separately in terms of a single programme or item but in terms of coverage as a whole. This can be assessed over a specific period (one week, one month etc) and ultimately over the whole campaign.*

*What about other programmes, such as films and popular shows that might attract wide interest and might have an influence on people's voting behaviour either through content or the persons involved? At the beginning there were suggestions that whatever is likely to have an impact on voting intentions should be avoided. Upon reflection this was felt to be too strong and restricting fundamental freedoms. Such an interpretation would be too wide and it could leave room for considering everything as interfering with elections. The final text calls for special care with regard to these kinds of programmes. This means that media people and authorities should be aware of possible secondary effects and act accordingly.*

*Other areas that might need regulation are the availability of free airtime, paid political advertising and publication of opinion polls. There is no obligation as such to allocate free airtime to parties and candidates, which should it occur might be limited to public broadcasting services. The aim is to enable, especially small or new parties to communicate with the voters. The wording is very cautious and says, "Member States may examine the advisability of such provisions". One can notice the words "may" and the "advisability".*

*The same caution applies to political advertising, that is paid advertising. There is no rule as to whether political advertising should or should not be allowed. Where such paid advertising is allowed there are two important principles to be respected. Firstly that all candidates and parties have the opportunity to access and secure advertising on equal terms and conditions. Secondly that the public is aware of the fact that what is broadcasted is a paid political message.*

*The question as to how any one country deals with the issues of allocating free airtime and political advertising is a complex one. While there is no general rule, at the same time there is a set of other questions to answer before a decision is taken. These include determining whom is entitled to have access to free airtime, and how time is allocated. There is also the implied risk of abuse of this right by forces that undermine democracy. In Cyprus there are seven political parties, five of them in parliament. It is not difficult to find a formula and accommodate all needs. What about Russia or other countries where there are tens of parties? How can the media confer free airtime to all these parties without negative effects on their audience rates or their regular programming?*

*With regard to political advertising there are two main problems. These are equality of opportunities between big or rich parties and the others who are less empowered. The other issue is that of negative advertising. Both issues can be dealt with in several ways. Each country chooses whatever best suits the needs, tradition and culture of the country.*

*The publication of opinion polls continues to trouble some political authorities while at the same time we witnessed a proliferation of surveys some of them carried on behalf of the media themselves. Practices vary, some countries prohibit the dissemination of opinion polls a couple or many days, even weeks before the elections, others have no provision and publication may take place while voters go to the ballots. After a warning that any restrictions should be in accordance with article 10, the recommendation set the minimum requirement for their publication: The public should be informed about the specific characteristics of the opinion poll, that is the technical parameters, the source and the client who commissioned it.*

*At the heart of my presentation is the question "what are the member States expected to do with the recommendation"? The answer was not immediately clear. All concerned in drafting the recommendation were aware of differing practises among member States. It transpired from the discussion that apart from constitutional and similar obstacles to enacting the recommendation into law, needs differed from*

country to country. It was not therefore reasonable to ask all to enact the recommendation into domestic law.

*This is reflected in the first draft and the final text that read as follows:*

1) *The Council of Ministers "Recommends that the governments of the member States*

*Examine the principles contained in the appendix and consider the inclusion of these in their domestic law or practice where appropriate and in accordance with constitutional law,*

*Or*

*Examines ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law.*

*Please note the flexible character of the latter and focus on the purpose of the recommendation rather than the means to achieve respect for the principles. The freedom or discretion for member States to act on the recommendation is greater in the final text.*

*I would like to finish with some words about the effectiveness of legal texts. As already said, in some countries no provisions are made in the law and no problems are reported. In other cases, detailed provisions give poor or negligible results. Tradition, culture, experience and other factors count and one should not expect that everything will work perfectly once a text is adopted. This does not mean that a regulatory text is not needed, or worth while. It is a starting point, an important one. If these provisions prove not to be sufficient or working properly, we should examine what might be wrong with us and the way we implement them, before any amendments are made or this text is put aside.*

## CHAPTER 3

### NATIONAL CASE STUDIES: EUROPEAN UNION MEMBER STATES

#### 3.0 Introduction

*As Professor Goodwin stresses*<sup>17</sup>

“Obligations in international law are not generally self-executing - they need implementation at the domestic level. The complexities and inter-relationships between electoral rights and objectives seem clearly to require a statutory framework and appropriate machinery, but neither universal nor regional human rights instruments contain any formal obligation to enact electoral legislation. The practical choices open to States in meeting their international obligations are not unlimited, however, and certain means are increasingly preferred.”

*It appears from this excerpt that States have to choose among various options as to the specific measures that will ensure respect for the fundamental principles. With that in mind, in this chapter are presented a selection of national legislative and regulatory texts. These are selected for a number of good reasons. They refer to the need to present examples that:*

- a) offer a full view of the various levels and forms of regulatory measures,*
- b) present different approaches,*
- c) deal with specific aspects and*
- d) all together define a large spectrum of issues and present the reader with the opportunity to select those that best fit the specific features of the country concerned.*

*The cases presented refer to countries that belong to two groups, European Union members and candidates, already in the vestibule of the Union. In addition to these two groups Canada is also presented, as a non European country offering the example of an electoral law that deals with all aspects and regulates the basic details in a thorough way. Within each of these groups there are other subgroups. It is largely impossible to locate any two countries as having the same regulatory framework.*

*In the first category, that of the European Union 15 members, we distinguish mainly between the northern countries and the rest. The Scandinavian countries have minimal or no specific rules, other than the fundamental principles enshrined in their respective constitutions. With the exception of Finland's American-type campaigns with television commercials allowed, all the rest prohibit political advertising.*

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<sup>17</sup> Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, InterParliamentary Union, 1994

*Furthermore, in Denmark, for example, there is no silence day and electioneering can go on even while the actual voting takes place.*

*Moving south, we find the Netherlands, which adopted a brief provision in their Media Act about allocation of funds and free airtime on national broadcasters. Luxemburg is working out a legal framework that deals with communication issues. In the rest of the Fifteen there is a variety of situations and we chose to present examples starting with the United Kingdom as a paradigm. We included here the various levels of its regulatory framework in a way that offers a global view, complete with the codes of conduct and rules of the BBC, a model for many broadcasters. The British system encompasses the founding principles of freedom of expression and leaves issues of scheduling and editorial work to the media professionals. Their work will be based on interpretation of the key terms of impartiality, fairness and balance, determined by the regulator. The regulator's interference with the party political broadcasts is rather, confined to the content and format of party messages than to any attempt aiming to control the media's actual work.*

*The French example moves in different directions, especially when it comes to the issue of party political broadcasts. The interventionist policy has many facets and the concepts of equity and fairness are given different meanings at different times. In the pre-electoral period the famous formula of the three-thirds applied for the allocation of broadcasting time, gives the government and the majority party(ies) camp two thirds of the total. The ratio changes during the first and the last stages of the electoral period both in the case of presidential and parliamentary elections. The regulator provides the parties and candidates with all the facilities for the production of their political broadcasts. This is done on the regulator's account and under its close and strict scrutiny, controlling both the content and the process of production. Further, the regulator insists upon a detailed scheduling that leaves the broadcasters with only one task; just transmit the messages at the time specified by the CSA. The issue of the publication of the outcome of public opinion polls, is also regulated in the same spirit of constraint. This evoked pan-European interest after a court decision that the prohibition imposed since the 1970s violated article 10 of the European Convention of Human Rights*

*Italy is another interesting example for more than one reason. It has created a new institution, in the spirit of technological convergence, a communications authority (Agcom) with powers covering the whole spectrum of telecommunications, broadcasting and publishing. The legislation in force establishes the main rules and procedures that should be respected by those involved in elections and the media, both in electoral and non-electoral periods. Different laws deal with the different types of elections and the communications authority interprets and extends the provisions of the law by issuing decisions and regulations on specific issues. For by-elections and other types of elections, the publication of opinion polls and other subjects are within the scope of these rules.*

*As one of the few European Union members allowing paid political advertising, Italy stipulated both the conditions for the exercise of this right, and controls over campaign finances. These measures and others establish rules and introduce administrative procedures in respect of the exercise of the rights of parties and candidates. Additionally they set out the obligations of the media, leaving the media to a great extent the freedom of editorial and scheduling decisions.*

*Portugal is not one of the old EU members and the country's political experience with dictatorship may be the reason why the law put emphasis on the right to reply. The provisions concerning this issue demanded inclusion here. These are an interesting example where the offer of free airtime and the exercise of the right to reply form the basis of political dialogue in broadcast media. There is another issue that attracted our attention; Portugal, in the same spirit as Italy (and France to a certain extent) used to impose constraints on the realisation and publication of opinion polls related to politics and voting preferences.*

*The discretion left to the broadcasters and the parties with regard to the production and the content as well as the scheduling of free of charge broadcasts is considerable. The law only sets out basic parameters that will constrain these decisions leaving details to be determined by the sides concerned.*

*The relatively liberal approach in this regulation is not reflected in the law on the publication of public opinion surveys. The authorities set out detailed provisions and attempt close and strict administrative control on matters related not only to the publication but also of the persons that may conduct surveys. There are also controls and requirements concerning the publication or dissemination of polls. Above all it is underlined here that a ban imposed on publication of poll results for a period of 30 days preceding election day has been lifted with law 10/2000.*

*The Netherlands opted for minimal regulation, dealing only with the allocation of airtime on public service broadcasting.*

### **3.1 United Kingdom**

*The way the United Kingdom regulates issues connected with elections and the media illustrates an approach of the "minimal interference" of the public authorities. This is achieved by the separation of roles and competences. What transpires also is a hierarchy of competences and content, starting from the generic and proceeding to more specific and detailed regulations. There is also an aspect of "horizontality", where the authority of the Electoral Commission overlaps to some extent with those of the Television and the Radio regulators. This leads to the need for the latter to take into account the former's views.*

*The law defined the main rules and principles and the respective Commissions elaborated further on their meaning and interpretation, leaving important latitude of action to broadcasters as to implementation. There is nevertheless one aspect on which regulation went a step further: that of direct access programmes. The respective commissions have set out a framework for issues such as length, content, scheduling, those having right of access and other aspects of the broadcasts.*

*In all the texts there is a distinction between election time and the rest of the year. The basics are common at all times. There is however need for more specific rules in election time. These deal with the particularities of the election period, such as the meaning of "election period", the rights of candidates and other issues of that kind.*

### **The legislative framework**

a) *The Political Parties, Elections and Referendums Act of 2000 deals with, among other issues, the main rules and principles governing media access of candidates and parties. The Act requires that the Electoral Commission's views are taken into account when rules about Party Political Broadcasts are drafted. Similarly the obligation of the Public Authorities to inform and educate the public concerning elections and for parties to be registered in order to acquire the right to media access, are also dealt with. It also reviews definitions related to elections and affecting media coverage.*

#### **Political Parties, Elections and Referendums Act 2000<sup>18</sup> 2000 Chapter 41 - continued**

##### **PART I, THE ELECTORAL COMMISSION - continued**

##### **Commission's general functions - continued**

#### **Broadcasters to have regard to Commission's views on party political broadcasts.**

11. - (1) In section 36 of the Broadcasting Act 1990 (independent television services: party political broadcasts), after subsection (4) there shall be inserted-

(5) Before making any rules for the purposes of this section the Commission shall have regard to any views expressed by the Electoral Commission.

(2) In section 107 of that Act (independent sound broadcasting services: party political broadcasts), after subsection (3) there shall be inserted-

(4) Before making any rules for the purposes of this section the Authority shall have regard to any views expressed by the Electoral Commission.

(3) The British Broadcasting Corporation and Sianel Pedwar Cymru shall each, in determining its policy with respect to party political broadcasts, have regard to any views expressed by the Electoral Commission for the purposes of this subsection.

(...)

#### **Education about electoral and democratic systems.**

13. - (1) The Commission shall promote public awareness of-

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<sup>18</sup> <http://www.legislation.hmso.gov.uk/acts/acts2000/20000041.htm>

(a) current electoral systems in the United Kingdom and any pending such systems, together with such matters connected with any such existing or pending systems as the Commission may determine;

(b) current systems of local government and national government in the United Kingdom and any pending such systems; and

(c) the institutions of the European Union.

(2) For the purposes of subsection (1) any system such as is mentioned in paragraph (a) or (b) of that subsection is pending at a time when arrangements for giving effect to it have been made by any enactment but the arrangements are not yet in force.

(3) Subsection (1) does not apply in relation to local government elections, or to local government, in Scotland; but in paragraph (b) of that subsection the reference to national government includes (in addition to the government of the United Kingdom) the government of parts of the United Kingdom for which there are devolved legislatures.

(4) The Commission shall perform their functions under subsection (1) in such manner as they think fit but may, in particular, do so by-

(a) carrying out programmes of education or information to promote public awareness of any of the matters mentioned in subsection (1); or

(b) making grants to other persons or bodies for the purpose of enabling them to carry out such programmes.

(5) Any grant under subsection (4)(b) may be made subject to such conditions as the Commission consider appropriate.

(6) The total expenditure incurred in any financial year by the Commission in performing their functions under subsection (1) (whether by making grants or otherwise) shall not exceed such sum as is for the time being specified for the purposes of this subsection by an order made by the Secretary of State with the consent of the Treasury.

(7) The Scottish Ministers may by order provide that, despite subsection (3), the Commission may perform the functions conferred by this section in relation to local government elections, or to local government, in Scotland.

(8) Subsection (6) shall not apply to the expenditure incurred by the Commission in performing their functions exercisable by virtue of an order made by the Scottish Ministers under subsection (7); but such expenditure shall not exceed such sum as is for the time being specified for the purposes of this subsection in an order made by the Scottish Ministers.

(9) The Scottish Ministers shall reimburse the Commission for any expenditure incurred by them which is attributable to the exercise of any of functions mentioned in subsection (8).

(10) Section 156(5) shall apply to an order made by the Scottish Ministers under this section as it applies to an order made by the Secretary of State under this Act and the reference in that section to enactments shall include a reference to any enactment comprised in or in an instrument made under an Act of the Scottish Parliament.

(11) The power of the Scottish Ministers to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

(...)

PART II, REGISTRATION OF POLITICAL PARTIES - continued

(...)

**Supplemental**

**Party political broadcasts**

37. - (1) A broadcaster shall not include in its broadcasting services any party political broadcast made on behalf of a party which is not a registered party.

(2) In this Act "broadcaster" means-

- (a) the holder of a licence under the Broadcasting Act 1990 or 1996 ,
- (b) the British Broadcasting Corporation, or
- (c) Sianel Pedwar Cymru.

(...)

PART X

MISCELLANEOUS AND GENERAL

*Broadcasting during election period*

**Broadcasting of local items during election period.** 144. For section 93 of the Representation of the People Act 1983 there shall be substituted-  
**Broadcasting of local items during election period.**

93. - (1) Each broadcasting authority shall adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in items about the constituency or electoral area in question which are included in relevant services during the election period.

(2) The code for the time being adopted by a broadcasting authority under this section shall be either-

- (a) a code drawn up by that authority, whether on their own or jointly with one or more other broadcasting authorities, or
  - (b) a code drawn up by one or more other such authorities;
- and a broadcasting authority shall from time to time consider whether the code for the time being so adopted by them should be replaced by a further code falling within paragraph (a) or (b).

(3) Before drawing up a code under this section a broadcasting authority shall have regard to any views expressed by the Electoral Commission for the purposes of this subsection; and any such code may make different provision for different cases.

(4) The Independent Television Commission and the Radio Authority shall each do all that they can to secure that the code for the time being adopted by them under this section is observed in the provision of relevant services; and the British Broadcasting Corporation and Sianel Pedwar Cymru shall each observe in the provision of relevant services the code so adopted by them.

(5) For the purposes of subsection (1) "the election period", in relation to an election, means the period beginning-

(a) (if a parliamentary general election) with the date of the dissolution of Parliament or any earlier time at which Her Majesty's intention to dissolve Parliament is announced,

(b) (if a parliamentary by-election) with the date of the issue of the writ for the election or any earlier date on which a certificate of the vacancy is notified in the London Gazette in accordance with the Recess Elections Act 1975, or

(c) (if a local government election) with the last date for publication of notice of the election, and ending with the close of the poll.

(6) In this section-

"*broadcasting authority*" means the British Broadcasting Corporation, the Independent Television Commission, the Radio Authority or Sianel Pedwar Cymru;  
"*candidate*", in relation to an election, means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it;

"*relevant services*"-

(a) in relation to the British Broadcasting Corporation or Sianel Pedwar Cymru, means services broadcast by that body;

(b) in relation to the Independent Television Commission, means services licensed under Part I of the Broadcasting Act 1990 or Part I of the Broadcasting Act 1996; and

(c) in relation to the Radio Authority, means services licensed under Part III of the Broadcasting Act 1990 or Part II of the Broadcasting Act 1996.

*b) The Broadcasting Act of 1990 stipulates the obligation of licence holders to include in their schedules party political broadcasts in conformity to rules to be determined by the respective authorities. It also gives the latter the power to determine which political parties have rights to such broadcasts and the rules to be followed by broadcasters.*

### **Broadcasting Act 1990 (c. 42)<sup>19</sup>**

1990 c. 42 - continued

#### **Part I - Independent Television Services - continued**

*Party political broadcasts.*

36.—(1) Subject to subsection (2), any regional Channel 3 licence or licence to provide Channel 4 or 5 shall include—

(a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and

(b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Commission may determine.

(2) Where any determination under section 28(3) is in force, a licence to provide Channel 5 may (but need not) include any such conditions as are mentioned in subsection (1)(a) and (b).

(3) Without prejudice to the generality of paragraph (b) of subsection (1), the Commission may determine for the purposes of that subsection—

(a) the political parties on whose behalf party political broadcasts may be made; and

(b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.

(4) Any rules made by the Commission for the purposes of this section may make different provision for different cases or circumstances.

<sup>19</sup> [http://www.hmsso.gov.uk/acts/acts1990/Ukpga\\_19900042\\_en\\_1.htm](http://www.hmsso.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm)

**Broadcasting Act 1990 (c. 42)**

1990 c. 42 - continued

**Part III - Independent Radio Services - continued**

*Party political broadcasts.*

107.—(1) A national licence shall include—

- (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
- (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Authority may determine.

(2) Without prejudice to the generality of paragraph (b) of subsection (1), the Authority may determine for the purposes of that subsection—

- (a) the political parties on whose behalf party political broadcasts may be made; and
- (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.

(3) Any rules made by the Authority for the purposes of this section may make different provision for different cases or circumstances.

## **The Regulators -- Independent Television Commission and Radio Authority**

*The Independent Television Commission(ITC) and the Radio Authority(RA) explain and interpret the law and the obligations arising in law from their respective Programme Codes. Among the matters covered are the definitions, meaning and content of the main terms in the broadcasting law, as required for implementation of the rules in practice. With the exception of the Party Political Broadcasts(PPBs), other issues are treated by both bodies so as to ensure that the broadcasters should converge upon certain principles. The broadcasters are less told what to do but rather shown ways that they can achieve the goals set for them in law.*

*The broad thrust of regulations are similar or identical for both radio and television. The Radio Authority tends to be more flexible on the "external" characteristics of party broadcasts. That is to say that the length and scheduling of PPBs are not defined in the Programme Code as is the case for television.*

### **THE ITC PROGRAMME CODE JANUARY 2002<sup>20</sup>**

#### **SECTION THREE**

##### **Impartiality**

(a) As stated in the Foreword, the Broadcasting Act 1990 makes it the statutory duty of the ITC to draw up, and from time to time review, a code giving guidance as to the rules to be observed for the purpose of preserving due impartiality on the part of licensees as respects matters of political or industrial controversy or relating to current public policy. The Impartiality Code relates specifically to Section 6(1)(c) of the Act and is drawn up in accordance with Section 6(3), 6(5) and 6(6). It is published under Section 6(7).

(b) For ease of reference, guidelines relating to the requirement under Section 6(1)(b) that news be presented with due accuracy and impartiality and the requirement under Section 6(4) relating to the views and opinions of persons providing a licensed service are also incorporated here. These are based on the ITC's code making powers under Section 7(1)(c) of the Act as well as those deriving from Section 6(3). Section 47 of the Act allows the ITC to substitute for Section 6(1)(c) a modified requirement in respect of local licensable programme services. Guidance is given in Section 3.8 of the Code.

(c) This section refers mainly to programmes covered by the impartiality requirements: i.e. those dealing with matters of political or industrial controversy, and current public policy. The only exceptions to this are in relation to news (3.4), where the due accuracy requirement relates to news on all topics, and to appearances by politicians and other political activists.

##### **3.1 Due impartiality**

The Broadcasting Act requires the ITC to do all that it can to secure 'that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy'.

Under the Act, matters relating to current political issues, those of a current industrial relations nature, and current public policy which is subject to opposing points of view

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<sup>20</sup> [http://www.itc.org.uk/uploads/ITC Programme Code.doc](http://www.itc.org.uk/uploads/ITC_Programme_Code.doc)

should be regarded as 'controversial'. The due impartiality requirement does not apply to every topic where differences of opinion may exist.

The term 'due' is significant; it should be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme. While the requirement of due impartiality applies to all areas of controversy covered by the Act, it does not mean that broadcasters have to be absolutely neutral on every controversial issue. And while broadcasters should deal even-handedly with opposing points of view in the arena of democratic debate, it does not mean that 'balance' is required in any simple mathematical sense or that equal time must be given to each opposing point of view.

Opinion should be clearly distinguished from fact. Judgement will always be called for. The requirement will also vary with the type of programme; the considerations applying to drama, for example, are different from those applying to current affairs programmes. Licensees transmitting to countries other than the UK should be aware that the due impartiality requirement applies to them no less than to licensees operating solely within the UK.

The provision that due impartiality must be preserved 'on the part of the person providing the service' is also significant. Subject to the safeguards contained in this Code, the provision allows for individual contributors to put forward what may be a personal or subjective view, or for such views to be reflected in a programme. It is for each licensee, acting through the executives who commission and schedule programmes, to ensure the service they provide deals fairly with matters of political or industrial controversy, or current public policy.

### **3.1(i) Editorialising**

The Act places the additional duty on the ITC to do what it can to secure the exclusion of the licensee's views and opinions on controversial matters other than the provision of programme services.

If, in a programme included in a licensed service, a director or officer of a licensee does express an opinion on a controversial matter other than the provision of programme services, it must be in a context which makes clear that the opinion expressed is not that of the licensee.

Speeches in Parliament are exempt from this provision.

### **3.2 Impartiality over time**

There are times when licensees will need to ensure that the principal opposing viewpoints are reflected in a single programme or programme item, either because it is not likely that the licensee will soon return to the subject, or because the issues involved are of current and active controversy. At other times, a narrower range of views may be appropriate within individual programmes. The ITC recognises that such issues call for editorial judgement based on the particular circumstances and that an impartial programme service does not necessarily have to ensure that in a single programme, or programme item, all sides have an opportunity to speak.

#### **3.2(i) The 'series' provision**

The Broadcasting Act's requirements about impartiality allow a series of programmes to be considered as a whole. For this purpose, the ITC defines a series as more than one programme broadcast in the same service, each one of which is clearly linked to the other(s) and which deal with the same or related issues.

It is not sufficient to claim that programmes on other channels or other media will ensure that opposing views will be heard.

Some series consist of programmes broadcast at regular intervals under the same title, but which may deal with widely disparate issues from one edition to the next. In this case, each programme should normally aim to be impartial in itself. Alternatively, producers may choose to deal with the same subject over two or more programmes or, for instance, offer separate in-depth interviews to the leaders of political parties and in this way achieve impartiality over time.

The intention to achieve impartiality in this way should be planned in advance and, wherever practicable, made clear to viewers.

### **3.3 Programme content: 'major matters'**

The Act requires the Code to take particular account of the impartiality due to major matters of political or industrial controversy or relating to current public policy.

What is a major matter will vary according to the current public and political agenda, whether national or regional. It would in most circumstances include political or industrial issues of national importance, such as the UK's role in the European Union, or significant legislation currently passing through Parliament. For licensees serving a local or regional audience, it would also include issues of comparable importance within their region.

In dealing with major matters of controversy, licensees must ensure that justice is done to a full range of significant views and perspectives during the period in which the controversy is active.

The treatment of major matters should not obscure the fact that due impartiality is required on all matters of political or industrial controversy or current public policy. The ways in which this may be achieved in relation to different programme types is dealt with in the following sections.

### **3.4 News**

In addition to the general requirements relating to matters of political or industrial controversy or current public policy, the Act requires that any news, given in whatever form, must be presented with due accuracy and impartiality.

Reporting should be dispassionate and news judgements based on the need to give viewers an even-handed account of events. In reporting on matters of industrial or political controversy, the main differing views on the matter should be given their due weight in the period during which the controversy is active. Editorial discretion will determine whether a range of conflicting views is included within a single news item or whether it is acceptable to spread them over a series of bulletins.

### **3.5 Personal view programmes**

Programmes in which an individual contributor is given the opportunity to put forward his or her own views, without necessarily referring to opposing views have a valuable place in the schedules. Personal view programmes on 'controversial' matters covered in the act are, however, subject to specific safeguards in order to ensure compliance with the general provisions relating to due impartiality.

The safeguards, which apply to all personal view programmes on 'controversial' matters, are as follows:

(a) Each programme must be clearly identified as giving a personal view both in advance announcements and at the start of the programme itself.

(b) Facts must be respected, and licensees have an obligation to do what they can to ensure that the opinions expressed, however partial, do not rest upon false evidence.

(c) A suitable opportunity for response to the programme should be provided, where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme.

### **3.5(i) Personal view programmes: the timescale**

As with current affairs and documentary programmes, a series of personal view programmes has no need to give equal time to every relevant point of view. But licensees should take care to ensure that a sufficiently broad range of views is expressed in any series of such programmes, and across the service as a whole during each calendar year, taking account of the frequency of the programmes within the series, the length of individual programmes and the nature of the subject matter.

For series which are a regular fixture in the schedules, such as a nightly, weekly or monthly access programme, the views expressed on controversial matters should be kept in reasonable balance throughout the progress of the series and licensees must be able to demonstrate this.

For an occasional series of programmes dealing with different aspects of the same subject matter it will normally be necessary to maintain impartiality within the series. Occasionally, however, the series itself may take a particular approach to a controversial issue or comprise a group of programmes presented from the same personal viewpoint, perhaps reflecting an original body of thought or research which may not readily be balanced.

The ITC recognises that such series are likely to have a long gestation period and are unlikely to be included in the schedules very often.

### **3.6 Interviews and discussions on controversial topics**

Sometimes, interviewees - including representatives of the Government - will seek to impose their own conditions on the conduct and use of an interview. Such requests are not improper in themselves, but care should be taken to ensure that what is included in the programme is determined by editorial criteria and not as the result of pressure. Licensees should consider whether, in the interests of due impartiality and fairness, they should disclose such agreements to viewers at the time of the broadcast.

In programmes dealing with political issues the participants do not necessarily have to be speakers from the main political parties. The obligation to ensure due impartiality relates to issues, not to parties, and some important issues do not divide opinion along existing party lines. Indeed there are occasions when it is preferable to confine discussion to representatives of only one party; the opportunity can be taken to investigate a particular approach to an issue in depth, provided that overall in a series of programmes impartiality is maintained. On the other hand there are many issues on which the attitudes of the parties are clear cut and distinct, recognisably part of the current political debate. In those cases speakers of known party allegiance should be chosen by the broadcasters.

For the provisions relating to other aspects of the conduct of interviews, see Section 2.5.

For the provisions relating to Impartiality and Fairness in drama and drama documentary, see Section 2.12.

### **3.7 Politicians in presentation roles and non-political programmes**

Programmes in which politicians and other activists in fields of political and industrial controversy appear outside their normal political role present different problems. Care and discretion are required over the use of such persons to produce or present programmes. Because of the need to preserve due impartiality, no currently active politicians should appear as newscasters, interviewers or reporters in any news programme, unless their use can be clearly justified, in which case their party allegiance should be clearly identified.

Care should be taken in making use of active politicians and political activists to present other programmes, such as studio discussions or current affairs programmes. Impartiality will normally require that such presenters are drawn from a wide political spectrum.

Guidance on the appearance of candidates in programmes during election periods is given in Section 4.3.

### **3.8 The undue prominence rule for local licensable programme services**

Under Section 47(4) of the Broadcasting Act 1990 the ITC may modify the provisions of Section 6 in respect of local licensable programme services by substituting in place of Section 6(1)(c) the following:

'(c) that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on matters of political or industrial controversy or relating to current public policy'.

The ITC will decide on a case by case basis whether the undue prominence requirement (rather than the impartiality requirement) should apply to particular licensees. Any licensee wishing to pursue this should contact the ITC for further guidance.

## **SECTION FOUR**

### **Party Political and Parliamentary Broadcasting**

#### **4.1 Party Political and Party Election Broadcasts**

Section 36 of the Broadcasting Act 1990 requires the ITC to ensure that Party Political Broadcasts (PPBs) are included in the regional Channel 3 (ITV), Channel 4 and Channel 5 services. This section of the Code reflects the rules which the ITC has determined in accordance with the Act. Within the terms of these rules, the precise allocation of broadcasts is the responsibility of licensees. Unresolved disputes between licensees and any political party, as to the length, frequency, allocation or scheduling of broadcasts, should be referred by the party or the licensee to the ITC.

##### **4.1(i) Length of broadcasts**

Parties may choose a length of 2'40", 3'40" or 4'40".

##### **4.1(ii) Frequency of broadcasts**

General election broadcasts will be carried by Channel 3 (ITV), Channel 4 and Channel 5. Broadcasts for the European Parliamentary election will be carried by ITV and Channel 5.

ITV will additionally carry: local election broadcasts in those regions where such elections are taking place; broadcasts in the relevant regions for Scottish Parliament, Welsh Assembly and Northern Ireland Assembly elections; and broadcasts for the major parties around other key events in the political calendar, such as the Queen's Speech, the Budget and party conferences. Major parties in Great Britain are defined

as Labour, Conservative, Liberal Democrats and, in Scotland and Wales respectively, the SNP and Plaid Cymru.

#### **4.1(iii) Allocation of broadcasts**

Major parties in Great Britain will normally be offered a series of broadcasts before each election.

Other parties may qualify for a broadcast on the basis of contesting one sixth or more of the seats up for election, modified as appropriate for proportional representation systems.

Major parties in Britain will be offered one broadcast on each occasion, in relation to other key political events.

The allocation of election broadcasts to Northern Ireland parties will be determined before each election by the relevant licensee.

#### **4.1(iv) Scheduling of broadcasts**

Election broadcasts by the Conservatives, Labour, the Liberal Democrats and Northern Ireland parties must be carried in peak-time (6pm to 10.30pm). SNP and Plaid Cymru broadcasts on ITV in Scotland and Wales must also be carried in peak. Other broadcasts should normally be carried in the period 5.30pm to 11.30pm.

#### **4.2 Content of broadcasts**

Editorial control of the content of Party Political Broadcasts (PPBs) and Party Election Broadcasts (PEBs) normally rests with the originating political party. However, licensees are responsible to the ITC for ensuring that nothing transmitted breaches the Programme Code, notably the requirements on matters of offence to good taste and decency set out in Section 1. Licensees are recommended to seek an indemnity from the parties against defamation, breach of copyright and similar legal risks. Licensees should issue parties with general guidelines on the acceptability of content (including Code compliance and avoidance of defamation), and technical matters. These guidelines, which are agreed between all relevant broadcasters, are designed to reconcile the editorial standards of the broadcaster, and audience expectations, with the freedom of political parties to convey their political messages.

#### **4.3 Programmes at the time of elections**

The general provisions of Section 3 of this Code – notably Section 3.3 on ‘major matters’ - apply to all coverage of elections. There is no expectation that the time devoted to all parties and candidates in an election will be equal. Licensees must exercise their judgement, based on factors such as significant levels of previous electoral support, evidence of significant current support, and the number of candidates being fielded by a party. Due weight should be given to coverage of major parties (these are defined in relation to the UK in Section 4.3(i) below). However, smaller parties and independent candidates may also be among those with significant views and perspectives, to which appropriate coverage may need to be given.

Discussion and analysis of election issues should finish when the polls open. A licensee may not publish the results of any poll it has commissioned or undertaken on polling day itself, until the polls have closed.

Appearances by candidates in UK elections as newsreaders, interviewers or presenters of any type of programme should cease for the election period (which is

defined in section 4.3(i) below for Parliamentary and local government elections, and is in other cases a period of one calendar month before the poll). Appearances in non-political programmes, that were planned or scheduled before the election period, may continue, but no new appearances should be arranged and transmitted during the period.

#### **4.3(i) Coverage of constituencies at Parliamentary and local government elections in the UK**

The restrictions formerly placed by the Representation of the People Act on the participation of candidates in programmes have been removed. It is no longer necessary to secure the agreement of all candidates before any candidate can take part in an item about the relevant constituency, and likely candidates are no longer prevented from taking part in the period between the calling of the election and the close of nominations. Nevertheless, due impartiality must be strictly maintained in coverage of the campaign in any constituency. If any candidate takes part in an item, about a particular constituency, then candidates of each of the major parties should be offered the opportunity to take part. The major parties in Great Britain are defined as Conservative, Labour and Liberal Democrat, and in Scotland and Wales respectively, the SNP and Plaid Cymru. The major parties in Northern Ireland are Democratic Unionist, Sinn Fein, SDLP and Ulster Unionist. It is right to make some distinction between the weight of the contribution from these candidates and others. However, constituency reports or debates should also offer the chance to take part to candidates representing parties with previous significant electoral support (for example parties which have gained seats in other recent elections, or individuals who have been elected before under a different label) or parties with evidence of significant current support.

Any constituency report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and any party allegiance. This should be conveyed in caption and/or voice-over.

Where a politician is appearing as a speaker on policy matters, care should be taken to avoid allowing him or her the opportunity to make constituency points, when no other candidates will have a similar opportunity.

The Political Parties, Elections and Referendums Act 2000 (see Appendix 4), defines the election period, during which the requirements in this sub-section of the Code must be applied. For a parliamentary general election, the period begins with the announcement of the dissolution of Parliament. For a parliamentary by-election, it begins with the issuing of the writ (or any earlier date notified in the London Gazette). For local government elections, it is the last date for publication of notice of the election. In all cases, the election period ends with the close of poll.

#### **4.3(ii) Coverage of constituencies and wider electoral regions at other elections in the UK**

The requirements of the previous sub-section also apply to coverage of constituencies at Scottish Parliament, and Welsh, Northern Ireland and London Assembly elections. The election period for these elections is defined as one calendar month before the poll. If coverage is given to wider electoral regions at these elections, or at the European Parliament election, the criteria outlined in Section 4.3 should be applied, in offering participation to candidates. In these instances, all parties putting up

candidates in the given electoral region should be listed, in caption and/or voice-over, but it is not necessary to list candidates individually.

#### **4.4 Use of recordings of Parliamentary proceedings**

Parliamentary rules for the use of coverage of proceedings state:

(a) no extracts of Parliamentary proceedings may be used in any light entertainment programme or in a programme of political satire;

(b) subject to paragraph (a) above, extracts of Parliamentary proceedings may be included in broadcast 'magazine' programmes which also contain music or humorous features, provided that the different types of items are kept separate;

(c) extracts from Parliamentary proceedings may not be used in party political broadcasts, except where it features a member of the party making the broadcast, and the member's consent has been obtained; the use of general scenes of either chamber or material featuring exchanges between the parties should not be included;

(d) no extracts of Parliamentary proceedings may be used in any form of advertising, promotion or other form of publicity, except in the form of trailers for programmes which use extracts within the requirement of these guidelines and where the trailers also comply with those requirements; and the user shall at all times comply with all rules of coverage, guidelines and directives laid down from time to time by the relevant select committee of each House in reports issued by them and otherwise.

### **3.2 France**

*France enjoys a number of measures regulating media coverage of political life and elections that are not equalled in any other Western European country. In its national regulatory framework a paternalistic approach is adopted. As a result the latitude of discretion for both the political parties and the media in respect of publicity is limited. Firstly the electoral law prohibits all political propaganda in printed and audiovisual media for the three months preceding an election. Second, the allocation of time is done on the basis of three tiers, for the government, the ruling party (ies) and the opposition. Non parliamentary parties also have the right to a small share. Most important, parties have the right to direct media access through special productions where the regulator does almost everything.*

*The Conseil Supérieur de l'Audiovisuel hires the services of a private company to produce **on behalf of the regulator and under its strict control** all party political broadcasts (PPBs). On the occasion of an election, the Council promulgates an extremely detailed list of the people and equipment that it will put at the disposal of the parties or candidates for the production of PPBs. The council defines the modalities and all the procedures to follow and the rules to respect. Nothing can go on air, unless the Council gives its permission after having approved the final product. Broadcasting is scheduled to take place at specific times, not within a timeframe. The only editorial concession to the parties is the opportunity to insert in their production material of their*

own for up to 50% of total duration of the broadcast, provided this respects the norms and standards set by the Council.

*In the 2002 parliamentary elections all PPBs were scheduled during the seven days preceding election day. The broadcasts of the 16 presidential candidates were scheduled from 8 to 19 April.*

*In the relevant texts the Council invites editorial staff in the media to treat parties and candidates “with a constant concern for balance and honesty”.*

*The Conseil Supérieur de l’Audiovisuel issues at the request of the broadcasters recommendations and decisions on the occasion of parliamentary, presidential and local elections, as well as elections of members of the industrial tribunals, known as “Conseils des prud’hommes”. A description of the legal framework governing media coverage of elections follows below, from a relevant report of OSCE’s Office for Democratic Institutions and Human Rights.*

### **The Legislative Framework**

*In the selected excerpts from the law on Freedom of Communication, the legislature defines the obligations upon the broadcasters to ensure pluralism in their programmes and treat the expression of ideas with honesty. The powers of control (not just monitoring) of the regulator are also determined in the law. The government is empowered to use the public channels at any time for broadcasting its statements.*

*Article L52-1 of the electoral code is also cited, stipulating the prohibition of publicity in printed and broadcast media of political propaganda as well as of publicity on achievements of the authorities for a period of three and six months respectively preceding elections.*

*"The following informal translation of Law No. 86-1067 of 30 September 1986 on freedom of Communication is offered solely for the purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use"<sup>21</sup>.*

### **Law no. 86-1067 of 30 September 1986 on freedom of Communication, amended and completed by the following (...)<sup>22</sup>**

#### **[Excerpts]**

#### **Article 1.**

The audiovisual communication is free. The exercise of this freedom can only be restricted to the extent necessary on one hand for the respect of human dignity, of the freedoms and the property of other persons, the pluralist expression of currents of

<sup>21</sup> Translated by the author

<sup>22</sup> <http://www.csa.fr/upload/dossier/loi862002.pdf>

thought and opinion and, on the other hand for safeguarding the public order, for the needs of national defense, for the obligations of the public service, for technical constraints inherent to communication media, as well as for the necessity to develop a national audiovisual production industry. The *Conseil Supérieur de l'Audiovisuel*, an independent authority, guarantees this freedom under the conditions defined in the present law; It ensures equality of treatment; it guarantees the independence and the impartiality of the public sector of radio and television broadcasting; it takes care to favour free competition and the establishment of non-discriminatory relations between producers and distributors of services; it supervises the quality and the diversity of programmes, the development of the national audiovisual production and creativity, as well as the defense of and the promotion of the French language and culture. It can draw up proposals for the betterment of the quality of programmes. It can address recommendations to producers and distributors of audiovisual communication services relevant to the respect of principles set in the present law; these recommendations are published in the official gazette of the French Republic.

(...)

#### **Article 13**

The *Conseil supérieur de l'audiovisuel* ensures respect of the pluralist expression of the currents of thought and opinion in the programmes of the radio and television broadcasting services, in particular in programmes of political and general information. The *Conseil supérieur de l'audiovisuel* communicates each month to the presidents of each assembly and the leaders of the different political parties represented in the Parliament the statement with the time of media interventions of political figures in televised news, and news bulletins, the magazines and the other programmes.

#### **Article 14**

The *Conseil supérieur de l'audiovisuel* exercises control, with all appropriate means on the object, the content and the modalities of production of the advertising programmes broadcast by the national programme companies and by those having obtain a licence to offer audiovisual communication services in virtue of the present law. All advertising programmes of political character are prohibited. Any infringement of the provisions of the above subparagraph is subject to penalties as provided by article L 90-1 of the electoral code (*Article L.90-1 of the electoral code: Any violation of the provisions of article L.52-1 will be punished with a fine of 75 000 €. Article L.52-1 is included in annex*)

#### **Article 15**

Last, the *Conseil supérieur de l'audiovisuel* (...) ensures that radio and television broadcasts do not include any incitement to hatred or to violence on grounds of sex, morals, religion or nationality.

#### **Article 16**

The *Conseil supérieur de l'audiovisuel* fixes the rules concerning the conditions of production, scheduling and broadcast of the programmes relevant to electoral campaigns and the national programme companies are obliged to produce and schedule and the company mentioned in article 51 of the present law [*TDF*] is obliged to broadcast them. The services offered in this respect are provided for in their terms of reference. Under the present law the Council addresses recommendations to the managers of audiovisual communication services licensed under the present law.(...)

### **PART III**

The public sector of audiovisual communication

#### **Article 43-11.**

The companies enumerated in articles 44 and 45 pursue, in the public interest, a mission of public service. They offer to the public, in respect of all its components, a set of programmes and services characterised by diversity and pluralism, quest for quality and innovation, respect of human rights and the democratic principles defined in the constitution. They offer a variety of programmes in analogue and digital modes in the sectors of information, culture, knowledge, entertainment and sport. They favour the democratic dialogue, exchanges between the different parts of the population, as well as social integration and citizenship. They contribute to the development and the spreading of the intellectual and artistic works and of knowledge on civic issues (...). They ensure honesty, independence and pluralism of information and expression. (...)

#### **Article 54**

The government can at any moment ask the companies mentioned in 1 et 2 of article 44 to produce and the company mentioned in article 51 to broadcast any messages and statements that it deems necessary. The programmes are announced as emanating from the government. They can give rise to a right of reply in accordance with modes fixed by the *Conseil supérieur de l'audiovisuel*.

#### **Article 55**

Retransmission of the proceedings of the parliamentary assemblies by the national programme companies should be effected under the control of each assembly respectively. All political parties represented by a group in one of the parliamentary assemblies and all trade unions and professional organisations represented on a national-wide scale will have access to airtime in accordance with the modes defined by the *Conseil supérieur de l'audiovisuel*. (...)

### **The Regulator -- Conseil Supérieur de l'Audiovisuel (CSA)**

*a) The Conseil Supérieur de l'Audiovisuel (CSA) issues decisions and recommendations at the request of the broadcasters on the occasion of elections. No general code exists other than a text published in the Council's informative bulletin of March 2000. In this text the body explains how it perceives pluralism, how it is assessed and the meaning of the various parameters attached to it.*

*In the recommendations the Council defines the obligations of the broadcasters, the meaning of "fairness" and how the broadcaster should implement the recommendation. It also recalls provisions of various laws relevant to elections and the media.*

*" The following informal translation of the Recommendation of the CSA, dated 3 April 2002, for the parliamentary elections of 9 and 16 June 2002, is offered solely for the*

purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use<sup>23</sup>.

**Recommendation for the parliamentary elections of 9 and 16 June 2002**  
**Date: 3 April 2002, Official Gazette of 12 April 2002**<sup>24</sup>

Considering the electoral code and in particular articles L.49 subparagraph 2, L.52-1 and L.52-2;

Considering the organic law n° 2001-419 of 15 May 2001;

Considering the amended law n° 77-808 of 19 July 1977 and in particular its Article 11;

Considering the amended law n° 86 -1067 of 30 September 1986 relating to the freedom of communication, in particular its articles 1, 13, 14, 16;

After deliberating,

the *Conseil Supérieur de l'Audiovisuel* addresses to all television and radio services the following recommendation which will be in force as from 7 May 2002 included.

I - Current events related to the elections

1° When a given electoral district is being treated, the television and radio services take care that the various candidates and the personalities who support them benefit from an equitable presentation and access to airtime from 7 May to 7 June 2002 included for the first ballot and from 10 to 14 June 2002 included for the second ballot. These services give an account of all candidatures.

2° When the treatment of these elections goes beyond the frame of a constituency, the television and radio services ensure that the various political forces presenting candidates benefit from a fair presentation and access to airtime from 7 May to 7 June 2002 included for the first ballot and from 10 to 14 June 2002 included for the second ballot.

3° The reports, comments and presentations to which these elections give rise must be displayed by the editorial boards with a constant concern for balance and honesty. The editorial boards make sure that the choice of the extracts of the candidates' statements and writings, those of the representatives of the political forces as well as the comments to which they can give rise do not distort their general meaning.

4° With regard to magazines or special news programmes, the Council requests the services to be careful with their invitation policy in order for the principles mentioned in 1° and 2° above to be respected.

5° In programmes other than information, the Council considers that it is necessary to avoid interventions related to the election if the principles mentioned in 1° and 2° cannot be respected.

II - Current events non-related to the parliamentary elections

With regard to the coverage of these current events, the television and radio services are bound to respect a balance between the time of speech of the members of the government, that of the personalities belonging to the parliamentary majority and that of the personalities belonging to the parliamentary opposition and ensure them

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<sup>23</sup> Translated by Dominique Tsouris

<sup>24</sup> <http://www.csa.fr/infos/textes/textes.detail.php?id=8183>

comparable programming conditions. Moreover, the editors must take care to ensure a fair time of speech to the personalities belonging to political formations not represented in Parliament.

The television and radio services having local or regional programmes ensure the coverage of the local or regional current events by taking into account the local or regional political balances.

For current events not being related to the elections, the Council considers that it is preferable not to invite candidates, except if required by the current events.

### III - Statements of the interventions

In order to ensure the observance of the previously mentioned principles:

1° For the national air waves channels TF1, France 2, France 3 (national program), Canal Plus (for descrambled programmes) and M6 (national program), the CSA (Conseil Supérieur de l'Audiovisuel) will establish a detailed account of the time allocated to each of the various political parties and groupings and their supports.

2° The statements of the interventions of the representatives of the political parties and groupings and their supports will be transmitted to the CSA in accordance with the indications which will be given to them, by:

the La Cinquième, LCI, Euronews, i-Television, France Inter, France Info, RTL, Europe 1, RMC Info, BFM, Radio Classique services.

3° Moreover, all television and radio services, including the local television air waves or cable broadcasters, must be able to provide to the CSA, on its request, all the necessary information elements, in particular for the investigation of proceedings which might be submitted to it (speaking time, sound and visual tracks ...).

### IV - Other provisions

1° Until the date of opening of the official election campaign, the collaborators of all television and radio services who might be candidates take care that their possible interventions on the air or on television do not have any electoral incidence likely to impair the equality of the candidates as regards the means of propaganda and consequently the sincerity of the poll.

These same collaborators abstain from appearing in broadcasts or expressing themselves on air in the performance of their duties as from the opening of the official campaign on Monday 20 May and until the completion of the election in the district where they were candidates.

2° the television and radio services ensure that the possible use of audio-visual archives including pictures or words of public personalities:

- does not give place to cutting and editing or any use likely to deform the initial meaning of the document;

- systematically indicate their source and date.

3° the broadcasting of direct access programmes is suspended from 6 May to 16 June 2002 included.

4° the principles drawn from the jurisprudence of the judge of the election must be scrupulously observed.

In particular, the diffusion of defamatory, untrue or abusive remarks or speeches bringing new elements of electoral controversy at a date or under conditions making an answer impossible or inoperative is likely to distort the sincerity of the poll and therefore to lead to its cancellation.

It is reminded that a mass support of one or more candidates or a political formation, which would be analyzed as broadcast time allocated for purposes of electoral propaganda, could be likely to distort the sincerity of the poll and consequently lead to its cancellation. Furthermore, such programmes could be regarded as assistance in kind brought to candidates by a legal entity (prohibited by Article L.52-8 of the electoral code) and therefore result in the rejection of the electoral campaign account of these candidates.

5° It is reminded that:

- Article 14 of the amended law of 30 September 1986 prohibits television or radio advertising programmes with a political character;

- Article L.52-1 second subparagraph, of the electoral code provides that: "As from the first day of the sixth month preceding the month during which general elections are to be held, no advertising campaign promoting the achievements or management of a community may be organized in the territory of the communities concerned by the poll. Without prejudice to the provisions of this chapter, this prohibition does not apply to the presentation, by a candidate or on his behalf, within the framework of the organization of his campaign, of the results of the management of offices which he holds or has held. The related expenditures are subject to the provisions in respect of the financing and ceiling of electoral campaign expenses contained in chapter V (a) of this title";

- Article L.49, subparagraph 2, of the electoral code, provides that: "From the day before the poll at 0 hour, it is forbidden to disseminate or have disseminated, by any means of audio-visual communication, any message having the character of election propaganda";

- Article L.52-2 of the electoral code, provides that: "In the event of general elections, no result of the election, whether partial or final, can be communicated to the public, through the press or by any audio-visual means of communication, in the metropolis, before the closing of the last polling station in the metropolitan territory. The same goes true in the overseas departments before the closing of the last polling station in each department concerned";

- Article 11 of the amended law of 19 July 1977 provides that: "on the day before as well as on the day of each ballot the publication, dissemination and comment, by any means whatsoever, of any survey as defined in Article 1 are prohibited. This prohibition is also applicable to the surveys having been the subject of a publication, dissemination or comment before the day preceding each ballot. It does not hinder already published magazines or data put on line before this date from continuing to be available";

- the services of audiovisual communication are bound to implement, if necessary, the right of reply instituted by Article 6 of the law of 29 July 1982, kept in force by the amended law of 30 September 1986 referred to above.

*b) The Council issues decisions in which it determines the practical arrangements for the production of the party broadcasts and the means being put at the disposal of the parties or candidates. Additionally the procedures to follow for the production of PPBs*

*are set out along with the rules applied and the timing of the broadcasts on television and radio.*

*Instead of translating its provisions and all technical details, we have compiled and included here a list of the issues raised in the decision.*

## **Decision on the conditions of production, scheduling and broadcasting of programmes of the official campaign for the parliamentary elections of 9 and 16 June 2002<sup>25</sup>**

### **Issues regulated**

- A drawing takes place to determine the order and the dates of party broadcasts
- Designation of the person(s) who will act on behalf of the party in relation to the provisions of the decision.
- Right to insert videograms produced by the parties themselves, up to 50% of the broadcast. Technical and other obligations.
- Constraints in respect of the content of the broadcasts and the use of certain symbols or other images.
- Schedule of the broadcasts in France and in the Overseas Territories.
- Constituent elements of broadcasts.
- List in detail of technical staff and equipment at the disposal of political parties for shootings in open air or in the studio.
- Period of time the above are put at the disposal of the political parties.
- Procedures and rules to follow in the course of production and post -production up to the final product.
- Various provisions on programming, broadcasting, responsibilities etc.

*c) The reader will get from the following description a general view of the role of the media in the campaign. Similarly the legal context in which the parties, candidates and the media act during presidential elections are set out. This excerpt originates from a report of the OSCE's Office for Democratic Institutions and Human Rights on the 2002 Presidential elections.*

*Report of OSCE/ODIHR assessment on presidential elections in the Republic of France, 21 April and 5 May 2002, Office for Democratic Institutions and Human Rights, 2002<sup>26</sup>*

<sup>25</sup> [http://www.csa.fr/infos/textes/textes\\_detail.php?id=8184](http://www.csa.fr/infos/textes/textes_detail.php?id=8184)

<sup>26</sup> [http://www.osce.org/odihr/documents/reports/election\\_reports](http://www.osce.org/odihr/documents/reports/election_reports)

## VII. MEDIA COVERAGE OF THE ELECTION CAMPAIGN

The fundamental principle for the media coverage of election campaigns reflected in the legislation is that of equality among candidates. Strict and detailed regulations control the conduct of the media and are monitored by the *Conseil Supérieur de l'Audiovisuel* (French Broadcasting Authority), established in 1982. It is a collegial body composed of nine members, a third nominated by the President of the Republic, a third by the President of the National Assembly, and a third by the President of the Senate. Members are appointed for a six-year mandate, which is not renewable.

The main functions of the *Conseil Supérieur de l'Audiovisuel* are to supervise the content of television programs, authorise private television channels to use air frequencies, and ensure that the principle of pluralism in opinions is respected. The *Conseil Supérieur de l'Audiovisuel* can act only after a program is broadcast. It respects the principle of editorial freedom and does not intervene in the content of the programs.

Prior to the start of the official campaign, the principle of equity governs the appearances of potential candidates in the media. In December 2001, the *Conseil Supérieur de l'Audiovisuel* issued a recommendation inviting all television channels and radio to provide potential candidates an equitable access to the media. However, on 5 and 19 March, the *Conseil Supérieur de l'Audiovisuel* requested the TV channels and radio to reduce the airtime devoted to Mr. Jacques Chirac and Mr. Lionel Jospin in order to give airtime to other candidates. Following this warning, TV channels adjusted their policy and on 26 March, the *Conseil* acknowledged progress in the respect of the principle of equity by the media.

The *Conseil Supérieur de l'Audiovisuel* monitored media activities before and during the official campaign, starting on 1 January and covering all six national television stations, both public and private. Prior to the beginning of the official campaign, the *Conseil Supérieur de l'Audiovisuel* calculated the air time guaranteed by each television station to candidates, both official and potential ones. In the case of candidates who were also exercising public functions, the *Conseil Supérieur de l'Audiovisuel* adopted a particular method to monitor their airtime before the official start of the campaign. The airtime depicting the above mentioned candidates in the exercise of their official duties was not accounted for, with the exception of occasions during which they referred to their campaign program or to other campaign related subjects. On the latter occasions, their airtime was included in the total airtime available to the candidates for campaign purposes in accordance with the relevant legal provisions.

The *Conseil Supérieur de l'Audiovisuel* issues recommendations and instructions to the media prior to and during the official election campaign. It works in close co-operation with other institutions that have a monitoring role for the elections, including the *Conseil Constitutionnel* and the *Commission Nationale de Contrôle*. The *Conseil Supérieur de l'Audiovisuel* can receive complaints from candidates regarding possible breaches of the principle of equality as well as against the content of some programs. Candidates can appeal against actions and decisions of the *Conseil Supérieur de l'Audiovisuel* to the *Commission Nationale de Contrôle*.

The law strictly forbids any paid political advertisement for a period starting three months prior to an electoral contest. Political advertisement is therefore prepared on

an equal basis for all candidates, using the same facilities for production and the same format, and is aired free of charge. Candidates are consulted on various options for advertisements, they can select certain features, but they are bound to respect the instructions of the *Conseil Supérieur de l'Audiovisuel*. The airtime for campaign advertisement is equally divided among candidates and decided by the *Conseil Supérieur de l'Audiovisuel* in consultation with the candidates. While the legislation provides for a minimum of 15 minutes of advertisement in each channel per candidate, on the occasion of the presidential elections, the *Conseil Supérieur de l'Audiovisuel*, in close consultation with the candidates, approved a 48 minutes of advertisement on each channel per candidate.

The provisions and practices determining the electoral campaign in the media are strict and closely monitored by the *Conseil Supérieur de l'Audiovisuel* to ensure that each candidate is guaranteed an equal exposure through the media and that voters receive information on all candidates. While the official election campaign is regulated in a detailed and precise way, the period prior to the beginning of the official campaign and the principles which should apply to it remain more difficult to monitor. Despite these difficulties, the *Conseil Supérieur de l'Audiovisuel* has assumed an extremely important and effective role in monitoring the conduct of the media before the start of the official campaign and issuing recommendations to ensure that the principle of equity is upheld.

## 3.2 Italy

*Italy is one of the few Western European countries to allow paid political advertising, as well as to prohibit publication or broadcasting of opinion poll results in the fifteen days preceding polling day.*

*In laws selected below the reader may note the extensive administrative-minded approach in regulating the coverage of elections. A number of procedures are established by law in connection to various electoral activities,. This is particularly so of the desire of broadcasters to accept political advertising and the wish of parties and candidates to air their messages with radio and television commercials. Emphasis is on supervision rather than elaborating the requirements concerning the actual content of the broadcasts, as is the case in the United Kingdom. This approach leaves significant latitude for initiatives by the broadcasters to define the ways and the means by which they can meet the requirements of fairness and equal treatment set by law.*

*Recommendations, rules and guidelines are also issued on the occasion both of national and regional elections, at the behest of the media involved. The powers of the regulator, that is the Authority for the Guarantee of the Communication, are broad, covering also the print media.*

### **The Legislative Framework**

*a) Law 515/1993 was amended, and articles regulating issues of advertising and opinion polls have been repealed and are now treated by a new law (see below). The law focuses on electoral expenses of political parties and candidates and contributions made to them by third parties, i.e. persons, legal and other entities. It determines ceilings both for contributions and expenses, and sets rules and procedures to follow in the collection of contributions. It also sets out the sanctions for any irregularity or violation of the law. Parties should submit to the appropriate house the accounts of their election expenses.*

*" The following informal translation of Law n. 515, of 10 of December 1993, on Discipline in the electoral campaigns for the election of the House of Deputies and the Senate of the Republic is offered solely for the purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use"<sup>27</sup>.*

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<sup>27</sup> Translated by Flora Alexandrou

**Law n. 515, of 10 of December 1993, on Discipline in the electoral campaigns for the election of the House of Deputies and the Senate of the Republic<sup>28</sup>**

*“Gazzetta Ufficiale” (Official Gazette) of the Republic of Italy n. 292, S.O. of the 14/12/1993*

**1. Access to the means of communication**

1. Within 5 days of the calling of the election for the Chamber of Deputies and the Senate, the parliamentary commission for the supervision of radio and television services provides to the public service broadcaster the regulations necessary to guarantee, in conditions of equality of treatment, suitable spaces for advertising on the public service broadcaster, as well as access to such spaces for political lists and groups of candidates at regional level, and for parties or significant political movements at national level. The commission also directly regulates the electoral surveys and the services or programmes of electoral information of the public service broadcaster during the election period, so as to guarantee equal treatment, completeness and impartiality for all parties and movements competing in the electoral campaign.
2. (ABROGATED)
3. (ABROGATED)
5. From the date of the calling of an election to the Chamber of Deputies and the Senate to the end of the vote, the presence of candidates, representatives of parties and political movements and members of the government, regional councils and local authorities in current affairs programmes with responsibility attributable to a specific journalistic publication registered as indicated in paragraph 1 of article 10 of law number 223 of 6 August 1990 must be limited exclusively to the need to guarantee completeness and the impartiality of information. Such a presence is forbidden in all other programmes. Paragraph thus modified from article 5 of law number 28 of 22 February 2000.
- 5a. The regulation of this article is applied to supplementary elections, limited to the relevant region or regions. Additional paragraph from article 1a, of bill number 131 of 13 May 1999, in the integrated text of the relevant law of conversion.

**2. Electoral advertising in newspapers and magazines and on radio and television (ABROGATED)**

**3. Other forms of advertising**

1. From the same date as stated in article 1, paragraph 2, the electoral advertising for political lists, groups of candidates or individual candidates through leaflets and posters is accepted within the limits allowed by law number 212 of 4 April 1956, and successive modifications.
2. All publications of electoral advertising, whether written material, printed or photographic material, radio and television broadcasts, tape-recordings and any other type of divulcation must indicate the name of the buyer responsible.
3. Newspapers, radio and television stations, printers and whoever else is asked to produce material or provide services which could be used for any form of electoral

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<sup>28</sup> [http://www.agcom.it/L\\_naz/L\\_515\\_93.htm](http://www.agcom.it/L_naz/L_515_93.htm)

advertising, including consultancy and intermediation, are required to ascertain that the relevant requests have been made directly by the administrative secretary or the delegates responsible for advertising, or else by the individual candidates or their mandate holders, who are required to issue invoices. In the circumstances set out in paragraph 4 they are required to acquire a copy of the authorisation of the candidate or of his mandate holder.

4. While adhering to that set out in paragraph 2, the instruments of electoral advertising of one or more candidates, produced or commissioned by trade unions or social or professional organisations, must be authorised by the candidates or by their mandate holders. The cost of such forms of advertising is calculated for the purposes of being shared according to the expenditure limit stated in article 7.

#### **4. Communication with the voters**

1. As soon as the first-past-the-post constituencies are determined, and each time they are reviewed, the councils whose territorial jurisdiction covers more than one such constituency must send a letter to each voter specifying the first-past-the-post constituency, both for the Chamber of Deputies and for the Senate, in which the voter will be able to exercise his/her right to vote and sign for the presentation of the candidatures.

#### **5. Ban on institutional advertising (ABROGATED)**

#### **6. Dissemination of opinion polls (ABROGATED)**

#### **7. Limits and publicity of the electoral expenditure of the candidates**

1. The expenditure for the electoral campaign of each candidate cannot exceed the maximum amount, derived from adding the fixed figure of 80 million lire to the figure of 100 lire per citizen resident in the first-past-the-post constituencies, or to the figure of 10 lire per citizen resident in the constituencies where the proportional representation system is in place. The electoral campaign expenditure for those candidates competing in both first-past-the-post constituencies and proportional representation constituencies cannot in any case exceed the greater of these two figures.
2. The electoral campaign expenditure directly referable to the candidate, even if supported by a political party, a political list or by a group of candidates, is considered, for the purposes of the expenditure limit stated in paragraph 1, as the expenditure of the individual candidate, for the purpose of possibly being shared. Such expenditure must be quantified in the declaration stated in paragraph 6.
3. From the day following the calling of an election, those candidates who intend to compete can collect funds for the financing of their electoral campaign exclusively via an electoral mandate holder. The candidate declares in writing, to the regional Committee for Electoral Guarantee as stated in article 13 with authority for the constituency in which he/she intends to compete, the name of the his/her designated electoral mandate holder. No candidate can designate more than one mandate holder for the collection of funds, who in turn cannot accept the assignment from more than one candidate.

4. The electoral mandate holder is required to register all the operations as stated in paragraph 3 relative to the electoral campaign of the designated candidate, using to such ends one single bank current account or possibly also one single post office current account. The staff of the post office or the bank is required to seek identification of those making payments into the bank current account or the post office current account stated in this paragraph. It is specified in the title of the account that the title holder acts in the capacity of electoral mandate holder of a candidate indicated by name. The contributions or services provided by each person, association or legal entity cannot exceed the figure of 20 million lire.
5. In the third paragraph of article 4 of law number 659 of 18 November 1981 the following modifications are approved:
  - a. in the first sentence, after the words “five million lire” the following words are inserted: “, sum to be raised over time in line with the ISTAT (National Statistical Institute) wholesale price index”
  - b. after the first sentence the following is inserted: “Said financing or contributions or services, as regards the electoral campaign, can also be declared through self-certification of the candidates”
  - c. in the second sentence, the words “The instruction does not apply” are substituted by the following: “The instructions stated in this paragraph do not apply”
6. The declaration stated in article 2, first paragraph, number 3, of law number 441 of 5 July 1982, must be transmitted within three months of the proclamation to the President of the relevant Chamber as well as to the regional Committee of Electoral Guarantee stated in article 13 which deals with advertising. In addition to the information required by this law, a report on contributions and services received and expenditure made must be attached to the declaration. The contributions and services to a value greater than 10 million lire provided by people, together with all contributions and services of whatever value provided by other subjects, must be analytically presented, through a list of names, including the attestation of the individual candidate. Bank or post office current account statements must also be attached. The report is signed by the candidate and countersigned by the mandate holder so as to certify the declared income.  
Paragraph thus modified from article 1, law number 672 of 31 December 1996.
7. Even non-elected candidates are required to send to the regional Committee of Electoral Guarantee the declaration stated in paragraph 6.  
Paragraph thus modified from article 1, law number 672 of 31 December 1996.
8. The figures stated in this article are raised periodically with a decree from the Minister of Internal Affairs on the basis of the ISTAT wholesale price index.

## **8. Requirements of communication (ABROGATED)**

## **9. Contribution for electoral expenditure**

1. The financial contribution stated in law number 195 of 2 May 1974, and successive modifications, is attributed, in relation to the electoral expenditure sustained by candidates in campaigns to be elected to the Chamber of Deputies and the Senate, to the parties or movements, political lists or groups of candidates. In order to identify those entitled to the reimbursement, the candidates for election to the

Chamber of Deputies in first-past-the-post constituencies who appear on more than on political list must declare, when declaring their candidature, to which list they wish to be associated for the reimbursement of electoral expenditure. The contribution is calculated by dividing among the claimants two funds for, respectively, the electoral expenditure for election to the Senate and the electoral expenditure for election to the Chamber of Deputies. Each fund, for the first elections, which will take place under this law, has half of the amount derived from the multiplication of the figure of 1600 lire by the number of inhabitants of the Republic according to the last general census.

2. The fund for the reimbursement of electoral expenditure for election to the Senate is organised on a regional basis. The fund is thus divided between the regions in proportion to their respective populations. The amount due to each region is divided between the groups of candidates and the unaffiliated individual candidates in proportion to the number of votes obtained in the election within the region. Only groups of candidates, which have had at least one candidate elected in the region and which have achieved at least 5 per cent of the valid votes within the region can receive any funds. Candidates not belonging to any group who are elected or who get at least 15 per cent of the valid votes in their respective constituencies can also receive funds.
3. The fund for the reimbursement of electoral expenditure for election to the Chamber of Deputies is divided, in proportion to the percentage of votes received for those seats to be assigned on the basis of proportional representation, between the parties and movements which have exceeded the threshold of 4 per cent of the valid votes or have had at least one candidate linked to them elected in a first-past-the-post constituency and have obtained at least 1 per cent of the valid votes nationally. The verification of this last condition is not necessary in order to receive a reimbursement for the parties or movements, which presented their own political lists or candidatures exclusively in constituencies in regions whose special statute provides for a particular protection of linguistic minorities. Regarding the calculation of any reimbursement due, each party and movement, for each candidate elected in a first-past-the-post constituency, receives a figure equal to the average reimbursement received per elected member as stated in the first sentence of this paragraph. Paragraph thus modified from article 2, law number 157 of 3 June 1999, transferred to the item political parties.

#### **9a. Contribution to electoral expenditure for by-elections**

1. For by-elections, the financial contribution stated in law number 195 of 2 May 1974, and successive modifications, is attributed to the parties or political movements linked to candidates who are elected or who have reached at least 15 per cent of the valid votes in their constituency. The contribution is divided between the parties and the political movements in proportion to the votes received in the first-past-the-post constituencies by the candidates linked to them. The candidates in the by-elections to the Chamber of Deputies declare, at the presentation of their candidacy, which party or political movement they belong to for the reimbursement of electoral expenditure. The declaration is optional for candidates in by-elections to the Senate; in the case of no declaration, the contribution is given directly to

such candidates, assuming they fulfil the requirements stated in the first sentence of this paragraph.

2. To such ends a fund amounting to 800 lire per inhabitant in the relevant constituency is set up for each round of by-elections. This figure can be raised on the basis of the National Statistical Institute (ISTAT) national consumer price index.  
*Added from article 1 of law number 309 of 27 July 1995.*

#### **10. Electoral expenditure limits for parties or movements**

1. The electoral campaign expenditure for each party, movement, political list or group of candidates which competes in the elections, excluding those stated in paragraph 2 of article 7, cannot exceed the amount resulting from the multiplication of the figure of 800 lire by the total number of citizens of the Republic registered on the electoral lists in the constituencies for the Chamber of Deputies and the Senate in which it is competing with political lists or candidates.

*Article thus modified from article 1 of law number 157 of 3 June 1999.*

#### **11. Type of electoral expenditure**

1. Electoral campaign expenditure includes that for:
  - a. the production, purchase or rent of material and the means of advertising
  - b. the distribution and circulation of the material and means stated in letter a, including the purchase of spaces on/in organs of information, on private radio and television, in cinemas and theatres
  - c. the organisation of public demonstrations, including those of a social, cultural or sporting kind
  - d. the printing, distribution and collection of modules, the authentication of signatures and the completion of any other operation required by law for the presentation of the electoral lists
  - e. the staff used and for any work done or service inherent to the electoral campaign
2. The expenditure for the electoral office, trips, telephone and postal charges, as well as passive costs are calculated at 30 per cent of the total amount of the allowable and documented expenditure.
3. The provisions stated in article 95 of the single text of the laws containing the rules for the election to the Chamber of Deputies, approved by decree number 361 by the President of the Republic on 30 March 1957, do not apply to meetings, even of a convivial nature, about advertising activities allowed by the law, or to seminars or other meetings, whether large or small. For the purposes of the same provisions, publicity objects with little current value are not to be considered as gifts.

#### **12. Advertising and the control of the electoral expenditure of parties, movements, political lists and groups of candidates**

1. The representatives of parties, movements, political lists and groups of candidates competing for election to the Chamber of Deputies and the Senate must present to the Presidents of the respective chambers, within 45 days of the opening of the new parliamentary session, for subsequent sending to the Court of Accounts, the final balance sheet of the electoral campaign expenditure and the respective sources of financing.

2. In order to check the final balance sheet stated in article 1, while retaining the same staff, a special committee composed of three magistrates selected by the drawing of lots from those in service, assisted by nine people employed to check the final balance sheet and other necessary staff, is to be set up at the Court of Accounts.
3. The checks must be limited to verifying whether the law on the expenditure made by those entitled has been respected and whether the documentation produced to support such expenditure is complete. The checks must be concluded within the six months following the presentation of the final balance sheet to the Court of Accounts, except in the case that the committee stated in paragraph 2, with reasoned justification, sets a new deadline, with a maximum extension of a further 3 months. The Court of Accounts presents the results of the checks directly to the Presidents of the two chambers. During the assignment the members of the committee cannot take on or carry out other tasks or responsibilities.
4. A copy of the final balance sheet is also stored at the relevant constituency electoral office, which has responsibility for publicity.

### **13. The regional Committee for Electoral Guarantee**

1. The regional Committee for Electoral Guarantee is set up at the regional Court of Appeal or, where such a body doesn't exist, the regional Court, composed, respectively, by the president of the Court of Appeal or of the Court, who will have final authority, and by 6 other members nominated by the president for a period of 4 years, renewable only once. Three of the nominated members of the committee are to be ordinary magistrates and the other three are to be either accountants who have been on the official register of accountants for at least 10 years or university professors in the subjects of law, administration or economics. In addition to the active members, the president also nominates 4 substitute members, of whom 2 must be magistrates and the other 2 from the categories stated in the previous sentence.
2. Members of the national or European parliaments, regional, provincial or town counsellors as well as members of the relevant council committees, those who were candidates for the positions mentioned above in the previous 5 years, those who have management or executive responsibilities at any level in the parties as well as those who have held such positions in the previous 5 years cannot be nominated as either active or substitute members of the committee.
3. For the fulfilment of its functions the committee makes use of the staff of the record office of the Court of Appeal or the Court. The committee can ask the relevant public offices, including those of the Guarantor for broadcasting and publishing, for any information pertinent to their enquiries. For the purposes of verification the committee also makes use of the services of the financial administration of the state.
4. The members of the committee who are not magistrates have the right to receive a payment for each sitting in which they take part. This payment will be determined by a decree adopted by the Justice Ministry, in agreement with the Treasury, within a month of this law taking effect.

#### **14. Publicity and the control of the electoral expenditure of the candidates (ABROGATED)**

#### **15. Sanctions [...]**

#### **16. Financial rules – Contribution for European elections**

1. The contribution for the electoral expenditure stated in article 9 is of a total amount of 91 billion lire.
2. Regarding the expenditure associated with the putting into effect of article 9, a special item denoted “obligatory expenditure item” is put into the budget forecast of the Treasury. In the case of early elections, the extra costs resulting from the putting into effect of article 9, equal to 61 billion lire, will be paid for through a corresponding reduction of the appropriation registered in the item 6854 (reserve fund for obligatory expenditures) in the budget forecast of the Treasury, which for 1994 was debited to the special current fund of the financial law of 1994, if necessary partly using the special fund of the Treasury.
3. Regarding the expenditure for the election of Italian members to the European parliament, a contribution is given to the parties or movements which have won at least one seat. The contribution is paid by dividing between those entitled a fund whose value is, for the first elections to the European parliament to take place under this law, determined by multiplying the figure of 800 lire by the number of inhabitants of the Republic at the last general census. The fund is divided for the purposes of reimbursement between the entitled parties and movements in proportion to the number of votes obtained by them nationally.
4. The extra costs resulting from the putting into effect of paragraph 3, equal to 15.5 billion lire, will be paid for out of the special fund of the financial law of 1994, if necessary partly using the reserve funds of the Treasury. The relevant resources will flow into the item set up according to paragraph 2.
5. Regarding the contributions for the expenditure for election to the European parliament, the propositions stated in article 12 are applied.

#### **17. Special postal tariffs**

1. Each candidate in a first-past-the-post constituency and each list of candidates in a constituency for election to the Chamber of Deputies or the Senate can use a favourable postal tariff of 70 lire for a sealed envelope of no more than 70 grams for the sending of electoral material, with a maximum number of copies equal to the number of registered voters in the constituency. Such a tariff can be used only in the thirty days prior to the vote and obliges the post office to deliver the sealed envelopes within the same time span and with the same procedures as those established for the delivery of weekly periodicals.

#### **18. Special fiscal dispositions**

1. Regarding printed electoral campaign material commissioned by the parties, movements, groups of candidates or individual candidates a VAT rate of 4 per cent is applied.
2. In number 18 of table A, part II, attached to the decree number 633 of the President of the Republic of 26 October 1972 the words "printed electoral campaign material" are added at the end.

### **19. Actions by councils**

1. From the day of the calling of the election to the Chamber of Deputies and the Senate, the councils are required to make available, on the basis of the relevant regulations and equal treatment of all parties and without costs to the councils, to the parties and movements competing in the election the council facilities for meetings and debates. On the day of the vote the councils can organise special transport services to facilitate voter turnout.

Paragraph added from article 1-ter, of bill number 131 of 13 May 1999 in the integrated text of the relative conversion law.

### **20. Town council, provincial, regional and European elections**

1. The dispositions stated from articles 1 to 6, the associated sanctions set out in article 15 and the dispositions stated in articles 17, 18 and 19 of this law are applied for the elections of Italian representatives to the European parliament and for the elections of the regional councils with an ordinary statute and, where compatible, for the regions with a special statute and the autonomous provinces of Trento and Bolzano.
2. The dispositions stated in articles 1 and 6, the associated sanctions set out in article 15 and the dispositions stated in articles 17, 18 and 19 of this law are applied for the elections of town and provincial councils, of the mayor and of the president of the province.
3. Article 28 of law number 8 of 25 March 1993 is abrogated.

### **20a. Rules of implementation**

1. The presidential council of the Senate and the office of the presidency of the Chamber of Deputies approve special rules for the putting into effect, in the areas of their respective competence, of this law.

Added from article 1 of law number 448 of 15 July 1994.

*b) The aim of Law 28/2000 is to guarantee access for all political entities to the media and to ensure that they are treated impartially and with equity. All national broadcasters are under an obligation to offer programmes of political communication. Equally they are obliged to ensure free access of all parties/candidates to such programmes. Further to these provisions free airtime and paid political advertising are also available forms of political communication. Free airtime is mandatory for national broadcasters which can not accept paid political advertising.*

*Other issues regulated include political messages in print media and the publication of the results of opinion polls.*

*Political communication in non-electoral periods is also regulated by law, and special regulations were introduced concerning the publication of opinion poll results. The regulator issues decisions on specific matters, on the occasion of elections for local authorities, by-elections and referenda.*

*" The following informal translation of Law 22<sup>nd</sup> of February 2000, n. 28, on Provisions for equal access to the means of communication during electoral and referenda campaigns and for political communication\_is offered solely for the purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use"<sup>29</sup>.*

**Law 22<sup>nd</sup> of February 2000, n. 28 on Provisions for equal access to the means of communication during electoral and referenda campaigns and for political communication<sup>30</sup>**

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**Article 1**

(Aim and area of application)

1. This law promotes and regulates access to the means of communication for political communication, with the aim of guaranteeing equal treatment and impartiality for all political subjects.
2. This law also promotes and regulates, to the same end, access to the means of communication during the campaigns for elections to the European Parliament, for political, regional and administrative elections and for every referendum.

**Article 2**

(Political communication on radio and television)

1. Radio and television broadcasters must guarantee impartiality and fairness in access to information and political communication for all political subjects.
2. Political communication on radio and television is defined for the purposes of this law as the broadcasting on radio and television of programmes containing political opinions and appraisals. The provisions of the succeeding paragraphs are applied to political communication. They are not applied to news broadcasts.
3. Equality of conditions is guaranteed in the presentation of opinions and political positions on political platforms, in debates, at round tables, in the presentation in debate of political programs, in question and answer sessions, in interviews and in any other transmission in which the presentation of opinions and political beliefs takes on a significant role.

<sup>29</sup> Translated by Flora Alexandrou

<sup>30</sup> [http://www.agcom.it/L\\_naz/L\\_220200\\_28.htm](http://www.agcom.it/L_naz/L_220200_28.htm)

4. The broadcasting of programmes of political communication on radio and television is obligatory for national radio broadcasters and for national television broadcasters with the requirement of providing information that they transmit clearly. The participation in such programmes is in any case free.
5. The Parliamentary Commission for the supervision of radio and television services, hereafter referred to as "Commission", and the Authority for guarantees in communication, hereafter referred to as "Authority", subject to consultation between them, and each acting in accordance with its responsibilities, establish the rules for the implementation of the regulations stated in this article.

### **Article 3**

(Self-managed political messages)

1. Radio and television broadcasters, which offer spaces for free political communication in accordance with article 2, paragraph 3 can transmit self-managed political messages, free or paid for, hereafter referred to as "messages".
2. The transmission of messages is optional for private broadcasters and obligatory for the public broadcaster, which arranges to make the necessary technical structures for the creation of said messages available to the applicant.
3. The messages contain the reasoned statement of a programme or of a political opinion and last for between one and three minutes for the television broadcasters and between thirty and ninety seconds for the radio broadcasters, as chosen by the applicant. The messages cannot interrupt other programmes, have an autonomous place in the programming and are to be transmitted in suitable programmes, whose position in the programming is to be communicated by each broadcaster to the Commission or the Authority with at least fifteen days notice. The messages are not considered in the calculation of the advertising ceilings provided for by the law.
4. For each national radio or television broadcaster the spaces for the messages cannot exceed 25% of the effective total duration of programmes of political communication transmitted in accordance with article 2, paragraph 3 of the same broadcaster or on the same network in the same week or the same time slot. A maximum of two programmes for each day of programming is allowed.
5. Local radio and television broadcasters which intend to transmit paid-for self-managed political messages must offer spaces for free political communication as stated in article 2 for a period of time equal to that of the messages actually broadcast, to a maximum of four. No political subject can broadcast more than two messages per day per broadcaster.
6. The spaces for the messages are offered on the condition of equal treatment of the political subjects whose election is considered in article 1, paragraph 2. The designation of the spaces in each programme is done by the drawing of lots. Unused spaces belonging to a political subject cannot be offered to another political subject. Each message can be transmitted only once in each programme. Nobody can broadcast more than one message in the same programme. Each message contains the denomination "free self-managed message" or "paid for self-managed message" and an indication of the paying for subject.

7. The national broadcasters can transmit only free self-managed political messages. Local broadcasters offer a discount of 50% on the prices normally stipulated for advertising in the same time slots.
8. The Authority and the Commission, each operating within its respective jurisdiction, fix the criteria of rotation for the use, during each month, of the spaces for self-managed messages mentioned in previous paragraphs and adopt any further provisions necessary for the implementation of the regulation provided for in this article.

#### **Article 4**

(Political communication on radio and television and self-managed messages on radio and television during election campaigns)

1. From the moment an election is called political communication on radio and television takes the following form: political platforms, debates, round tables, the presentation in debate of candidates and of political programmes, interviews and any other form which permits a comparison between political positions and the competing candidates.
2. The Commission and the Authority, subject to consultation between them, and each acting in accordance with its responsibilities, determine the designation of the spaces among the political subjects according to the following criteria:
  - a. in the period between the date of the calling of the election and the date of the presentation of the candidates the spaces are distributed between the political subjects present in the assemblies to be re-elected as well as between those not represented in said assemblies provided that they are represented in the European Parliament or in one of the two chambers of Parliament.
  - b. in the period between the date of the presentation of the candidates and the date of the closure of the electoral campaign the spaces are distributed according to the principle of equal opportunity between the coalitions and between the competing lists which have fielded candidates in constituencies which compose at least one quarter of the total number of eligible voters, except for the possible presence of political subjects representing recognised minority languages, bearing in mind the electoral system to be applied and the territorial sphere of reference.
  - c. in the period between the first and the second vote in the case of a second ballot, the spaces are distributed equally between the two competing candidates.
  - d. for a referendum, the spaces are distributed equally between those for and those against the referendum.
3. From the date of the presentation of the candidates for the election as stated in article 1, paragraph 2, national radio and television broadcasters can transmit self-managed messages for the non-contradictory presentation of political lists and programmes, in accordance with the conditions established by the Commission and the Authority on the basis of the following criteria:
  - a. the spaces for the messages are distributed equally among the different political subjects, also with reference to the time slots of transmission.
  - b. the messages are organised in a self-managed way, are transmitted without payment and must last for a period sufficient to permit the presentation of a political programme or a political opinion, and in any case last, at the choice of the

- applicant, between one and three minutes for television broadcasters and between thirty and ninety seconds for radio broadcasters.
- c. the messages cannot interrupt other programmes, or be interrupted themselves, have an autonomous position in the programming and are transmitted in suitable programmes with a maximum of four programmes per day.
  - d. the messages are not considered in the calculation of the advertising ceilings provided for by the law.
  - e. each message can be transmitted only once in each programme.
  - f. no political subject can broadcast more than two messages per day.
  - e. each message contains the denomination "self-managed message" and an indication of the paying for subject.
4. The transmission of self-managed messages as stated in paragraph 3 is obligatory for the public broadcaster, which arranges to make the necessary technical structures for the creation of said messages available to the applicant.
  5. Local radio and television broadcasters which agree to transmit without payment self-managed messages, in the terms and with the conditions stated in paragraph 3, will receive a reimbursement from the State in the measure defined by 31 January every year with a decree from the Ministry of Communication in agreement with the Treasury. At least one third of the total amount set aside annually is designated for radio broadcasters. Initially, the reimbursement for each self-managed message is 12,000 lire for radio broadcasters and 40,000 lire for television broadcasters, regardless of the duration of the message. The amount set aside each year is distributed among the regions and the autonomous provinces of Trento and Bolzano in proportion to the number of citizens on the electoral lists in each region and autonomous province. The reimbursement is made within the ninety days after the conclusion of the electoral operations for the spaces actually used and jointly certified by the broadcaster and the political subject, within the limit of available resources, by the region which uses, for the investigative proceedings and the management of the spaces offered by the broadcaster, the regional communication committee or, where such a body has not yet been set up, by the regional committee for radio and television services. In the Trentino-Alto Adige region the reimbursement is made by the autonomous provinces which use, for the investigative proceedings, the provincial committees for radio and television services until the setting up of the new bodies provided for in paragraph 13 of article 1 of law number 249 of 31 July 1997.
  6. For the broadcasters as stated in paragraph 5 a maximum of six of the programmes as stated in paragraph 3 letter c per day are allowed. Each political subject can have a maximum of one message per day on the same broadcaster. The Authority distributes equally the spaces for the messages between the political subjects, also with reference to the transmission time slots, and fixes the total number of messages to distribute between the applying political subjects in relation to the resources available in each region, using the relevant regional communication committees or, where they have not yet been set up, the regional committees for radio and television services.
  7. Local radio and television broadcasters which agree to transmit free self-managed messages in accordance with paragraphs 5 and 6, in the terms of and with the

conditions stated in paragraph 3, have the right to broadcast paid for messages, up to a maximum of two per day for each political subject, under the conditions set out in paragraph 7 of article 3 and according to the conditions stated in letters b to g inclusive in paragraph 3 of the present article. The total time given to the broadcast of paid-for self-managed messages must be, by law, equal to the time given to the broadcast of free self-managed messages in the same week.

8. Local and national radio and television broadcasters inform the Authority, within five days after the date stated in paragraph 1, the position in the programming of the programmes. Until the electoral operations have been completed, each successive modification must be communicated to the same Authority at least five days in advance.
9. From the date of the calling of the election to the closure of the election campaign the transmission on radio or television of messages of propaganda, publicity or political communication, however denominated, is allowed exclusively according to the regulations of this article.
10. For referenda the regulations concerning the broadcast of political communication and self-managed messages stated in the previous paragraphs are applied from the date of the calling of the referendum.
11. The Commission and the Authority, subject to consultation between them, and each acting in accordance with its responsibilities, establish the territorial broadcasting limit mentioned in the preceding paragraphs, bearing in mind the importance of the consultation in the national territory.

## **Article 5**

(Information programmes on radio and television)

1. The Commission and the Authority, subject to consultation between them, and each acting in accordance with its responsibilities, define within five days of the calling of an election the specific criteria which, until the end of voting, the public broadcaster and the private radio and television broadcasters must respect in their information programmes, with the aim of guaranteeing equal treatment, objectivity and the completeness and impartiality of information.
2. From the date of the calling of the election until the closure of the electoral process it is forbidden for any radio or television broadcast to give, even in an indirect form, voting indications or present their own voting preferences.
3. The producers and the presenters are also required to behave correctly and impartially in the management of the programme, so as not to influence, even in a surreptitious form, the free choice of the electors.
4. In paragraph 5 of article 1 of law number 515 of 10 December 1993 the words "Beginning from the thirtieth day prior to the date of the vote for election to the Chamber of Deputies and the Senate" are replaced by "From the date of the calling of the election for the Chamber of Deputies and the Senate until the closure of the electoral process".

## **Article 6**

(Radio stations of political parties)

The provisions of articles 1 to 5 do not apply to radio stations mentioned in article 11 paragraph 2 of law number 67 of 25 February 1987 and successive modifications. It is forbidden for such radio stations to provide spaces, whether free or paid-for, for self-managed messages.

### **Article 7**

(Electoral political messages in newspapers and periodicals)

1. From the date of the calling of the election until the day prior to the election itself, the editors of newspapers and periodicals, if they intend to publish any type of electoral political message, must give timely notification of it in their respective publications in order to allow equal access to the relevant spaces to the candidates and the political parties. The communication must be made according to the conditions and with the content set by the Authority.
2. Only the following types of electoral political message are permitted:
  - a. announcements of debates, round tables, conferences, speeches.
  - b. publications which present the electoral manifestos of the political lists, the groups of candidates and the individual candidates.
  - c. publications of comparisons between candidates.
3. The provisions stated in paragraphs 1 and 2 do not apply to official newspapers or periodicals of political parties or political movements, or to electoral publications of political lists, groups of candidates or individual candidates. Furthermore, these provisions do not apply to other newspapers and periodicals outside the period stated in paragraph 1.

### **Article 8**

(Political and electoral opinion polls)

1. In the fifteen days prior to the election it is forbidden to make public or publish or broadcast the results of opinion polls on the result of the election or on the voting intentions of the electors, even if such opinion polls have been conducted prior to the exclusion period.
2. The Authority establishes the obligatory criteria by which the opinion polls stated in paragraph 1 must be conducted.
3. The results of the opinion polls conducted outside the period stated in paragraph 1 can be published or broadcast only if accompanied by the following indications. These indications are the responsibility of the subject who has conducted the opinion poll, and must be made available at the same time, in their entirety and with the same indications, on the special web-site set up and run by the Department for Information and Publishing under the Presidency of the Council of Ministers:
  - a. the subject who conducted the opinion poll
  - b. the buyer
  - c. the criteria followed in determining the sample
  - d. the method of collecting information and the elaboration of the data
  - e. the number of people questioned and the area of reference
  - f. the questions asked
  - g. the percentage of people questioned who didn't reply to any question

- h. the date on which the opinion poll was conducted

### **Article 9**

(Regulation of institutional communication and the requirement of information)

1. From the date of the calling of the election until the closure of the election it is forbidden for any part of the public administration to conduct communication activities with the exception of those done in an impersonal form and necessary for the effective running of its administrative duties.
2. Public or private radio or television broadcasters, on the instruction of the relevant authorities, inform the citizens of the voting conditions and the opening and closing time of the polling stations.

### **Article 10**

(Measures and sanctions)

1. Violation of the provisions stated in this law, as well as those issued by the Commission and the Authority, will be prosecuted by the latter, according to the provisions of this article. Any interested political subject can, in any case, report such violations within ten days of their occurrence. The violation should be reported, even by fax:
  - a. to the Authority.
  - b. to the private broadcaster or editor where the violation occurred.
  - c. to the relevant regional communication committee or, where said body has not yet been set up, to the regional committee for radio and television services.
  - d. to the tax authorities which have territorial responsibility for the domicile of the broadcaster or the editor. Said tax authorities will then take the necessary steps to secure the relevant recordings as stipulated by the Authority or by the report of the violation within the following twelve hours.
2. The Authority, making use also of the relevant regional communication committee or, where said body has not yet been set up, of the regional committee for radio and television services, as well as the relevant territorial inspectorate of the Ministry of Communication and the tax authorities, initiates a brief investigation and, once the facts have been declared, even by fax, the interested parties listened to and possible counter-deductions acquired, to be transmitted within twenty four hours of the notification, takes a decision without delay, and in any case within the forty eight hours following the verification of the violation or of the declaration, derogating from the terms and the procedural conditions stated in law number 689 of 24 November 1981.
3. In the case of a violation of articles 2, 4, paragraphs 1, 2 and 6, the Authority orders the radio or television broadcaster to transmit political communication programmes with significant participation of the political subjects who were directly damaged by the violation.
4. In the case of a violation of articles 3 and 4, paragraphs 3 to 7, the Authority orders the relevant radio or television broadcaster to suspend immediately the transmission of programmes in violation of this law and:

- a. the creation of spaces, free or paid-for, for the transmission of self-managed political messages by subjects damaged or illegitimately excluded, thus restoring the balance between the political parties.
- b. if necessary, the restoration of balance between the spaces designated for messages and those designated for free political communication.
5. In the case of a violation of article 5, the Authority orders the relevant radio or television broadcaster to transmit political communication programmes with significant participation of the political subjects who were directly damaged by the violation.
6. In the case of a violation of article 7, the Authority orders the relevant editor to make available spaces for compensatory electoral publicity for the political subjects who were illegitimately excluded.
7. In the case of a violation of article 8, the Authority orders the relevant radio or television broadcaster or editor to declare such circumstances on the means of communication which published or broadcast the opinion poll with the same importance, in terms of time slot, position and editorial characteristics, as that given to the publication of the original opinion polls.
8. In addition to that envisaged in paragraphs 3, 4, 5, 6 and 7, the Authority orders:
  - a. the transmission or publication, even repeated depending on the seriousness of the case, of messages containing an indication of the violation committed.
  - b. where necessary, the transmission or publication, even repeated depending on the seriousness of the case, of corrections with the same importance, in terms of time slot, position and editorial characteristics, as that given to the communication to be corrected.
9. Furthermore, the Authority can also adopt further emergency measures with the aim of restoring balance in the access to political communication.
10. The measures of the Authority stated in this article can be contested at the Regional Administrative Court (TAR) of Lazio within thirty days of the communication of said measures. In the case of inertia on the part of the Authority, the interested subjects can, within the same time period, ask the TAR of Lazio, even in closed session, to convict the Authority itself and require it to take a decision within three days of the judgement. In the case of a request for a closed session, the interested subjects can transmit or deposit memoirs within five days of the notification. The TAR of Lazio, independently of the subdivision of the court in session, declares its opinion on the request for suspension in the first Council Chamber after the expiry of the period as stated in the previous sentence, and in any case not after the seventh day from this. The same rules apply for appeals before the Council of State.

## **Article 11**

(Conditions of communication)

1. Within thirty days of the vote for election to the Chamber of Deputies and the Senate and also in the case of supplementary elections, the owners of local and national radio and television broadcasters and the editors of newspapers and magazines inform the Presidents of the Chamber and the Senate, as well as the regional committee of electoral guarantee as stated in article 13 of law number 515

of 10 December 1993, about the services of political communication and the political messages published or broadcast in accordance with the previous articles, the names of those who have participated in them, the spaces given free of charge or at a reduced price, the associated income and the names of the subjects who have made the relevant payments.

2. In the case of a failure to respect the conditions stated in paragraph 1, a fine of from ten million lire to one hundred million lire will be imposed.

### **Article 12**

(Financial cover)

1. The financial burden deriving from the introduction of this law, valued at twenty billion lire beginning in the year 2000, will be covered by a corresponding reduction in the registered appropriation in the three-year budget 2000-2002 of the base forecast unit of the current "Special Fund" estimated by the Treasury, using in part for the years 2000 and 2002 the reserve funds of the Treasury and for the year 2001 the reserve funds of the Ministry of Finance.
2. The Treasury is authorised to implement, with its own decrees, the necessary changes in the budget.

### **Article 13**

(Annulment of regulations)

1. The articles 1, paragraphs 2, 3 and 4, 2, 5, 6 and 8 of law number 515 of 10 December 1993 are annulled.

### **Article 14**

(On becoming law)

1. This law will take effect the day after its publication in the Gazzetta Ufficiale (Official Gazette).

## 3.4 Portugal

*Freedom of expression and of the media, including the rights of journalists are guaranteed by articles 37 and 38 of the constitution., These establish also the right of political, social and other organisations to free media access through the public service broadcasters. Free access is ensured both in electoral and non-electoral periods. The appropriate procedures are defined in the laws on radio and television. Such access is also connected to a right of reply to statements by the government.*

### **The Legislative Framework**

*a) Both the Television and the Radio broadcasting laws include provisions concerning the exercise of rights to media access at all times. All political and other social organisations having a rational appeal have the right to “reserved time”. Specific rules define the duration of airtime, which is not the same on television and on radio. The laws deal explicitly with the right of reply. The law on radio broadcasting explicitly provides the specific right to political reply. This part of the legislation elaborates on the conditions under which the right is exercised, and the procedures that must be followed to guarantee it.*

### **Law no. 4/2001, of 23 of February 2001 - The Radio Broadcasting Law<sup>31</sup>**

**[Excerpts]**

#### **CHAPTER V**

#### **Rights to broadcasting time and to reply or political reply**

#### **SECTION I**

#### **Right to broadcasting time**

#### **Article 52.**

#### **Access to the right to broadcasting time**

1 - Political parties, trades union organisations, professional organisations, and those that represent economic activities; environmental protection and consumer associations; and also non-governmental organisations that promote equal opportunities and non-discrimination, are guaranteed the right to broadcasting time on the public radio service.

2 - Broadcasting time is understood to mean an individual programme slot which is the responsibility of the holder of the right, a fact that should be explicitly mentioned at the beginning and at the end of each programme.

3 - The organisations mentioned in no. 1 have the right to the following annual free amount of broadcasting time:

a) Ten minutes per party represented in Parliament, plus fifteen seconds for each elected MP;

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<sup>31</sup> <http://www.icp.pt/template16.jsp?categoryId=5436>

b) Five minutes per party not represented in the Assembly of the Republic that participated in the most recent national elections, plus fifteen seconds for each 15,000 votes obtained in the elections;

c) Sixty minutes, per category for trades union organisations, professional organisations, and those that represent economic activities; and sixty minutes for the other organisations indicated in no. 1, to be divided according to their representation;

d) Ten minutes for other organisations that have the right to broadcasting time granted by law.

4 - Each holder may not use the right to broadcasting time more than once every 15 days, nor in programmes that last more than five minutes or less than two minutes, unless their overall broadcasting time is less.

5 - The people in charge of the programme should organise general plans for its respective use with the collaboration of the holders of the right to broadcasting time and in accordance with this present law.

6 - When it is irreparably impossible to reach an agreement on the plans mentioned in the previous number and by request of interested parties, the AACS will arbitrate.

#### **Article 53.**

##### **Limitations of the right to broadcasting time**

1 - The exercise of the right to broadcasting time may not take place on Saturdays, Sundays or Bank Holidays, and should also cease one month before the date fixed for the beginning of a campaign for any elections or referendums, according to the respective law.

2 - The right to broadcasting time is non-transferable.

#### **Article 54.**

##### **Broadcasting and reserve of right to broadcasting time**

1 - Broadcasting time programmes are broadcast in the national program service with the highest number of listeners between 10am and 8pm.

2 - The holders of the right to broadcasting time should request to reserve the broadcasting time that they are entitled to up to five working days before the broadcast, and the respective recording should be carried out or the pre-recorded materials should be submitted up to forty-eight hours before the broadcast of the programme.

3 - The holders of the right to broadcasting time are ensured the provision of indispensable technical resources for the production of the respective programmes in conditions of absolute equality.

#### **Article 55.**

##### **Forfeit of the right to broadcasting time**

Non-compliance with the deadlines in the previous article will mean forfeit of the right, unless it is due to forces beyond the control of the holder, in which case the unused time may be added to the next program taking place after the end of the impediment.

#### **Article 56.**

##### **Right to broadcasting time during election-time**

During election-time, the use of the right to broadcasting time is regulated by the electoral law.

## **SECTION II**

### **Right to political reply**

#### **Article 57.**

##### **Right to political reply of opposition parties.**

1 - The parties represented in the Assembly of the Republic that do not form part of the Government have the right to reply to political statements made by the Government that are directly aimed at them, on the public radio broadcasting service and during the same program service.

2 - The duration and emphasis granted for the exercise of the right mentioned in the previous number will be the same as for the original statements that give rise to the reply.

3 - When more than one party has requested the exercise of the right, by means of the respective representative, the time is distributed in equal parts among the various holders, and each participant must be given at least one minute.

4 - The procedures covered in the present law for the exercise of right to reply are applicable to the right to political reply, with the appropriate adaptations.

5 - For the purposes of this present article, only general political or sectarian statements made by the Government in their name and identifiable as such will be considered, and no importance will be given namely to statements by members of the Government on matters relating to the management of its respective departments.

## **CHAPTER VI**

### **Rights to reply and make corrections**

#### **Article 58.**

Prerequisites for the rights to reply and make corrections

1 - Any individual person or company, organisation, public service or organisation that has been the object of references, even indirectly, in the radio broadcasting programme services, that may affect their reputation or good name has the right to reply therein.

2 - The organisations mentioned in the previous number have the right to make corrections on the radio whenever untrue or erroneous references have been made therein regarding them.

3 - Whenever the program where the references mentioned in the previous numbers have been broadcast on a chain broadcast the rights to reply and make corrections may be exercised on the organisation responsible for this program or on any operator who has broadcast it.

4 - The right to reply and make corrections become null and void if the person responsible for the respective programme service has, with the explicit agreement of the interested party, corrected or clarified the text in question, or has provided them with another means of efficiently clarifying their position.

5 - The right to reply or make corrections are independent of legal proceedings for the fact that it was broadcast, as well as of the right to compensation for the harm caused by the same.

**Article 59.****Right to hear the broadcast**

1 - The holder of the right to reply or make corrections, or the person who legitimately represents them in accordance with no. 1 of the following article, may demand, for the purposes of exercising it, to hear the recording of the broadcast and for a personal copy, on payment of the cost of the material used, which should be provided to them within twenty-four hours.

2 - The request for hearing postpones the deadline for exercising the right, which recommences twenty-four hours after the moment at which it is provided to them.

**Article 60.****Exercise of the rights to reply and make corrections**

1 - The exercise of the right to reply and to make corrections should be requested by the holder himself or herself, by their legal representative or by their heirs during the 20 days following the broadcast.

2 - The deadline in the previous number is postponed when, for reasons of force majeure, the people referred to therein are prevented from exercising the right in question.

3 - The text of the reply or corrections should be submitted to the people responsible for the broadcast, with the signature and personal details of the writer, with proof of reception, explicitly evoking the right to reply or make corrections or the competent legal provisions.

4 - The content of the reply or corrections should be in direct, useful relation to the references that gave rise to them, and may not exceed 300 words, or the number of words of the text that gave rise to them, if this is greater.

5 - The reply or corrections may not contain expressions that are disproportionately uncivil or that involve criminal or civil liability, to which only the writer of the reply or corrections is liable.

**Article 61.****Decision on the broadcast of the reply or corrections**

1 - When the reply or corrections are unseasonable, come from a non-legitimate person, are clearly unjustified or contravene the provisions of nos. 4 and 5 of the previous article, the person responsible for the programme service in question may refuse broadcast of the same, and should inform the interested party of the refusal and the reasons for the same, in writing during the twenty-four hours following reception of the reply or corrections.

2 - If the reply or corrections is in violation of the provisions of nos. 4 or 5 of the previous article, the person in charge will invite the interested party, within the deadline stipulated in the previous number, to eliminate the passages or expressions in question within forty-eight hours, without which they will be entitled to refuse to broadcast the whole text.

3 - In cases where the right to reply or make corrections has not been satisfied or has been unjustifiably refused, the interested party may resort to the judicial court in the area of their residence within 10 days of the refusal or the expiry of the legal deadline

for the satisfaction of the right, or to the AACS, according to the specifically applicable legislation.

4 - Once a request has been made for the legal notification of the person in charge of the program that has not satisfied the right to reply or correction, the latter is immediately notified by mail to contest within two working days, after which the decision will be pronounced in another two days, and in case of an appeal it has a solely devolutive effect.

5 - Only documental proof is allowed, and all documents should be provided with the initial request and with the appeal.

6 - In the case of proceeding with the request, the programme service issues the reply or makes corrections within the deadline laid down in no. 1 of the following article, accompanied by the mention that it is being carried out by legal decision or the decision of the AACS.

#### **Article 62.**

##### **Broadcast of the reply or corrections**

1 - The broadcast of the reply or correction is carried out twenty-four hours after reception of the respective text by the person in charge of the programme service in question, with the exception of the provisions of nos. 1 and 2 of the previous article.

2 - The reply or correction is broadcast for free during the same programme or, if this is not possible, at an equivalent broadcasting time.

3 - The reply or correction should be broadcast as many times as the programmes with the reference that gave rise to them were broadcast.

4 - The reply or correction is read by a speaker of the programme service in a format that ensures it is easily understood and may include other audio components whenever the reference that gave rise to them used similar techniques.

5 - The broadcast of the reply or correction may not be preceded nor followed by any comments whatsoever, with the exception of those necessary to indicate any inaccuracy or error, which may give rise to a new reply or make corrections, within the terms of nos. 1 and 2 of article 58.

#### **Article 67.**

##### **Assault against freedom of broadcasting and information**

1 - Whosoever prevents or hinders the broadcast of programme services, apprehends or damages materials necessary for the exercise of the activity of radio broadcasting - apart from in cases stipulated by the law - and with the purpose of attacking the freedom of broadcasting or of information, is punishable with imprisonment of up to two years or with a fine of up to 240 days, if not subject to a more serious punishment within the terms of the penal law.

2 - The application of the fine stipulated in the previous number is without prejudice to the conduct of civil liability for the harm caused to the radio broadcasting operator.

3 - If the violator is a government agent or civil servant or public corporation and they practice the facts described in no. 1 while carrying out their functions, they are punishable with imprisonment of up to three years or with a fine of up to 320 days, if not subject to a more serious punishment within the terms of the criminal law.

(...)

## *b) The Publication and Broadcast of Opinion Polls*

*Portugal belongs to the small group of Western European countries that impose strict rules on the conduct of opinion polls and the publication of their results. The relevant law, voted in 2000, establishes a number of requirements an organisation should fulfil before it receives an authorisation to carry out opinion polls and surveys. This law sets the procedures to follow, both for the conduct of the poll and the publication of results. Scrutiny and control on opinion polls replace the ban on the publication of opinion poll and survey results for a period of 30 days preceding election day, that Portugal imposed until 2000.*

*Under the provisions of the law, the regulatory authority issued the following set of guidelines recalling the main clauses of the relevant legislation.*

*" The following informal translation of the Norms of reference in relation to the publication of opinion polls and surveys issued by the regulator of Portugal under law 10/2000 is offered solely for the purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use"<sup>32</sup>.*

### **Norms of reference in relation to the publication of opinion polls and surveys<sup>33</sup>**

*(Article 15º, number 2, subparagraph b) of the Law nº 10/2000, of 21 of June)  
(Approved in the plenary meeting of 13 December 2000)*

The good use of the opinion polls and surveys and the necessity to guarantee that this approximation of the real - seeking to reflect and, eventually, to measure the trends, tastes and choices that may be deducted from, or brought about- proceed within the limits of rigorousness and exemption, common in general in the journalistic work, justify, in the perspective of Law nº 10/2000, of 21 of June, the establishment of a frame of reference.

Ethical and legal standards being as expected in force, whose principles are already integrated in journalistic practice, it is important to underline and specify the aspects relevant to the specific case of treatment of opinion polls and surveys, currently found and defined in the present law, with due respect for editorial independence of the organs of social communication and the criteria of their journalists.

For clarity reasons, but also with respect to the conceptual distinctions that the pertinent law establishes, the common general principles to the spreading of opinion polls and surveys are defined as well as autonomous procedures to adopt for the dissemination of opinion surveys and those needed on the issue of spreading opinion polls.

It is underlined that the legislation in vigour is applicable to the generality of the organs of social communication independently of the support of publication and covers all

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<sup>32</sup> Translated by the author

<sup>33</sup> <http://www.aacs.pt/sondagens.htm>

opinion polls and surveys on subjects that are found explained in article 1° of the law n° 10/2000, or are produced with no purpose of public spreading.

Thus, the High Authority for the Social Communication, meeting in 13 December 2000, and having in mind the provisions in subparagraph b) of number two of the article 15°. of the Law n1 10/2000, of 21 June, approves the following "norms of reference" in relation to the publication and dissemination of opinion polls and surveys, reserving for a later stage the adoption of the "technical norms" relevant to the conduct of opinion polls.

## I. GENERAL PRINCIPLES

I.1. The journalistic analysis of opinion polls and surveys functions on the principle of good-faith interpretation, that leads to an interpretation of the results in a form that avoids the falsification or deformation of the data effectively collected, within their meaning and limitations.

I.2. The data supplied by opinion polls and surveys, their interpretative analysis and the headings that accompany their dissemination, constitute one coherent and interlinked set. There should be avoided, especially, presentation headings and labels of opinion polls and surveys that contain categorical affirmations that the available data do not support.

I.3. Similar care must be present in the adequacy between the journalistic treatment of the opinion polls and the text and meaning of the questions as they were formulated. The publication of the questions, as they were put, along with the journalistic analysis, constitutes a guarantee of the rigorousness of that analysis.

I.4. The reproduction of data supplied by opinion polls and surveys that already have been object of previous dissemination implies the citation of the respective source (place and dates where the first publication occurred).

I.5. The dissemination of data of opinion polls and surveys, referring to electoral acts or referenda covered by the law, can occur up to the closing of the respective electoral campaign, remaining the impediment of spreading these data before the closing down of the ballot boxes in all country.

## II. DISSEMINATION OF OPINION POLLS

II.1. Only opinion polls that have been deposited in the High Authority for the Social Communication and produced for entities authorised to this effect can be disseminated.

II.2. The requirements of the law are extensible to opinion polls that, while not initially destined to public dissemination, they finish, for one or another reason, distributed to organs of social communication.

II.3. The credibility of the data supplied by opinion polls assumes the dissemination of the respective *fiche technique*, in the terms established by paras 2 and 3 of article 7° of the cited law.

II.4. Opinion polls capture a reality in continuous evolution. The data that they supply become outdated. The date where information was gathered is an essential element for understanding the limitations of opinion polls and the content of the analysis made on them.

II.5. The data authorized for an opinion poll can only be projected for the universe represented in the sample. For example, if all the inquired persons proceed from a specific region, the sample is not representative of the whole nation.

II6. The journalistic analysis of the data of the opinion poll must respect the meaning of the questions as they were formulated. In the case of the electoral opinion polls, the possibility to relate the intention of vote of the inquired persons presupposes that this question has effectively been made.

II7. The elaboration of electoral forecasts based on data selected from opinion polls demands the indication of the used criteria, especially those based on the elimination or distribution of the undecided or the inquired persons that "do not know/do not answer", and implies the publication of the "raw results", that is, of the results supplied by the opinion poll prior to these eliminations and distributions.

II8. Whenever are reproduced or transmitted, or references are made to published data collected in opinion polls, it is important that, simultaneously, the people or responsible entities for the spreading of these data identify themselves.

### III SPREADING OF SURVEYS

III1. In the terms of the law, an opinion survey constitutes a mere collection of information the results of which can not be projected for a universe different from the one of the inquired persons. In this perspective, the opinion surveys, as well as surveys based on auto-selective samples (when the inquired ones are requested to telephone, to write, to send e-mails) do not constitute adequate form to auscultate the public opinion on issues socially more sensitive, such as those that refer to electoral choices.

III2. The distribution of data supplied by opinion surveys, such as they are defined by law, implies the express warning, in sound or picture, that these results do not allow generalizations, representing clearly only the opinion of the inquired persons.

### 3.5 The Netherlands

*The legal framework in the Netherlands broadly follows the lines of the Scandinavian countries except Finland. This framework sets a very limited set of rules providing for the allocation of airtime on national broadcasters, while other issues are regulated by reference to the pertinent laws.*

#### **THE MEDIA ACT<sup>34</sup>**

*(Bulletin of Acts and Decrees of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) 1987, 249) as last published in the Bulletin of Acts and Decrees 1994, 386, and as subsequently amended by: (...)*

#### **Section 39g**

1. The Media Authority shall allocate national broadcasting time to those political parties which gained one or more seats in the House of Representatives or the Senate of the States General at the last election.
2. The Media Authority shall allocate national broadcasting time to political parties which are standing in all constituencies in an election for the Senate of the States General, as well as to political parties in the Netherlands participating in an election for the European Parliament. Notwithstanding section 39c, subsection 3, this broadcasting time shall be allocated not on an annual basis, but only for such a period - to be determined by the Media Authority - as immediately precedes the day fixed for the relevant election in the Netherlands.
3. Notwithstanding subsections 1 and 2, if a political party has been ordered to pay an unconditional financial penalty under articles 137c, d, e, f or g, or article 429 quater of the Criminal Code, the Media Authority shall not allocate any broadcasting time to that political party for a period commencing on the day on which the order becomes irrevocable. This period shall last:
  - (a) one year, in the case of a penalty of less than NLG 2,500;
  - (b) two years, in the case of a penalty of between NLG 2,500 and NLG 5,000;
  - (c) three years, in the case of a penalty of between NLG 5,000 and NLG 7,500; and
  - (d) four years, in the case of a penalty of NLG 7,500 or more.
4. If, on the day on which the order referred to in subsection 3 becomes irrevocable, the political party in question has had no parliamentary seats allocated to it under the Elections Act (Kieswet), but is allocated one or more parliamentary seats on the basis of an election held within two years of the said day, the period during which that political party shall not be allocated any broadcasting time as referred to in subsection 1 shall commence on the day on which the said election is held.
5. After an order as referred to in subsection 3, the political party in question shall in any event and, where necessary, notwithstanding subsection 3 (a), not be allocated any broadcasting time as referred to in subsection 2 for a period of two years as from the day on which the order becomes irrevocable.

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<sup>34</sup> <http://www.cvdm.nl/documents/mediaact.pdf>

**“The rules are worked out as follows:**

*The regular broadcasting time on radio is 10 minutes in 2 weeks for each party. The regular broadcasting time on television is 3 minutes in 2.5 weeks for each party.*

*During election time the media authority allocates to each party 20 minutes (2 times X 10 minutes) for broadcasting on radio and 18 minutes (6 times X 3 minutes) for broadcasting on Television.*

*The Media Authority also determines the budget that political parties get for their transmissions.*

*Besides the legal broadcasting time mentioned above political parties can also buy advertising time. Although in former times the national advertising organizations had the policy to refuse advertisements for political parties.” (Information provided by Mr Marcel Betzel, Project manager, Commissariaat voor der Media Netherlands)*

## CHAPTER 4

### NATIONAL CASE STUDIES. CANDIDATE COUNTRIES FOR ACCESSION AND NON-EU COUNTRIES

#### Introduction

*Most of the ten countries that are awaiting accession to the European Union in May 2004 belong to the former eastern block. They have therefore lived for only a dozen-years in free market conditions. Their experiences of broadcasting are still marked by the history of state-ownership and control of the media. Similarly these societies endured uneven relations with former power holders. These states are called upon to evolve in a new environment, that is to cover in a few years the distance other European Union countries covered over some many decades. The two examples quoted are Poland and Lithuania. The provisions made in their relevant laws and regulations focus on specific issues that are points of concern in their societies. These laws and regulations establish the right to campaign, protect candidates from “false information” and ensure access to public media. Fundamental principles can take greater proportions in these countries because of their history. These include by way of example, the multitude of political forces contesting elections and to the manner in which some print and broadcast media and journalists perceive their role.*

*Constraints of space do not allow the inclusion of laws and other texts from all European countries. However, it is useful to provide the reader with overall descriptions of the legal frameworks concerning media coverage of elections in four more countries of Central and Eastern Europe. This information derives from election monitoring reports of the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR). These reports concern recent elections (2002), thus providing up to date information on the situation in the countries concerned.*

*Two countries among the candidates for accession, Cyprus and Malta, are both former British colonies. These have inherited some concepts from their former masters. Regulatory excerpts from both are also included in the present chapter. The interesting point about Cyprus is that equality in media access was enforced by the parliament in the mid-1980s to counter government abuse. \_This is a rare event in a country with a presidential system of government. The quota imposed and the way the public broadcaster was forced to cover elections and party activities in general went beyond the limits guaranteeing editorial independence. This quota effectively enforced the inclusion in news bulletins of material without subjecting it to any test of news-worthiness.*

*The Maltese case shows also how the allocation of time for a variety of information broadcasts can be effected by the regulator. It was selected for this chapter to illustrate the way a full one-year schedule of programmes is drawn with the aim of responding to the needs of democratic political life. Again, the reader will see that all*

*details are determined by the regulator and little or nothing is left to be done by the media themselves.*

*The chapter ends with the case of a non-European country, in the western European tradition. Canada, as an established democracy, seems satisfied with the basic and fundamental arrangements. This assumes respect for other rights, such as the right to campaign and the protection against defamation and libel, offered by other laws. The important elements are related to the “completeness” of the provisions and particularly the establishment of a mechanism of consultation between the political actors under the coordination of the Arbitrator. This process of consultation determines the allocation of available airtime. The text contains clear practical provisions that respond to concrete needs*

## **4.1 Poland**

### **The Legislative Framework**

*a) The rights and obligations relevant to election campaigns and access to the media are included in the relevant electoral laws. The Broadcasting Act establishes the obligation of public broadcasters to give access to political parties and other organisations to their schedules.*

*The Constitution stipulates that the National Broadcasting Council (NBC) is the guarantor of free expression and of the public interest.*

*In order for the NBC to fulfil its role, it issues regulations on issues such as the procedures that will enable those entitled to present their views, and the allocation of available air-time for this purpose on public broadcasting services.*

### **THE CONSTITUTION OF THE REPUBLIC OF POLAND<sup>35</sup>**

[...]

#### **Chapter IX**

#### **ORGANS OF STATE CONTROL AND FOR DEFENSE OF RIGHTS**

[...]

#### **The National Broadcasting Council**

**Article 213.** 1. The National Broadcasting Council shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio and television broadcasting

2. The National Broadcasting Council shall issue regulations and, in individual cases, adopt resolutions.

**Article 214.** 1. The members of the National Broadcasting Council shall be appointed by the Sejm, the Senate and the President of the Republic.

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<sup>35</sup> <http://www.krrit.gov.pl/stroynykrrit/english.htm>

2. A member of the National Broadcasting Council shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function.

## **BROADCASTING ACT**

adopted by the Polish Parliament on December 29, 1992.

*(unofficial consolidated text incorporating amendments promulgated in official journal „Dziennik Ustaw”: 1993, No. 7, item 34; 1995, No. 66, item 335 and No. 142, item 701; 1996, No. 106, item 496; 1997, No. 88, item 554, and No. 121, item 770; 1999, No. 90, item 999; 2000, No. 29, item 356 and 358, No. 73, item 852)*<sup>36</sup>

### **Chapter I General Provisions**

#### **Article 1**

1. The tasks of radio and television broadcasting shall be:

1) to provide information,

(...)

3a) to disseminate civil education,

(...)

### **Chapter III Radio and Television Programme Services**

#### **Article 17**

(...)

5. Subject to the reservations contained in paragraph 6, programmes or other broadcasts may not be sponsored by:

1) political parties,

(...)

6. Sports events coverage may not be sponsored by entities referred to in paragraph 5 subparagraphs 1-3 and by (...).

7. Sponsorship of the following programmes shall be prohibited:

1) news, with the exception of sports and weather forecasts,

2) commentaries on social and political topics,

3) consumer and practical advice programmes,

4) electoral programmes or programmes directly related to electoral campaigns.

### **Chapter IV Public Radio and Television**

#### **Article 23**

1. Public radio and television broadcasting organisations shall enable political parties to present their position with regard to major public issues.

2. The provision of paragraph 1 shall apply correspondingly to national trade unions and employers' organisations.

3. The National Council shall determine, by a regulation, the manner of implementation of the obligations referred to in paragraphs 1 and 2.

#### **Article 24**

1. Political parties and other organisations participating in elections to the Sejm, the Senate and local self-government shall be entitled to transmit election programmes

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<sup>36</sup> <http://www.krrit.gov.pl/stronykrrit/english.htm>

in the public radio and television programme services on terms determined in separate provisions.

The provision of paragraph 1 shall apply respectively to the election of the President of the Republic of Poland.

*b) The following excerpts from the Law on Elections of the Sejm illustrate the way the electoral campaign is regulated. Article 14 of the law includes provisions regulating:*

- *the timing of the campaign,*
- *the duration of the campaign,*
- *the various forms it can take,*
- *its financing and the modalities for exercising one's electoral rights .*

*Public broadcasters are under an obligation to broadcast programmes of political communication free of charge. Provisions for the criteria and the allocation of time are made by electoral committees. All broadcasters should eventually broadcast paid election programmes.*

*Specific treatment is prescribed for the publication of false information. Here a distinction is made between that information included in party electoral material and that published in the press. Each case is regulated in a different way.*

## **ACT ON ELECTIONS TO THE SEJM OF THE REPUBLIC OF POLAND**

**Act of 28<sup>th</sup> May, 1993<sup>37</sup>**

**[Excerpts]**

### **Chapter 14: Election campaign**

#### **Article 133**

The election campaign shall begin on the day of proclamation of the President's order on elections, and shall end 24 hours before the polling day.

#### **Article 134**

The provisions of this Act shall not be construed so as to infringe the duty of mass media to furnish during the election campaign reliable information about events and developments in the country and abroad.

(...)

#### **Article 136**

From the 12<sup>th</sup> day before the election day until the end of elections it shall be forbidden to announce the outcomes of pre-election surveys (public opinion polls) on probable voting behaviour and election results, as well as the results of election opinion polls conducted on the polling day.

(...)

#### **Article 139**

1. If posters, slogans, leaflets, announcements or other forms of election propaganda and agitation shall contain false details and information, any concerned person shall have the right to petition the voivodship court for:

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<sup>37</sup> [http://www2.essex.ac.uk/elect/electjp/pl\\_19193.htm](http://www2.essex.ac.uk/elect/electjp/pl_19193.htm)

- 1) the confiscation of such materials;
  - 2) the prohibition of publication of such details and information;
  - 3) an order to rectify the information;
  - 4) an order to apologize to the person libelled;
  - 5) an order that a participant pay a sum of 20 million zloty to a charitable institution;
  - 6) an adjudication that a participant pay up to 20 million zloty compensation.
2. The voivodeship court, by a bench of 3 judges, shall examine a petition referred to in para. 1 within 24 hours, in non-litigious proceedings. The court may examine the case in the event of reasonable absence of the plaintiff or a participant in the proceedings, who have been notified pursuant to the rules about the time of the trial. A ruling which terminates the proceedings in the case shall be immediately served by the court on the person concerned referred to in para. 1, on the appropriate constituency electoral commission and on the person under a duty to observe the court's ruling. Within 24 hours any such ruling of the voivodeship court may be subject to appeal to the court of appeal which shall be obliged to examine it within 24 hours. There shall be no legal recourse against the ruling of the court of appeal and it shall be subject to immediate execution.
3. False details or information on the elections and related to the election campaign, published in press shall be subject to rectification within 48 hours.
4. The court shall, in respect of rectification of details or information published in press publication other than a daily newspaper, indicate the daily newspaper in which the rectification must be published, at the expense of the person so obliged, within 48 hours.
5. In the event of a refusal or failure to publish such rectification by a person so obliged or any person indicated in the court's ruling, the court shall order, on the concerned person's request, that the publication of rectification be enforced by a writ of execution, at the expense of the relevant person.
6. The provisions of Article 133 shall not apply to matters referred to in paras. 1 to 5.

#### **Article 140**

1. It shall be forbidden to carry out election campaigning in work places and public institutions in a way and by methods disturbing their ordinary functioning.
2. It shall be forbidden to carry out election campaigning in the areas of military units and other units subordinated to the Minister of National Defence, and in civil defence units as well as in quartered police units.

#### **Article 141**

It shall be forbidden to organize marches and demonstrations on the day of the election.

#### **Article 142**

1. During the period between the 15<sup>th</sup> day before the election day and the day ending the election campaign the "Polish Television Joint-stock Company" and the "Polish Radio Joint-stock Company", hereinafter called "Polish Television" and "Polish Radio", shall broadcast, without payment, the election programmes prepared by election committees, pursuant to the provisions of this Act.
2. An election committee shall have the right to broadcasting of its election programmes without payment on:

- 1) nationwide channels — provided that it has registered a national list of candidates for deputies to the Sejm,
- 2) regional channels — provided that it has registered a constituency list of candidates for deputies to the Sejm in at least one constituency.
3. The total length of time of broadcasts without payment of election programmes shall amount to:
  - 1) on nationwide channels — 15 hours for Polish Television and 30 hours for Polish Radio,
  - 2) on regional channels — 10 hours for Polish Television and 15 hours for Polish Radio.
4. The boards of companies referred to in para. 1, having taken into account the opinion of the appropriate programming council, shall determine:
  - 1) the length of time assigned for broadcast of election programmes without payment on each of the nationwide and regional channels,
  - 2) an outline of time allocations referred to in subpara. 1, during the period between the 15<sup>th</sup> day before the election day and the day ending the election campaign.Information about the above-mentioned decisions shall be made public in the form of a communiqué publicized in a daily newspaper with nationwide circulation, no later than the 30<sup>th</sup> day before the day of the election.

**Article 143**

1. Persons responsible for the management of production of the appropriate nationwide television and radio broadcasts shall determine the allotment of time without payment assigned for the broadcasting of the election programmes of election committees, referred to in Article 142, para. 2 subpara. 1, dividing such time allocated into equal parts amongst the election committees so entitled, on the basis of information supplied by the National Electoral Commission concerning the registered lists of candidates for deputies to the Sejm.

The sequence of broadcasting of the election programmes for each day shall be determined no later than the 18<sup>th</sup> day before the election day by persons responsible for management of production of the broadcast, referred to in para. 1, by random selection in the presence of the agents of those election committees so entitled

**Article 144**

1. The directors of local branches of Polish Television and the boards of regional radio broadcasting companies shall conduct the allocation of time assigned for broadcasting of the election programmes of election committees without payment, referred to in Article 142, para. 2 subpara. 2, distributing such units of time to those election committees entitled, in proportion to the numbers of constituency lists of candidates for deputies to the Sejm registered by them, on the basis of information about the registered constituency lists provided by the constituency electoral commissions territorially competent for the area covered by a regional channel.

2. The provisions of Article 143, para. 2 shall apply accordingly.

**Article 145**

1. Notwithstanding the length of time allotted for the broadcast of the election programmes, without payment, each election committee may broadcast, between the 15<sup>th</sup> day before the election day and the day ending the election campaign only, paid election programmes by means of public and non-public radio and television

broadcasters. The total time of paid programmes cannot exceed 15 per cent of the total time allocated to a particular election committee for its broadcast of election programmes without payment.

2. Broadcasters shall not refuse to broadcast the paid election programmes referred to in para. 1.

3. Rates charged for the broadcast time of the election programmes referred to in para. 1 cannot exceed 50 per cent of the rates charged for commercials and they shall be identical for each user and shall be fixed in accordance with the price list in force on the day of proclamation of elections.

4. The rules concerning advertisement activity in television and radio broadcasts, subject to the provision of para. 5, shall apply to the programmes referred to in para. 1.

5. The time assigned for broadcast of paid election programmes shall not be subject to the time limits for commercials, established by other regulations.

#### **Article 146**

An agent of an election committee may appeal to the National Electoral Commission, within 48 hours after their issue, against the decisions referred to in Article 143, para. 1 and Article 144, para. 1. There shall be no legal recourse against the decision of the National Electoral Commission.

#### **Article 147**

Election information, communiqués, appeals and slogans announced in the press (in printed form or on television or radio) at the expense of an election committee, political party or other social organization supporting the lists of candidates for deputies to the Sejm, and at the expense of candidates themselves, shall include an indication by whom they are paid and shall fulfill the requirements provided for in Article 137, para. 1.

#### **Article 148**

Matters related to carrying out of election campaign in television and radio broadcasts, which are not subject to the provisions of this Act, shall be governed by the provisions of the Act of 29 December 1992 on Radio Broadcasting and Television (Journal of Laws of 1993, No. 7, item 34).

The exercise of rights under this Act shall not prevent any injured party from bringing an action, under other statutes, including the Criminal Code, the Civil Code and the Press Law, against persons, whose acts or omissions during electoral campaign have infringed his personal or property rights.

### **Chapter 15: The financing of elections**

#### **Article 150**

1. Expenditures related to the organization of the preparation and conduct of the election shall be covered by the State Budget.

2. The State Budget shall cover expenditures related to:

1) the duties of the National Electoral Commission and of the National Electoral Office, as provided by statute;

2) the duties of electoral commissions of subordinate level, and ensuring provision of services to them by organs and organizational units assigned for those purposes;

- 3) election duties of principal organs of the state administration and subordinate central offices and organizational units, and also of other state organs;
- 4) election duties ascribed to communes;
- 5) broadcast without payment by the Polish Television and the Polish Radio of election programmes of election committees, pursuant to the provisions of Article 142;
- 6) entitlement by election committees to obtain subsidies in relation to expenditures on election campaign, pursuant to the provisions of Article 155.

3. A report on expenditures covered by the State Budget, referred to in para. 3, shall be announced by the National Electoral Commission within 5 months after the election day.

4. Each year, the State Budget shall provide financial resources for the operation of the National Electoral Commission, the National Electoral Office and voivodeship electoral offices, and also for the maintenance and updating of the permanent register of voters in the commune by heads of the commune or mayors (presidents of towns).

5. The rules of financial planning of the expenditures referred to in paras. 2 and 4 and of their execution shall be determined by budgetary provisions.

#### **Article 151**

The expenses of election committees related to elections shall be met from their own resources.

#### **Article 152**

1. Election committees may organize the raising of funds for election purposes, in the manner and according to rules specified by the provisions on public collections.

2. No permit is required for the organization of a public collection.

#### **Article 153**

1. Election committees cannot accept for election purposes funds derived from:

- 1) the State Budget, with the exception of cases referred to in Article 155;
- 2) state organizational units;
- 3) the budget of local-government units, municipal unions and other municipal legal persons, and self-government councils;
- 4) state-owned enterprises, and also economic subjects with participation of the State Treasury, local-government units, municipal unions and other municipal legal persons;
- 5) subjects receiving subventions of the State Treasury;
- 6) foreign persons, within the meaning of the provisions of foreign exchange law.

2. The provisions of para. 1 shall apply as appropriate to non-cash assets.

#### **Article 154**

1. The financing of election committees' participation in elections shall be public.

2. Any election committee whose constituency list has been registered, shall draw up a financial report on the sources of funds received, and in particular, on any bankers' credit obtained, the terms of that credit, and on donations exceeding the equivalent of the ten-fold average monthly wage in six main sectors of material production, and also on the expenditures for election purposes.

3. The National Electoral Commission, in agreement with the Minister of Finance, shall establish a specimen for such financial report and the detailed scope of information to be included therein.

4. Financial reports shall be announced, in a daily newspaper with nationwide circulation, by election committees within 3 months of election day. The election

committee shall notify in writing the National Electoral Commission of its announcing of the report.

5. Agents of election committees set up by voters shall retain documents concerning the financing of electoral campaign for a period of 12 months after election day.

#### **Article 155**

1. An election committee, which fulfills the requirements referred to in Article 154, paras. 2 and 4, shall have the right to receive subsidies from the State Budget, in relation to expenditures on election campaign in proportion to the number of deputies to the Sejm elected from the lists of that election committee.

2. The total amount of subsidies shall be established at 20 per cent of the sum of expenditures estimated in the State Budget in relation to the organization of, preparation for and conduct of the election.

3. The subsidy for an election committee shall be calculated by dividing the total amount of subsidies, referred to in para. 2, by 560, and multiplying the quotient by the number of deputies elected to the Sejm from the lists of that election committee.

4. Transfer of the subsidy to a bank account indicated by the election committee shall be made by the Minister of Finance on the basis of the estimated expenditures referred to in para. 2 and information of the National Electoral Commission about those election committees entitled to obtain subsidies as well as the number of deputies to the Sejm elected from the lists of those election committees.

#### **Article 156**

In the event that the funds obtained for purposes of the election campaign, including any subsidy referred to in Article 155, para. 1, exceed expenditures, the agent of an election committee created by voters shall apply such surplus to publicly beneficial purposes. Information about such fact shall be announced in a daily newspaper with nationwide circulation no later than 9 months after election day and shall also be communicated to the National Electoral Commission .

## **The Regulator – the National Broadcasting Council**

*The regulator determines the criteria and modalities for the exercise of the right of access to the public broadcasters. Two regulations are included here. The first defines the criteria upon which free access to the media is provided to political and other organisations. The authorities responsible for allocation of free airtime are also stipulated. The second regulation refers to the election of local authorities, campaigning and media access rights of candidates. It defines the formula and the criteria on which this will be decided.*

### **Official Journal „Dziennik Ustaw” of 2001, No. 124 item 1360 REGULATION OF THE NATIONAL BROADCASTING COUNCIL**

of 18 September, 2001,  
[Excerpts]

#### **Concerning procedures related to the presentation of standpoints with regard to crucial public issues by political parties, trade unions and unions of employers in public radio and television<sup>38</sup>**

Under Article 23 item 3 of the Broadcasting Act of 29 December 1992 (official journal "Dziennik Ustaw" of 2001, No 101, item 1114) the following is hereby ordered:

**§ 1.** 1. Public radio and television broadcasting organisations shall reliably present, analyse and discuss standpoints represented with regard to crucial public issues by political parties, national organisations of trade unions and unions of employers.

2. Public radio and television broadcasting organisations shall fulfil the obligation referred to in item 1 in a manner which enables the presentation of diversified standpoints.

3. Public broadcasting organisations which transmit national programme services shall inform about the work of supreme organs of political parties, national organisations of trade unions and unions of employers with regard to crucial public issues.

**§ 2.** 1. The Polish Television *Telewizja Polska S.A.* and the Polish Radio *Polskie Radio S.A.* shall produce and transmit programmes enabling political parties to present their standpoints with regard to crucial public issues.

2. The said programmes shall last at least 45 minutes and shall be broadcast in Channel I of the Polish Television and Channel I of the Polish Radio once a week, between 4 p.m. and 11 p.m.

3. The Management Boards of the Polish Television *Telewizja Polska S.A.* and of the Polish Radio *Polskie Radio S.A.* shall divide the transmission time allocated for the programme amongst the entitled political parties in proportion to the number of votes obtained by them in parliamentary [*Sejm*] elections.

4. The right to participate in the programme shall be exercised by political parties which:

1) set up an independent electoral committee and whose district lists of candidates for parliamentary deputies obtained, on a nation-wide scale, at least 3% of votes cast in a valid manner,

2) took part in the electoral coalition, whose district lists of candidates for parliamentary deputies collected, on a nation-wide scale, at least 6% of votes cast in a valid manner, in the parliamentary [*Sejm*] elections held on 23 September 2001.

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<sup>38</sup> <http://www.krrit.gov.pl/stronykrrit/angielska/14a.doc>

5. The transmission time allotted to political parties referred to in item 4 point 2 shall be awarded to the electoral coalition. The transmission time allotted to the electoral coalition may be used by:

- 1) jointly by political parties constituting the coalition, represented during the programme by a common representative or representatives, or
- 2) separately by each of the political parties constituting the coalition in proportions defined in the coalition founding agreement for the purpose of dividing the grant referred to in Article 28 of the Act dated 27 June 1997 on Political Parties (official journal "Dz.U." of 2001, No. 79, item 857).

6. The decision concerning the manner of using the transmission time referred to in item 5 shall be made by the statutory governing bodies of the political parties. The governing bodies of the parties shall inform the Management Boards of the Polish Television *Telewizja Polska S.A.* and of the Polish Radio *Polskie Radio S.A.* about the changes in the use of the transmission time one month in advance.

7. The transmission time allotted to political parties which underwent a fusion after the elections held on 23 September 2001 shall be given to the part created as a result of the said fusion.

8. The use of the transmission time shall be accounted for separately for each calendar month.

9. The Polish Television *Telewizja Polska S.A.* and the Polish Radio *Polskie Radio S.A.* shall produce programmes in consultation with the plenipotentiaries of the political parties referred to in item 4. In case of a joint use of the transmission time by political parties referred to in item 4, point 2, these parties shall appoint a joint plenipotentiary.

**§ 3.** The Polish Television *Telewizja Polska S.A.* and the Polish Radio *Polskie Radio S.A.* shall produce and transmit a periodical current affairs programme dedicated to political events in the country.

**§ 4.** The Polish Television *Telewizja Polska S.A.* and the Polish Radio *Polskie Radio S.A.* shall provide current information regarding the work of the Parliament (Sejm) and the Senate in the programming form decided upon in agreement with the presidium of the Parliament (Sejm) and of the Senate.

**§ 5. 1.** The provisions of this Regulation shall not infringe upon prerogatives to transmit electoral programmes given by virtue of separate provisions to political parties or other organisations participating in elections to the Parliament (Sejm), the Senate, the Office of the President of the Republic of Poland and territorial self-government.

2. During the electoral campaign preceding the elections, referred to in item 1, the public radio and television broadcasting organisations shall be obliged to prepare separate programmes enabling political parties to present their standpoints.

3. The programmes referred to in § 2 shall not be transmitted during the period of transmission of electoral broadcasts.

**§ 6.** The National Broadcasting Council in consultation with competent programming councils shall periodically assess the fulfilment of the obligations binding upon the public radio and television broadcasting organisations under this Regulation.

**§ 7.** The Regulation of the National Broadcasting Council of 13 May 1994 concerning procedures related to the presentation of standpoints with regard to crucial public issues by political parties, trade unions and unions of employers in public radio and

television (official journal "Dz.U." No 74, item 335; of 1996, No 10, item 59; of 1997, No 9, item 50; of 1998, No 25, item 146) shall become null and void.

**§ 8.** The Regulation shall take effect within fourteen days after its promulgation.

Chairman of the National Broadcasting Council Juliusz Braun

*Official Gazette 'Dziennik Ustaw' of 1998, No. 118 item 769*

**REGULATION OF THE NATIONAL BROADCASTING COUNCIL of 1 September 1998**

**Concerning procedures related to the division of free broadcasting time, preparation, emission and information about emission time before elections to borough, county, and voivodeship councils.**

**(Official Gazette "Dz.U." of 10 September 1998)<sup>39</sup>**

*Under article 77, item 3 of the Act of 16 July 1998 concerning election laws for borough, county, and voivodeship councils (Official Gazette 'Dziennik Ustaw', No. 95, item 602), the following is hereby ordered:*

**§ 1.** The election programmes shall be broadcast free of charge on regional and national channels of Polish Television 'Telewizja Polska-Spółka Akcyjna', below referred to as 'Telewizja Polska', and in regional programmes transmitted by regional public broadcasting companies, below referred to as 'regional broadcasting companies', and also on national programmes of Polish Radio 'Polskie Radio-Spółka Akcyjna', below referred to as 'Polskie Radio', during the period from the 15<sup>th</sup> day before the elections until the end of the election campaign.

**§ 2.1.** For the necessities of broadcasting the election programmes, the areas of regional programme transmission on Polish Television-'Telewizja Polska' are established according to Appendix 1, and the areas of emission of regional programmes by individual regional broadcasting companies are established in Appendix 2.

2. At the request of interested election committees for broadcasting programmes in the electoral districts situated on the borders of the areas defined in the appendices mentioned in item 1, the National Broadcasting Council may allow the transmission of election programmes from the neighbouring area if it is justified by better programme reception quality.

**§ 3.** The Boards of Directors of Polish Television-'Telewizja Polska' and Polish Radio-'Polskie Radio' will divide the total election broadcasting time among all of the national stations within the limits of the total time granted for national stations to broadcast election programmes free of charge.

**§ 4.1** The authorized representatives of the election committees shall present the requests for free broadcasting time to the authorities of the broadcasting companies defined in §7 and §8, not later than 22 days prior to election day.

2. The requests that are mentioned in item 1 should contain:

- 1) the name of the election committee authorized to free broadcasting of the election programmes,
- 2) the first and last name and address of the person authorized by the election committee to represent it in issues connected with free broadcasting of the election programmes, called 'authorized representative',
- 3) the list of election districts, with the registered rolls of candidates for borough, county, and voivodeship councils, pertaining to the broadcasting areas.

3. To the petition are attached:

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<sup>39</sup> <http://www.krrit.gov.pl/stronykrrit/angielska/9a.doc>

1) copies of the protocols for registration of the rolls of the candidates listed in the request,

2) the document issued by the election committee stating the nomination of the election committee's authorized representative for election programmes.

**§ 5.1.** The election committees entitled to broadcast on the same channel can present joint requests for a broadcasting time licence .

2. In the event of joint requests for a broadcasting time licence presented by two or more election committees, shared broadcasting time shall be conceded as a sum of the individual broadcasting times of each committee.

3. The committees presenting a joint request for a broadcasting time licence are responsible for appointing one joint authorized representative.

**§ 6.** Before dividing the broadcasting time, the authorities of the broadcasting companies mentioned in §7 and §8 shall call meetings of the authorized representatives, in order to provide them information about the proposed tentative schedule of election programme broadcasting time and to draw numbers for the order of election programme emission.

**§ 7.** The directors of the departments within Polish Television-‘Telewizja Polska’ and the presidents of the boards of directors of the regional broadcasting companies will divide the broadcasting time on the regional channels in proportion to the number of registered rolls of candidates in the area of emission of a given programme.

**§ 8.** The presidents of the boards of directors of Polish Television-‘Telewizja Polska’ and Polish Radio-‘Polskie Radio’ shall divide the broadcasting time among the election committees entitled to broadcast the election programmes on national stations in proportion to the number of lists of candidates registered by these committees in the elections to the vovoideship councils.

**§ 9.** After having considered the requests of the authorized representatives, not later than 19 days prior to election day, the authorities of the broadcasting companies mentioned in §7 and §8 shall establish the rules and provide the authorized representatives information in writing about:

- 1) broadcasting time granted to the election committee,
- 2) dates of emission of the election programmes of the election committee,
- 3) dates and time of registration of the election programmes,
- 4) technical conditions which the election programme materials independently prepared by the election committees should meet.

**§ 10.** Materials for an election programme independently prepared by an election committee should be delivered to the broadcasting station 24 hours prior to emission at the latest.

**§ 11.** The election programmes shall be broadcast in blocks in which the order of emission of the election programmes of the individual committees is established by drawing, as mentioned in §6, with the participation of the authorized representatives.

**§ 12.1.** The broadcasting station required to emit the election programmes guarantees free registration of the presentations of the election committee representatives, candidates for membership on councils, or other information prepared by the election committees in the studio of the broadcasting station.

2. In order to record a programme, the broadcasting station guarantees the opportunity to use the studio for three times the length of the expected time of emission of the programme in question.

**§ 13.** The broadcasting stations required to emit the election programmes shall announce these at least twice in their information programme schedules. They shall provide information about the emission of election programme blocks daily in the programme announcements as well as through the printed press in the manner adopted for providing information about programme content.

**§ 14.** The regulation shall take effect upon promulgation.

## 4.2 Lithuania

### The Legislative Framework

*The selection of the excerpts from the law on the election of the municipal councillors is included here because it focuses on the rights of candidates to campaign., These rights include :*

- *the use of the mass media,*
- *the right to reply to comments*
- *the right to reply to information compromising a candidate, and*
- *the issue of campaign finances.*

*Candidates should enjoy equal rights to free and /or paid media access. To facilitate the authorities in limiting paid political advertising ,expenses are regulated through the creation of the special electoral accounts. These are required to enable supervision and control of campaign funding by public authorities. The law refers also to negative or “compromising” advertising and establishes the right of the targeted candidate(s) to reply on the basis of, and in conformity with, defined rules and procedures.*

Official translation

#### **Law on the Amendment of the Law on Elections to Municipal Councils**

7 July 1994, No. I-532

*(New edition by 19 October 1999, No. VIII-1369, (as amended by 19 September 2002, No. IX-1080) <sup>40</sup>*

**[Excerpts]**

#### **SIXTH CHAPTER**

#### **GUARANTEES OF THE ACTIVITIES OF CANDIDATES FOR COUNCILLOR**

#### **Article 43. The Right of a Candidate for Councillor to Speak at Meetings, to Use the Mass Media**

1. After the commencement of the election campaign, candidates for councillor shall have the equal right to speak at voters' meetings or any other meetings, gatherings, conferences as well as through the state and municipal mass media, and to publicly announce his election program or the election programme of the party, political organisation which has nominated him as candidate.

2. Heads of state power and government institutions, as well as heads of local authorities must help candidates for Councillor to organise meetings with voters, to obtain necessary information, with the exception of the information which is considered confidential according to laws of the Republic of Lithuania and decrees of the Government.

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<sup>40</sup> <http://www3.lrs.lt/cgi-bin/preps2?Condition1=189258>

**Article 44. Liability for the Violation of this Law**

Persons who prevent by force, deception, threat, bribery or otherwise voters from implementing the right to vote or to be elected to councils, and to organise campaigning, as well as the members of electoral committees, other officers who have falsified election documents, counted fraudulently the votes, violated the secrecy of the voting or otherwise violated this Law, shall be held liable under laws of the Republic of Lithuania. Legal action shall also be instituted against persons who have publicised or otherwise disseminated false data about a candidate for councillor or prevented a candidate from meeting with voters.

**Article 45. The Right of a Candidate for Councillor to be Relieved from Work or his Service Duties during the Period of Election Campaign**

Upon his request, a candidate for councillor may be relieved from work or other service duties for the period of organising and holding the election, but no longer than for 14 days.

**Article 46. The Immunity of a Candidate for Councillor**

Without the consent of the Central Electoral Committee, during the election campaign as well as until the first sitting of a newly elected council, a candidate for councillor may not be found criminally liable, arrested, neither can administrative penalties be judicially imposed on him for the actions done during the election campaign.

**SEVENTH CHAPTER  
ELECTION CAMPAIGN****Article 47. The Fundamentals of an Election Campaign**

1. The conditions prescribed by this Law to start campaigning shall be provided for parties, political organisations and candidates from the day the election campaign starts.

2. Campaigning may be conducted in any form or manner, provided it does not contradict the Constitution and the laws of the Republic of Lithuania.

**Article 48. Conditions and Procedure for the Use of the Mass Media**

1. Organisations that have submitted lists of candidates for elections, shall be granted the right to use the state and municipal mass media free of charge. Rules of the preparation of programmes intended for election campaigning, the actual duration and time of the National Radio and Television of Lithuania programmes shall be established by the Central Electoral Committee upon co-ordination with the heads of the National Radio and Television of Lithuania. It shall also distribute in such a manner that the principles of equality of the organisations who have submitted lists of candidates, and of the lists of candidates are preserved. Each organisation who is submitting a list of candidates, shall be allotted no less than 20 minutes of radio and television time and additional time shall be allotted proportionately to the number of the lists of candidates submitted.

2. The actual time and duration of municipal radio and television programmes allotted for the election campaign shall be established by a constituency electoral committee, upon co-ordination with the heads of the radio and television, and shall be distributed in such a manner that the principles of equality of the lists of candidates are preserved.

3. The election programme of a list of candidates shall, in the manner prescribed by the Central Electoral Committee, be published by the constituency electoral committee within 20 days after it was submitted. Election programmes of the lists of candidates shall not be announced after the polling day and during the period of prohibition of election campaigning.

4. Campaigning in the commercial mass media shall be restricted only by the size of special election accounts.

5. All disputes concerning the election campaign shall be settled by the Central Electoral Committee, in compliance with the fundamentals provided for in this Law.

**Article 49. The Publicising of Material Compromising a Candidate for Councillor and a Countering Opinion of the Candidate**

1. If during the election campaign the mass media publicise some material compromising a candidate for councillor (such data may be publicised not later than: in a means of the mass media which is issued more than three times a week, 5 days prior to the election, in other means of the mass media - 10 days before the election, but in all cases the material compromising a candidate may be publicised not later than in the issue preceding the last issue of a means of the mass media prior to the election), it must provide the candidate with a possibility of expressing a countering opinion, which consists of a short exposition of the publicised compromising material and the candidate's reply. The extent of the countering opinion usually may not exceed the volume of the compromising material more than three times. The means of the mass media must publicise the candidate's countering opinion within 7 days after it has been expressed, but not later than prior to the 2 days remaining before the end of the period allowed for election campaigning. If the means of the mass media itself cannot publicise the candidate's countering opinion during the period of time set by this Law, it must with its own funds publicise the candidate's countering opinion in another means of the mass media.

2. The material which is aimed to influence voters not to vote for an individual candidate and which contains information negatively describing the candidate shall be considered as material compromising the candidate. An opinion about the candidate publicised in the mass media (unlike the information, criteria of the truth shall not be applied to an opinion), negative as well, shall not be considered as compromising material and shall not entitle the candidate to demand publicising of a countering opinion. A demand by the candidate's to publicise a countering opinion may not be met also when: the material publicised does not concern him personally; the publicised material about him is not compromising; the compromising material about the candidate is publicised by him or by another candidate who is nominated on the same list of candidates or is nominated by the same party, political organisation; the material contains no information describing the candidate; the candidate has already used the right to a countering opinion.

3. If the candidate has duly furnished the countering opinion to the means of the mass media, but it has not been publicised, by the decision of the Central Electoral Committee the candidate's countering opinion shall be broadcast on the National Radio or Television of Lithuania and shall be paid for at the price of advertisements. In this event, the means of the mass media must pay the Central Electoral Committee two times the amount of the broadcast cost.

4. If the compromising material about the candidate has been publicised during the period of time when it cannot be publicised according to this Law, by the decision of the Central Electoral Committee the candidate's countering opinion shall be broadcast on the National Radio or Television and shall be paid for at the price of advertisements. In this instance the means of the mass media must pay the Central Electoral Committee three times the amount of the broadcast cost.

5. In all cases a countering opinion shall not be publicised during the period of the prohibition of an election campaign. Publicising of a countering opinion shall not exempt the means of the mass media from responsibility under laws of the Republic of Lithuania.

6. When a countering opinion of the candidate is publicised by the decision of the Central Electoral Committee, the cost of publicising established by this Law shall be exacted without suit from that means of the mass media which has publicised the material compromising the candidate during the prohibited period or has not publicised the candidate's countering opinion in time.

**Article 50. Releasing the Material Compromising a Party, Political Organisation which has Nominated a List of Candidates and the Countering Opinion**

1. If during the election campaign the mass media release the material compromising a party, political organisation which has nominated a list of candidates (such data may be released not later than: in a means of the mass media which is issued more frequently than three times a week - 5 days before the election, in other means of the mass media - 10 days before the election, but in any case the material compromising the party, political organisation which has nominated a list of candidates may be released not later than in the last but one issue of a means of the mass media before the election), it must provide the party, political organisation or one of the branches of the party, political organisation with a possibility to express a countering opinion. The countering opinion shall consist of a short exposition of the released compromising material and the party's reply. The extent of the countering opinion usually may not exceed the volume of the compromising material more than three times. The means of the mass media must announce the countering opinion within 7 days after it has been expressed, but not later than 2 days before the prohibition of campaigning becomes effective. If the means of the mass media itself cannot announce the countering opinion during the period of time set by this Law, it must make arrangements to publicise the countering opinion with its own funds in another means of the mass media.

2. The material which is aimed at influencing voters not to vote for the candidates nominated by a specific party, political organisation and which contains information negatively describing the party, political organisation (its branch or division) shall be considered as compromising material. An opinion about the party, political organisation announced in the mass media (unlike hard news, criteria of truth shall not apply to an opinion), including a negative opinion, shall not be considered as compromising material and shall not grant the party, political organisation the right to demand announcement of a countering opinion. The demand to announce a countering opinion may also be rejected in cases when: the released material does not concern the party, political organisation; the released material is not compromising; the compromising material about the party, political organisation is released by a

candidate nominated by the party, political organisation; the material contains no information characterising the party, political organisation; the party, political organisation has already exercised the right to a countering opinion.

3. The party, political organisation shall give its countering opinion to the means of the mass media through its representative for the elections at the Central Electoral Committee or through its representative for the elections at the constituency electoral committee. In the event the representative for elections has given the countering opinion to the means of the mass media by the due date, but it has not been made public, the countering opinion shall be broadcast, on the decision of the Central Electoral Committee, on the National Radio or Television of Lithuania and shall be paid for at the rates of advertisement fees. In this event, the means of the mass media must pay the Central Electoral Committee double the amount of the broadcast costs.

4. If the compromising material was released during the time period when its release is not permitted under this Law, by the decision of the Central Electoral Committee the candidate's countering opinion shall be broadcast on the National Radio or Television of Lithuania and shall be paid for at the rates of advertisement fees. In this event the means of the mass media must pay the Central Electoral Committee three times the amount of the broadcast costs.

5. In any case a countering opinion shall not be announced during the period when campaigning is prohibited. Announcement of a countering opinion shall not exempt the means of the mass media from liability under the laws of the Republic of Lithuania.

6. When the countering opinion is released on the decision of the Central Electoral Committee, the costs thereof set by this Law shall be recovered without suit from that means of the mass media which has released the compromising material during the period when such release is not permitted or has not announced the candidate's countering opinion.

#### **Article 51. Prohibition to Conduct Election Campaigning while Abusing one's Official Position**

1. Anyone shall be prohibited from abusing his official position in state or municipal institutions, offices or organisations, as well as in the state or municipal mass media when carrying out any type of election campaign, from instructing other persons to do so, or from trying to exert influence upon the will of voters in any other manner, while using his official position. State and municipal officials shall be prohibited from using their official position in creating for themselves or their party, exceptional election campaigning conditions. An administrative or criminal action may, in accordance with the procedure established by laws, be taken against the official who has violated this Article.

2. If a person is a candidate for councillor, he can use the state or local authority mass media only according to the procedure set forth in Article 48 of this Law. If the fulfilment of their duties requires to announce to the mass media important news, they can do it only at a press conference. The state or municipal mass media may publicise only a recording of such conference, which contains no election campaigning.

#### **Article 52. Election Campaign Funding**

1. An election campaign shall be financed from the funds received from parties, political organisations and candidates for councillor, which are being accumulated in

a special election account opened according to the certificate issued by the Central Electoral Committee.

2. The maximum amount of money permitted for campaigning shall be in the amount of 100 AMWs for each list of candidates and 500 AMWs for a an organisation presenting lists of candidates. If the amount of money transferred to the appropriate election account exceeds the established sum, the surplus shall be transferred by the bank to the State budget.

3. The expenditures of the election campaign shall be: the cost of preparing, acquiring, producing or rendering of events, publications, radio or television programmes, as well as items or services aimed at influencing the will of voters to vote for or against a candidate or candidates. It shall be prohibited to cover these expenditures from other than these accounts. Election campaign items and services the cost of which is more than 0.5 AMW may not be provided free of charge. Election campaign items and services cannot be provided by giving obvious discounts. Those who desire to support a list of candidates or a candidate must do this by transferring funds to special election accounts. If expenditures related to election campaign items were made before the commencement of the election campaign, the party, political organisation or the candidate shall inform the Central Electoral Committee about this, which, upon evaluating the election campaign items, shall reduce the maximum amount of funds of the special election account permitted to be used for the election campaign by the amount of their expenditure and shall issue a certificate that these items may be used during the election campaign. The means of the mass media without the state or municipal capital may indicate which list (lists) of candidates or which candidate (candidates) it supports and later publicise their election campaign free of charge. In this instance it shall not be allowed to remunerate the means of the mass media for publicising such an election campaign in any other way. In the event that single services of the election campaign, the cost of which is less than 0.5 AMW, are rendered for free by the supporters of a candidate, a list of candidates (it shall not be permitted to the individuals specified in Article 51), they shall not be estimated and shall not alter the maximum amount of the special election account.

4. Upon establishing that during the election campaign the payment for election campaign items or services has been made not from the special election account, as well as in cash or indirectly, the tax inspectorate shall recover without suit the sum or remuneration (the sum or remuneration which had to be paid) paid for election campaign items, services from the receiver thereof and shall transfer to the State budget.

5. The election campaign shall be also financed from the State funds. The candidates, party, political organisation shall not pay for the time on state, municipal radio and television allotted to them under this Law, for publishing candidate list election programs, and these expenditures shall not change the maximum allowable amount of the special election account.

6. The utilisation of funds allocated for campaigning shall be controlled by tax inspectorates and the Central Electoral Committee. Parties, political organisations must file with the Central Electoral Committee reports, the form whereof is prescribed by the Central Electoral Committee, concerning the sources of funds and their utilisation for campaigning not later than within 25 days following the proclamation of

final election results. The Central Electoral Committee shall publish these reports in the *Valstybės žinios*.

7. Special election accounts shall be closed not later than within 20 days after the proclamation of final election results. Candidates, parties, political organisations which have nominated a list of candidates shall, at their own discretion, use the funds that have not been used for election campaigning. The funds of the accounts which have not been closed in time shall be transferred by the bank to the State budget.

**Article 53. Prohibition of Campaigning on the Polling Day**

1. Campaigning shall be prohibited during the 30 hours preceding an election and on the polling day, with the exception of permanent visual campaign material in the places intended for this, provided that it was displayed at least 48 hours prior to the beginning of the election. During the period of election campaign prohibition no visual campaigning material (with the exception of those issued by the Central Electoral Committee) may be displayed in a polling station or within 50 meters of the building in which a polling station is situated.

2. Individuals in violation of the provisions listed in this Article, shall be held liable under law.

### 4.3 Czech Republic

*Final report on parliamentary elections in the Czech Republic, 14-15 June 2002*, Office for Democratic Institutions and Human Rights, 2002<sup>41</sup>

#### VIII. THE MEDIA AND THE ELECTIONS

##### A. THE LEGAL FRAMEWORK

Several laws regulate the media coverage of elections. Overall, these have not changed significantly since the last elections for the Chamber of Deputies. The legal framework provides the basis for a free media and for broad dissemination of political party views, platforms and campaign messages.

The *Charter of Fundamental Rights and Freedoms* (Article 17.3) prohibits censorship. The *Election Law* (Article 16.3) requires each of the publicly funded broadcasters (Czech television and Czech radio) to offer a total of 14 hours of free airtime between the 16th day and 48 hours before the elections, divided equally among all parties registered with the SEC. The specific times and dates for each party's free time is decided by lot. Responsibility for the content of the party spots lies solely with the parties; the public media are not allowed to interfere in any way.

The *Broadcasting Act*, passed in 2001 as a general law for electronic media, obliges the media to provide objective and balanced information and forbids preferential treatment of any political party (Article 31-2.3). Article 48-1d expressly prohibits advertising in the private or public electronic media by political parties and independent candidates. The penalty for violation of these obligations is from 5,000 to 2.5 million Czech crowns. The private electronic media are only allowed to cover election related issues in the framework of their usual reporting (debates, interviews, etc.) and to cover the campaign in their news and current affairs programs.

In contrast, the print media are allowed to offer paid political advertisements without any restrictions, provided the same conditions are applied to all parties without discrimination.

The Council of the Czech Republic for Radio and Television Broadcasting is the regulatory and oversight body for all electronic media. It consists of 13 members appointed and removed by the Prime Minister based on proposals made by the Parliament. In addition, the operations of public Czech television are further controlled by the Council of Czech Television, composed of 15 members appointed by the Parliament. The Council for Radio and Television Broadcasting did not receive any formal complaints regarding the coverage of parties during the campaign. The Council of Czech Television received two formal complaints, one from a candidate asserting that she was disadvantaged by the format of a political discussion program from which she was excluded, and a complaint from a private citizen about the general style of election-related broadcasting. Decisions on both complaints were still pending at the time of the elections.

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<sup>41</sup> [http://www.osce.org/odihr/documents/reports/election\\_reports](http://www.osce.org/odihr/documents/reports/election_reports)

## 4.4 Slovakia

*Final report on parliamentary elections in the Slovak Republic, 20-21 September 2002, Office for Democratic Institutions and Human Rights, 2002*<sup>42</sup>

### VIII. MEDIA

#### A. LEGAL FRAMEWORK FOR THE MEDIA DURING THE ELECTION CAMPAIGN

As provided under Article 23 of the Election Law to the Slovak National Council, the media campaign started on 21 August and ended 48 hours before the opening of the polls (i.e. at mid-day on 18 September). By law, both Slovak Television and Slovak Radio allocated 21 hours of broadcasting time to the parties contesting the elections. These 21 hours had to be divided equally among the parties, and lottery selection determined individual slots. The parties were responsible for the content of their advertisements. Disputes over the allocation of airtime to parties were to be resolved by the CEC whose decision in this matter was binding.

Thanks to the 1999 amendments to the Election Law, campaigning on private electronic media is no longer expressly prohibited, however, what is permitted remains subject to controversy. All the electronic media are subject to Act 308/2000 on Broadcasting and Retransmission that ambiguously prohibits public statements in favor of a political competitor during an election campaign (Article 32, Section 11). The Council for Broadcasting and Retransmission, a member of the European Platform of Regulation Authorities (EPRA), oversees operations of all electronic media and is responsible for ensuring that all legal requirements are met.

Except for the 48-hour moratorium noted above, print media are not subject to legal restrictions during the election campaign. Existing libel laws (four articles from the Penal Code and one from the Simple Offenses Act) may still repress newspaper criticism of political and administrative authorities. Legal proceedings lodged against a journalist in June 2001 by the chancellery of the President of the Republic sparked a debate in Parliament and signaled the beginning of a process to revise the articles in question. On 8 November 2001, Parliament rejected the draft revision of these articles by a majority of one.

## 4.5 Latvia

*Final report on the Saeima elections in the Republic of Latvia, on 5 October 2002 Office for Democratic Institutions and Human Rights, 2002*<sup>43</sup>

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<sup>42</sup> [http://www.osce.org/odihr/documents/reports/election\\_reports/](http://www.osce.org/odihr/documents/reports/election_reports/)

<sup>43</sup> [http://www.osce.org/odihr/documents/reports/election\\_reports/](http://www.osce.org/odihr/documents/reports/election_reports/)

## **VII. THE MEDIA**

New legislation requires that the public be informed as to who has financed each political party broadcast on both private and public media, which has facilitated greater transparency. The new law also requires the media to reveal their income from political party advertisements, which also serves as a crosscheck on whether figures reported by the parties correspond to actual expenditures. While the public media have disclosed their income from political party revenues, the private media generally have not, and have therefore failed to live up to their responsibilities according to the new legislation.

"Hidden advertising", for example, paid editorial coverage, or candidates using their presence on programs not related to politics to convey a political message, was expected to be a factor in this election. However, it did not really materialise as a problem to any great extent. This was largely due to a project conducted by the Soros Foundation Latvia and Delna (Transparency International) - the Transparency in Political Party Financing Project. This raised the issue of "hidden advertising" as a topic of concern prior to the campaign, alerting parties and the media to the fact that this issue would be monitored.

Concern was expressed that particularly during an election period, restrictions on the media for broadcast in minority languages may present an obstacle for both citizens and non-citizens alike to absorb the political debate, and create an "information gap" concerning the election.

At present, the public broadcast service has devoted 20% of the second channel LTV 2 and one of the four public radio stations to broadcast in minority languages. In terms of the private media, Section 19 para. 5 of the media law pertaining to private broadcast media stipulates that "the amount of broadcasting time in foreign languages (all languages except Latvian and Liv) in programs produced by broadcasting organisations shall not exceed 25% of the total volume of the broadcasting time in a twenty-four hour period".

According to a representative of the National Broadcasting Council, recommendations will be proposed to the 8th Saeima to permit broadcasting in minority languages beyond the present limits, in order to more accurately reflect the linguistic profile of the Latvian population.

### **4.6 Hungary**

*Final Report on the parliamentary elections in the Republic of Hungary, 7 and 21 April 2002, Office for Democratic Institutions and Human Rights, 2002*<sup>44</sup>

## **VII. THE MEDIA AND ELECTIONS**

### **A. THE MEDIA AND ITS SUPERVISORY BODIES**

The Media Law established an independent body, the National Radio and Television Commission (ORTT), to oversee and monitor radio and television broadcasters. The ORTT is charged with tendering for and issuing licenses, assigning broadcast

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<sup>44</sup> [http://www.osce.org/odihr/documents/reports/election\\_reports/](http://www.osce.org/odihr/documents/reports/election_reports/)

frequencies, monitoring media behavior and resolving media disputes and complaints which are reviewed by its Complaint Committee. ORTT members are nominated by the parliamentary parties and elected by the Parliament to serve for a term of 4 years. The law also sets in place a supervisory Board of Trustees to oversee public broadcast media. Under the law both the government and the opposition parliamentary parties appoint members of this board on a 50-50 parity basis. However, since the prior board was dissolved in 1998, only the government members have been in place. Because the opposition parties had nominated 5 members for 4 positions, the government had argued no opposition nominees should be appointed until the 3 opposition parties could agree on which of the 5 nominees should serve. A recommendation that the Parliament should select among the 5 nominees was rejected, and the board was established with only the 4 government members on board. The decision was controversial from the start with both the Court of Registration responsible for registering the newly constituted body, and the Prosecutor-General determining that the composition of the board operating with only ½ of its members was in violation of the law. The Supreme Court ultimately countered their decisions and found the board in its current state to be legitimate. An appeal to the Constitutional Court was rejected on the basis that it was not a constitutional issue. Although the absence of opposition members on the board has continued to raise questions about its independence, blame has also been directed toward the opposition parliamentary parties for failing to resolve the question of their proposed members.

## **B. LEGAL PROVISIONS PERTAINING TO MEDIA COVERAGE IN THE CAMPAIGN PERIOD**

The Media Law does not address broadcasting during the election campaign period specifically. Article 4 provides general guidance that information provided by broadcasters must be objective and balanced. The law also prohibits a broadcaster from serving the interests of any particular party or political movement, and likewise, the law prohibits any party commissioning advertising on the station from interfering with the broadcaster's responsibilities or freedoms. Moreover, parties are prohibited from sponsoring any kind of programming. The law protects broadcasters from responsibility for the content of advertisements and limits the length of advertisements to two minutes or less.

The Procedural Law governing elections provides some additional guidance. Article 40 establishes the period of the election campaign as that between the "call for the election and 00:00 hours of the day before election day." Article 44 provides that program providers may publish political advertisements for candidates and organizations nominating candidates with equal conditions during the campaign period. The law also prohibits broadcasters from adding any opinions or analyses to political advertisements. Article 93 requires public broadcasters to broadcast at least one political announcement free of charge between the 18th and 3rd day before the election for those nominating organizations that have submitted national lists, county lists, or single mandate district candidates coinciding with their broadcast areas. An additional advertisement must be broadcast for the same nominating organizations on the last day of the campaign period. Commercial media have no such obligations, and it is up to the broadcaster to determine whether paid political advertising will be

accepted. Although limited free airtime is provided on public television, most parties did not rely on this source of coverage, but instead invested in paid airtime. Among the three most popular television stations, TV2 decided not to accept paid political advertising at all, while MTV1 and RTL Klub broadcast paid political advertising regularly.

## 4.7 Malta

### The Legislative Framework

*The Broadcasting Authority of Malta, established in 1961, is one of the oldest in Europe. Its powers and responsibilities are extensive. These include the duty to organise and schedule political broadcasts in various forms, including party political broadcasts and political spots, both free of charge. It is mandatory for all broadcasters to carry the programmes scheduled by the Authority. The rules and procedures for discharging these duties are defined in the Broadcasting Act. Under this act the Authority publishes a plan with all the relevant details.*

*Under the provisions of the Broadcasting Act, the Broadcasting Authority published the following "Procedure Governing Party Political Broadcasts" for the Year 2002. In Part I, the Authority defines the general rules and procedures to govern the broadcasts. In Part II it enumerates the frequency and duration of the various programmes scheduled. Part II also sets the allocation of time to the political parties and other issues. Finally, in Part III, the details of each programme are summarised in tables. Parties taking part in the programmes are required to sign a formal undertaking not to include in their broadcasts any defamatory, injurious or otherwise negative and offensive material.*

#### Party Political Broadcasts – 2002

##### Procedure governing party political broadcasts, 2002 Series<sup>45</sup>

#### PART I

##### 1. GENERAL

1.1 This series of Party Political Broadcasts consists of Press Conferences, Debates, Party Productions and Political Spots.

1.2 All programmes and spots are transmitted under the auspices of the Broadcasting Authority.

1.3 This scheme of Party Political Broadcasts consists of 925 minutes of airtime apportioned between the Malta Labour Party, the Nationalist Party and Alternattiva Demokratika. Airtime and programmes are distributed as follows:

	PN	MLP	AD
Press Conferences	2 x 60'	2 x 50'	-
Debates	4 x 45'	4 x 45'	-
Party Productions & Political Spots	179'	154'	12'

1.4 This series of Party Political Broadcasts covers the period from Monday, 25<sup>th</sup> February 2002 to 31<sup>st</sup> December 2002, provided that no party political broadcasts may be aired on Friday, 8<sup>th</sup> March and Saturday, 9<sup>th</sup> March 2002. Unless otherwise indicated,

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<sup>45</sup> <http://www.ba-malta.org.mt/>

programmes will be transmitted on TVM, on Radjo Malta and on Channel 12. Transmissions will normally take place on Thursdays at 8.30 p.m. approximately. Channel 12 will broadcast a repeat of the programme series.

1.5 Press Conferences, Party Productions and Political Spots will be transmitted on dates which will be selected by the parties taking part in this scheme. However, only one Press Conference per month per party is allowed. All other programmes which form part of the scheme will be transmitted as shown on the schedule at Appendix I.

1.6 Requests for airtime are to be made to the Authority in writing and conveyed either by hand during office hours or by fax (240855). Airtime will be granted on a first come first served basis provided block airtime bookings are limited to one week. Further details which set out the parameters regulating the scheduling of programmes are given under each programme category as shown in Part II of this procedure.

1.7 Airtime for programmes and for Political Spots which is not utilized by the party concerned either on the date such airtime is booked or allocated or by the expiry date of the period of time reserved for this scheme will be forfeited.

1.8 Political Party representatives, and all those taking part in this series, must abide by the provisions of the law and the rules issued by the Authority from time to time and by any order or directive given by the presiding Chairperson or interviewer. The Authority's decision on any points which may arise in connection with these transmissions will be final.

1.9 Neither the Broadcasting Authority nor Public Broadcasting Services Ltd. will accept any responsibility for any interference with or breakdown of the television or radio services and cannot bind themselves to repeat any broadcast that suffers as a result of such interference or breakdown.

1.10 The Authority reserves the right to suspend indefinitely or for such time as it will consider necessary, any person from participating in any of the programmes in the event that such person shall have, in the Authority's view, committed a serious breach of the rules, particularly rule 1.8.

1.11 All programmes and spots in this series will be transmitted on TVM. Press Conferences and Debates will also be broadcast on Radjo Malta where technically appropriate.

1.12 Every effort will be made by the Authority to issue a press hand-out and to give advance publicity on the broadcasting media provided adequate notice is given.

1.13 In all programmes, where the Authority requires advance information about speakers and the choice of subjects, the party choosing the subject and speaker/s will supply the required information in writing to the Authority by not later than noon on Friday preceding the day of broadcast. *Failure to comply with this rule will disrupt arrangements and may entail the forfeiture of the broadcast* in which case an appropriate announcement will be made. Where necessary the Authority will inform the other party about the subject and speaker/s selected not later than the following working day.

1.14 Press Conferences and Debates are transmitted live from PBS Studios. Party Productions may be supplied in pre-recorded form by the party concerned however, political spots are broadcast only after pre-recording. Those taking part in live transmissions are to be at the studios not later than half an hour before broadcast time. Only the participant, the Party Broadcasting Officer and his/her assistant may attend.

1.15 Political parties participating in this series may request a recording of any political programme after the programme has been broadcast subject to the payment of the relative fee as prescribed in the Dubbing of Tapes Regulations, 2000. A period of seven days from the date of the broadcast is allowed for such requests.

1.16 In selecting a subject for those programmes which require one, parties should be guided by the need to inform and educate public opinion on specific matters and the choice of titles must be consistent with the spirit of this rule.

1.17 This series of Party Political Broadcasts will come to an automatic end if Parliament is dissolved.

1.18 All parties participating in the scheme shall bind themselves in terms of the indemnity form attached as Appendix IV to this scheme. Failure to sign this indemnity forms indicates lack of interest in participation in the scheme as a whole.

1.19 If a political party fails to participate in any programme mentioned in paragraph 1.1 aforesaid, the Authority will ensure that the party fully participating in the scheme will not lose any of the time allotted to it. Time equivalent to that lost will be used by the party in such format as the Authority may deem fit.

1.20 Political parties shall refrain from airing any political spots or party productions on Friday, 8<sup>th</sup> March 2002 and on Saturday, 9<sup>th</sup> March 2002. Nor shall PBS Ltd air such spots and productions on the said dates.

1.21 All programmes (press conferences and debates, party productions and political spots) which form part of this scheme of party political broadcasts may be carried by other stations - apart from PBS Ltd. - provided that the entire scheme is so carried and the station in question is not selective in those parts which are to be broadcast.

## **PART 2**

### **SPECIFIC ARRANGEMENTS**

#### **2. PRESS CONFERENCES**

2.1 This section of the scheme consists of two programmes of 60 minutes each allocated to the Nationalist Party and two programmes of 50 minutes each allocated to the Malta Labour Party.

2.2 Press Conferences are meant to be informative discussions in which a party representative answers questions and replies to points raised in the general public interest by five journalists who will be nominated by the Broadcasting Authority.

2.3 Press Conferences will be regulated by a participating Chairperson who will ensure a fair and lively discussion conducted in the public interest. Details of the Chairpersons nominated by the Broadcasting Authority are at Appendix II. The Chairperson may either on his own initiative or in response to a request by a journalist require the speaker to answer a question which in his/her opinion has not really been answered.

2.4 The subjects for Press Conferences will be chosen by the party requesting airtime for this purpose.

#### **3. DEBATES**

3.1 This series of Debates is made up of four programmes of 45 minutes each allocated to the Nationalist Party and four programmes of 45 minutes each allocated to the Malta Labour Party. Participation will consist of one or two representatives from each political party and a Chairperson nominated by the Authority. The political party choosing the title of the debate shall also choose whether the representative from each political party

shall be one or two.

3.2 Debates will be conducted by a participating Chairman who starts off the programme by asking once the same question to the representative of each of the political parties. The subject for each programme will be chosen by the political party to whom the debate is allocated. The party shall inform the Authority at least one week prior to the date of the debate of the subject of the debate.

3.3 Debates may, at the parties' discretion, include visual material of not longer than 3 minutes on the subject selected for discussion which material should illustrate the party's views on the subject being debated. The visual material provided by both parties will be screened at the beginning of the programme and shall include the respective party logo which will be shown throughout in a corner of the screen. A party's decision not to provide such visual material will not preclude the screening of material provided by the other party. The party concerned will be responsible for the production of this material and for its cueing within these programmes.

3.4 The visual material provided is to be delivered on a Beta tape and on a VHS cassette to the Authority not later than two clear working days before the date of transmission.

#### **4. PARTY PRODUCTIONS AND POLITICAL SPOTS**

4.1 This series of party political broadcasts reserves 345 minutes of airtime for party productions and political spots and time in this section is allocated as follows to the Malta Labour Party, the Nationalist Party and Alternattiva Demokratika:

Labour Party - 154'

Nationalist Party - 179'

Alternattiva Demokratika - 12'

4.2 Party Productions may, at the parties' discretion, vary from the straight talk to an elaborate television production.

4.3 Party Productions consist of a number of programmes which may vary in duration from 5 to 10 minutes. Programmes can be slotted at the parties' discretion on any day except Saturdays, Sundays, Public Holidays and National Holidays.

4.4 Airtime for party productions can be availed of by each party at the rate of not more than one programme per week and the Authority must be informed in writing at least a week in advance of the selected transmission date.

4.5 No political party may request the Authority to slot a party production and political spots on the same day.

4.6 Political spots vary in duration between 5 and 60 seconds but will be rounded off for calculation purposes in multiples of 5 seconds.

4.7 Each party may request the Authority to slot a maximum of 12 spots in any one week.

4.8 Not more than 3 spots can be scheduled on any particular day and the scheduling of such spots would be decided upon by the Authority in an equitable manner.

4.9 Political spots and those party productions which the parties decide to have in pre-recording form, will be provided by the parties themselves and video tape recordings must comply with the station's technical requirements. The visual material provided is to be delivered on a Beta tape to the Authority not later than two clear working days before the date of transmission. A VHS copy is also to be delivered to the Authority at least two

clear working days before the selected transmission date. *Failure to comply with the above time limit will amount to the non-broadcast of the said party production and political spot.*

4.10 Party productions and spots shall include the respective party logo which will be shown throughout in a corner of the screen.

4.11 Political Spots will be scheduled during advertising breaks except for advertising breaks during news broadcasts. However, spots will not be shown immediately before or after any programme in this series of party political broadcasts.

4.12 No close ups shall be permitted in party productions and political spots of members of the public unless their written consent has been requested by the political party concerned and communicated to the Authority.

4.13 The Authority is hereby directing PBS Ltd. to broadcast all party productions and all political spots without the need of vetting them.

### PART 3

### APPENDICES

#### Appendix I

##### Schedule of Programmes

PROGRAMME	DATE	POLITICAL PARTY	CHAIR/INTERVIEWER
Debate	28th February, 2002	P.N.	Prof. Godfrey Pirotta
Debate	14th March, 2002	M.L.P.	Dr. Sandra Sladden
Debate	11th April, 2002	P.N.	Prof. Godfrey Pirotta
Debate	25th April, 2002	M.L.P.	Dr. Sandra Sladden
Debate	09th May, 2002	P.N.	Prof. Godfrey Pirotta
Debate	23rd May, 2002	M.L.P.	Dr. Sandra Sladden
Debate	03rd October, 2002	P.N.	Prof. Godfrey Pirotta
Debate	17th October, 2002	M.L.P.	Dr. Sandra Sladden

#### Appendix II

##### Chair/Interviewers

A.	Press Conferences:	Mr Michael Mallia / Mr Eucharist Abela
B.	Debates:	Dr Godfrey Pirotta / Dr Sandra Sladden
C.	"Wegibni"	Mr Godfrey Grima

#### Appendix III

##### Summary of Procedural Requirements

Programme	Airtime Bookings	Advance Notice and Subject	Transmission Days	Frequency
Press Conferences	Limited to one week (1.6)	Friday preceding day of broadcast (1.13)	Thursdays (1.4)	Once a month (1.5)
Debates*	Limited to one week (1.6)	Subject chosen by political party	Thursdays (1.4) vide Appendix I	Once a month (1.5)

Party Productions*	Limited to one week (1.6)	One Week (4.4)	Any weekday (1.5)	Once weekly (4.4)
Political Spots*	Limited to one week (1.6)	First come, first served basis (1.6)	Any day (1.5) but vide also (4.5)	Maximum of 12 spots per party per week with not more than 3 on any particular day (4.7 & 4.8)

The Community Channel - Channel 12 will carry programme repeats on Fridays at 8:30 p.m. approximately.

NOTE: Figures in brackets indicate paragraphs from procedural rules.

\* Visual material on Beta tape and VHS cassette is to be made available to the Authority at least 2 clear working days before transmission dates, vide (3.4) and (4.9).

## Appendix IV

### Form of indemnity in connection with party political broadcasts

Today, the \_\_\_\_ day of February, 2002, each of the parties here undersigned taking part in the scheme of party political broadcasts organized by the Broadcasting Authority for the year 2002 shall not knowingly include in any programme or political spot provided by them in any manner whatsoever and in particular whether by way of visual images, sounds, words, music, pictorial representations or actions any defamatory, seditious, libellous, offensive or any matter which constitutes an injurious falsehood or slander of title or any tort or of an infringement of any monopoly, copyright, trademark, patent or other similar criminal offence or contempt of court or breach or Parliamentary privilege or which violates the provisions of any law and shall at all times indemnify and keep the Authority, the PBS Limited and the other parties participating in this scheme indemnified from and against all claims, costs, damages, penalties, expenses and proceedings occasioned to or incurred by the Authority and the parties in consequence of the inclusion (whether knowingly or not) in any programme or political spot provided by them of any such matter.

Provided that this indemnity is being limited to the extent that the Broadcasting Authority, PBS Limited and the other parties participating in this scheme may have as a result of the above been ordered to pay such claims, costs, damages, penalties, and expenses, judicial or otherwise, by a court of law in a final judgement.

Provided also that the Broadcasting Authority, PBS Limited and/or the other parties, as the case may be, shall not later than eight days after a claim is made inform the party concerned of the claim and/or judicial or other proceedings against them as aforesaid, and such party shall be entitled to assist and defend jointly with the Broadcasting Authority, PBS Limited and/or other party, the said claim.

For and on behalf of ...

## 4.8 Cyprus

*The first commercial radio station was established in 1990 and the first commercial television broadcast was aired in 1992. At that time, the public service broadcaster, founded in the 1950s had a poor image. It was seen as a mere echo of the government. A dispute occurred in 1985 between the President of the republic and the two main political parties. These, a right wing party and a communist one, had a combined share of two thirds of the electorate and the majority in parliament. The two parties forced the adoption of special regulations for media access and fair coverage of elections. Since then both the radio and television landscapes have changed dramatically. However, the provisions made in the 1986 regulations are still in force. These are of genuine interest since they are the outcome of a fight between the president and the parliament in a presidential system of government.*

### **Legislative framework**

#### **The Cyprus Broadcasting Corporation Law, Cap 300A**

##### ***Unofficial translation from Greek***<sup>46</sup>

(...)

#### **Regulations under article 19 (5), Regulatory Administrative Acts 118/1986**

The Council of Ministers acting on its powers under article 19 of the Cyprus Broadcasting Corporation Law, issues the following regulations:

1. The present regulations will be referred to as the Cyprus Broadcasting Corporation Regulations (on equitable treatment of political parties) of 1985

2. Under the present law

“House” means the House of Representatives;

“News bulletins” means the news bulletins on radio and television;

“Republic” means the republic of Cyprus;

“Elections” means Presidential, Parliamentary and every other election carried out in conformity with the law;

“Commission” means the Commission established under regulation 7.

“Corporation” means the Cyprus broadcasting Corporation;

“Political Party” means the parties represented in Parliament and every other operating party having secured at least five per cent of the total valid votes in the last parliamentary elections.

3. The Corporation should at every time ensure equal treatment of the political parties, in conformity to the following provisions of the present regulations.

4. The Corporation provides balanced and objective information to the public about the activities of the political parties based on the principles governing the Code of News Reporting on Political Parties, in appendix A, of the present regulations.

5. For publicity purposes and during the electoral campaign periods, speeches, statements, interviews, press releases, assessments and comments by the President of the Republic, the ministers and other government and semi-government officials, as well as by senior officials of the public service and of semi-government organisations,

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<sup>46</sup> Translated by the author

and speeches, statements, interviews, press releases, assessments and comments by the political parties and their leaders or representatives are treated in the same way on a foot of equality in conformity to the Electoral Code, in appendix B.

6. a) In the case of elections, the Corporation should ensure equitable treatment of the political parties in respect of news coverage of their press releases and of their activities in general, of invitation to participate in relevant programmes of the Corporation, as well as with regard to offering them airtime on radio and television, to present their positions to the people.

b) In respect of the above, the Corporation should implement the Electoral Code, in appendix B.

c) The detail arrangements for the implementation of the electoral Code should be done in due time, in consultation between the Corporation and the political parties.

d) Under the present section, "political party" means any party contesting an election carried out in conformity with the law.

7. In order for the Corporation to implement as appropriate the Code of News Reporting on Political Parties and the Electoral Code (appendices A and B), a Commission is established, composed by representatives of the political parties represented in parliament and by equal number of officials representing the Corporation from the Direction and the news bulletin services.

#### Appendix A

#### **Code of the Cyprus Broadcasting Corporation on news reporting on the political parties**

*Unofficial translation from Greek<sup>47</sup>*

1. Party district conventions are covered in news bulletins in two-minute reports and island wide conventions in five-minute reports.

2. Rallies are covered in the first part of the news bulletin on television and reference is made at the beginning and the end of the bulletin. District rallies receive three-minute and island-wide five-minute coverage.

3. Press releases of the parties have their place in news bulletins independently of their content; whether positions are new and known or not, they receive up to three minutes coverage.

4. Total time of reports on other party activities or press releases should be up to two-minutes.

5. Press releases on organisational or internal affairs activities of the parties are not referred in news bulletins.

6. a) Only parties present in parliament are covered in news bulletins or participate in programmes. Their order of appearance will follow their vote share in last elections, unless news value suggests a different approach.

b) Reports on other parties should depend on the news value of the specific event.

7. Speeches and press releases on positions of the parties on current issues having a character of confrontation to positions by the government or other parties should be covered in news bulletins and on television with up to three minute reports.

8. a) Two press conferences of each party should be broadcast each year soon after the main news bulletin on television, each of a duration not more than 75 minutes.

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<sup>47</sup> Translated by the author

b) Announcements should be made on the above and there should also be three-minute reports on news bulletins and in other current affairs programmes.

9. There should be no coverage of speeches in connection to memorial services or other activities unless they have news value.

10. The Corporation should invite the party leaders or their representatives to television sixty-minute programmes.

11. Following a request by the House of Representatives, the Corporation should programme live broadcasts of its sessions.

## Appendix B

### **Electoral Code of the Cyprus Broadcasting Corporation**

#### ***I. News and television coverage***

1. The Corporation will cover in news bulletins and on television the party leaders' speeches in towns.

2. The party leaders will indicate to the Corporation five other meetings to be covered, at which they or other party cadres will speak.

3. There will be on everyday basis a special bulletin to announce the coming meetings of the parties. The parties should inform the Corporation about them in time.

4. In the course of the electoral period the Corporation will accept free of charge party press releases and announcements of total length 35 minutes per week.

#### ***II Participation in the programme "meeting with the press" or similar ones***

The Corporation will invite political leaders or their representatives to take part in the programme "Meeting with the press" or other similar television programmes. Three or four journalists (the same number in all programmes) will question them. The programme will last 75 minutes and follow the main evening news bulletin.

#### ***III Interviews***

During the electoral period the Corporation will interview the party leaders or their representatives on key issues (Cyprus issue, economy, education etc.). The questions will be the same for all and the interviews will last up to 20 minutes. They will be broadcast both on radio and television during the first period of the elections.

#### ***IV Free airtime on radio and television***

Towards the end of the electoral period the corporation will offer to the party leaders or their representatives up to 15 minutes free airtime on radio and television to address the people.

#### ***V Order (of appearance)***

a. In the cases II and III and IV appearances will be in reverse order to the parties' strength.

b. The time schedule of the broadcasts will be determined after consultation between the Corporation and the party leaders or their representatives.

#### ***VI Presidential candidates***

Under the provisions of this Code (appendices A and B) candidates to the office of the President supported by a party will be treated as party leaders.

**VII** In case the President of the Republic or a member of the council of ministers is party leader or representative or member of a party that will contest the elections with own candidate, news and television coverage of government achievements or future

projects will be suspended for a period of three months preceding the election day or soon after the announcement of the candidature.

*Done on 3<sup>rd</sup> October 1985*

## 4.9 Non-EU Countries -- Canada

*Western Europe has often followed different approaches on a variety of issues from that in the rest of the World particularly the USA and Canada. They differ on two major points. Firstly the European countries favour a more interventionist policy to regulate media. Secondly the Europeans have a disdain of money in politics. There is a fear that it could eventually corrupt the foundations of democracy, were politics left to market forces.*

*Part 16 of the Canadian Election Act is an example of how the issue of an electoral campaign is dealt with by an overseas country. The reader should note that Canada also differs from the United States on the matter of political broadcasting. It adopts both free airtime and paid political advertising.*

*The selected part of the law includes provisions guaranteeing political advertising in general and regulating the publication of opinion polls. Its focus is on political broadcasts in the form either of free airtime or paid political advertising. The latter is dealt with in a systematic way in an effort to eventually respond to all issues, without interfering with scheduling or editorial discretion.*

*The most interesting provisions are the appointment of a Broadcasting Arbitrator and the establishment of specific procedures for the allocation of airtime as between the parties, on the basis of criteria defined in the law. The arbitrator is in essence a coordinator of political actors. He/she seeks to carry out the mission assigned by law through consultation and close cooperation with the parties.*

*Other focal points are regulation of financial issues and the role of third parties taking part or making contributions to the election contenders. Limits are set as to the amount of any contributions. Procedures are also established both for overseeing and controlling contributions and the finances of each political party contesting the campaign.*

### Legislative framework

#### **CANADA ELECTIONS ACT -**

**[Excerpts]**

#### **PART 16 - COMMUNICATIONS<sup>48</sup>**

##### **Interpretation**

Definitions 319. The definitions in this section apply in this Part.

"election advertising" « *publicité électorale* » "election advertising" means the transmission to the public by any means during an election period of an advertising

<sup>48</sup> <http://laws.justice.gc.ca/en/E-2.01/text.html>

message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated. For greater certainty, it does not include

(a) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news;

(b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;

(c) the transmission of a document directly by a person or a group to their members, employees or shareholders, as the case may be; or

(d) the transmission by an individual, on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views.

*"election survey" « sondage électoral »* "election survey" means an opinion survey of how electors voted or will vote at an election or respecting an issue with which a registered party or candidate is associated.

*"network" « réseau »* "network" means a network as defined in subsection 2(1) of the Broadcasting Act, but does not include a temporary network operation as defined in that subsection.

*"network operator" « exploitant de réseau »* "network operator" means a person or undertaking to which permission has been granted by the Canadian Radio-television and Telecommunications Commission to form and operate a network.

*"prime time" « heures de grande écoute »* "prime time", in the case of a radio station, means the time between the hours of 6 a.m. and 9 a.m., noon and 2 p.m. and 4 p.m. and 7 p.m., and, in the case of a television station, means the hours between 6 p.m. and midnight.

### **Election Advertising**

**Message must be authorized** 320. A candidate or registered party, or a person acting on their behalf, who causes election advertising to be conducted shall mention in or on the message that its transmission was authorized by the official agent of the candidate or by the registered agent of the party, as the case may be.

**Government means of transmission** 321. (1) No person shall knowingly conduct election advertising or cause it to be conducted using a means of transmission of the Government of Canada.

**Application** (2) For the purpose of subsection (1), a person includes a group within the meaning of Part 17.

**Election advertising posters** 322. (1) No landlord or person acting on their behalf may prohibit a tenant from displaying election advertising posters on the premises to which the lease relates and no condominium corporation or any of its agents may prohibit the owner of a condominium unit from displaying election advertising posters on the premises of his or her unit.

**Permitted restrictions** (2) Despite subsection (1), a landlord, person, condominium corporation or agent referred to in that subsection may set reasonable conditions relating to the size or type of election advertising posters that may be displayed on the premises and may prohibit the display of election advertising posters in common areas of the building in which the premises are found.

**Blackout period** 323. (1) No person shall knowingly transmit election advertising to the public in an electoral district on polling day before the close of all of the polling stations in the electoral district.

**Interpretation** (2) The transmission to the public of a notice of an event that the leader of a registered party intends to attend or an invitation to meet or hear the leader of a registered party is not election advertising for the purpose of subsection (1).

**Definition of "person"** (3) For the purpose of subsection (1), a person includes a registered party and a group within the meaning of Part 17.

**Exceptions** 324. Subsection 323(1) does not apply in respect of

(a) the transmission of a message that was transmitted to the public on what is commonly known as the Internet before the blackout period described in that subsection and that was not changed during that period; or

(b) the distribution during that period of pamphlets or the posting of messages on signs, posters or banners.

**Prohibition -- prevention or impairment of transmission** 325. (1) No person shall prevent or impair the transmission to the public of an election advertising message without the consent of a person with authority to authorize its transmission.

**Exception** (2) Subsection (1) does not apply with respect to

(a) the prevention or impairment, by a public authority, of an unlawful transmission if reasonable notice has first been given to the person who authorized the transmission; or

(b) the removal by an employee of a public authority of a sign, poster or banner where the posting of it is a hazard to public safety.

### **Election Opinion Surveys**

**Transmission of election survey results** 326. (1) The first person who transmits the results of an election survey -- other than a survey that is described in section 327 -- to the public during an election period and any person who transmits them to the public within 24 hours after they are first transmitted to the public must provide the following together with the results:

(a) the name of the sponsor of the survey;

(b) the name of the person or organization that conducted the survey;

(c) the date on which or the period during which the survey was conducted;

(d) the population from which the sample of respondents was drawn;

(e) the number of people who were contacted to participate in the survey; and

(f) if applicable, the margin of error in respect of the data obtained.

**Additional information -- published surveys** (2) In addition to the information referred to in subsection (1), the following must be provided in the case of a transmission to the public by means other than broadcasting:

(a) the wording of the survey questions in respect of which data is obtained; and

(b) the means by which a report referred to in subsection (3) may be obtained.

**Report on survey results** (3) A sponsor of an election survey shall, at any time during an election period after the results of the survey are transmitted to the public, provide, on request, a copy of a written report on the results of the survey, as transmitted under subsection (1). The report shall include the following, as applicable:

(a) the name and address of the sponsor of the survey;

(b) the name and address of the person or organization that conducted the survey;

- (c) the date on which or the period during which the survey was conducted;
- (d) information about the method used to collect the data from which the survey results are derived, including
  - (i) the sampling method,
  - (ii) the population from which the sample was drawn,
  - (iii) the size of the initial sample,
  - (iv) the number of individuals who were asked to participate in the survey and the numbers and respective percentages of them who participated in the survey, refused to participate in the survey, and were ineligible to participate in the survey,
  - (v) the dates and time of day of the interviews,
  - (vi) the method used to recalculate data to take into account in the survey the results of participants who expressed no opinion, were undecided or failed to respond to any or all of the survey questions, and
  - (vii) any weighting factors or normalization procedures used in deriving the results of the survey; and
- (e) the wording of the survey questions and, if applicable, the margins of error in respect of the data obtained.

Fee may be charged (4) A sponsor may charge a fee of up to \$0.25 per page for a copy of a report provided under subsection (3).

**Broadcast of surveys not based on recognized statistical methods** 327. The first person who transmits the results of an election survey that is not based on recognized statistical methods to the public during an election period and any person who transmits them within 24 hours after they are first transmitted to the public must indicate that the survey was not based on recognized statistical methods.

**Prohibition -- causing transmission of election survey results during blackout period** 328. (1) No person shall knowingly cause to be transmitted to the public, in an electoral district on polling day before the close of all of the polling stations in that electoral district, the results of an election survey that have not previously been transmitted to the public.

**Prohibition -- transmission of election survey results during blackout period** (2) No person shall transmit to the public, in an electoral district on polling day before the close of all of the polling stations in that electoral district, the results of an election survey that have not previously been transmitted to the public.

**Application** (3) For the purpose of this section, a person includes a group within the meaning of Part 17.

#### **Premature Transmission**

**Prohibition -- premature transmission of results** 329. No person shall transmit the result or purported result of the vote in an electoral district to the public in another electoral district before the close of all of the polling stations in that other electoral district.

#### **Broadcasting outside Canada**

**Prohibition -- use of broadcasting station outside Canada** 330. (1) No person shall, with intent to influence persons to vote or refrain from voting or vote or refrain from voting for a particular candidate at an election, use, aid, abet, counsel or procure the use of a broadcasting station outside Canada, during an election period, for the broadcasting of any matter having reference to an election.

**Prohibition -- broadcasting outside Canada** (2) During an election period, no person shall broadcast, outside Canada, election advertising with respect to an election.

**Non-interference by Foreigners**

**Prohibition -- inducements by non-residents** 331. No person who does not reside in Canada shall, during an election period, in any way induce electors to vote or refrain from voting or vote or refrain from voting for a particular candidate unless the person is

(a) a Canadian citizen; or

(b) a permanent resident as defined in subsection 2(1) of the Immigration Act.

**Political Broadcasts**

**Appointment of Broadcasting Arbitrator** 332. (1) A Broadcasting Arbitrator shall be appointed by the Chief Electoral Officer without delay after the consultations described in section 333. The Broadcasting Arbitrator shall be

(a) chosen by a unanimous decision of representatives of registered parties; or

(b) named by the Chief Electoral Officer, if the consultations do not result in a unanimous decision.

**Term of office** (2) The term of office of the Broadcasting Arbitrator shall expire six months after polling day at the general election next following his or her appointment.

**Removal for cause** (3) The Chief Electoral Officer may remove the Broadcasting Arbitrator from office only for cause.

**Eligible for re-appointment** (4) A Broadcasting Arbitrator whose term of office has expired is eligible to be re-appointed.

**Salary** (5) A Broadcasting Arbitrator shall be paid the salary or other remuneration that may be fixed by the Chief Electoral Officer.

**Convening of representatives** 333. (1) The Chief Electoral Officer shall hold a meeting of two representatives of each registered party represented in the House of Commons at that time, or if Parliament is dissolved, at the time of dissolution, designated in writing by their party leader, for the purpose of holding consultations to choose a Broadcasting Arbitrator. The meeting shall be held within

(a) 90 days after polling day at a general election; or

(b) 14 days after the day on which the Broadcasting Arbitrator dies, becomes incapacitated, resigns or is removed from office, if that day is not during the election period of a general election.

**Chairperson** (2) The Chief Electoral Officer shall designate the Chairperson at the meeting referred to in subsection (1) and at all subsequent consultations.

**Report** (3) The representatives of the registered parties referred to in subsection (1) shall make a report signed by each of them to the Chief Electoral Officer of the results of their consultations no later than

(a) six weeks after a meeting referred to in paragraph (1)(a); and

(b) four weeks after a meeting referred to in paragraph (1)(b).

**Vacancy during election period** 334. In the event of the death, incapacity, resignation or removal of the Broadcasting Arbitrator during the election period of a general election, the Chief Electoral Officer shall appoint a new Broadcasting Arbitrator without delay.

Broadcasting time to be provided to registered parties 335. (1) In the period beginning on the issue of the writs for a general election and ending at midnight on the day before polling day, every broadcaster shall, subject to the regulations made under the Broadcasting Act and the conditions of its licence, make available, for purchase by all registered parties for the transmission of political announcements and other programming produced by or on behalf of the registered parties, six and one-half hours of broadcasting time during prime time on its facilities.

**When broadcaster affiliated with network** (2) If a broadcaster is affiliated with a network, the part of the broadcasting time to be made available under subsection (1) that may be determined by agreement between the broadcaster and the network operator shall be made available by the network operator during the portion of the broadcaster's prime time broadcasting schedule that has been delegated to the control of the network operator.

2000, c. 9, s. 335; 2001, c. 21, s. 17.

**Request for meeting** 336. (1) The Broadcasting Arbitrator shall convene a meeting of representatives of all registered parties to consult on the allocation of broadcasting time made available under section 335 within 30 days after the receipt of a written request from the chief agent of a registered party, or six months after the Broadcasting Arbitrator takes office, whichever is earlier.

**Time of request** (2) The written request may not be made until the Broadcasting Arbitrator has been in office for 60 days.

**Chairperson** (3) The Broadcasting Arbitrator shall act as Chairperson at any meeting referred to in subsection (1).

**No allocation** 337. (1) A registered party shall not be allocated broadcasting time if, after receiving notice of the meeting referred to in subsection 336(1), the party (a) indicates in writing to the Broadcasting Arbitrator that it does not wish to be allocated broadcasting time; or

(b) fails to communicate to the Broadcasting Arbitrator its intentions regarding the allocation of the broadcasting time and fails to have its representative attend the meeting.

**Agreement on allocation** (2) Unanimous agreement of the registered parties on the allocation of the broadcasting time is binding on all registered parties.

**Broadcasting Arbitrator decides when no agreement** (3) If unanimous agreement is not reached within four weeks after the meeting referred to in subsection 336(1), the Broadcasting Arbitrator shall allocate the broadcasting time, and that allocation is binding on all registered parties.

**Factors in allocation** 338. (1) Subject to subsections (3) to (5), in allocating broadcasting time, the Broadcasting Arbitrator shall give equal weight to

(a) the percentage of seats in the House of Commons held by each of the registered parties at the previous general election; and

(b) the percentage of the popular vote at the previous general election of each registered party.

The Broadcasting Arbitrator shall in addition give half the weight given to each of the factors referred to in paragraphs (a) and (b) to the number of candidates endorsed by each of the registered parties at the previous general election, expressed as a percentage of all candidates endorsed by all registered parties at that election.

**Allocation where merger of parties** (2) Subject to subsections (3) to (5), in allocating broadcasting time in the case of the merger of two or more registered parties, the Broadcasting Arbitrator shall

(a) in determining the percentage of seats held by a merged party at the previous general election for the purpose of paragraph (1)(a), include the total number of seats held by the merging parties;

(b) in determining the percentage of the popular vote of a merged party at the previous general election for the purpose of paragraph (1)(b), include the total number of votes obtained by the merging parties; and

(c) for the purpose of giving the half-weight under subsection (1), assign to the merged party the number of candidates endorsed by the merging party that had the greatest number of candidates at that election.

**No allocation in excess of 50%** (3) In no case shall the Broadcasting Arbitrator allocate more than 50% of the total of the broadcasting time to a registered party.

**Allocation of time in excess of 50%** (4) If the calculation under subsection (1) would give more than 50% of the total of the broadcasting time to a registered party, the Broadcasting Arbitrator shall allocate the excess amount to the other registered parties entitled to broadcasting time on a proportionate basis.

**Discretion re allocation** (5) If the Broadcasting Arbitrator considers that an allocation determined in accordance with subsection (1) would be unfair to a registered party or contrary to the public interest, the allocation may be modified, subject to subsections (3) and (4), in any manner that the Broadcasting Arbitrator considers appropriate.

**Notification of allocation** (6) The Broadcasting Arbitrator shall, as soon as possible, give notice in writing of every allocation of broadcasting time made by the Broadcasting Arbitrator or by the registered parties to

(a) every registered party; and

(b) every political party that became an eligible party either before or after the allocation.

The notice shall advise an eligible party referred to in paragraph (b) that it has 30 days after the receipt of the notice to request that broadcasting time be made available to it, for purchase, under section 339.

**New parties entitled to broadcasting time** 339. (1) Subject to subsection (4), every eligible party referred to in paragraph 338(6)(b) that makes a request as described in subsection 338(6) within the time referred to in that subsection is entitled to purchase broadcasting time in an amount equal to the lesser of

(a) the smallest portion of broadcasting time to be made available under section 335 allocated to a registered party under sections 337 and 338, and

(b) six minutes.

**Parties not entitled to time** (2) An eligible party referred to in paragraph 338(6)(b) is not entitled to have any broadcasting time made available to it under this section if the party

(a) indicates in writing that it does not wish any broadcasting time under this section; or

(b) fails to make a request as described in subsection 338(6) within the time referred to in that subsection.

**Broadcasting time to be provided to new eligible parties** (3) In addition to the broadcasting time to be made available under section 335, and within the period referred to in that section, every broadcaster shall, subject to the regulations made under the Broadcasting Act and to the conditions of its licence, make available, for purchase by every eligible party entitled to broadcasting time under this section, broadcasting time in the amount determined under this section for the eligible party for the transmission of political announcements and other programming produced by or on behalf of the eligible party during prime time on that broadcaster's facilities.

**Maximum of 39 minutes** (4) The maximum amount of broadcasting time available for purchase by eligible parties under this section is 39 minutes and, once that amount of broadcasting time is reached, all entitlement under this section shall be altered or established to be of whatever number of minutes or portions of minutes is necessary so that all eligible parties requesting time under this section receive the same amount of time within the 39-minute limit.

**Reallocation in case of suspension** 340. (1) Where a registered party to which broadcasting time has been allocated under section 335 is subsequently suspended and a notice of its suspension is published in the Canada Gazette, the Broadcasting Arbitrator, within two weeks after the suspension, shall convene the representatives of the remaining registered parties and eligible parties to which broadcasting time has been allocated for the purpose of reallocating that party's broadcasting time.

**Reallocation in case of loss of eligibility** (2) Where an eligible party to which broadcasting time has been allocated under section 339 subsequently ceases to be an eligible party, the Broadcasting Arbitrator, within two weeks after the cessation of eligibility, shall convene the representatives of the remaining registered parties and eligible parties to whom broadcasting time has been allocated for the purpose of reallocating that party's broadcasting time.

**Exception** (3) If the suspension or cessation of eligibility referred to in subsection (1) or (2), respectively, occurs after the issue of the writs for a general election, the broadcasting time that was allocated to the suspended party or to the party that has ceased to be eligible shall not be reallocated.

**Reallocation in case of merger** 341. If two or more registered parties merge after an allocation of the broadcasting time to be made available under section 335, the Broadcasting Arbitrator shall without delay convene the representatives of the registered parties, including the merged parties, for the purpose of reallocating the broadcasting time allocated to all registered parties.

**Broadcasters to be notified** 342. (1) The Broadcasting Arbitrator shall notify the Canadian Radio-television and Telecommunications Commission of every allocation under sections 337 and 338 and every entitlement under section 339 as soon as possible after it is made or requested and the Commission shall notify every broadcaster and every network operator of every such allocation and entitlement without delay after it is made and again immediately after the issue of the writs for the next general election.

**Information to parties** (2) The Broadcasting Arbitrator shall, on request, provide all registered parties and all eligible parties referred to in paragraph 338(6)(b) with the names and addresses of all broadcasters and network operators.

**Annual review** 343. (1) In each of the calendar years after the calendar year in which an allocation of broadcasting time has been made under sections 337 and 338 or an eligible party has requested and has become entitled to broadcasting time under section 339, the Broadcasting Arbitrator shall convene and chair a meeting of the representatives of all registered parties to review the allocation or entitlement.

**Reduction to six and one-half hours** (2) If, at a meeting referred to in subsection (1), it is determined that the total broadcasting time allocated or requested exceeds six and one-half hours, the Broadcasting Arbitrator shall reduce the allocated or requested time to six and one-half hours on a proportionate basis and that reduction shall be final and binding on all registered parties and eligible parties.

**Definitions** 344. (1) The definitions in this subsection apply in subsections (2) and (5).

*"commercial time" « temps commercial »* "commercial time" means any period of two minutes or less during which a broadcaster normally presents commercial messages, public service announcements or station or network identification.

*"program time" « durée de l'émission »* "program time" means any period longer than two minutes during which a broadcaster does not normally present commercial messages, public service announcements or station or network identification.

**Notice of preference by party** (2) Each registered party and each eligible party entitled to purchase broadcasting time under this Act shall, not later than 10 days after the issue of the writs for a general election, send a notice in writing to each broadcaster and each network operator from whom it intends to purchase broadcasting time, setting out its preference as to the proportion of commercial time and program time to be made available to it and the days on which and the hours during which that time as so proportioned is to be made available, but at no time shall that party obtain broadcasting time before the 5th day after the notice is received by the broadcaster or network operator.

**Consultation to reach agreement** (3) Every broadcaster or network operator who receives a notice under subsection (2) shall, within two days after its receipt, consult with representatives of the registered party or eligible party that sent the notice for the purpose of reaching an agreement on the requests contained in it.

**When no agreement** (4) If no agreement is reached under subsection (3) within two days after the commencement of the consultation required by that subsection, the matter shall be referred to the Broadcasting Arbitrator who shall decide on the requests without delay and give notice of his or her decision to the broadcaster or network operator and to the representatives of the registered party or eligible party that made the requests.

**Factors in decision** (5) In making a decision under subsection (4), the Broadcasting Arbitrator shall take into account the following principles:

(a) that each registered party and each eligible party should have the freedom and flexibility to determine the proportion of commercial time and program time to be made available to it and the days on which and the hours during which that time as so proportioned should be made available; and

(b) that any broadcasting time to be made available to a registered party or eligible party should be made available fairly throughout prime time.

**Decision binding** (6) A decision of the Broadcasting Arbitrator under subsection (4) is final and binding on the registered party or eligible party, as the case may be, and the broadcaster or network operator.

**Free broadcasting time** 345. (1) In the period beginning on the issue of the writs for a general election and ending at midnight on the day before polling day at that election, every network operator shall, subject to the regulations made under the Broadcasting Act and to the conditions of its licence, make available, at no cost, to the registered parties and eligible parties referred to in subsection (2), for the transmission of political announcements and other programming produced by or on behalf of those parties, broadcasting time as determined under that subsection if the network formed and operated by the network operator

(a) reaches a majority of Canadians whose mother tongue is the same as that in which the network broadcasts;

(b) is licensed with respect to more than a particular series of programs or type of programming; and

(c) does not involve a distribution undertaking as defined in subsection 2(1) of the Broadcasting Act.

**Determination of free broadcasting time** (2) For the purpose of subsection (1), the minimum amount of broadcasting time that a network operator is to make available shall be no less than the amount of free broadcasting time made available by it at the last general election and shall be made available as follows:

(a) two minutes to every registered party referred to in paragraph 337(1)(a) and every eligible party referred to in paragraph 339(2)(a); and

(b) the remainder to all registered parties that have been allocated any of the broadcasting time to be made available under section 335 and all eligible parties that have requested broadcasting time under section 339 in the proportion that their allocated or requested purchasable broadcasting time bears to the total broadcasting time allocated or requested under those sections.

**Free time not election expense** (3) The value of free broadcasting time made available to a registered party under this section shall not be taken into consideration in calculating its election expenses within the meaning of section 407.

**Determination of population reached** (4) For the purpose of subsection (1), a network is deemed to reach

(a) people resident within the areas served by broadcasting stations affiliated to the network that

(i) in the case of A.M. radio stations, are enclosed by the night-time interference-free official contour of the stations,

(ii) in the case of F.M. radio stations, are enclosed by the 50 mV per metre official contour of the stations, and

(iii) in the case of television stations, are enclosed by the Grade B official contour of the stations; and

(b) people resident outside the areas described in paragraph (a) to whom the signals of broadcasting stations affiliated to the network are available via distribution undertakings licensed by the Canadian Radio-television and Telecommunications Commission.

2000, c. 9, s. 345; 2001, c. 21, s. 18.

**Broadcasting Arbitrator to prepare guidelines** 346. The Broadcasting Arbitrator shall, not later than two days after the issue of the writs for a general election, prepare and send to the Canadian Radio-television and Telecommunications Commission a set of guidelines respecting

- (a) the allocation of or entitlement to broadcasting time under this Act;
- (b) the procedures for booking broadcasting time by registered parties and eligible parties; and
- (c) any other matters that may be pertinent to the conduct of broadcasters and network operators under this Act.

**C.R.T.C. to prepare and send guidelines** 347. The Canadian Radio-television and Telecommunications Commission shall, not later than four days after the issue of the writs for a general election, prepare a set of guidelines respecting the applicability of the Broadcasting Act and the regulations made under that Act to the conduct of broadcasters and network operators in relation to a general election and send them, together with the set of guidelines sent by the Broadcasting Arbitrator under section 346, to all broadcasters and network operators.

**Prohibition relating to rates charged** 348. No person shall charge a registered party, any other political party or a candidate or a person acting on behalf of any of them,

- (a) a rate for broadcasting time made available to the party or candidate, in the period beginning on the issue of the writs and ending at midnight on the day before polling day, that exceeds the lowest rate charged by the person for an equal amount of equivalent time on the same facilities made available to any other person at any time within that period; or
- (b) a rate for an advertisement in a periodical publication published or distributed and made public in the period referred to in paragraph (a) that exceeds the lowest rate charged by the person for an equal amount of equivalent advertising space in the same issue of the periodical publication or in any other issue of it that is published or distributed and made public in that period.

## **PART 17 THIRD PARTY ELECTION ADVERTISING**

**Definitions** 349. The definitions in this section apply in this Part.

"*election advertising*" « *publicité électorale* » "election advertising" has the same meaning as in section 319.

"*election advertising expense*" « *dépenses de publicité électorale* » "election advertising expense" means an expense incurred in relation to

- (a) the production of an election advertising message; and
- (b) the acquisition of the means of transmission to the public of an election advertising message.

"*expenses*" « *dépenses* » "expenses" means

- (a) amounts paid;
- (b) liabilities incurred;
- (c) the commercial value of property and services, other than volunteer labour, that are donated or provided; and

(d) amounts that represent the difference between an amount paid or a liability incurred for property and services, other than volunteer labour, and the commercial value of the property and services, when they are provided at less than their commercial value.

"group" « *groupe* » "group" means an unincorporated trade union, trade association or other group of persons acting together by mutual consent for a common purpose.

"third party" « *tiers* » "third party" means a person or a group, other than a candidate, registered party or electoral district association of a registered party.

**Spending limit** 350. (1) A third party shall not incur election advertising expenses of a total amount of more than \$150,000 during an election period in relation to a general election.

**Spending limit -- electoral district** (2) Not more than \$3,000 of the total amount referred to in subsection (1) shall be incurred to promote or oppose the election of one or more candidates in a given electoral district, including by

(a) naming them;

(b) showing their likenesses;

(c) identifying them by their respective political affiliations; or

(d) taking a position on an issue with which they are particularly associated.

**Expenses re party leader** (3) The limit set out in subsection (2) only applies to an amount incurred with respect to a leader of a registered party or eligible party to the extent that it is incurred to promote or oppose his or her election in a given electoral district.

**Spending limit -- by-election** (4) A third party shall not incur election advertising expenses of a total amount of more than \$3,000 in a given electoral district during the election period of a by-election.

**Third party inflation adjustment factor** (5) The amounts referred to in subsections (1), (2) and (4) shall be multiplied by the inflation adjustment factor referred to in section 414 that is in effect on the issue of the writ or writs.

**No combination to exceed limit** 351. A third party shall not circumvent, or attempt to circumvent, a limit set out in section 350 in any manner, including by splitting itself into two or more third parties for the purpose of circumventing the limit or acting in collusion with another third party so that their combined election advertising expenses exceed the limit.

**Advertising must name third party** 352. A third party shall identify itself in any election advertising placed by it and indicate that it has authorized the advertising.

**Registration requirement for third parties** 353. (1) A third party shall register immediately after having incurred election advertising expenses of a total amount of \$500 and may not register before the issue of the writ.

**Application for registration** (2) An application for registration shall be sent to the Chief Electoral Officer in the prescribed form and shall include

(a) the name, address and telephone number of

(i) if the third party is an individual, the individual,

(ii) if the third party is a corporation, the corporation and the officer who has signing authority for it, and

(iii) if the third party is a group, the group and a person who is responsible for the group;

(b) the signature of the individual, officer or person referred to in subparagraph (a)(i), (ii) or (iii), respectively, as the case may be;

(c) the address and telephone number of the office of the third party where its books and records are kept and of the office to which communications may be addressed; and

(d) the name, address and telephone number of the third party's financial agent.

**Declaration of financial agent to accompany application** (3) An application under subsection (2) must be accompanied by a declaration signed by the financial agent accepting the appointment.

**New financial agent** (4) If a third party's financial agent is replaced, it shall, without delay, provide the Chief Electoral Officer with the new financial agent's name, address and telephone number and a declaration signed by the new financial agent accepting the appointment.

**Trade union or corporation** (5) If the third party is a trade union, corporation or other entity with a governing body, the application must include a copy of the resolution passed by its governing body authorizing it to incur election advertising expenses.

**Examination of application** (6) The Chief Electoral Officer shall, without delay after receiving an application, determine whether the requirements set out in subsections (1) to (3) and (5) are met and shall then notify the person who signed the application whether the third party is registered. In the case of a refusal to register, the Chief Electoral Officer shall give reasons for the refusal.

**Application rejected** (7) A third party may not be registered under a name that, in the opinion of the Chief Electoral Officer, is likely to be confused with the name of a candidate, registered party, registered third party or eligible party.

**Registration ends** (8) The registration of a third party is valid only for the election period during which the application is made, but the third party continues to be subject to the requirement to file an election advertising report under subsection 359(1).

**Appointment of financial agent** 354. (1) A third party that is required to register under subsection 353(1) shall appoint a financial agent who may be a person who is authorized to sign an application for registration made under that subsection.

**Financial agent -- ineligible persons** (2) The following persons are not eligible to be a financial agent of a third party:

(a) a candidate or an official agent of a candidate;

(b) a person who is the chief agent, or a registered agent, of a registered party;

(c) an election officer or an employee of a returning officer; and

(d) a person who is not a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration Act.

**Requirement to appoint auditor** 355. (1) A third party that incurs election advertising expenses in an aggregate amount of \$5,000 or more must appoint an auditor without delay.

**Eligibility criteria** (2) The following are eligible to be an auditor for a third party:

(a) a person who is a member in good standing of a corporation, an association or an institute of professional accountants; or

(b) a partnership every partner of which is a member in good standing of a corporation, an association or an institute of professional accountants.

**Ineligibility criteria** (3) The following persons are not eligible to be an auditor for a third party:

- (a) the third party's financial agent;
- (b) a person who signed the application made under subsection 353(2);
- (c) an election officer;
- (d) a candidate;
- (e) the official agent of a candidate;
- (f) the chief agent of a registered party or an eligible party; and
- (g) a registered agent of a registered party.

**Notification of appointment** (4) Every third party, without delay after an auditor is appointed, must provide the Chief Electoral Officer with the auditor's name, address, telephone number and occupation and a signed declaration accepting the appointment.

**New auditor** (5) If a third party's auditor is replaced, it must, without delay, provide the Chief Electoral Officer with the new auditor's name, address, telephone number and occupation and a signed declaration accepting the appointment.

**Registry of third parties** 356. The Chief Electoral Officer shall maintain, for the period that he or she considers appropriate, a registry of third parties in which is recorded, in relation to each third party, the information referred to in subsections 353(2) and 355(4) and (5).

**Authorization by financial agent for expenses, etc.** 357. (1) Every contribution made during an election period to a registered third party for election advertising purposes must be accepted by, and every election advertising expense incurred on behalf of a third party must be authorized by, its financial agent.

**Delegation** (2) A financial agent may authorize a person to accept contributions or incur election advertising expenses, but that authorization does not limit the responsibility of the financial agent.

**Prohibited use of certain contributions** (3) No third party shall use a contribution for election advertising if the third party does not know the name and address of the contributor or is otherwise unable to determine within which class of contributor referred to in subsection 359(6) they fall.

**Prohibition -- use of foreign contributions** 358. No third party shall use a contribution for election advertising purposes if the contribution is from

- (a) a person who is not a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration Act;
- (b) a corporation or an association that does not carry on business in Canada;
- (c) a trade union that does not hold bargaining rights for employees in Canada;
- (d) a foreign political party; or
- (e) a foreign government or an agent of one.

**Election advertising report** 359. (1) Every third party that is required to be registered in accordance with subsection 353(1) shall file an election advertising report in the prescribed form with the Chief Electoral Officer within four months after polling day.

**Contents of report** (2) An election advertising report shall contain

- (a) in the case of a general election,

(i) a list of election advertising expenses referred to in subsection 350(2) and the time and place of the broadcast or publication of the advertisements to which the expenses relate, and

(ii) a list of all election advertising expenses other than those referred to in subparagraph (i) and the time and place of broadcast or publication of the advertisements to which the expenses relate; and

(b) in the case of a by-election, a list of election advertising expenses referred to in subsection 350(4) and the time and place of the broadcast or publication of the advertisements to which the expenses relate.

**When no expenses** (3) If a third party has not incurred expenses referred to in paragraph (2)(a) or (b), that fact shall be indicated in its election advertising report.

**Contributions** (4) The election advertising report shall include

(a) the amount, by class of contributor, of contributions for election advertising purposes that were received in the period beginning six months before the issue of the writ and ending on polling day;

(b) for each contributor who made contributions of a total amount of more than \$200 for election advertising purposes during the period referred to in paragraph (a), subject to paragraph (b.1), their name, address and class, and the amount and date of each contribution;

(b.1) in the case of a numbered company that is a contributor referred to in paragraph (b), the name of the chief executive officer or president of that company; and

(c) the amount, other than an amount of a contribution referred to in paragraph (a), that was paid out of the third party's own funds for election advertising expenses.

**Loans**(5) For the purpose of subsection (4), a contribution includes a loan.

**Categories** (6) For the purposes of paragraphs (4)(a) and (b), the following are the classes of contributor:

(a) individuals;

(b) businesses;

(c) commercial organizations;

(d) governments;

(e) trade unions;

(f) corporations without share capital other than trade unions; and

(g) unincorporated organizations or associations other than trade unions.

**Names must be provided** (7) If the third party is unable to identify which contributions were received for election advertising purposes in the period referred to in paragraph (4)(a), it must list, subject to paragraph (4)(b.1), the names and addresses of every contributor who donated a total of more than \$200 to it during that period.

**Declaration** (8) An election advertising report shall include the signed declarations of the financial agent and, if different, of the person who signed the application made under subsection 353(2) that the report is accurate.

**Bills, receipts** (9) A third party shall, at the request of the Chief Electoral Officer, provide the original of any bill, voucher or receipt in relation to an election advertising expense that is in an amount of more than \$50.

2000, c. 9, s. 359; 2001, c. 21, s. 20.

**Auditor's report** 360. (1) The election advertising report of a third party that incurs \$5,000 or more in election advertising expenses must include a report made under subsection (2).

**Auditor's report** (2) The third party's auditor shall report on the election advertising report and shall make any examination that will enable the auditor to give an opinion in the report as to whether the election advertising report presents fairly the information contained in the accounting records on which it is based.

**Statement** (3) An auditor shall include in the report any statement that the auditor considers necessary, when

(a) the election advertising report that is the subject of the auditor's report does not present fairly the information contained in the accounting records on which it is based;

(b) the auditor has not received from the third party all of the required information and explanation; or

(c) based on the auditor's examination, it appears that proper accounting records have not been kept by the third party.

**Right of access** (4) The auditor shall have access at any reasonable time to all of the documents of the third party, and may require the third party to provide any information or explanation, that, in the auditor's opinion, is necessary to enable the auditor to prepare the report.

**Corrections to election expenses report** 361. The Chief Electoral Officer may make a correction in a report referred to in subsection 359(1) if the error does not materially affect the substance of the report.

**Publication** 362. The Chief Electoral Officer shall, in the manner he or she considers appropriate,

(a) publish the names and addresses of registered third parties, as they are registered; and

(b) publish, within one year after the issue of the writ, reports made under subsection 359(1).

## CHAPTER 5

### THE BROADCASTERS

#### 5.0 Introduction

*National legal frameworks determine principles, guidelines and specific measures for broadcasters and participants in elections (candidates, political parties, political and other groups). While it appears from the preceding sections that principles are universal but no common pattern exists in the frameworks adopted. This is true in relation to the nature and the type of regulation of specific issues, and the extent to which the latter are subjects of the relevant framework.*

*The media are called upon to implement the rules and respect the principles. They also favour a variety of approaches depending both on the extent and the depth of the legal framework. Where the authorities have voted a liberal ruling, the margin for media action is extensive. In such circumstances the media eventually need to work out a general framework in the form of a code of conduct or of guidelines. Such a code is necessary to establish the general rules that they will follow during an election and to implement the higher principals in their schedule of election broadcasts. Where the authorities schedule nearly everything, it still rests with the broadcasters to realise specific programmes assuming editorial responsibility.*

*The examples quoted in this section illustrate different cases . The BBC model is often used as a reference point because of the high standards it sets and the prestige and tradition it enjoys. Having said this, it should be stressed that no model has universal application for implementation. The Belgian French-speaking Community's public broadcaster RTBF is our second example. In conformity with the relevant recommendations of the regulatory authority (CSA, setting a very general framework that calls for balanced coverage), and in conformity to its statutes RTBF elaborated an extensive framework of conduct at the time of the May 2003 elections to the legislature. Another example comes from a private broadcaster, MEGA Channel, in Cyprus. In the quoted text the channel sets out the principles that governed its policy for the May 2001 parliamentary elections. These included a code of conduct with respect to the various electoral activities and the schedule of programmes.*

*Finally, excerpts are included from an article by Karen Siune, in *Political Advertising in Western Democracies: parties and candidates on television*, by Lynda Lee Kaid, Christina Holtz-Bacha (editors) pp. 129-132. These provide information on the situation in two northern countries, Denmark and Norway. In these cases regulations do not emanate from the national legal system. The broadcasters themselves adopted frameworks to deal with party access to radio and television programmes.*

*It appears from the examples quoted that several provisions in the broadcaster's texts are often found in legal texts or regulations voted by national authorities in other*

*countries. In many cases media professionals repeat in their codes of conduct and sets of guidelines the relevant provisions from national legislation or other regulatory frameworks. There are also a number of cases where they produce their own sets of operating principles and guidelines interpreting generic rules and fundamental principles set in the national legal system. This illustrates the variety of options and the room for action either a national legislator and/or regulator and ultimately media professionals have at their disposal when dealing with similar issues. The national general context and traditions will guide the choice for minimal or extensive legislative provisions by the authorities. This leaves to the broadcasters and journalists some margin of self-regulation to supplement, interpret or extend them.*

*The examples illustrate the wide spectrum of issues that professionals have to face. These show how media professionals transform principles into guidelines. They illustrate measures and actions that professionals have to take for such guidelines to be implemented in the form of choices made concerning approaches and specific programmes.*

## **5.1 The United Kingdom -- The British Broadcasting Corporation**

*The British Broadcasting Corporation (BBC) is acknowledged worldwide as the point of reference for all broadcasters. The spectrum of services it offers, the norms and standards it has set and the quality of its programmes are viewed as a model for all broadcasting professionals.*

*The Corporation is not bound by obligations set in national legislation. However, its Board of Governors has drawn up detailed sets of Producers' Guidelines and other guiding texts. In these the principles are explained along with the policy lines and other elements that should govern the producers work with respect to a very wide variety of issues. Further guidance is issued for special occasions or in respect of specific issues. This is the case with polls, general or local authority elections and others of this kind. The selection here arose from the 2001 general election, and the 2002 mayoral and local elections.*

*In the first case, after a brief description of the overall context and reference to the participants, guidance is given as to the meaning and as to the ways fairness can be achieved and how small parties should be treated.*

*In the second case, it should be noted that mayoral and local elections, present far more issues and these are more complicated. The specific guidelines set out the rules that should be followed in dealing with each case, the regions or areas, the candidates etc.*

*It should be noted that these internal guidelines are made public, stressing the need for transparency on one hand and the broadcaster's accountability vis-à-vis the public on the other.*

## 5.1a The British Broadcasting Corporation

### **Guidance for all BBC Programme Makers during the General Election Campaign<sup>49</sup>**

*Please see also Producers' Guidelines, Online guidelines and guidelines for visually impaired viewers.*

There is no area of broadcasting where the BBC's commitment to impartiality is more closely scrutinised than in reporting election campaigns. Election 2001 will present us with a number of specific new challenges: –

- Devolution has changed the political map of the UK. We are effectively dealing with 3 main parties in England, and a different combination of 4 main parties in Scotland, Wales and Northern Ireland. In addition minor parties, have had significant electoral successes under PR elections which have taken place since 1997.
- This will be the first full Online election.
- The abolition of Section 93 of the RPA will enable programme makers to make far more extensive use of candidates and we will have new guidelines to ensure fairness particularly in constituency reports.

These guidance notes which supplement Chapters 2 and 34 of the Producers' Guidelines, have been drawn up following extensive consultation with a wide range of BBC programme makers across the UK who will have to make them work in practice. They are intended to offer a framework within which–

- Journalists can operate in as free and creative an environment as possible.
- Whilst scrupulously delivering to audiences impartial reporting of the campaign which gives them fair coverage and rigorous scrutiny of the policies and campaigns of all parties.
- This guidance is intended to assist programme makers, editors and the BBC as a whole to achieve fairness.

They apply to all BBC programmes and outlets. Programmes which do not usually cover political subjects or normally invite politicians to participate should consult the Chief Political Adviser before finalising any plans to do so.

#### **1. Achieving Balance**

Daily News magazine programmes (in the nations, regions and UK wide) must achieve an appropriate and fair balance in coverage of the main parties in the course of each week of the campaign.

As a working shorthand for the General Election Campaign we will take the main parties in England to be Labour, Conservative, Liberal Democrats; In Scotland these three plus the SNP, in Wales these three plus Plaid Cymru; in Northern Ireland the Ulster Unionists, the SDLP, the DUP and Sinn Fein.

Network programmes must ensure that SNP and/or Plaid Cymru are featured in a fair proportion of items on subjects on which they have distinctive policies. See also Section 5 on devolution.

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<sup>49</sup> <http://www.bbc.co.uk/info/genelection/index.shtml>

- This means that each strand (e.g. a drive time show on radio) is responsible for reaching its own targets within the week and cannot rely on other outlets at different times of day (e.g. the breakfast show) to do so for it.
- Single programmes should avoid individual editions getting badly out of kilter. There may be days when inevitably one party dominates the news agenda e.g. when the main party manifestos are launched, but in that case care must be taken to ensure that coverage of similar prominence and duration is given to the other manifesto launches on the relevant days.
- Every edition of the multi-item programmes which cover the campaign e.g. the Regional 6.30 – 7.00 slot, should refer in at least one item to each of the main parties.
- News 24 and television and radio summaries will divide the 24 hour day into blocks and aim to achieve balance across a week in each one.
- Weekly programmes, or running series within daily sequence programmes, which focus on one party or another should trail both forwards and backwards so that it is clear to the audience that balance is built in over time.
- Particular care should be taken over coverage of high profile issues like Europe where there is a multi-faceted debate within and between the parties to ensure a balance of views is maintained.

## **2. Minor Parties**

Minor parties embrace a wide range, from parties which have elected representatives in the European Parliament, the Scottish Parliament, the Northern Ireland Assembly, to those who have not stood before, or who have stood many times with little electoral success. Relevant factors to take into account in deciding how much coverage a party should get are significant levels of previous electoral support, evidence of current support and the number of candidates being fielded.

The following guidance is aimed at ensuring minimum coverage for all those parties. It does not set a maximum. There may well be regional variations in the relative strength of the minor parties and this ought to be reflected in the coverage.

- The manifesto launch of all parties who are standing in at least one sixth of the seats UK wide should be covered on BBC1, BBC2, R1, R2, R4, R5Live, & News 24, in all summaries in the hours following the launch, and with some reference to content in the main news programmes which follow (e.g: the 1, 6, or 10 On BBC1, WATO on R4, Drive on R5, the news belt on Newsnight on BBC2). BBC Parliament will also carry them.
- All daily news and current affairs network programmes should ensure that the policies of each of these parties are explained, and analysed, in at least one substantial item during the course of the campaign.
- All regional programmes in England which report the election should cover the manifesto launch of all parties who are standing in more than one sixth of the constituencies in that region. There should be at least one other substantive item on each of these parties during the campaign.
- All Programme Strands in Scotland, Wales and Northern Ireland which report the election should cover the manifesto launch and do at least one other substantive item in the course of the campaign, on all parties standing in one sixth of the seats in

those nations . They should also include a contribution from these parties in some items on those subjects on which they have distinctive policies.

- The audience will be referred, as appropriate to the full list of parties standing on Ceefax, BBC News Online and/or the national and city sites.

## 5.1b The British Broadcasting Corporation

### English Mayoral and Local Elections Guidelines 2002<sup>50</sup>

The campaign for the Mayoral Elections taking place on May 2nd is effectively underway and care must be taken to ensure we are scrupulously fair in reporting them.

1. Regional and local programmes reporting on individual campaigns should ensure all those candidates mounting a serious campaign are given broadly the same treatment in the period between now and polling day.
2. This does not mean all candidates have to be on every item, but it does mean for example, that a substantial piece about the declaration or campaign of one candidate is balanced at the appropriate time by similar treatment for others.
3. Set-piece debates or discussions on the election should either involve all those candidates mounting a serious campaign or none. A full list of candidates should be given at the end of the piece.
4. Network programmes which report on the Mayoral Elections as a whole may draw on a range of candidates from different mayoral contests, but should not give undue prominence to a single candidate in one place.
5. News reports which focus on a single contest should follow the guideline in 3 above.
6. Where referendums to decide whether to have an elected mayor or not are taking place care must be taken to ensure that both sides of the argument are given equal weight in our output.

All queries should be addressed to the Chief Political Adviser - Anne Sloman.

### Local Government Election Guidelines

This year is the first time the Local Elections in England have been fought without the restrictions of Section 93 of the RPA.

However as in last year's General Election, we are legally obliged to adopt a code of practice for "the participation of candidates in the... election in items about the electoral area in question... during the election period".

I have therefore drawn up guidelines based on the same principles as the General Election guidelines we all used last year.

Like them they are intended to offer a framework within which -

- Journalists can operate in as free and creative an environment as possible.
- Whilst scrupulously delivering to audiences impartial reporting of the campaign which gives them fair coverage and rigorous scrutiny of the policies and campaigns of all parties.
- This guidance is intended to assist programme makers, editors and the BBC as a whole to achieve fairness.

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<sup>50</sup> <http://www.bbc.co.uk/info/editorial/prodgl/election.shtml>

### *"Election period"*

There is no longer a legal distinction between the period before close of nominations and the period after it. These guidelines come into effect on April 2nd, i.e. immediately after Easter and one calendar month before polling day.

However between now and then care should be taken when reporting local government stories to ensure an appropriate and fair balance in coverage of the main parties, week by week.

### *"Election area"*

In practice this means two things: the Council as a whole, and individual wards.

## **1. The Council**

Every programme will be responsible for ensuring that the parties represented on the Council achieve appropriate and fair balance in the course of each week of the campaign.

This may be done by a number of different items, or in the case of set piece debates or discussions, in the same item.

Candidates representing minor parties, not currently represented on the Council in question but who are running serious campaigns should receive some coverage in the period April 2nd - May 2nd.

## **2. Wards**

Exactly the same principles apply as those in the General Election guidelines for Constituency reports.

Any report based on a single ward must:

- Give due weight to candidates of the main parties. This means that if any candidate takes part in an item about a specific ward then candidates of each of the main parties, (Labour, Conservative and Liberal Democrat) should be offered the opportunity to take part.
- They should also include some participation from candidates which have either previous electoral support in the area or evidence of significant current support in the area.
- Full length ward reports should include a list of all candidates standing.

### *Use of Candidates in issue based items*

Programmes may use candidates in items which are either straight news reports about current on-going council business or in items about local controversies which feature in the election campaign.

In the case of the former the obligation to achieve fairness between parties over the course of a week applies. In the case of the latter when programmes wish to use a candidate in a package or debate, the other participants should where at all possible, also be candidates, though not necessarily from the same ward.

Callers to phone-ins must still be checked to see if they are candidates. Before the abolition of the RPA this would have precluded them from appearing as such. Now they can be encouraged to contribute, but the audience must be clear that they are speaking not as ordinary members of the public but as contributors with a stated political agenda. Care must be taken that over time programmes are not giving undue preference to one candidate over another.

The aim of all these guidelines is to encourage vigorous debate and a higher profile to candidates of all parties in general without giving unfair advantage to one candidate over another.

These guidelines apply to all BBC output on television, radio and on-line.

They are not confidential - we are putting them in the public domain today - which means we are all accountable for delivering them.

Programmes which do not usually cover political subjects or normally invite politicians to participate should consult the Chief Political Adviser before finalising any plans to do so during this period.

All queries should be addressed to the Chief Political Adviser - Anne Sloman.

These guidelines issued: 12 March 2002.

## **5.2 Belgium -- Radio Télévision Belge de la Communauté Francophone (RTBF)**

*The Conseil Supérieur de l'Audiovisuel, the radio and television regulator, issues recommendations on the occasion of elections. In these it recalls the basic principles for fair treatment and a variety of provisions on specific issues included in a number of laws or the constitution and relevant to the coverage of elections. These specific issues include: racism, incitement to discrimination, hateful speech .*

*The broadcasters draw up their own codes of ethics and guidelines. In fulfilment of its obligations, RTBF, the public service broadcaster of the French speaking Community, drafted the plan of action for the general election of May 2003, cited below. This text is a good example of internal guidelines and a schedule of programmes by a public service broadcaster. It guides the reader through the requirements and all the positive actions the broadcaster should take in order to fulfil its role. This role includes provision of information and a platform at the disposal of proponents of political thoughts and ideas.*

*The aspects treated here are numerous and are cover both radio and television services. They prescribe the treatment that should be received by the main and other political parties. They also set the constraints on parties not respecting democracy. The plan covers the variety of programmes that are to be produced and scheduled. Provisions also refer to the rights of organisations other than political parties, to announcements by the government, to commercial advertising, sponsorship, and opinion polls. It also deals with information and other services offered by RTBF on the Internet.*

*It should be noted that the most detailed part of the plan is that dealing with direct access programming, the "electoral forums". Nearly half of the document deals with the various aspects and arrangements that should be made in order to give parties access to airtime. It determines:*

- the allocation of airtime on radio and television,*
- the procedure for parties and formations to gain access to the forums,*
- production and scheduling details,*
- the form of such programmes,*
- content control and responsibility.*
- use of archive material and*
- content control and responsibility.*

*It illustrates the many aspects of the issue. The processes of production and broadcasting pose a number of problems and responsibility tends to be diffused. The broadcaster in the plan adopted attempts to make all necessary arrangements and regulate the greatest possible number of issues raised by the election.*

" *The following informal translations of the electoral device of the RTBF for the parliamentary elections of 18 May 2003 is offered solely for the purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use*"<sup>51</sup>.

## **Electoral device of the RTBF for the parliamentary elections of 18 May 2003.**<sup>52</sup>

### **A. GENERAL CONSIDERATIONS**

Article 9 of the RTBF management agreement under date of 11 October 2001 states:

" On radio, television and the Internet, at the time of European, federal, regional and community, provincial and communal elections, the Company broadcasts, according to the terms and conditions determined by the board of directors, a specific device of programmes making it possible for the citizens to seize the stakes of the elections. The device will offer interviews, quantified results, comparisons between elections and brief analyses. It will use the interactivity capacities of the Internet.

On radio and television, this device will include at least:

- a) a special programme putting forward the political, economic and social stakes of these elections;
- b) within fifteen days before the poll, information programmes or talk shows;
- c) a programme presenting the results;
- d) panels allotted to the formations concerned.

Moreover, the company will give special attention to social elections and allocate, if needed, free airtime".

Pursuant to this provision the Board of directors of the RTBF adopted, on Wednesday 5 February 2003, the electoral device as follows.

### **B. PROGRESSIVE PERIODS OF CAUTION AND NEUTRALITY**

The RTBF decides to adopt three progressive caution and neutrality periods, as follows:

- a) from Tuesday 18 February 2003 (that is to say 3 months before the election) to Monday 7 April 2003 included (that is to say the day preceding the dissolution of Parliament and the convocation of the electors): concept of "cautious period"
  - no interview, sound run or visualization of candidates, militants or notorious sympathizers of political parties, whether they are candidates for the next elections or not, in all radio transmissions and television programmes which welcome guests or the public, and in particular in talk shows, animation programmes, quizzes, entertainment, sporting or cultural events;
  - unless an exception is authorised, in case of absolute need, by the director of information services;
  - with the exception of radio and television news and information programmes which depend on them, which will continue to cover political current events and particularly those of the election campaign,

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<sup>51</sup> Translated by Dominique Tsouris

<sup>52</sup> <http://www2.rtf.be/jp/matin/elections.pdf>

- b) from Tuesday 8 April, 2003 (that is to say the day of the dissolution of Parliament and the convocation of the electors) on Sunday 11 May 2003 included:
  - no interview, sound run or visualization of candidates, militants or notorious sympathizers of political parties, whether they are candidates for the next elections or not, in radio transmissions and television programmes,
  - unless an exception is authorised, in case of absolute need, by the director of information services,
  - with the exception of radio and television news and information programmes which depend on them, which will continue to cover political current events and particularly those of the election campaign, - by applying a general balance and quantification – over the 34 days of this period – of the broadcasting of the candidates for general election and of the militants and notorious sympathizers, over these two weeks, in respect of the D' Hondt formula (i.e. 3 PS, 3 MR., 2 ECOLO, 2 CDH), and in the respect of the following counting principles:
    - the counting will relate separately to radio and television;
    - the counting will be limited to current affairs issues, and will not take into account the subjects comprising audio or visual archives;
    - the counting will be made for each run of a subject (except for the reruns of the Television News (JT) of *La Une* on *La Deux* and in the night loop which will be accounted for as a single run) being explicitly specified that, since counting will not be done by second, the journalists will take care not to establish discriminatory distortions in the duration of the interviews and cuttings in which candidates, agents, militants and notorious sympathizers of political parties take part - the accounted runs will be the subject of a weighting on the basis of the following factors (these factors having to be multiplied between them):.

Radio		Television	
Interview	2	Interview	2
Cutting	1	Cutting	1
Run between 7.00 and 9.15	2	Before evening time-slot	2
Run at another time	1	Another time-slot	1
Passage on network (on all channels La Première or Fréquence Wallonie)	2		
Passage on a regional cutaway of Fréquence Wallonie or on Bruxelles-Capitale	1		

- c) from Monday 12 May 2003 to Sunday 18 May 2003 included (until closing time of the last polling station):
  - no interview, sound run or visualization of candidates, militants or notorious sympathizers of political parties, whether they are candidates for the next elections or not, in radio transmissions and television programmes,

- unless an exception is authorised, in case of absolute need, by the director of information services,
- with the exception of radio and television news and information programmes which depend on them, which will continue to cover political current events and particularly those of the election campaign,
- and for which the broadcastings will be the subject of a particular quantification – over the seven days – of the broadcastings of the candidates for the legislative election and the militants and notorious sympathizers, over this last week, in compliance with the D' Hondt formula (i.e. 3 PS, 3 MR., 2 ECOLO, 2 CDH), and in compliance with the same counting principles as those stated in b) above.

An exception may only be granted to this rule in case of absolute need and with the agreement of the director of information services.

The coverage of electoral information cannot modify the general editorial balances of information programmes of the RTBF and especially of the Radio News (JP) and Television News (JT), and cannot result in an "overweight" of Belgian political information to the prejudice of the coverage of other information, such as generally practised by the editorial staff of the RTBF in similar periods.

Generally, a particular caution is essential when representatives of ministers, government departments, political parties, the two sides of industry or emblematic personalities are speaking.

In all cases, their run must be reported to the director of information services with a sufficient notice to allow an adequate reaction.

#### C. FRENCH-SPEAKING DEMOCRATIC PARTIES NOT SIMULTANEOUSLY REPRESENTED IN PARLIAMENT AND THE SENATE

The parties that are not simultaneously represented in Parliament and the Senate will have access to radio and television under the following terms and conditions:

- radio electoral panels, according to the rules fixed by the regulation hereafter;
- in radio and television news, a space in the form of a brief account or a report per party or a global report on all parties concerned, provided that:
  - these French-speaking democratic parties or lists not simultaneously represented in Parliament and the Senate observe the principles and rules of democracy;
  - these French-speaking democratic parties or lists not simultaneously represented in Parliament and the Senate present complete lists (seat holders and substitutes) in the French electoral college of the Senate or in at least two electoral districts in Parliament, one of which at least being a complete list (seat holders and substitutes) in the electoral district of Brussels-Hal-Vilvorde.

#### D. PARTIES FAILING TO COMPLY WITH DEMOCRACY

In accordance with Article 7, § 1 of the decree defining the statute of the RTBF, with Article 3 of the law of 16 July 1973 on the protection of ideological and philosophical views, and with the order of the Council of State n° 80.787 of 9 June 1999, the RTBF decided to exclude from its electoral debates and panels any candidate appearing on a list of a party or a formation preaching or having preached:

- doctrines or messages based on discriminations, in the enjoyment of the rights and freedoms secured in the European Convention of Human Rights and Fundamental Freedoms, founded in particular on sex, race, colour, language, religion, political

opinions or any other opinions, national or social origin, affiliation to a national minority, fortune, birth or any other situation, or which would aim at the destruction of the rights and freedoms secured in the aforementioned Convention or at fuller restrictions than those provided in the aforementioned Convention;

- doctrines or messages based on discrimination, distinction, exclusion, restriction, preference which have or may have for purpose or effect to destroy, compromise or limit the recognition, enjoyment or exercise, under equal conditions, of human rights and fundamental freedoms in the political, economic, social or cultural fields or in any other field of social life;

- doctrines or messages being insults to the convictions of others, prompting discrimination, hatred, violence or segregation with respect to a person, a group, a community or their members because of their race, colour, ascendance, nationality or national or ethnic origin;

- doctrines or messages containing elements that tend to the negation, minimization, justification, approval of the genocide perpetrated by the German national-socialist government during the second World War or any other form of genocide.

#### E. INFORMATION PROGRAMMES AND DEBATES

1. The programmes of debates between the candidates and/or the editorial staff, the press or the public, the special programmes presenting the general and particular stakes of the elections and the radio and television news bulletins including interviews, cuttings, briefs, rubrics and sequences in connection with the election campaign, come under information programmes of the RTBF.

2. For this reason, these programmes are subject to compliance with the following rules:

a) the information programmes of the RTBF are organized under the editorial control of the latter (Article 5 of the decree for 14.7.1997);

b) the information programmes of the RTBF must be made without any preliminary censorship and interference by any public or private authority whatsoever (Article 7, § 2 of the decree of 14.7.1997);

c) the information programmes of the RTBF must be made in a spirit of objectivity (Article 7, § 2 of the decree of 14.7.1997).

3. The special information and debate programmes (except the television news bulletin) will appear as follows on television:

a. "*Focussing*": nine special programmes dedicated to the electoral stakes, based on the following topics: safety and justice, economy and employment, tax policy and social policy, citizenship and integration, social security, environmental issues and mobility, the public service and public companies, Europe and international politics and "what does Flanders want?";

b. "*Signed on Sunday*": four special programmes with selected interesting personalities among young candidates (from Sunday 20 April to Sunday 11 May 2003 included);

c. "*Evening face to face*": approximately 30 minutes debates bringing together three candidates of one party facing three candidates of another party, according to a levelling rule and an agenda which opposes between them each of the four parties simultaneously represented in Parliament and the Senate (from Thursday 8 May to

Thursday 15 May 2003, after the news bulletin: Successively ECOLO-CDH, MR-CDH, PS-ECOLO, CDH-PS, MR-ECOLO, and PS-MR.).

d. *"The debate of the presidents"*: debate with the chairpersons of the four parties simultaneously represented in Parliament and the Senate facing the political journalists and the public, with questions from television viewers (Friday 16 May 2003);

e. (possibly): Programme project *"It is my voice"*: programme with a political and playful concept, with a duration from 10 to 15 minutes, opposing, according to a levelling rule, in six "blind face to face" two candidates of different political formations, two interlocutors being side by side, but separated by a curtain, ignoring who is their interlocutor (whose voice will be disguised), having to answer questions and, in fine, discover the identity of their interlocutor (from Friday 2 May to Friday 11 May 2003 included, instead of Project X).

4. The radio editorial staff will propose a device articulated *inter alia* in the following way:

a. On *La Première*

- DEBATES on the stakes of the election: A one-minute presentation cutting of the debate of the day which will take place within the framework of *"Face à l'Info"* from 18:20 to 19:00 with the participation of representatives of the 4 French-speaking parties (PS, MR., Ecolo, CDH), on the same topics as those of the Focussing, and, in addition, on the topics "Food Safety" and "Ethical Problems".
- The young and the elections: Within the framework of the programme *"Quand les Jeunes s'en mêlent..."* (When the young interfere...) a programme during which the young "first-time voters" from different social backgrounds meet known and less known candidates to ask them questions. Another programme is foreseen within a more pedagogical framework. The questions would be addressed this time to specialists and relate to the practical organization of the poll, to its consequences....
- *"The face to face"*: Same device as on television by reducing the number of representatives per party to facilitate listening on radio, in the programme *Midi Première*.
- *"The guest of Midi Première"*: The last but one week before the election, interview with the 4 presidents of the Flemish parties having a French-speaking equivalent. The week before the election: *"Facing the opinion"* of the French-speaking presidents to whom the listeners would be invited to put questions which would be recorded and selected by the editorial staff. From 7:17 to 7:56 with an interruption for Eco Matin and Ads.

b. On *Fréquence Wallonie*

- A debate by province in regional cutaway (18.10 – 19.00) Friday 16 May 2003, with three provincial under-cutaways at CPNamur (Arlon, Namur and Wavre).
- The day before, Thursday 15 May 2003, a debate by regional cutaway with candidates for the Senate of the 4 parties simultaneously represented in Parliament and the Senate, coming from the province covered by the regional cutaway.

- Radiolène will organize additional debates in collaboration with Télévesdre according to electoral criteria of the RTBF.
- In Hainaut the debates will be produced by Mons in collaboration with Charleroi. On Bruxelles-Capitale
- 3 debates according to same representativeness criteria concerning the French-speaking lists - Brussels, stake of the electoral district (safety, employment, integration, mobility, environment.....);
  - Brussels, federal and community stake (refinancing, periphery...)
  - Debate of the Flemish personalities (does Brussels still interest the Flemish, widening of the economic zone on 30 communes...).

#### F. ELECTORAL FORUMS (Free airtime programmes – tr's. Note)

The Board of Directors has adopted the following regulation:

##### 1. Access to television forums

Only the recognized French-speaking political groups simultaneously represented in Parliament and the Senate will have access to the RTBF electoral television forums. There will be 10 of them, each with a 3-minute duration.

The allocation of the electoral television forums between the recognized French-speaking political groups will be done in proportion to the number of seats held by these political groups in Parliament, according to the D'Hondt formula.

This gives the following result:

Quotient/party	PS	MR.	ECOLO	CDH	FN
Div. by 1	19	18	11	10	1
Div. by 2	9.5	9	5.5	5	0.5
Div. by 3	6.3 3	6	3.67	3.33	0.33
Div. by 4	4.7 5	4.5	2.75	2.5	0.25
Forums	3	3	2	2	0

These forums will be broadcast from Monday 5 May to Friday 16 May 2003, on *La Une*, around 19:25, according to the following run order (this order being determined, on the last four days of the last week, by the increasing political weight of the parties):

Monday 5 May	PS	Monday 12 May	PS
Tuesday 6 May	MR	Tuesday 13 May	CDH
Wednesday 7 May	CDH	Wednesday 14 May	ECOLO
Thursday 8 May	ECOLO	Thursday 15 May	MR
Friday 9 May	MR	Friday 16 May	PS

##### 2. Access to radio forums

2.1. The recognized French-speaking political groups simultaneously represented in Parliament and the Senate will have access to the electoral radio forums. There will be 10 of them, each with a 3-minute duration.

The distribution of the electoral radio forums between the recognized French-speaking political groups will be done in proportion to the number of seats held by these political

groups in Parliament, according to the D' Hondt formula. This gives the following result:

Quotient/party	PS	MR.	ECOLO	CDH	FN
Div. by 1	19	18	11	10	1
Div. by 2	9.5	9	5.5	5	0.5
Div. by 3	6.33	6	3.67	3.33	0.33
Div. by 4	4.75	4.5	2.75	2.5	0.25
forums	3	3	2	2	0

These forums will be broadcast from Monday 5 May to Friday 16 May 2003, on *La Première*, right before the Radio News around 18.00, according to the following run order (this order being determined, on the last four days of the last week, by the increasing political weight of the parties):

Monday 5 May	PS	Monday 12 May	PS
Tuesday 6 May	MR	Tuesday 13 May	CDH
Wednesday 7 May	CDH	Wednesday 14 May	ECOLO
Thursday 8 May	ECOLO	Thursday 15 May	MR.
Friday 9 May	MR	Friday 16 May	PS

2.2. The other French-speaking formations which present at least one list in all electoral districts of the Walloon Area and in the electoral district of Brussels-Hal-Vilvorde in Parliament, as well as in the French electoral college in the Senate, will be able each to have access to two radio forums of 3'00 each, to be broadcast, according to a calendar to be determined by the general administrator of the RTBF, according to the requests and programming availabilities, between Monday 5 May and Friday 16 May 2003, on *La Première*, after the Radio News at 19:00.

2.3. The other French-speaking formations which present at least one list in all electoral districts of the Walloon Area and in the electoral district of Brussels-Hal-Vilvorde in Parliament, or in the French electoral college in the Senate, will be able each to have access to two radio forums of 2'00, to broadcast, according to a calendar to be determined by the general administrator of the RTBF according to the requests and programming availabilities, between Monday 5 May and Friday 16 May 2003, on *La Première*, after the Radio News at 19.00.

2.4. The other French-speaking formations which present a list in one or more electoral districts of the Walloon Area in Parliament, will be able each to have access to a radio forum of 2'00, to broadcast, according to a calendar to be determined by the general administrator of the RTBF according to the requests and programming availabilities, between Monday 5 May and Friday 16 May, 2003, on *Fréquence Wallonie*, before the Radio News at 18.00.

2.5. The other French-speaking formations which present a list in the electoral district of Brussels-Hal-Vilvorde in Parliament, will be able each to have access to a radio forum of 2'00, to diffuse, according to a calendar to be determined by the general administrator of the RTBF according to the requests and programming availabilities, between Monday 5 May and Friday 16 May 2003, on *Bruxelles-Capitale*, before the Spoken News at 18:00.

2.6. The other French-speaking formations which present a list in one or more electoral districts of the Walloon Area in Parliament and in the electoral district of Brussels -Hal-Vilvorde in Parliament, without covering the whole of the French-speaking districts in Parliament, will be able each to have access to a radio forum of 2'00, to broadcast, according to a calendar to be determined by the general administrator of the RTBF according to the requests and programming availabilities, between Monday 5 May and Friday 16 May 2003, on *La Première* after the Radio News at 19:00.

2.7. In exceptional circumstances, a list being addressed to the whole of the French-speaking people in the electoral district of Leuven in Parliament or in the Dutch electoral college in the Senate, may have access to a radio forum of 2'00, to broadcast, according to a calendar to be determined by the general administrator of the RTBF according to the requests and programming availabilities, between Monday 5 May and Friday 16 May 2003, on Bruxelles-Capital, before the Radio News at 18:00.

2.8. "French-speaking" formation means, for the implementation of this article, the lists whose French-speaking character can objectively and reasonably be deduced from indices such as:

- the French language used for the denomination of the party,
- the majority use of French language in the political communication in general of this party on other media support, both in ordinary period as election time.

### 3. Introduction of the requests

3.1. The recognized French-speaking political groups simultaneously represented in Parliament and the Senate, mentioned in items 1 and 2.1. hereinbefore, automatically obtain access to the television and radio electoral forums, without it being necessary for them to lodge a specific demand for this purpose with the RTBF.

3.2. Each political group and formation mentioned in items 2.2. to 2.7 hereinbefore, which wishes to benefit from one of the radio forums being open to it, will have to lodge a written request to this effect, clearly specifying the panel mentioned in foregoing items 2.2. to 2.7 that it solicits. This request must be dated and signed by its president or, in the absence of a president, by its chief candidate; it must be sent by registered mail with acknowledgement of receipt, to the general administrator of the RTBF, Mr. Jean-Paul Philippot, RTBF, Boulevard Auguste Reyers, 52, local 9 M 17 in B-1044 Brussels, at the earliest on Saturday 26 April 2003 at 4.00 pm, after the submission of the lists of candidates, and at the latest on Tuesday 29 April 2003 at noon, the postmark being good evidence.

The request, without the appendices mentioned in item 3.3. hereinafter, must also imperatively be sent by fax to the general administrator of the RTBF, by Tuesday 29 April 2003 at noon at n° 02.733.40.20 or 02.737.25.56.

Any modification in the composition of the lists of candidates, occurring between Saturday 26 April 2003 and Thursday 1 May 2003, on the basis of decisions of the offices of electoral operations and the Courts of Appeal, must be notified by fax to the general administrator of the RTBF, by Thursday 1 May 2003 at 6.00 pm, at n° 02.733.40.20 or 02.737.25.56.

3.3. The request mentioned in item 3.2. hereinbefore, in its version sent by registered mail, must imperatively be accompanied by:

- all the useful details for the identification of the applicant party: exact denomination, initials possibly used, address of the head office the party, telephone and fax numbers, email address, both of the head office of the party and its president or, failing, of its chief candidate;
- a copy of the Memorandum and Articles of Association of the party and of the list of all its leaders;
- the complete electoral programme of the party;
- all useful and convincing details as to the submission of the lists in the various electoral districts or electoral colleges in Parliament and the Senate allowing the RTBF to check the compliance with the access criteria to the requested forum.

3.4. The applications which do not fulfil the basic conditions, the formal or time requirements provided for in item 3.2. hereinbefore, or which are not accompanied by the documents required by item 3.3. hereinbefore, will automatically be rejected.

3.5. The president, or failing this the chief candidate, of each formation which will have submitted a request for electoral panel, will be personally informed, by fax, of the acceptance or not of his application, as well as of the channel, day and hour of broadcasting of the forum which will be granted to his formation.

#### 4. Days and hours of the forums broadcasting

4.1. Except in cases of absolute necessity judged by the general administrator, the electoral forums are broadcast on the channels, on the days and at the hours fixed or agreed pursuant to the present device.

4.2. In the event of a technical impossibility to broadcast an electoral forum, or in the event of a technical problem during this broadcasting, a new broadcasting will be proposed another day or hour, fixed by the general administrator in concert with the applicant party.

4.3. No electoral forum is broadcast on Saturday 17 May 2003 preceding the poll.

4.4. Except in cases of pressing need judged by the general administrator, no electoral platform is broadcast on Saturdays and Sundays.

#### 5. Production of the forums

5.1. Each party produces itself its radio and television electoral forum(s) at its costs.

5.2. However, on the express request of one interested party, formulated at least one working day before its transmission on radio and at least five working days before its transmission on television, the electoral forums which are allotted to this party, may be recorded, both on radio and television, by the RTBF.

The latter will provide, to the best of its capacities, at the place, on the day and at the time fixed by itself, the technical means and the technical staff necessary to the production of the aforesaid forums. In this case, the production services provided by the RTBF will be invoiced at market price. However, the RTBF reserves the right to refuse to produce the forums required by a party if it turns out that this party has not paid one or more invoices which were sent to it at the time of the preceding elections for the production of electoral forums. It also reserves the right to communicate these facts to the Audit Board of the electoral expenditures.

5.3. The electoral forums produced by the parties themselves or the RTBF must all be pre-recorded.

5.4. The cassettes must be provided to the RTBF at the latest 48 hours before the broadcasting on radio and at the latest 72 hours before the broadcasting on television.

For Sunday programmes – where appropriate – and for those of Monday, they must be provided at the latest on Thursday.

5.5. These cassettes must be of a sufficient technical quality, in the usual "broadcast" standards. In the event of insufficient technical quality, the RTBF reserves the right not to diffuse the aforementioned electoral forums.

## 6. Form of the forums

6.1. The electoral panel can take the form of a speech, conversation or a bi- or multilateral interview or use other means of expression, such as a video clip, having recourse to audio-visual techniques. The recourse to subliminal techniques is however prohibited.

6.2. The members of the RTBF staff can in no way take part, by picture or voice, in the contents of electoral forums.

6.3. The political parties or federations freely choose the initials under which they wish to appear, in the respect of the electoral law.

6.4. The televised electoral forums may be accompanied on the screen by a translation in sign language or subtitled by a teletext subtitling or a screen subtitling for the deaf and hard-of-hearing. The parties which wish to do so can ask the RTBF to undertake this translation in sign language or this subtitling, provided that they give the complete text of the remarks made in their forums to the RTBF at least 96 hours before the broadcasting of their forums and that they are committed to pay the price of this service at market price.

## 7. Resort to the archives

7.1. The incorporation of sequences of sound or visual illustration in the electoral forums is authorized, including the presentation of posters or press extracts, in compliance with the rules of common law as regards audio-visual quotation.

7.2. If the electoral forums contain sound or visual archives emanating from the RTBF and referring to parties or people playing or having played a political economic, social or cultural role, the preliminary authorization of the RTBF will be necessary and the agreement of the people concerned or their beneficiaries shall have to be formally obtained and proven. These sequences of files shall not contain elements of identification of the RTBF, such as logos, codes, pictures, voice or comments of journalists, organizers or presenters of the RTBF, decorations, subtitles or tele-subtitles realised by the RTBF.

7.3. If the electoral forums contain sound or visual archives emanating from another television channel and referring to parties or people playing or having played a political, economic, social or cultural role, the preliminary authorization of this channel will be required and will, just like the prior agreement of the interested people or their beneficiaries have to be formally proven. These sound or visual archives cannot contain elements of identification to this channel, such as logos or codes, pictures, voices or comments of journalists, organizers or presenters of this channel, decorations, subtitles or tele-subtitles realised by this channel.

7.4. The access to the sound or visual archives of the RTBF is authorized on payment in particular of the technical expenses of research and copy, at the market price. However, this access is limited to a maximum third of the duration of the panel for which these archives are intended.

7.5. No sound or visual archive emanating from the RTBF can be used for purposes other than the production and the transmission of the electoral forums referred to by this device, and in particular for a use at electoral meetings or video cassettes intended for electoral propaganda.

#### 8. Panel announcement

The diffusion of the electoral forums is preceded and followed by an announcement indicating the nature of the programme and the denomination of the list or party to which it is dedicated. This announcement is produced and diffused by the RTBF.

#### 9. Editorial control

The political party which benefits from one or more electoral forums assumes the whole editorial control for the contents of these forums. The latter do not give cause for the exercise of the right of reply (Art. 14 of the law of 23 June 1961 relating to the right of reply).

#### 10. Observance of the laws

10.1. The electoral forums cannot constitute a breach of the laws, be contrary to general interest, public order and the moralities. They cannot contain any form of clandestine advertisement for products or services.

10.2. The electoral forums must be positively built and avoid discrediting or ridiculing the other political parties and attacking their representatives personally. The parties take care that their electoral forums do not contain new elements of polemic on a date or under conditions which would make any reply by other means impossible or inoperative.

10.3. The electoral forums cannot contain messages, pictures and remarks:

a. based on distinctions between humans, in the enjoyment of the rights and freedoms secured in the European Convention of human rights and fundamental freedoms, based in particular on sex, race, colour, language, religion, political or other opinions, national or social origin, membership of a national minority, fortune, birth or any other situation, or which would aim at the destruction of the rights and freedoms secured in the aforementioned Convention or at wider limitations than those provided for in the aforementioned Convention;

b. based on discrimination, distinction, exclusion, restriction, preference having or likely to have as a purpose or effect to destroy, compromise or limit the recognition, enjoyment or exercise, under conditions of equality, of human rights and fundamental freedoms in the political, economic, social or cultural fields, or in any other field of social life;

c constituting insults to the convictions of others, incentive to discrimination, hatred, violence or segregation with regard to a person, a group, a community or their members, because of their race, colour, ascendance, nationality or national or ethnical origin;

d. containing elements tending to the negation, minimization, justification, approval of the genocide perpetrated by the German national-Socialist domination during the Second World War or any other form of genocide.

10.4. The electoral forums cannot contain direct or indirect references to the flags, anthems, colours, armorial bearings, currencies or other official elements of Europe, Belgium or one their components.

#### 11. Control of the panel contents

The RTBF will not diffuse any electoral panel of a party, movement, formation, political association or a list of candidates, which, either separately or cumulatively:

a) would not observe the principles and rules of democracy or comply with them, as required by Article 3 § 1 of the law of 16 July 1973 ensuring the protection of ideological and philosophical tendencies;

b) would not have included in its memorandum and articles of association or its programme a provision by which it commits itself to observe, in the political action it intends to carry out, and make its various components and elected agents observe at least the rights and freedoms ensured by the Convention for the protection of human rights and of fundamental freedoms of 4 November 1950 and approved by the law of 13 May 1955 and the additional protocols to this convention in force in Belgium;

c) shows, by its own acts or those of its components, lists, candidates or elected agents, in an obvious way and through several concordant indices, its hostility towards the rights and freedoms ensured by the Convention for the protection of human rights and of fundamental freedoms of 4 November 1950 and approved by the law of 13 May 1955 and the additional protocols to this convention in force in Belgium;

d) would preach or have preached doctrines or messages:

- based on distinctions between humans, in the enjoyment of the rights and freedoms secured in the European Convention of human rights and fundamental freedoms, based in particular on sex, race, colour, language, religion, political or any other opinions, national or social origin, membership of a national minority, fortune, birth or any other situation, or which would aim at the destruction of the rights and freedoms secured in the aforementioned Convention or at wider limitations than those provided for in the aforementioned Convention;

- based on discrimination, distinction, exclusion, restriction, preference having or likely to have as a purpose or effect to destroy, compromise or limit the recognition, enjoyment or exercise, under conditions of equality, of human rights and fundamental freedoms in the political, economic, social or cultural fields, or in any other field of social life;

- constituting insults to the convictions of others, incentive to discrimination, hatred, violence or segregation with regard to a person, a group, a community or their members, because of their race, colour, ascendance, nationality or national or ethnical origin;

- containing elements tending to the negation, minimization, justification, approval of the genocide perpetrated by the German national-socialist domination during the Second World War or any other form of genocide.

## 12. Suspension of electoral forums

In the event of non-observance of the above mentioned provisions by the a party, formation, movement, association or list of candidates which would have requested and obtained electoral forums from the RTBF, the Standing Committee of the RTBF, or, if this committee does not have the possibility to meet, the general administrator of the RTBF, after concerting the vice-presidents of the Board of Directors, may suspend the diffusion of whole or part of the electoral forums by which the political party, formation, movement, association or list of candidates concerned profit.

## F. SPECIFIC DEVICE ON THE INTERNET

According to the human and technical means at the disposal of the Internet cell during the election campaign, it will propose a device articulated, in whole or part, on the following elements:

1. for the election campaign:

a) statistical information with an informative character on the institutional structures of the country, the power levels, the institutions, the voting mechanisms...

b) dynamic information by editing and editorial work of Belga dispatches relating to the elections

- rerun of radio or television cuttings such as briefs, assembled cuttings, short reports and headings (other than debates, face to face, facing the editorial staff, facing the opinion, long interviews or magazines)

- online promotion of electoral programmes upon the request of the editorial staffs and services concerned

c) interactivity by spaces for dialogues and questions for the listeners (but, in principle, no forum, chat or survey or links towards the sites of parties or candidates)

2. for the electoral evening:

- rerun of the IBM results of the Ministry for the Interior, with results by canton, district and electoral college

- simulation of the hemicycles

- analyses emanating from the radio and Belga dispatches

- diffusion in streaming of La Première

- photographs of the electoral evening

- debate of the presidents in audio and/or video.

## G. CONCEDED PROGRAMMES

With regard to recognized representative associations (or R.R.A.) which have been entrusted with radio and/or television programmes, pursuant to Article 7, § 3 of the decree of 14 July 1997 defining the statute of the RTBF, the Board of Directors, as for the former polls, adopts the following device:

1. Pursuant to Article 24, § 1 of the regulation adopted by the Board of Directors on 19 October 1998, the "political forums" on radio and the "political doctrine" programmes on television are suspended from Tuesday 18 March to Sunday 18 May 2003 included. They are replaced by the electoral forums, according to the methods defined in chapter I hereinbefore.

2. Philosophical and religious programmes, as well as the economic and social forums are maintained.

3. During the period from Tuesday 18 March to Sunday 18 May 2003 included, the persons in charge of the maintained conceded programmes, and especially of those which will approach current economic and social issues, are subject to a general obligation of caution and, pursuant in particular of Article 24, § 2 of the above mentioned regulation, may in no case:

- make propaganda;

- directly or indirectly address any recommendation of vote whatsoever;

- directly or indirectly request to vote for one or more parties, one or more candidates, or for a category of parties or candidates ;

- ask candidates, political agents or militants or notorious sympathizers of political parties to appear or intervene on the air, since those have let know that they will or may be candidates at the next elections, nor people who, without being candidates, are agents, militants or notorious sympathizers of a political party or a candidate;
- treat directly or indirectly issues being the subject of the main electoral stakes ;
- interfere in the election campaign, in particular by direct or indirect allusions to political parties or candidates for the elections or elements of their program.

#### H. COMMERCIAL AND NON-COMMERCIAL ADVERTISEMENT– SPONSORSHIP

1. Any form of advertisement and sponsorship for political parties or professional organisations, both trade unions and employer organisations, is prohibited by Articles 27 (a), § 1 and 28, § 1, 9° of the decree on the audio-visual of 17 July 1987.

2. Any advertisement spot which would prejudice human dignity, comprise discriminations founded on race, sex or nationality or make any attempt on the religious beliefs, philosophical or political convictions of others is prohibited by Articles 27, 1° to 3° of the decree on the audio-visual of 17 July 1987.

3. During the period from Tuesday 8 April to Sunday 18 May 2003 included, except in cases of absolute necessity judged by the general administrator, any advertisement spot is subject to the compliance with the provisions of the law of 4 July 1989 relating to the limitation and control of the electoral expenses incurred for Parliamentary elections. The broadcasting of any commercial or non-commercial advertising spot, likely by its form or substance to influence directly or indirectly the result of the poll, is suspended, when this spot is required:

- by a Minister, Secretary of State, ministerial cabinet or government, federal, regional or community department,
- by a mutual benefit association
- by a press organ or a social partner.

4. The institutional advertisement spots are authorized when they:

- invite the citizens to submit their candidature or actually exercise their right to vote,
- invite, in a general way, citizens not to vote for formations or candidates representing the political extremists and not-democratic tendencies.

#### I. GOVERNMENT COMMUNICATIONS

1. With regard to the communications of the federal government, Article 1, § 4 of the law of 18 July 1977 defining some provisions relating to the radio and television broadcasting service, as modified by Article 3 of the law of 12 July 1994 aiming at the control of official communications from public authorities, prohibits the transmission of governmental communications during the two months preceding the elections, that is to say from Tuesday 18 March to Sunday 18 May 2003, unless they are justified by urgency (for example when Belgium takes part in a military conflict in the Middle-East), in which case, neither the name, nor the picture of the minister or ministers may accompany the spot which must be strictly informative.

2. With regard to the communications of the community and regional governments, Article 8 of the decree of the Government of the French Community of 21 September 2000 specifies that "no governmental communication is issued during the two months preceding the date of the communal, provincial, regional, federal or European elections, or if necessary, the anticipated dissolution of the parliamentary assemblies".

Since the date of these anticipated elections is known beforehand and is fixed on 18 May 2003, the two-month deadline, starting from 18 March 2003, as provided by the beginning of this provision, seems to have to prevail against the deadline starting from the day of the anticipated Parliament dissolution on 8 April 2003.

It should also be underlined that Article 8, § 2 of the above mentioned decree also provides for a particular procedure in the event of extreme urgency, in so far as neither the name nor the picture of the Ministers or Secretaries of State who solicit them, or the name or the picture of a Parliament appears on the air or on the screen, and provided that these communications have a strictly informative and objective character.

3. The messages or communications which might be solicited by organs of the European Commission within the framework of the European festival – and which are not specified by the above mentioned legislations – will be treated in compliance with the rules that are specific to non-commercial advertisement spots.

#### J. SURVEYS

1. The dissemination and comment of opinion polls relating in particular to voting intentions are authorized, in compliance with the forms provided for by the law of 18 July 1985 relating to the publication of the opinion polls, under the express condition that:

a) these surveys emanate from organizations being specialized in surveys whose quality is recognized by the market;

b) the dissemination of survey results implies the communication of the following:

- the name and quality of the person or party that commissioned the survey;
- the name of the Institute which carried out it;
- the population concerned;
- the date on which it was carried out;
- the weight of the sample and number of people really questioned;
- the questions asked and possible answers;
- A breakdown in percent of answers to all the questions, with mention, for each question, of the percentage of the people who did not answer it;
- rate of error;

c) the dissemination of survey results is accompanied by a mention specifying the relativity of these results.

2. The RTBF will not echo any voting intention survey on Saturday 17 May 2003, which precedes Sunday 18 May 2003, the day of the election, nor of exit polls on the day of the election, until the official closing of the last polling station.

### 5.3 Cyprus – MEGA Channel

*The section on national legislation includes legislative provisions adopted in 1985 regulating access by political parties to, and coverage of elections by, the public service broadcaster. Private stations are governed by a separate legislative framework stipulating that:*

*«broadcasters should treat equitably and with no discrimination the executive power, the political parties, the presidential candidates, the deputies and the candidates, the trade unions and other social organisations, the municipal and communal authorities without affecting the rights of journalists to evaluate facts and situations on the basis of their news-worthiness and significance.»*

*The parliament failed to enact regulations drafted by the Radio and Television Authority. Broadcasters chose to adopt their own guidelines and schedule programmes to ensure fairness, despite the absence of any obligation in law or elsewhere so to do. It is a fair example of self regulation by a private channel, setting the minimal requirements of fairness as an internal arrangements. The text was made public, and addressed both to the press and to political parties.*

*The code contains a number of general principles and the meaning given to them by the channel, in practical terms. The code also stipulates how the parties and the candidates would be treated. A schedule of programmes of various formats follows, disclosing the formula on which the allocation of time was based. A comparison between the election result and the air time share of the parties leads to the conclusion that the allocation was broadly equal as between the parties. The ratio of time allocated between the smaller and bigger parties is near to 1.*

*Apofasi 2001, Schedule of programmes<sup>53</sup>, MEGA Channel, 2001*

#### **CODE OF CONDUCT**

Parliamentary elections, May 2001

##### **Introduction**

There is no doubt that mass media play an important role in modern societies as transmitters of information.

The media play an even more significant role in election periods; when they fulfil their mission in a fair and impartial way they contribute to free and democratic elections.

The concern of the news and current affairs service of MEGA Channel in this election is to find the golden rule between the need to respect editorial independence and the obligation to conform to fundamental rules, and ensure our impartiality in the electoral competition.

##### **General principles**

In the coverage of the electoral campaign the political parties contesting the elections with full tickets will be treated in an equitable, fair and impartial way.

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<sup>53</sup> Translated by the author

In this respect, MEGA will offer all parties access to its programmes and the opportunity to present to the public their positions on issues of public concern.

Equity means proportionality taking into account among other criteria the political party's presence in the House of Representatives, its territorial organization and presence island-wide and its historical role in the country's political life with the ultimate aim to inform the citizens in an essential manner.

As general rule fairness is ensured by allocating equal time to the main political parties; however, the news service of MEGA reserve the exclusive right to decide and present news bulletins on the basis of the news-worthiness of the facts and therefore equal time cannot be respected in all cases.

Equal treatment cannot be applied in every specific report or programme; it should be assessed over the whole electoral period.

It is underlined that any regulatory framework for the coverage of elections by the media should not interfere with or constraint editorial independence. The journalist keeps the right to define the news- and current affairs-value of an item.

Reports on the candidates should not be made at the expense of issues of concern to the electorate.

### **Code of conduct of MEGA Channel**

This code is not exhaustive.

- Candidates that will represent each party in discussion programmes will be selected in consultation with the parties but the final decision lays with the news section of MEGA channel; it will be based on specific criteria, some of which are as follows:
  1. The rank of participants in their respective party should be of equal status.
  2. Equal treatment of candidates.
  3. Avoidance of over-exposure of any candidates.
  4. Special knowledge of candidates on the topic of discussion.
  5. The candidate's ability to respond to the needs of a television programme.
- MEGA will give the right to reply to candidates being the target of charges in any of its programmes.
- MEGA will report on press releases by political parties or candidates in news bulletins and /or programmes in accordance with their news-worthiness.
- With the exception of the party leaders' statements during the cast of their vote, no programmes of political dialogue or forecasts about the outcome of elections will be broadcast in the eve of and on the election day until the close of the polls.

### **Opinion polls**

During the electoral period, MEGA channel will commission a number of opinion polls on its behalf. Their results will be made public in special programmes with the participation of election analysts.

The political parties will be offered the opportunity to comment on the opinion polls in the course of the above special or in other programmes. The parties will be given detailed information about the dates and the number of the opinion polls that will be conducted on behalf of MEGA, as well as about the form of the programmes in which

the results will be presented; this will be done in due time to enable them prepare their analyses.

The news and current affairs service of MEGA channel reserves the right to report on the results of other opinion polls, conducted on behalf of other organizations. This will be done provided that the following information on the said polls will be furnished:

- a. The organisation that conducted the poll and the agent that commissioned it.
- b. The period during which the poll was conducted.
- c. The methodology and the sample of the poll.
- d. The margin of statistical error.

## **SCHEDULE OF PROGRAMMES**

In conformity to the Code of election coverage of our channel, and aiming at providing the citizens with objective and impartial information, as well as the equitable treatment of all parties and **lists** contesting the elections with full tickets in all constituencies, the news and current affairs service of MEGA has scheduled the following electoral programmes:

### **a. Interviews with party leaders or heads of party lists**

Duration: 60 minutes

Venue: Television studio of MEGA

Type of programme: Live interview

Schedule: (dates, time and participant quoted)

### **b. Debates with party leaders or heads of party lists**

Start time: 21:30

Venue: Television studio of MEGA

Type of programme: Live discussion

Schedule: (Dates and names of participants)

### **c. Discussion programmes with party or lists representatives**

Venue: Television studio of MEGA

Type of programme: Live broadcast

Schedule: (dates, time and parties/lists represented)

### **d. Opinion Polls**

Two opinion polls will be conducted on behalf of MEGA channel and their results will be made public in two special programmes in May. The results will be presented and analysed with the participation of MEGA channel election specialists and analysts.

### **e. Pre-recorded debates with the participation of candidates**

Soon after the party tickets are finalised, 15-minutes special supplements will be inserted and scheduled within the early afternoon news and current affairs programme "Mid-day Edition". Each time two candidates will participate and discuss on issues related to the electoral campaign.

These programmes start on the 26<sup>th</sup> of March and will end on the 25<sup>th</sup> of May. It is expected that 45 programmes will be broadcast and 90 candidates will participate.

Participation of candidates has been established on party criteria and in the same proportion followed in all other programmes, which is as follows:

1. DISY and AKEL, 16 candidates each
2. DIKO, KISOS and EDI: 12 candidates each

3. New Horizons and Ecologists: 8 candidates each
4. ADIK: 6 candidates

For purely practical reasons these programmes will be recorded in advance and broadcast in connection to the general schedule of the electoral coverage by MEGA. Priority will be given to candidates that will not participate in other programmes. Further to the above, other candidates and party representatives will be invited to the same programme “Mid-day Edition” in connection to current issues. Participation in these programmes will also follow the same principle of equitable treatment of the political parties.

**f. Electoral meetings of the parties or lists**

Scenes from one mass electoral meeting of each party or list of candidates contesting the elections will be transmitted live in the evening main news bulletin of 20:20. The duration of the connection will be three minutes and the party will know in advance the exact time of the connection.

The party concerned will choose the meeting to cover.

MEGA reserves the right to refuse transmission of a specific meeting for exclusively technical reasons or in case of conflict with another scheduled broadcast of a meeting taking place the same day and time.

Consultations will take place with the political parties for defining the meetings to cover; priority of coverage will follow the order of agreements.

**g. Visits of party leaders or heads of lists**

At least one visit of each party leader or head of list will be covered in the main evening news bulletin in a 90 seconds report. The choice of the visit will be left to the party.

MEGA reserves the right to refuse coverage of a specific visit for exclusively technical reasons or in case of conflict with another scheduled broadcast of a visit taking place the same day.

Consultations will take place with the political parties for defining the visits to cover; priority of coverage will follow the order of agreements.

**SUMMARY TABLE**

The following table summarises the exact image of the coverage for each party; it transpires that the electoral schedule of MEGA respects equity in treatment.

Party	Interviews	Debates /leaders	Debates /repres.	Meetings	Visits / leaders	Total	Vote share*
DISY	1	1	4	1	1	8	34.7%
AKEL	1	1	4	1	1	8	33.0%
DIKO	1	1	3	1	1	7	16.4%
KISOS	1	1	3	1	1	7	8.1%
EDI	1	1	3	1	1	7	3.6%
NEO	1	1	2	1	1	6	1.7%
ECO	1	1	2	1	1	6	1.0%
ADIK	1	1	2	1	1	6	New

\* Quoted by the author for comparison purposes

## 5.4 Denmark and Norway

KAREN, SIUNE, Political Advertising in Denmark, in *Political advertising in Western democracies: parties and candidates on television*, by Lynda Lee Kaid, Christina Holtz-Bacha (editors) pp. 129-132.

### DENMARK AND NORWAY

#### PRINCIPLES FOR PARTY ACCESS TO BROADCASTING

There are special regulations for party access during election campaigns. The rules are made by the broadcasting organizations themselves, not regulation by law: Only political commercials are forbidden by law. Neither the government nor the state as such has direct influence on the rules for party access to broadcasting.

In Denmark all parties are treated equally by the old, formerly monopolistic Danmarks Radio (1989, 1990). The guiding principle has been equal access for all parties participating in an election. Independent of whether a party is new or old, small or large, represented in the national parliament or not, as soon as a political party is accepted by the Ministry of Internal Affairs as running at the announced election, the party is allocated free time on radio and television. Free time means access on an equal footing to special election programs in the format decided by the broadcasting company. To be accepted by the Ministry of Internal Affairs "a party has to collect signatures amounting to 1/175 of the valid votes cast in the previous election." Danes are receptive to the formation of new parties, but they are not very concerned about their preelection support for new parties. Often parties able to collect the requisite number of signatures from the population go on to garner a much smaller number of votes on election day. Accepting new parties to challenge the established parties in the national elections is part of the Danish democracy and is also reflected in the attitude toward new parties' access to broadcasting. The principle of equal access in Denmark has been strengthened by a statement from the Ombudsman and by a Supreme Court decision.

For the broadcasting organization Danmarks Radio, equal access includes equal airtime on Danish national radio and television. This principle applies only to the old, formerly monopolistic channel, not to the new television channel, TV 2, but so far no parties have complained. On the DR channel all parties get a party platform in the form of a 10-minute program, followed by a 30-minute program during which journalists question the party that just presented its program. At the end of this questioning program, a party representative, usually the leader, has the opportunity to close the evening with a 3-minute statement. This format has been used since the end of the 1960s. The party presentations may either be produced by the parties themselves or be made in cooperation with the broadcasting company. If produced outside Danmarks Radio, which today is the most common, the political party receives a fixed amount of money to produce the program. There is no limit to the amount of money a party can spend on the production of the party platform, and there are no limitations on what a party can say during its 10 minutes.

Danmarks Radio has for decades allocated each party its series of programs at peak time, all parties starting at 8 p.m. Days are allocated according to the size of the party. The largest party receives first choice and usually selects the latest possible day before the election. With respect to scheduling on radio, the parties choose in the opposite order to counterbalance. It has become a tradition that a panel debate is broadcast on radio as well as on television, with representatives from all parties, one from each party, based again on the principle of equal time, 2 days before election day. This program usually takes 3 hours.

The day before election day has been exempt from election programs since television started broadcasting party presentations. The idea behind this day—clean from political propaganda, at least on television—was that voters should be allowed time to digest the relatively heavy amount of political communication they had been exposed to on television and decide on which party to vote for.

When the DR broadcasting monopoly was broken, the major event of relevance to election communication was that the new TV 2 introduced a panel debate on the night before election day. Another break with tradition was that the panel debate did not include representatives of all parties, as had always been the tradition in DR's panel debates. Only parties expected to be significant were invited to participate on the new channel. News criteria dominated over traditions, as they will in general if there are no normative obligations.

A normative obligation is also found in DR with respect to nonelection time, when all parties are given special coverage of their traditional annual meetings. All parties, independent of size and power, receive the same amount of coverage broadcast on a late evening following their annual meeting.

Political party access to broadcasting has been labelled "minute democracy" in Norway as well as in Denmark. In contrast to the Danish situation, where the Ombudsman and a decision made by the High Court actually reinforced the principles of equal access, the Norwegian Ombudsman once concluded that decisions about "who, when and how" access to the Norwegian national television channel belonged exclusively to the Norwegian broadcasting institution, NRK. The principles applied in the two countries are a bit different, though seen from an American point of view, they seem very much the same.

To receive equal treatment in Norway, a party must meet three criteria: It must have been represented in the Norwegian parliament, Stortinget, during one of the last two election periods; have run candidates in a majority of the districts; and have a current national organization. One exception is that a minor party in a coalition that forms the government, or is a clear alternative to the government, can participate with more than one representative in the final debate. The principle is that equal time is allotted to all parties in order to allow them to participate in the broadcast debate. The government as such has its own representative in programs where all political parties are present. The Norwegian program's format also does not provide parties time for their own platform in the form of a presentation program like there is in Denmark. Instead, candidates only respond to questions from journalists or a panel of voters. Parties not qualified for equal treatment in Norwegian television, but acknowledged as running for the election, will be covered by short programs combining information and questioning.

The comparison with Norway illustrates the special equity of the Danish system, in which all parties running at a given election, regardless of size, power, or position in parliament, have the same right to present their ideas, independent of the party's economic position. Thus Denmark has some kind of publicly financed political advertising. Nevertheless we formally deny it, because political advertising is forbidden by law. In Denmark the party access to television described above is considered public service to the electorate, but how do the voters perceive it?

## 5.5 Concluding Overview

*Inevitably this concluding overview covers Chapters 3, 4 and 5. The various and specific issues treated in these chapters differ in nature but in essence they all deal with the same fundamental issue. They arise in national legislation, in a regulator's guidelines or in a broadcaster's code of conduct. In many cases, judging from their content they could be considered as belonging to any of the three legal mechanisms: legislation, regulation, or code of conduct.*

*The basic features of national legal and other regulatory frameworks in the European zone are summarised in one word, diversity. It refers to the whole range of the relevant issues, from the very existence of regulation to the issues dealt with and the philosophy of the policy adopted. There is one fundamental common denominator, though. The principles defended are in all cases the same. These are freedom of expression and free exercise of the will of the people. Together these constitute the foundations of democratic societies.*

*These universally endorsed human rights are in all cases enshrined in the constitutions along with the principle of equality. This last leads among other things to the principle of equal treatment. These constitutional provisions may be considered sufficient conditions, requiring little or no further legislative or administrative measures to enable the exercise of these rights. This is the case particularly in Sweden, Norway and Denmark and, to some degree, the Netherlands.*

*The second aspect at which disparity exists is the nature of the documents regulating the rights and obligations of the election protagonists. In this context these are the media, political parties and candidates. The texts chosen here include the maximum of pertinent provisions in legal texts, laws and regulations. These leave little room for specific aspects to be ruled by other forms of intervention, purposely issued at election time. Other treatments opt for a system resulting in more flexible approaches. This is for example, the case in the United Kingdom, where the legislative component is minimal, the rest being left to codes of conduct and guidelines.*

*From this emerges the question of distribution of prerogatives, regulatory, and decision-making powers as between the government, an independent body acting as the regulator, and the broadcasters /media professionals. The share each of them has in each system differs, while the range of issues and the extent of prerogatives are also part of the parameters on which further disparities exist. The choice is between several options as a result of a variety of possible combinations. In the case of Nordic countries, broadcasters have a broad margin of action, including that of deciding about the rules and the measures that will enable the actors in political life to have access to airwaves. They can even determine the forms of political communication., Excluding or refusing, for example, the dissemination of paid political advertising, though not prohibited by the existing legislative framework.*

*The guiding line is not consistently followed for every item. Legislation or specific regulations sometimes goes much further on a chosen issue. Among the many that exist the one that attracts most attention is usually party broadcasts where there is tendency to regulate as much as possible, leaving only a few questions unanswered. In this respect we have the extreme cases of Malta, where producing, scheduling and organising political broadcasts, including debates and interviews are in the hands of the regulator, and France where the regulator is in fact the producer of the party broadcasts.*

*An issue parallel to the differences in approach noted here arises from the fact that norms, rules and standards are found in a variety of legal and other instruments. In some cases basic provisions for media and elections are found in laws governing political parties or elections. In other cases such provisions are included in broadcasting acts or in broadcasting regulations and guidelines. National cases differ and the power to regulate is assigned to a different body. This may be an independent authority, (electoral or radio and television regulator), or in the case of Nordic countries the greater part of the responsibility rests with the broadcasters.*

*Apart from those basic issues directly concerned with media and elections, other aspects of law have broader meaning and application. These acquire a special significance at election time. Examples include provisions for the right of reply, prohibitions on racist comments, libel and defamation, and others. These are generally included in laws other than electoral law. This is why relevant clauses are often recited by the regulators, or the pertinent excerpts from these laws are included as appendices to the regulatory documents for media and elections.*

*Touching the core of the matter one may pose the question: "What are the issues to regulate?"*

*The sample selection of laws and research upon which this publication is based show that there is no definitive answer. This is true with regard to the thematic list and also the extent of regulation for each item. One may start with principles and proceed to definitions of the main concepts and interpretation of the clauses of the law. There are however more aspects to be considered. These include definition of rights and obligations, procedures and measures for their implementation and others. Each country made a different selection of issues to deal with and followed a different approach as to the extent of intervention. The fact that some countries have adopted a minimal approach without experiencing any problems may be considered as the most confusing or disturbing. This is especially so when considering the situation in countries which adopted policies that go in the opposite direction without resolving eventual problems.*

*Further questions may be asked:*

- *Is there a model that may be followed in dealing with media and elections?*
- *Does the system adopted by the United Kingdom (with minimal provisions in the relevant acts; with guidelines and interpretation of the main concepts and principles by the regulators and the broad margin of action left to the broadcasters) respond to the needs of every country?*
- *Is the Italian model, allowing paid political advertising and imposing constraints on electoral expenses the best solution?*
- *Should there be a ban for one, three or more days on the publication of opinion polls?*
- *Is the option of minimal or no constraints at all the best solution?*
- *What about Article 10 and freedom of expression?*

*The only definite answer to these questions is that no system has universal value and applicability. Each country made arrangements in response to a series of considerations, arising from its history, traditions, political culture and other parameters.*

*A brief review and some commentary may prove useful. Established democracies, such as the Nordic countries, the Netherlands, Belgium, the United Kingdom and others have opted for systems where intervention by the authorities is very limited. There are obvious reasons for this: The political system in these countries has evolved through various stages. The basic rights, such as the right to campaign on equal terms, equal treatment, freedom of expression, criticism of the parties and of the government, are not only universally acknowledged features of these systems they are also defended by the system itself.*

*It is also true that over the years, particular issues relevant to the conduct of campaigns were already settled by other laws that have broader application, both in relation to politics and to other aspects of life.*

*Equally the media themselves, journalists and media professionals, have clear views of their role and how to use their power. Basic principles found in their codes of conduct combined with the authorities respect for their editorial independence form the basis of their activity. This does not mean that everything is perfect. Problems do exist but the core issues relevant to media coverage of elections are treated in a fair way by almost all.*

*Another way to understand the success of these countries lies in the level of civic culture and related issues. In these countries the level of civic culture and education is relatively high. This tends to enable citizens to judge for themselves to some degree the value of information, the way the media or political figures act in public, or they present their cases. This is because, among other factors, the media are long*

*established institutions and the value of what is presented to the public can be placed within its context and historical perspective.*

*The second major group includes countries such as France, Italy, Greece, Portugal and others.*

*France has a long tradition of centralised power. With that, there is a tendency to interfere and control the media. This tendency is less evident today. Nevertheless there is a continuation of the authorities' suspicious approach vis-à-vis the press and the media in general. There is a certain reluctance to accept self-regulation. This is true despite the evolution of the last two decades and establishment of an independent media regulator. The government retains a strong hold on the appointment of members to the regulator. This is especially true when the president of the republic comes from the governing party. By extension, this applies to the heads of the public broadcasters, as they are appointed by the regulator.*

*Concerning campaigns, the prohibition on political advertising in non-broadcast media may be considered excessive. Similarly the absolute control of party media broadcasts can be considered excessive. There is a positive point however. This is that the technical means and personnel are made available to the election participants. However the process involved and the many constraints imposed on the content and other aspects of the broadcasts are not helpful to a genuine dialogue. Perhaps the most striking aspect of the French system is that nothing can go on air unless the final production has received the prior approval of the regulator. The way the broadcasts are scheduled also deprives the broadcasters of any editorial independence or initiative.*

*Italy has adopted an extensive apparatus of instruments concerning media and elections. There are separate laws determining parity of treatment in election and non-election periods. Specific laws govern media behaviour during general and mayoral elections. Other laws enforce financial control over electoral expenses. In this way the main principles and provisions are laid down in laws leaving specific issues to be dealt with by the regulator. This array of instruments is indicative of a will to ensure administrative control on a sphere of activity that has been characterised by complete deregulation in the past. It is a mid-way approach between minimal control and others such as France where very little is left for coordination, editorial and scheduling initiatives by the broadcasters.*

*In the case of Portugal, specific laws deal with particular issues. In particular the right to media access as a positive action and a reaction to government or other parties' interventions is protected. Democracy was restored only thirty years ago. To some extent this explains the emphasis given to political dialogue as a major feature of elections and political life in general. The extensive references to the right of reply make the relevant document very useful for all countries in need of ideas on the issue.*

*The bans on the publication of opinion polls, in Italy and in other countries are indicative of perceptions that society should be protected. The decision of the French Cour de Cassation on the issue as well as of other courts set the standards all countries should respect and underline the need to align relevant actions with article 10 of the European Convention on Human Rights.*

*In the case of new democracies, both the legal and social contexts are yet in transition with efforts from all for full harmonisation with European standards. Such efforts have two sides. Firstly there is the need to break away from practices and standards that had dominated political and social life before 1990. The second concerns introducing measures and practices based on principles set by the Council of Europe and the European Union. The media's image suffers not only from continuation of practices followed under the previous regime, but also from the bad image they had, in that period. This calls for greater efforts on behalf of the media professionals to convince a sceptical public that changes are genuine.*

*That most of the Central and Eastern European countries allow paid political advertising is to a certain extent a positive measure. Such advertising enables direct contact with the electorate, thus avoiding any suspicion of bias on behalf of certain media and journalists.*

*It is evident that in this transitional period the public has not yet a clear image of the role of each social and political agent. The rules and concepts are not clear enough to all and the lack of experience and tradition explains why more precise rules are needed. At the same time relations between the media and state and government officials need time to escape from evils of the past. Even on issues that are self-evident in the West, definite and concrete measures are implemented to inform and assist both the authorities and the media professionals in achieving their goals, and to ensure fair and balanced treatment.*

*Both Poland and Lithuania have included basic provisions in their legislative and regulatory framework. One may note the sensitivity over the issue of "compromising material" and the extensive efforts made in the relevant legal texts to respond to it. This response is not limited to setting the principles on which to base the citizens protection, it contains many details on possible actions and procedures to follow. In the case of Poland, provisions are made in the law relevant to elections not only as to the actions the citizen may take but also on to the eventual sanctions or measures the court may order. There is an effort for speedy action. However the question remains open as to whether the general aspects of this issue should be dealt with in the law of libel and defamation instead. This would leave the election law concerned only with issues directly arising from the peculiarities of the electoral period.*

*Despite disparity and the fact that no model has universal applicability, it would be useful to stress the following:*

- *It is important that the principles served by legal and other provisions are clear and where possible that interpretation of concepts is provided.*
- *In the various texts a distinction should be made between principles, and means and measures to achieve them.*
- *The role and power of each authority as well as the objectives served by each legal or other text should be clear and precise.*
- *Basic principles and all that form the foundations of the regulatory framework may be better served if included in legislation. While means and measures by which the principles can be implemented may be included in recommendations, decisions and guidelines. These latter instruments may govern arrangements that need flexibility. This calls for frequent amendment. Such procedures are easy and speedy, in respect of regulations which is not the case with legislation.*

## CHAPTER 6

### ROUND TABLE

#### 6.0 Introduction

*As the title suggests, this last chapter presents a selection of texts coming from a variety of sources and perspectives dealing with the major aspects of media and elections. The aim is to provide an opportunity to reflect on the issues raised so far, through documents that go beyond legal and other regulatory frameworks. In a number of cases this is done from different angles or with objectives other than regulation. These texts complement or extend the information contained in the previous chapters. They finish with a report containing comments on a regulatory text aiming to assist with interpretation and the implementation of its clauses. It is an eloquent witness to the complexity of its many facets. It illustrates the difficulties of taking positive action to ensure respect for principles. This becomes more than evident at the time of implementation.*

*The chapter starts with a press report from the United Kingdom indicating that the citizens are turning away from election reports and other election programmes on television. A number of considerations emerged as to the root of this phenomenon. Among the matters considered were: the form and style of the broadcasts, the role of opinion polls and the formula for allocation of airtime to political parties. These were questioned by a number of citizens.*

*As a consequence of the gloomy picture of politics on television, the Electoral Commission sought to identify the causes through a public consultation. The executive summary is reproduced in the present publication with other excerpts. These deal with the length of the party political broadcasts and the eventuality of lifting the ban on paid political advertising. These excerpts will assist the reader in apprehending the scope of issues raised in the report.*

*Tom Moring, who has studied the issue of political communication especially in Finland, describes in one of the articles the situation in that country. Finland adopted an American-styled system, with television commercials since the early 1990s.*

*Paid political advertising is an issue of controversy between those who claim that any ban constitutes a violation of freedom of expression and those opposing it. These opponents favour the view that political spots will eventually subject political life to the power of money. The High Court of Australia issued a verdict in 1992, declaring the relevant clauses in the law as violating the Constitution. Selections here of excerpts summarise the positions of the parties in this trial. These are a fair indication of each side's arguments on the issue. These inevitably arise every time there is a discussion as to whether to allow paid political advertising.*

*The next issue for discussion is opinion polls. They are presently a feature tending to dominate the electoral stage in all contemporary societies. They take a variety of forms. The most recent being online voting and phone-in calls. The British Broadcasting Corporation deals with this subject extensively in chapter 35 of its Producers Guidelines. These refer to the various forms opinion polls may take and define the rules that should govern reporting on them. This practice enables citizens to be duly informed as to the meaning and true value of the polls. These comprehensive guidelines also constitute a tool in the hands of all concerned to assess the value of each form of opinion poll.*

*The legal framework concerning opinion polls is complemented by case-law. A number of national courts have issued verdicts on the issue since 1998, creating thus a legal precedent against measures limiting their publication. Such proposed limits can be for several days, even weeks before election day. One may recall that in its Recommendation on Media Coverage of Elections the Council of Europe underlines the need for any constraints on the publication of opinion polls to conform with article 10 of the European Convention of Human Rights. It is stressed here that so far, despite the bans and constraints imposed in a number of European countries, no recourse has been made to the European Court of Human Rights.*

*Two court decisions are reproduced here, one from the French **Cour de Cassation** and one from the **Supreme Court of Canada**. The first is the only one so far in Western Europe and is very important as the verdict was issued with direct reference to article 10 of the European Convention of Human Rights. It creates a precedent, affecting the whole European zone. It is to be expected that there will be more reaction to limitations and constraints in force in a number of countries.*

*The verdict from the Supreme Court of Canada was not unanimous, offering thus the opportunity to the reader to be acquainted with the arguments of the dissenting judges as well. Both opinions are supported by extensive reasoning, based on the conclusions of scientific research regarding the effects of opinion polls. Due to space constraints, only the basic verdict is reproduced including the dissenting opinion.*

*The conclusions of a research paper on the effects of opinion polls completes this section on polls and elections. The author, Pertti Suhonen, examines the issue with respect to Finland and Sweden and in the light of the various theories on the role of opinion polls.*

*A crucial element in every election campaign is that of financial resources. It has already been raised during the discussion on paid political advertising. The advocates of a ban on paid advertising argue that money could prove a devastating factor for democracy. Some of the aspects of the issue are revealed through two excerpts from different perspectives. The first originates in a study of the situation in 18 countries with regard to the financing of electoral campaigns. The countries examined belong to Central and Eastern Europe, with two common features. With the exception of Turkey, they are all former communist countries and they have limited experience in a free*

*market economy. They have adopted different rules and standards on many issues of political communication and the regulation of media operations. The second example is France. This illustrates one of the approaches adopted in Western Europe. A “declared enemy” of paid political advertising France chose to finance election campaigns with public funds.*

*Most of the questions dealt with so far refer to radio and television advertising but, many new elements have emerged since the early 1990s. These spring from new technologies , particularly the World Wide Web with the opportunities that it offers both to the broadcasters and to election participants. The core question is whether monitoring and control of the Web, if any, can be foreseen in a similar way to broadcasting media. If so, what kind of norms and standards should apply to the media and to parties and candidates respectively?*

*The issue has been the subject of a public consultation in the United Kingdom and the questions raised there are reproduced here This facilitates some understanding of the problems created by new technologies. The British Broadcasting Corporation (BBC) has issued guidelines on the way its online coverage of elections should be dealt with by its editorial staff. The two documents complement each other. They present the perspective of the authorities and that of the broadcaster. The latter has to handle information in its online services.*

*This documentary reader could never be considered as fulfilling its objectives had it finished with laws and regulations, codes of conduct, guidelines and research studies. The whole issue is about results, about whether legal and other frameworks achieve their goal, whether they enable a positive role of the media in fair and democratic elections. The presence of international observers and /or monitoring teams is an established practice today and their work offers the opportunity to assess the extent to which rules have been implemented or have produced the expected results. The OSCE’s Office for Democratic Institutions and Human Rights has produced a considerable number of monitoring reports on many European and other countries. They are a valuable source of information on the legal framework governing the conduct of elections and the behaviour of the media during elections in the countries monitored by the Office. The excerpts dealing with three of these countries are a fair example of how rules are implemented and of the results achieved.*

## 6.1 Political Communication

*The number of people interested in media reports and other forms of political communication is declining in the United Kingdom. This is also the case in other countries. Can the facts be denied? Which facts? What is the exact problem? Is it a media problem, or really an issue of audiences? Is it a problem of politics and the politicians?*

*Whatever the answer may be, in the context of the present publication the question should be reworded in the following terms: what can be done in order to enable the media to play a positive role and attract higher audiences, despite apparently, "low performance" by the politicians?*

*The review of the relevant issues by the UK Electoral Commission stresses among other things the need to continue with the present ruling and arrangements. To the Commission the solution was to incite parties to be more innovative in their presentations, and to make the rules governing the form of party political broadcasts more flexible. Parties may be given the choice from a variety of lengths of broadcasts instead of the fixed duration slots between 2'40" and 4'40". If these suggestions are adopted, should we expect them to redress the situation?*

*If not, what about allowing political television spots, as a means to make political communication more attractive? The dominant view in the United Kingdom favours retaining the ban on paid political advertising thus continuing the Western European tradition.*

*This is not the opinion of the High Court of Australia. The Court's verdict is against the ban imposed by the federal government. As one of the plaintiffs' advocates suggested: "the specific clauses contravene an implied guarantee of freedom of access to, participation in, and criticism of, federal and State institutions amounting to a freedom of communication in relation to the political and electoral processes. Alternatively, they contravene an implied guarantee of freedom of communication in relation to the political and electoral processes." Conversely the advocates of the ban support the view that "The restriction enhances rather than detracts from the democratic process, because it is directed to deterring corruption in that process". There are other arguments put forward. They are relevant to the disposition of powers and prerogatives of the states vis-à-vis the federal government and other issues.*

### 6.1.1 Election audiences plunge to new low

**Julia Day, Guardian, Monday October 1, 2001<sup>54</sup>**

Interest in TV election coverage sunk to an all-time low this year with a staggering 70% of viewers expressing no interest in the coverage and a quarter ignoring it altogether.

The general election attracted the lowest ever turnout of voters and, if any further proof of apathy were needed, audiences for election results programmes have plummeted over the past decade, according to new research.

The audience for BBC1's election night coverage fell from 11.9 million in 1992 to 4.9 million on June 7 2001.

ITV's audience dropped from 7.73 million in 1992 to 2.7 million this year.

This year, 40% of TV viewers switched channels to avoid the election coverage.

The Independent Television Commission's new report will make depressing reading for broadcasters and politicians alike.

A week before the election, 52% of viewers had hardly seen any coverage and those who had were male professionals aged over 65.

The BBC has already announced an urgent and wide-ranging review of its political coverage, sparking fears among BBC journalists that future coverage will be dumbed down.

The suggestions made by dissatisfied TV viewers make interesting reading - many complained the interviewers were not tough enough.

Although viewers would prefer less coverage overall, they suggested the introduction of a single, specialist channel, tougher interviews and wider coverage of policies and local and environmental issues.

Many viewers wanted a three-way debate between the main political leaders and more programmes, such as Question Time, that enable the public to quiz politicians directly.

A third of TV viewers believed the Green Party was not given enough coverage on BBC1 and ITV.

One of the main complaints was the level of importance given to the opinion polls - many viewers thought voter turnout was low because the pundits' forecasts made voting seem irrelevant.

### 6.1.2 Public Debate in the United Kingdom

#### **Party political broadcasting**

*Party political broadcasting - Report and recommendations<sup>55</sup>*, The Electoral Commission, 2003

#### **Executive summary**

#### **Background**

The Electoral Commission is an independent body established on 30 November 2000. Among the Commission's statutory functions is a duty to keep under review a range of electoral and political matters, including political advertising in the broadcast media.

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<sup>54</sup> <http://media.guardian.co.uk/broadcast/story/0,7493,559896,00.html>

<sup>55</sup> [http://www.electoralcommission.org.uk/files/dms/Finalversion\\_7607-6718\\_\\_E\\_\\_N\\_\\_S\\_\\_W\\_\\_.pdf](http://www.electoralcommission.org.uk/files/dms/Finalversion_7607-6718__E__N__S__W__.pdf)

In our report on the 2001 general election, we identified as a priority the need to review the role of party election broadcasts in providing voters with information to support their voting decisions, including the criteria governing their allocation.

We acknowledged continuing concern among political parties regarding broadcast allocations, and the need to take account of the increasing diversification of broadcast channels.

#### *Process*

We have consulted widely in undertaking this review, receiving comments from political parties, broadcasters, media and other interest groups, and members of the public. We issued a discussion paper in December 2001 in which we invited comments on a range of issues relating to arrangements for party political broadcasts (PPBs), their effectiveness, the media environment and arrangements in other countries. On the basis of responses to that paper we developed a consultation paper setting out suggestions for improvements to PPB arrangements. This was issued in June 2002.

#### *Priority*

The priority for the Commission in this review has been to promote and protect the interests of the electorate.

We are concerned, above all, that PPBs should encourage participation and provide voters with information to support their voting decisions. This review is part of a wide agenda that we are pursuing to re-engage the electorate and to which others must also contribute.

#### *The role of PPBs*

We acknowledge that there is scepticism about PPBs and mixed evidence regarding their effectiveness.

Surveys at the 2001 election found that many viewers and listeners switched off when a PPB came on, but that audiences were nevertheless sizeable. And although surveys suggest that the influence of PPBs on voters is limited, comparisons show that they have more effect than other forms of direct campaigning.

PPBs remain the one opportunity available to qualifying political parties to present a message directly to the electorate through the broadcast media. There is no reporter providing commentary or interpretation, no interviewer steering the agenda, and effectively no scope for editorial interference. The principle that political parties should be able freely to publicise their platforms and policies to voters, and that voters should be able to receive such information, is a vital one.

#### *Opinions*

It has become clear during the course of our review that there is widespread support for PPBs to continue.

This support is not just from political parties. Many broadcasters recognise the important place of PPBs within our democratic system, and there is even wide public support. ITC research 2 following the 2001 election found that 63% of respondents thought it was either 'very important' or 'quite important' for election broadcasts to be shown on TV.

There is a considerable lack of consensus on many of the issues we have considered in this review. This is inevitable given the range of different and often conflicting interests amongst those involved in, or affected by, party political broadcasting and we

recognise the strength and validity of many of the competing arguments. Building on the large degree of consensus that does exist regarding the continued importance of PPBs, we have sought to make recommendations that protect and strengthen the system of PPBs and which, above all, promote the interests of the viewers and listeners.

### **Conclusions and recommendations**

- Although evidence regarding the influence of PPBs is inconclusive, they remain one of the most effective and therefore most important direct campaigning tools available to qualifying political parties. The principle that political parties should be able freely to publicise their platforms and policies to voters, and that voters should be able to receive such information, remains compelling.
- We urge parties to be innovative in their design and production of PPBs. We also urge parties to ensure strict and timely compliance with technical specifications required by the broadcasters.
- We recommend that a full review of PPB arrangements be undertaken closer to the time of digital switchover.
- The case for retaining the ban on paid political advertising in the broadcast media is persuasive. The ban is in the interests of the electorate and therefore the public interest. It is also in the interests of political parties and broadcasters.
- It seems to us that the UK system would survive scrutiny under the Human Rights Act, at least if the regime of free and unmediated broadcasts is robust.

#### *Changes to legislation*

- We recommend that the proposed duty on OFCOM to determine rules should also include a requirement to establish a committee composed of the broadcasters and sitting under a chairperson who is independent of broadcasters.
  - We recommend that regulation of the obligation to carry PPBs should be the same for all broadcasters, and that the BBC and the Welsh Authority (S4C) be brought within the scope of OFCOM for this purpose.
  - We recommend that the legislation be strengthened to include criteria to which the regulator should have regard in making rules regarding qualification for PPBs and length and frequency of PPBs.
  - We recommend that, in the interests of reaching as wide a spectrum of electors as possible, PPBs should not be restricted to a narrow type of broadcaster.
- We recommend that any TV or radio channel which achieves prescribed audience reach and share thresholds should be required to include PPBs in their schedules. The criteria should apply to all UK broadcast channels for all major elections.

#### *Changes to detailed arrangements*

- We recommend that qualification for a party broadcast should continue to be based on the number of candidates being fielded by each party.
- We recommend that parties should be able to have shorter broadcasts than at present. We suggest that, in order to maintain the distinction between PPBs and commercial advertising, the minimum PPB length be set at 1 minute 30 seconds.
- We believe it would be possible to provide greater flexibility to parties, including the option of having a greater number of shorter broadcasts, without making the system unworkable for broadcasters. We recommend that parties be given the choice

between two or more 'packages' of PPBs, essentially involving a choice between fewer, longer broadcasts, or more, shorter broadcasts.

- We recommend that clear labelling of PPBs should continue, but that labels should be engaging and informative. We offer to work with broadcasters and parties to design new labels for PPBs.

- We are content that the current arrangements for the number and timing of non-election party broadcasts in Great Britain are satisfactory. We recommend that broadcasters which transmit a separate signal to Northern Ireland should be obliged to offer broadcasts around key political events to qualifying parties in Northern Ireland.

#### *Powers*

This report has been submitted to the Secretary of State, as required by law. The Commission's role with respect to party political broadcasting arrangements is advisory and it is not for us to make the final determination as to how arrangements might be changed. It is for the broadcasting authorities to decide on any changes to their codes and procedures and for Parliament to decide on any proposals for legislative change. (...)

## **Length of broadcasts**

*Party political broadcasting - Report and recommendations*, The Electoral Commission, 2003

### **Current options**

The first PPBs, transmitted on radio during the 1924 general election campaign, each lasted 20 minutes and the first televised broadcasts, transmitted in 1953, each lasted 15 minutes. The length of broadcasts has been reduced in recent years.

Prior to the consultation exercise carried out by broadcasting authorities in 1998, parties were offered either 5 or 10-minute broadcasts on television, and 2 minutes 30 second broadcasts on radio. Following the consultation exercise, parties qualifying for PPBs have been offered either 4 minutes 40 seconds, 3 minutes 40 seconds or 2 minutes 40 seconds for television broadcasts.

Under the current arrangements, many parties choose the shortest option of 2 minutes 40 seconds. Rather than maximising the total amount of time, they have preferred to opt for shorter broadcasts, which are considered to be more effective as a communication tool. Many parties would like the opportunity to have even shorter broadcasts, noting that short and oft-repeated messages are considered most effective by the advertising industry.

#### *Shorter broadcasts...*

Some parties and many broadcasters are opposed to substantial shortening of PPBs. They consider that substantial political messages should be presented in PPBs and that shortening the length would dilute serious policy issues and encourage over-simplification, sloganeering and spin. They are concerned too that shorter broadcasts tend to be more negative and point to the largely negative political advertising culture in the USA where turnout at elections is typically lower than in the UK.

We believe it is important that the distinction between PPBs and commercial advertisements and programme trailers remains very clear, because they are different types of broadcast and are subject to different regulatory controls. One way in which this is achieved is through clear labelling of PPBs, which we discuss below. Another way is through the different length of PPBs which are currently at least five times as long as typical TV advertisements which rarely exceed 30 seconds.

However, we do not accept that it is not possible to present a serious political message in less than 2 minutes 40 seconds. Many political news reports or political party press releases are short in length, with journalists and politicians alike recognising that in mass communication it is often more effective to make one clear point than attempting a lengthy, more detailed argument. The broadcasting authorities acknowledged in their 1998 consultation paper that PPBs now tend to draw more on the techniques of the advertising world than those of the public service broadcaster, proposing that this emphasis be accommodated through greater provision of PPBs at election times rather than in the annual series. We consider that there is a strong case for reducing the length of party broadcasts, although we remain concerned that PPBs should not be confused with commercial advertising or programme trailers.

We recommend that parties should be able to have shorter broadcasts than at present. We suggest that, in order to maintain the distinction between PPBs and commercial advertising, the minimum PPB length be set at 1 minute 30 seconds.

#### *...greater flexibility*

We understand the concerns of parties that in opting for shorter broadcasts the overall amount of airtime they receive is reduced. We recognise the argument that, if communication with the electorate is to be effective, not only should broadcasts be short but they should be repeated several times. Our priority is to ensure that the electorate have adequate opportunity to receive information from parties and, accordingly, to ensure that the parties have adequate opportunity to present such information. Given that TV and radio are the principal and most powerful communications media, and given that parties are prohibited from taking paid advertising in these media, we believe it is essential that the regime of free broadcasts provides sufficient opportunity for qualifying parties to present information.

At the same time we acknowledge that it is not practical to allow parties freedom to divide up a set amount of allocated time as they see fit, even within the constraints of minimum and maximum time slots. Broadcasters need to have sufficient time to schedule PPBs. In the context of a short campaign period, allowing parties such freedom is likely to make scheduling arrangements very much more difficult for broadcasters, both in terms of determining the requisite number of 'slots' to be filled and in determining the allocation of broadcasts to individual slots.

We believe it would be possible to provide greater flexibility to parties, including the option of having a greater number of shorter broadcasts, without making the system unworkable for broadcasters. We recommend that parties be given the choice between two or more 'packages' of PPBs, essentially involving a choice between fewer, longer broadcasts, or more, shorter broadcasts.

#### *Countering objections*

We recognise that providing a choice of packages would mean that scheduling arrangements would be even more difficult for broadcasters than at present. Under such an arrangement, we would suggest that major parties to which series of broadcasts will be offered should be required to meet earlier deadlines for confirming their preference of broadcasts package. Parties may also need to accept that, for the shortest broadcasts, broadcasts from more than one party might be aired together in blocks, provided that it is possible to devise a system of placement which meets the criteria of fairness. This might mean, for example, that instead of a broadcaster transmitting one broadcast of nearly three minutes on a given evening during the election campaign, they transmit broadcasts on behalf of two parties, each of 1 minute 30 seconds, within a single slot. We do not consider that it is unreasonable to expect broadcasters to accommodate such a change. Indeed, by offering a choice between a small number of set packages, the degree of uncertainty for broadcasters is arguably reduced as parties at present can potentially choose any combination of 2 minute 40 second, 3 minute 40 second or 4 minute 40 second broadcasts.

Broadcasters have a duty to ensure balance and impartiality which, for PPBs, is achieved in considering the series of broadcasts as a whole. Broadcasters are concerned that by giving parties some choice about the number of broadcasts they have, there may be a perception that balance isn't being achieved. We do not accept that variations in the numbers of broadcasts would create imbalance, provided that the different packages offered to parties of equivalent strength consisted of approximately equal overall time. We consider that the potential for perception of imbalance under the current system is greater, given that one party might opt for five broadcasts of 4

minutes 40 seconds and a party of equivalent strength might opt for five broadcasts of 2 minutes 40 seconds.

One further objection that we should counter is that by providing shorter broadcasts than at present, PPBs would not appear in programme listings and parties would therefore lose valuable additional publicity. TV listings tend to exclude any programme that is shorter than 3 minutes: thus, the labelling at the beginning and end of PPBs means that the shortest broadcasts are included in listings at present. Provided that clear information is provided to parties about which broadcasts would appear in listings, we believe that this should be a factor for parties to consider in making their choice of longer or shorter broadcasts. Clearly, parties that value the extra publicity listings provide would opt for longer broadcasts, while parties wishing to increase the surprise element would favour shorter broadcasts.

### 6.1.3 The Finnish Exception

Tom Moring, Political Advertising on TV in Finland, in *Political advertising in Western democracies: parties and candidates on television*, by Lynda Lee Kaid, Christina Holtz-Bacha (editors) pp. 161-165.

In 1990 Finland was the first country in the Scandinavian region to allow political advertising on radio waves over nationwide terrestrial television. Thus Finland is a special case in comparison with most countries in Northern Europe.' In Norway and Denmark, political ads are still forbidden through national regulations if they are carried independently by radio waves or cable networks. In Sweden, domestic distribution is also prohibited; however, Swedish political parties or candidates could get around the restrictions by purchasing time on direct satellite broadcasts. Before the 1990 parliamentary election in Denmark, the London-based TV 3, broadcasting by satellite over Scandinavia, offered the Danish parties the opportunity to air political ads, but the Danish parties agreed not to accept the offer. In Norway, TV 3 itself has kept to the restrictions on political advertising. In Sweden, however, the moderate right-wing party (Moderaterna) aired some spots over TV 3 in the 1991 election, and it has been followed by the Liberal party. The regulations are somewhat less categorical in Sweden than in Denmark and Norway; in Sweden, legislation permits political parties to allow political ads on domestic channels. Although that is unlikely to happen, political television ads distributed by satellite are expected to appear in increased numbers in the next Swedish election.

In Finland, political ads have never been banned from cable TV. However, the audience ratings of domestic cable programs averaged less than 3% of the total audience in the early 1990s, not a large enough audience to trigger more than marginal investments in TV slots until ads were also allowed on the nationwide domestic commercial programs.

(...)

#### **Changes in Finnish Electoral TV in the Early 1990s**

The changes in the Finnish campaigns in the early 1990s have not only concerned the introduction of political TV advertisements but also cover a whole range of changes in electoral television as well as political practice. All these changes seem to influence the Finnish political system in the same "Americanized" direction. Therefore, the total process must be briefly described to provide a context for the political TV spot campaign in 1992.

There is a strong tradition in Europe of strictly regulating electoral television. In many countries there is a TV and radio "quarantine," prohibiting candidates from appearing in programs close to the elections, with the exception of special strictly regulated election programs, which can be free time slots allotted to parties according to strict rules. There can also be debates in which the parties are allowed fixed amounts of time to make their presentations and answer questions. Scandinavian countries also have special journalistic party interviews in which (usually two) journalists do a (usually quite critical) directly broadcast interview with a party representative (Esaïasson & Moring, 1993).

These principles also guided Finnish electoral television until the early 1990s. The formal equal rights for each party to appear on public service TV during the campaign were strictly followed; the party interviews were equally long, independent of the size of the party; and commercial television in Finland was not expected to carry campaign programs.

Gradually, these principles started to erode. By the beginning of the 1980s, the amount of time allotted each party in Finnish party debates was allowed to diverge, to the benefit of the bigger parties. In the latter part of the 1980s the TV and radio quarantine was gradually lifted, starting with news and current affairs programs.

In the early years of the 1990s, the Finnish television campaign culture changed dramatically. In the campaign before the 1991 parliamentary election, commercial MTV aired its own party leader debate for the first time. On TV 3, MTV aired political entertainment programs on which party representatives appeared on the screen discreetly in the nude, within the moral code of Finnish sauna culture. Among these party representatives were actual candidates running for seats, who appeared on this entertainment show close to the election (Moring & Himmelstein, 1993).

The publicly owned broadcasting company (Yle), in its current affairs programs, introduced more vivid reporting about the campaign, thus opening the way for more competitive journalism. Party leader duels were introduced, but with only the largest parties included.

In the local election campaign in 1992, the development took a step further: Political TV spots were introduced on nationwide television. The appearance of political leaders on entertainment programs (quiz programs, kitchen shows, and so on) proliferated. The commercial MTV had not one TV debate, but two.

The public service broadcasting company, Yle, in its turn strengthened journalistic competition at the expense of equality among the parties. Yle limited the number of parties allowed to appear in the debates to those represented in Parliament. Of the 17 parties who took part in the debates in 1991, only 9 were allowed to appear in the campaign programs of 1992. The order of appearance in party interviews, which had earlier been decided by lottery, was now decided by journalistic considerations.

Furthermore, party leaders from the two government parties were presented in (critical) social reporting programs close to the election. The two programs, presenting four party leaders in debates before the elections in 1991, were in 1992 reduced to one program presenting two party leaders, the prime minister and the leader of the biggest opposition party.

All of these changes followed in the same direction taken a year earlier, away from strictly regulated electoral television toward a system that would open up political representation to commercial as well as journalistic competition. This development has continued in the early phases of the campaign leading up to the Finnish presidential elections in 1994, which already bear clear resemblances to the "talk show democracy" that developed in the United States in the presidential campaign in 1992 (Dennis et al., 1993).

#### 6.1.4 The High Court of Australia

AUSTRALIAN CAPITAL TELEVISION PTY. LIMITED AND OTHERS and THE STATE OF NEW SOUTH WALES v. THE COMMONWEALTH OF AUSTRALIA and ANOTHER (1992) 177 CLR 106 F.C. 92/033<sup>56</sup>  
Constitutional Law (Cth)

##### **COURT**

MASON CJ(1), BRENNAN(2), DEANE(3), DAWSON(4), TOOHEY(3), GAUDRON(5) AND McHUGH(6) JJ

HRNG CANBERRA, 1992, MARCH 17-19, SEPTEMBER 30; MELBOURNE, 1992, AUGUST 28. #DATE 30:9:1992

##### **DEMURRERS**

Australian Capital Territory Pty. Ltd., Prime Television (Southern) Pty.Ltd., TWT Ltd., Tasmanian Television Ltd., Southern Cross Television (TNT 9) Pty. Ltd., Prime Television (Victoria) Pty. Ltd., Queensland Television Ltd. and TCN Channel 9 Pty. Ltd., holders of commercial television licences and licence warrants under the Broadcasting Act 1942 (Cth) ("the Act"), sued the Commonwealth in the High Court for a declaration that Pt IIID of the Act was invalid. Alternatively they claimed a declaration that s. 95D and ss. 95B, 95C, 95E, 95Q and 95S of the Act were invalid in their application to a broadcaster who was a licensee. The Commonwealth demurred to the statement of claim on the ground that Pt IIID was entirely a valid law of the Commonwealth. The State of New South Wales brought an action in the High Court against the Commonwealth and the Australian Broadcasting Tribunal for declarations that Pt IIID was invalid and that the Part did not apply to Parliamentary by-elections. The defendants demurred to the statement of claim on the ground that Pt IIID was entirely a valid law of the Commonwealth. They also claimed that s. 95J, read with s. 95H, did not prevent Pt IIID from applying to a by-election. The demurrers were set down for hearing together before a Full Court.

*Sir Maurice Byers QC (with him S. J. Gageler), for the plaintiffs in the first action.* Sections 95B, 95C, 95D and 95Q of the Broadcasting Act 1942(Cth) contravene an implied guarantee of freedom of access to, participation in, and criticism of, federal and State institutions amounting to a freedom of communication in relation to the political and electoral processes. Alternatively, they contravene an implied guarantee of freedom of communication in relation to the political and electoral processes. Those guarantees arise as a necessary implication from the nature of the institutions of government created and preserved by the Constitution or from the common citizenship of the Australian people. The agreement of the Australian people called the Constitution into existence and gave it substantial validity. The Commonwealth of Australia Constitution Act 1900(Imp.) gave that agreement legal form. The Constitution derives its continuing validity from the will of the Australian people. It can only be changed by the people: s. 128. The Constitution enshrines the principles of representative and responsible government: ss. 7, 24, 28, 53, 64. Section 106 preserves the existence of State Constitutions in which representative and responsible government were at the time of federation, and remain, essential characteristics (...).

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<sup>56</sup> [http://www.austlii.edu.au/au/cases/cth/high\\_ct/177clr106.html](http://www.austlii.edu.au/au/cases/cth/high_ct/177clr106.html)

The word "Constitutions" in s. 106 encompasses such of the laws of a State as relate to the designation and form of its government (...). The references in ss. 9 and 10 of the Constitution to the "Parliaments" of the States are references to them as organs of representative and responsible government. The principle of responsible government permeates the Constitution, forming part of the fabric on which the written words of the Constitution are superimposed (...). That principle, involving as its essential feature executive responsibility to a popularly elected legislature, has as its principal design and effect that the actual government of the State is conducted by officers who enjoy the confidence of the people (...). The view of the framers that an American-style Bill of Rights was unnecessary was based on their faith in the proper functioning of representative and responsible government and the free operation of the electoral process. Representative and responsible government is responsive to the voice of the people. It requires that electors make their will known not only in the ballot box but by communication with their representatives in Parliament. It requires that every person have the entitlement to make his other views known on political issues not only during election campaigns but between elections. Since the executive government is responsible to the popularly elected House of Parliament, the ability of the people to make known their views on current political issues arising during a term of that House is essential to its operation. The fundamental premise of the structure of the Constitution, and in particular of the electoral processes specifically provided for by ss. 7, 24, 28 and 128 and preserved in the case of State Constitutions by s. 106, is the continuous ability of the Australian people as a whole to make informed judgments on matters of political significance. This necessarily involves the capacity at all times for free and unhindered public discussion on all such matters, subject to traditional and proportional limitations such as those imposed by the laws of defamation and sedition. A law which seeks to control the content of a communication on a matter of political significance, in the absence of some compelling justification, is therefore invalid on two grounds: first, as an interference with the free operation of the institutions and processes created or preserved by the Constitution, in particular the electoral processes required or preserved by ss. 7, 24, 28, 106 and 128; secondly, as a denial of a fundamental premise on which the representative and responsible government established and preserved by the Constitution is based, viz. the ability of the Australian people to control the institutions of government through electoral processes. In so far as the structures and processes of the Constitution require or permit access or participation by the individual, they necessarily confer on the individual a correlative right to that access or participation (...). That right includes all that is necessary for its effective exercise. The right to vote is a personal right (...). In Canada the existence of an implied guarantee of freedom of communication was recognized as an essential feature of Canadian parliamentary democracy having constitutional status even before the Canadian Charter of Rights and Freedoms(...). A major purpose of the express guarantee of freedom of speech in the First Amendment to the United States Constitution was to protect the free discussion of governmental affairs (...). The implication of the guarantee of freedom of communication arising from the common citizenship of the Australian people rests on the same as well as on broader considerations. The concept of citizenship in a free and democratic society necessarily implies a personal freedom of movement and

communication throughout that society. The existence of such a freedom is deeply rooted in the common law and in the traditions of democratic government. In addition to the express guarantee of freedom of speech in the First Amendment, an implied constitutional guarantee of freedom of movement has always been recognized in the United States (...). Sections 95B, 95C, 95D and 95Q abrogate the citizens' freedom to communicate on political matters during election periods and purport to substitute for it the regime in Div. 3. This regime discriminates against persons or parties not already represented in a Parliament or legislature. The constitutional freedom is totally taken away. The prohibitions in ss. 95B, 95C and 95D are invalid because they prevent the communication of political information or, alternatively, because they prevent the communication of political information during an election period. Section 95H substitutes for the right of freedom of political discussion a regime under which those parties represented by members in the Parliament obtain ninety per cent of the total time allowed for broadcasting political material. Non-party Senators take the next five percent. No other person has a right to time. He must apply. The obligation ins. 95Q to provide free time is invalid because it compels the broadcasting of political information or, alternatively, because it compels the broadcasting of political information discriminating in favour of political parties already presented in a Parliament or legislature. The provisions cannot be justified as falling within the area of any permissible regulatory power. They are not proportionate to the attainment of any legitimate governmental objective. (...) The reference to "intercourse" was inserted in s. 92 to make explicit that for the citizens of the new Commonwealth colonial boundaries had ceased to exist and that the Commonwealth consisted of the entire continent and Tasmania. The interstate intercourse given absolute freedom by the section is but an illustration of the width of intercourse implied in the creation of the new Commonwealth. The section does not profess to exhaust the rights of Commonwealth citizens. The right to resort to their federal capital and their federal institutions is clearly inherent in citizenship of the Commonwealth, yet the section does not mention it (...). Section 92 is a specific and limited statement of the ampler freedom created by the formation of the Commonwealth. Its focus on the freedom of intercourse across State borders is not to give preference but to give equality with freedom of intercourse throughout the States. The natural meaning of "intercourse" in s. 92 embraces all forms of movement and communication. It includes radio and television broadcasting (...). That the means or purpose of the movement or communication is commercial in character does not remove it from the scope of "intercourse". The freedom guaranteed is a personal freedom, independent of any commercial attributes (...). The absolute freedom of movement guaranteed by the section is a freedom to pass to and from among the States without burden, hindrance or restriction (...). The absolute freedom of communication guaranteed by the section similarly may not be burdened, hindered or restricted. The freedom is infringed as much by compulsion as by prohibition. The licensing provisions of the Broadcasting Act remove the right to conduct commercial radio and television stations from the public domain and substitute for it a regime under which a limited number of approved persons obtain statutory titles to conduct commercial television and radio stations for profit. The essence of the statutory title is the licensee's right to broadcast advertisements for money. The Television Licence Fees Act 1964 (Cth) envisages

substantial earnings from the conduct of the business authorized by the licence derived from the broadcasting of advertisements. A commercial television licence therefore confers upon the licensee a legal right to broadcast advertisements and to do so for money. The effect of ss. 95B, 95C, 95D and 95Q is to take away from the licensee the right to charge money for political advertisements and give the right to broadcast political advertisements free of charge to the beneficiaries indicated in Div. 3, that is, in substance, to the legislators. That is an acquisition of property within the meaning of s. 51(xxxi) without just terms. Acquisition of an interest being part of a larger grant is an acquisition of property (...). We adopt the submissions of the plaintiff in the second action as to interference with State constitutions.

*K. Mason QC, Solicitor-General for the State of New South Wales, (with him L. S. Katz), for the Attorney-General for that State*, intervening in support of the plaintiffs in the first action, and for the plaintiff in the second action. Section 95D(3) and (4) are invalid because they impede the capacity of the States to function and the processes by which their legislative and executive powers are exercised, thereby threatening their structural integrity(...). They also contravene the protection of State constitutions guaranteed by ss. 106 and 107 of the Constitution (...). The process of election is fundamental to the organization and structure of State governments because it determines the composition of the legislature and the executive. Political advertising by political parties and pressure groups is a well-established and legitimate means whereby relevant information is conveyed to electors and the Executive kept accountable (...). It is the threat through proper means of conveying pleasure or displeasure at government that is of the essence of a democratic political system and has impact on the way governments act from time to time. Elections are not conducted in an information vacuum. An effective democracy requires information to be freely circulated in the "marketplace of ideas" (...). Effective means of choice between alternative governments is fundamental. Sections 95B(3), 95C(4) and 95D(3) are invalid because of their substantial interference with the capacity of the Executive to govern and to protect the efficacy of State laws and policies from affectation by laws and policies of the federal Parliament and Government. The ban on political advertisements by State Governments and government authorities goes far beyond the protection of any legitimate federal interest in relation to federal and Territorial elections because of the capacity of elections and by-elections to occur indiscriminately and because of the width of the relevant prohibitions. The capacity of State Governments and their authorities to protect themselves and to communicate information vital to their interests and proper functioning is severely impaired. Because of the definition of "political matter", ss. 95B(3), 95C(4) and 95D(3) would prohibit broadcasts on behalf of a State Government during a federal constitutional referendum in which there was a Commonwealth proposal to amend the Constitution by extending the Commonwealth Parliament's concurrent or exclusive powers, or to abolish the States or to make applicable to the States a controversial bill of rights. Since State Governments may have legitimate interests in advertising even where this is intended to affect voting, the blanket prohibitions in ss. 95B(3), 95C(4) and possibly 95D(3) single out the States and their authorities for discriminatory treatment, in the sense of special disabilities or burdens which cannot be justified vis-à-vis those persons and bodies given the benefit of free time and policy launches, and charitable

organizations given liberty under s.95A(3), such as environmental groups or those promoting the interests of particular classes of needy persons. Sections 95B(3), 95C(4) and 95D(3) are invalid because they single out the States and their authorities for discriminatory treatment affecting their legislative and executive functions and impose special disabilities on them which do not apply to other persons having an interest in disseminating "political information" (...). The onus of justifying any such discrimination rests on the Commonwealth (...). Discrimination against interstate intercourse is essential to invalidity under s. 92. We refer to our submissions in *Nationwide News Pty. Ltd. v. Wills*. If they are accepted, it is conceded that Div. IIID does not discriminate against interstate intercourse. Political advertising falls outside trade and commerce and thus within the area of intercourse. The absolute freedom is uninfluenced by protectionist concepts, but is not infringed by reasonable and proportionate regulation. Intercourse includes trans-border communication(...). The challenged provisions do not satisfy the test of being a reasonable and proportionate regulation. The public interest requires the dissemination, not the suppression, of the information the broadcasting of which is banned. The very grant of free time shows that the content of the material banned is not in issue. The fundamental importance of free speech in public matters is not outweighed by the concerns about corruption. The Act is also unfair in its allocation of free time in favour of existing parties. It operates to entrench them and deter new entrants. It imposes burdens on innocent persons because of a perceived need to prevent the corruption of major political parties. Section 95B(3) and (4) and s. 95C(4) and (5) are invalid as contravening an implied constitutional right to freedom of communication with the central organs of federal government and in relation to federal electoral and judicial processes(...). Unlike s. 92, this right extends intrastate. Otherwise a petitioner or claimant might be denied access to the post to seek federal redress, or a plaintiff prevented access to a federal court to file process. Section 51(xxxi) is to be given a liberal construction appropriate to such a constitutional guarantee (...). The acquisition need not be by the Commonwealth. It is sufficient that there is an acquisition whereby the Commonwealth or another acquires an interest in property, however slight or insubstantial it may be (...). The right acquired by the Commonwealth or its nominee need not be identified with something disposed of by the person from whom the acquisition is made (...). To be valid, an acquisition must be for a purpose in respect of which the Parliament has power to make laws (...). The Act impinges upon a commercial broadcaster's right to use its plant and equipment as it sees fit. That is a right inherent in the property interest itself, and is made all the more valuable by the relative exclusivity conferred by the licensing regime. The licensee's plant is the vehicle for the passage of messages which the Act commandeers for the benefit of specified persons. The Act also curtails the pre-existing right of the broadcaster under its licence to broadcast subject to all existing valid conditions. The right to use and dispose of property as the owner thinks fit is central to the concept of ownership (...). This includes the right to exclude others (...). Those who are granted free time are given an effective right of entry over the plant and the licence. A broadcasting licence is a form of property (...). It satisfies the test in *National Provincial Bank Ltd. v. Ainsworth* (...). A commercial radio and television licence is transferable (s. 89A), valuable because it is a limited commodity (s. 6A(1)), revocable only for cause (s. 88), and in force for a specified

period with a right of renewal save in specified circumstances (ss. 86, 86AA, 87(1)). The rights conferred on those granted free time amount to an identifiable and measurable advantage and a material benefit of a proprietary nature (...). It is irrelevant to acquisition whether the acquirer can assign the property (...). Section 51(xxxi) is not limited to the protection of traditional rights of property (...). In its application to s. 95D(4), Div. 3 is invalid because its purpose is not a purpose in respect of which the Commonwealth Parliament has power to make laws in the context of State elections. The avowed object of the legislation is to stop political corruption. That, and its application to State elections, is not a purpose within Commonwealth power. Section 51(v) does not show the purpose of the law (...). If Div. 3 is invalid, ss. 95B(4), 95C(5) and 95D(4) cannot stand because they would operate differently. Division 3 is referred to expressly in those provisions, and its importance is revealed by the legislative history which shows that without it the 1991 Act would not have been passed. If ss. 95B(4), 95C(5) and 95D(4) are invalid, ss. 95B(3), 95C(4) and 95D(3) should also be struck down. To leave governments bound when private advertisers are free would invert the operation of the legislative scheme. (...)

*G. Griffith QC, Solicitor-General for the Commonwealth, and D. J. Rose QC (with them J. S. Hilton), for the defendants.*

G. Griffith QC Pt IIID leaves untouched ample mechanisms for political debate and communication to those who wish to participate; for example print advertising, direct mail, current affairs interviews, press conferences, press releases, public meetings and door knocking. (BRENNAN J. But your argument must go to the extent of saying that the plenary power with respect to elections extends to preventing any of those modes of communication.) It does go that far. The test is whether the current restriction is inconsistent with the constitutional requirement that the Parliament be directly chosen by the people. The restriction enhances rather than detracts from the democratic process, because it is directed to deterring corruption in that process. So long as the legislation is not inconsistent with the constitutional requirement, it is a matter for the legislature whether it is appropriate, whether it is the best mechanism, or whether it goes too far. The plenary powers in s. 51(v) over radio and television broadcasting enable the Parliament to provide completely for the provision of broadcasting services or for their prohibition (...). It is wrong to construe powers by reference to their extravagant use or possible abuse (...). Parliament has plenary powers under ss. 10, 29, 31, 51(xxxvi) and (xxxix) to make laws with respect to elections. It may make laws regulating the conduct of persons in regard to elections, including laws for the protection of the integrity of the electoral process by the prevention of corruption and undue influence (...). As the Constitution in ss. 24, 29 and 41 contains express restrictions upon the exercise of these legislative powers, there is limited scope for the implication of other restrictions. The Court should not strike down the legislation unless it is satisfied that it so impairs the democratic process that it can no longer be said that Parliament is being directly chosen in an informed way by the people. Where an interstate movement or communication is both trade and commerce and intercourse, the only test under s. 92 is that of discriminatory protectionism. In *Cole v. Whitfield* (...), having held that the laws did not infringe s. 92 as it relates to trade and commerce, the Court pronounced them valid without

considering whether there was in infringement of any wider freedom of intercourse. Television broadcasting for profit will constitute trade, commerce and intercourse by the broadcaster and by those advertising for trading or commercial purposes, and intercourse by those advertising for other purposes, including political purposes. Where a law burdens interstate intercourse for validity that the law be protectionist in the sense that it confers a competitive advantage on intrastate intercourse. But the law must not discriminate against interstate intercourse in the sense that it imposes on interstate intercourse burdens which are not imposed on intrastate intercourse of the same kind. A law of general application, the effect of which is to impose special burdens on interstate intercourse, will nonetheless be valid if its object is non-discriminatory and if the incidental burdens it places on interstate intercourse are appropriate and adapted, and not disproportionate, to the achievement of that object. If discrimination were not necessary, interstate intercourse would enjoy a privileged status. Section, as now interpreted, does not give interstate trade and commerce a privileged status (...), and there is no reason why interstate intercourse should have a special status. Section does not give an interstate trader an individual right to be free of restrictions (...). Similarly, there is no individual right to be free of restrictions in relation to interstate intercourse (...). The purpose of s. 92 is the public purpose of removing at State borders impediments to interstate intercourse, not the private purpose of guaranteeing an individual the right to engage in interstate intercourse free from legislative control or burden. Section 92 does not require more than that a person can engage in interstate movement or communication on similar terms to those on which he can engage in intrastate movement or communication. The Act does not discriminate against interstate intercourse. *Crandall v. Nevada* (...) all involved discrimination against interstate intercourse. If discrimination is not a requirement for invalidity, the Act satisfies the test of reasonable regulation. The Court must accept that Parliament had reasonable grounds for apprehending the problems to which the legislation is addressed, and cannot inquire whether the solution adopted was necessary or even desirable (...). For invalidity, it is not enough that the Court considers the law to be inexpedient or misguided. The law must be incapable of being reasonably considered to be appropriate and adapted to achieving its object. It must be so lacking in reasonable proportionality that it must be characterized as having no relationship with the objective it is intended to achieve (...). The Act does not lack reasonable proportionality. The framers of the Constitution did not show the American farmers' lack of faith in parliamentary supremacy. The latter considered it necessary to protect minority rights. The former expressly rejected this necessity (...). The pre-Charter Canadian cases do not establish any implied guarantee of freedom of communication which could strike down legislation otherwise within power (...). The American cases on the First Amendment balance the degree of interference with freedom of speech and the electoral process against the importance of the governmental issue at stake. In any event, the First Amendment cases are not applicable to our Constitution. In our case the matter turns on ss. 7 and 24 and the implications to be derived there from. If a Commonwealth law falls within ahead of power, the Court cannot review the law on the ground that it interferes with fundamental human rights (56) *Davis v. The Commonwealth* (1988), 166 CLR 79, at p. 116. The Act amply falls within legislative power, and whether it is meritorious or not

is irrelevant (...). Legislation cannot be struck down on the ground that it infringes an implied freedom under the Constitution (...). Once it is accepted that the right of freedom of expression is subject to some regulation in the public interest, it is for Parliament and not the courts to determine what the public interest requires (...). The Act does not relevantly interfere with the States. Neither the States nor State elections are singled out for special and adverse treatment but they are affected as an integral part of the general scheme. No special burdens or disabilities are imposed on the States and the law is not aimed at them. The States and their elections are treated equally with the Commonwealth and the Territories and their elections. The fact that, by being denied access to free time, the Commonwealth and State governments are treated differently from political parties and other persons is not discrimination. The issue of discrimination is that like things are treated differently or unlike things treated in the same way (...). A non-discriminatory law prohibiting the Commonwealth and the States from advertising in the electronic media during a referendum campaign does not impair the continuing existence, structure or capacity of the States to function. The States have no role in the mechanism of altering the Constitution. The matter is for the people of the Commonwealth.

*D. J. Rose QC* There is no acquisition of property within s. 51(xxxi) because s. 129 subjects every licence to modification from its inception. A broadcasting licence in this respect is no different from a lease which empowers the lessor to resume the land during its term. The free time requirements do not involve an acquisition of property by the parties or candidates. They obtain no right of property. The free time is not capable of transfer to others (...). It lacks one of the essential characteristics of a property right. A law requiring the provision of a service does not involve an acquisition of property simply because the provision of the service will involve the use of property. All the parties and candidates obtain is the right to have their broadcast put to air. Nothing sort of a proprietary interest is "property" within s. 51(xxxi) (...). It is fair and just to require the holders of valuable privileges such as broadcasting licences to provide limited free service in the public interest. Alternatively, the free time provisions are just and fair because s. 129 means that the licensees take their licences on the basis that they can be modified. Sections 95B(4), 95C(5) and 95D(4) are inseverable from Div. 3. Sections 95B(3), 95C(4) and 95D(3) are inseverable from ss. 95B(4), 95C(5) and 95D(4). Sections 95C and 95D as they concern local government elections are severable from the provisions concerning other State and Territory elections. The provisions of s. 95B concerning referenda are severable from those concerning elections. If any part of ss. 95B, 95C or 95D is invalid, it is severable from the provisions of any other of those sections.

*J. J. Doyle QC, Solicitor-General for the State of South Australia (with him B. M. Selway), for the Attorney-General for that State*, intervening in support of the defendants. The fact that a provision along the lines of the United States First Amendment was not adopted, and the inclusion in s. 92 of the guarantee of free intercourse among the States, suggests that any implication of freedom of access to, participation in, and criticism of, constitutional institutions should be narrowly confined. The Constitution requires or is predicated on a process such that the Senators and members are "directly chosen by the people". It is implicit that the process must permit the choice to be made freely and, to the extent necessary for a free choice,

permit candidates and electors to communicate with each other. But nothing beyond that is a necessary implication from the constitutional provision. The proper approach is not to ask what are the assumptions which were made by the framers of the Constitution, and then to express them as affirmative rights, but to consider whether the particular law in its operation prevents electors and candidates participating in the conduct of the election in a meaningful way. The plaintiffs convert background assumptions into fundamental constitutional principles. A law which from a practical point of view prevents a free election would be invalid. It is implied in the Constitution that a member of Parliament represents constituents in an electorate. A law which so restricts communication between a member and constituents as to prevent the member representing the constituents will be invalid. This law, despite its effects, prohibits the use of two means of communication only. Its effect is not so great as to lead to the conclusion that free and meaningful elections cannot be held or that members of Parliament and electors cannot communicate. Any relevant guarantee has no application to State elections. Sections 106 and 107 of the Constitution continue State constitutions as they are for the time being, and implicitly confirm the independence of the States. But any implications about rights of State electors and members of Parliament must come from the State constitutions. If the law did prevent a free or meaningful election or communication between members and electors, it would be bad in relation to States, not because of an implied guarantee but because it would deny their continued existence as we know them. Accordingly, ss. 95B and 95D are not invalidated by any relevant implication. We repeat our s. 92 submissions made in *Nationwide News Pty. Ltd. v. Wills*. The law does not in terms apply to communication across borders. The object or purpose of the law is not to prevent communication across borders. It is, by prohibiting political advertisements, to control the manner in which elections are conducted and to limit expenditure on political campaigns. There is in fact an impediment on interstate communication, but the law is appropriate and adapted to the stated purpose, the burden on interstate commerce is incidental to that purpose and is not disproportionate to the achievement of the stated object. In particular, the nature of the medium makes it impossible to distinguish between advertisements communicated within and across State borders.

*Sir Maurice Byers QC*, in reply. In a democracy the right to freedom of speech is part of the fabric of society (...). There cannot be democracy if the voters are gagged and blindfolded.

## 6.2 Opinion Polls – Publication and Role

*The issue of opinion polls is treated variously in national regulatory frameworks and in broadcasters' codes of conduct. Examples were included in Chapters 3, 4 and 5. The issue has gained greater significance in recent years for a number of reasons. These are the many forms of poll that are now available, and their extensive use both by the political forces and the media. Most significantly because of repeated challenges to the legitimacy of restrictions on their publication. All of these and other reasons that may be found in the texts that follow demanded the considerable space afforded to the issue in the present publication.*

*How to report opinion polls? As they have become part of everyday life and they are a major feature of election periods, they can not be ignored. This is stressed in the BBC's guidelines, which include also a set of general rules applied to all forms of opinion polls. In addition there are special rules relevant to specific forms of polls.*

*The general rules specify the technical information that should be provided concerning the identity or source of the poll, and who commissioned it. This is to assist the citizens in assessing the value of the poll. The general rules also deal with the prominence given to opinion polls by journalists, the interpretation of results and the weight attributed to polls in the relevant media reports. These rules seek to ensure that opinion poll results are not elevated to the level of the election outcome as often can be the case.*

*Further more, specific forms of poll present various, and peculiar problems of accuracy, credibility and others. Some are not fit to be treated as opinion polls. Journalists should distinguish them each from the other and treat each according to its intrinsic merits.*

*The second issue is that of constraints and limitations imposed by the authorities on the publication of opinion polls. What is the legality of restrictions on their publication? Such constraints range from one day to as much as two or four weeks before the actual vote takes place. Until recently polls were tolerated or merely accepted by all as a necessary evil. In recent years the role of polls during elections has changed dramatically. This arises because of their frequency and their position at the centre of the public's interest. It is also the case that the new technological means and especially the Internet have profoundly changed the situation with respect to the spreading of information. This was one of the reasons mentioned before the French Court of Cassation, which decided against the restrictions imposed since the 1970s. This decision and similar ones from Canada and Philippines focus on the right to freedom of expression and information. They advocate the abolition of restrictions because they violate that fundamental right.*

*The Supreme Court of Canada noted of the three-day ban on opinion polls : “The doubtful benefits of the ban are outweighed by its deleterious effects. The impact of s.322.1 on freedom of expression is profound.(...) The ban interferes with the rights of voters who want access to the most timely polling information available, and with the rights of the media and pollsters who want to provide it”.*

*Conversely, in a dissenting opinion, judges noted that “By providing for timely publication of poll results to allow scrutiny and criticism, s.322.1 improves information to the public during election campaigns, enhances the electoral process and strikes a balance between the right to vote and freedom of expression.”*

*The selection of the specific judgements offers the opportunity to review both sides of the argument notwithstanding that the ultimate decision was against the ban.*

*The French Court’s judgement is of more interest to European Countries as it is based on article 10 of the European Convention of Human Rights .It is noted in the verdict that the clauses in the law“introduce restrictions to the freedom to receive and impart information that are not necessary for the protection of the legitimate interests enumerated in article 10.2 of the Convention...”*

## 6.2.1 Code of Conduct

### CHAPTER 35: OPINION POLLS<sup>57</sup>

#### 1 COMMISSIONING OPINION POLLS

There are many circumstances where polls may add value to programmes and augment our journalism but care must be taken to ensure that a poll commissioned by the BBC is not used to suggest a BBC view on a particular policy or issue. It is particularly important that a BBC poll is not used to imply BBC intervention in a current controversy. Only in very rare circumstances does the BBC commission or sponsor opinion polls purporting to sample party political support or voting intentions in the electorate at large. Joint polls with other organisations often carry particular problems of impartiality in presentation and should be avoided.

Any proposal to commission an opinion poll on politics or any other matter of public policy for any BBC service should be referred to the Chief Political Adviser for approval. Technical advice should also be sought from the Political Research Unit.

#### 2 REPORTING OPINION POLLS

The following rules for reporting the findings of voting intention polls in the United Kingdom conducted by any polling organisation must be rigorously applied:

- do not lead a news bulletin or programme simply with the results of a voting intention poll
- do not headline the results of a voting intention poll unless it has prompted a story which itself deserves a headline and reference to the poll's findings is necessary to make sense of it
- do not rely on the interpretation given to a poll's results by the organisation or publication which commissioned it: look at the questions, the results and the trend
- report the findings of voting intentions polls in the context of trend. The trend may consist of the results of all major polls over a period or may be limited to the change in a single pollster's findings. Poll results which defy trends without convincing explanation should be treated with particular scepticism and caution
- do not use language which gives greater credibility to the polls than they deserve: polls "suggest" but never "prove" or even "show"
- report the expected margin of error if the gap between the contenders is within the margin. On television and online graphics should always show the margin of error
- report the organisation which carried out the poll and the organisation or publication which commissioned it
- report the dates of the fieldwork and draw attention to events which may have had a significant effect on public opinion since it was done (e.g. "The poll was carried out last Monday, before the party announced.....").

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<sup>57</sup> <http://www.bbc.co.uk/info/editorial/prodgl/chapter35.shtml>

### **3 POLLS AT ELECTION TIMES**

As with all political reporting, special care has to be taken in reporting polls at election times.

BBC policy takes into account three key factors:

- polls should not be ignored during the campaign. They are part of the story and audiences should be informed about them
- but, context is essential, and so is the language used in reporting them
- polls can be wrong. There are real dangers in only reporting the most "newsworthy" polls – i.e. those which, on a one-off basis, show dramatic movement.

So, in addition to the stipulations about polls in general (see previous section) coverage of polls at election times will:

- pre-select the main polls
- report the selected polls on a regular basis on the same outlets throughout the campaign
- report even single polls, in context. For example, on television the graphic will never be separated from the explanatory piece.

Detailed guidance as to how this policy should be implemented in practice will be issued by the Chief Political Adviser before the start of the campaign.

### **4 POLLS FOR USE IN ELECTION RESULTS PROGRAMMES**

In spite of the considerable thought and effort which has gone into refining the methodology, exit polls have not proved a sufficiently reliable way of predicting the results of elections. Our journalistic credibility is based on the audience's expectation that information the BBC broadcasts is accurate.

Polls carried out on polling day, by whatever method, have their limitations and should be seen for what they are - a device to sustain the programme until the real results come in. They may give an indication of the way things are going, but because of the pitfalls of sampling error, should always be used in bands, as in "it looks as if x are to be the biggest party with between x and x seats". A precise seat projection should wait for sufficient real results to establish the actual trend.

### **5 SURVEYS**

Surveys of small specific groups like MPs or health authorities when used responsibly can be a very useful way of informing our audience and gathering information, but like opinion polls they must be both conducted and reported with care and after seeking appropriate advice. Contact should be made at an early stage both with Political Research Unit, who will advise as to whether the survey is practical, and from the Chief Political Adviser, who will advise on the necessary thresholds for responses and on appropriate content.

Surveys must never be reported as polls. The audience should be in no doubt about the status of the information they are receiving. Their remits should not be translated into percentages but reported in straight numbers e.g.: "Of the 81 MPs in this group we spoke to 60, of whom 40 were in favour of x and 20 were opposed to it".

## **6 PHONE-IN POLLS AND STUDIO AUDIENCES**

Phone - in polls (unlike professionally conducted polls using the telephone) rely on people telephoning in to register a vote. Phone-in polls may accurately be described as "straw polls" even when the subject is serious. Programmes which want to carry them out need to understand their severe limitations. They do not sample opinion; they are simply a programme device which illustrates certain viewpoints. A programme's audience is self-selected and is never representative of the population . When asked to give views on a topic, a minority, again self-selected, responds. If voting takes place during an extended period it may encourage repeat voting by people who feel strongly about the issue.

Questions in phone-in polls should be as neutrally worded as the context calls for. Slanted questions give slanted results.

Phone-in polls must never be used by programmes as a means of gathering serious information on party political support. In other contexts, phone-in polls may produce interesting, even impressive results ("Ten thousand of our listeners/viewers called in and they are four to one in favour of ..."). But we should make clear that the results have no wider significance.

The results of phone-in polls are not even remotely indicative of wider opinion, and programmes must not treat them in any way which implies that they are. Consequently publicity should not be sought for the results of phone-in polls outside of the programmes in which they are conducted. BBC News programmes should not normally report the results of phone-in polls.

Programmes which feature phone-in polls on the same subject taken at different times (for example at the start of the programme and again at the end) must not present the results in such a way as to suggest that they demonstrate a shift in opinion by the people who voted.

Straw polls of the views of studio audiences should be treated with similar care. No claims should be made for the significance of the views expressed beyond that they represent the opinions of those in the audience at the time, even on those occasions where the audience has been selected to be broadly representative of, for example, party allegiance. Again, questions need to be properly framed.

## **7 FOCUS GROUPS AND PANELS**

The same principles apply to the use of panels or focus groups. It is inappropriate to imply that the views of panels, however carefully selected, could represent the views of the entire population, and they must not be used as a means of trying to estimate party support in the electorate at large. Panels or focus groups, when properly selected, may be more appropriately used to examine why certain views are held rather than the extent to which they are held.

The advice of the Chief Political Adviser should be sought before commissioning any focus group research on political party issues and the methodology should be checked with the Political Research Unit.

## **8 VOX POPS**

Vox pop interviews do not even remotely indicate wider public opinion. Their value to programmes is to allow different sides of an issue in question to be expressed through

the voices of the man and woman in the street. But the context should always make it clear that they are an expression of one side of an argument, not an indication of the weight of opinion on either side of it. It follows that great care must be taken with vox pops on politics or matters of public policy to edit them in such a way as to ensure both sides of the issue are covered.

## **9 ONLINE AND NEW MEDIA**

The principles outlined in this chapter apply with equal force to online sites and to other new forms of interactive voting (e.g. interactive television).

Interactivity of every sort is part of the central appeal of any online site. However, on BBC sites, especially News Online and programme sites which may relate to political or public policy issues, care has to be taken that expressions of opinion are not translated into anything that could be construed either as the BBC's opinion or as an accurate representation of public opinion as a whole. So any summary of online voting or expression of opinion must:

- not be called a poll
- not be reported in BBC editorial content, whether on or off the site
- not be expressed in percentage terms. The results should be expressed in terms of how many hits the yes button has received and how many the no button.

Any summary of online voting or expression of opinion about political or public policy issues must include a disclaimer the effect that "This is not a representative poll and the figures do not purport to represent public opinion as a whole on this issue".

## 6.2.2 Limitations on Publication of Opinion Polls

### Supreme Court of Canada

[1998] 1 S.C.R. **Thomson Newspapers Co. v. Canada (Attorney General)**<sup>58</sup>

Thomson Newspapers Company Limited, doing business as

*The Globe and Mail, The Evening Telegram, Winnipeg Free Press and Times-Colonist*, and Southam Inc. *Appellants v. The Attorney General of Canada*

*Respondent and*

The Attorney General of British Columbia and the Canadian Civil Liberties Association  
*Interveners*

File No.:25593. 1997: October 9; 1998: May 29.

**Present:**Lamer C.J. and L'Heureux-Dubé, Sopinka,\*<sup>1</sup> Gonthier, Cory, McLachlin, Iacobucci, Major and Bastarache JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

The appellants brought an application for a declaration that s. 322.1 of the *Canada Elections Act* violates freedom of expression and the right to vote guaranteed by ss. 2(b) and 3 of the *Canadian Charter of Rights and Freedoms*. The impugned section prohibits the broadcasting, publication or dissemination of opinion survey results during the final three days of a federal election campaign. The Ontario Court (General Division) denied the appellants' application, holding that s. 322.1 did not violate a citizen's right to vote and that, although the section infringed freedom of expression, it was justified under s. 1 of the *Charter*. The Court of Appeal affirmed the judgment.

*Held* (Lamer C.J. and L'Heureux-Dubé and Gonthier JJ. dissenting): The appeal should be allowed.

*Per* Cory, McLachlin, Iacobucci, Major and Bastarache JJ.: Section 322.1 of the *Canada Elections Act*, which applies only to "new" poll results, infringes s. 2(b) of the *Charter*. The publication of opinion survey results is an activity that conveys meaning and therefore falls within the ambit of s. 2(b). By prohibiting the broadcasting, publication or dissemination of opinion survey results during the final three days of an election campaign, s. 322.1 restricts freedom of expression.

Section 322.1 is not justified under s. 1 of the *Charter*. All the steps of a s. 1 analysis must be undertaken with a close attention to context. Characterizing the context of the impugned provision is important in order to determine the type of proof which a court can demand of the legislator to justify its measures under s. 1. In the course of a contextual approach under s. 1, the vulnerability of the group which the legislator seeks to protect, that group's own subjective fears or apprehension of harm, the inability to measure scientifically a particular harm, and the efficaciousness of a remedy, are all factors which the court must take into account in assessing whether a limit has been demonstrably justified according to the civil standard of proof. Another factor to be considered is the nature of the activity which is infringed. The degree of constitutional protection may vary depending on the nature of the expression at issue. Here, the speech infringed is political information. Opinion surveys regarding political candidates or electoral issues are part of the political process and, thus, at the core of

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<sup>58</sup> [http://www.lexum.umontreal.ca/csc-ccc/en/pub/1998/vol1/html/1998scr1\\_0877.html](http://www.lexum.umontreal.ca/csc-ccc/en/pub/1998/vol1/html/1998scr1_0877.html)

expression guaranteed by the *Charter*. The nature of the expression at issue suggests that a deferential approach is inappropriate in this case.

While the objective of providing a period of rest and reflection for voters prior to going to the polls is not a pressing and substantial objective, the objective of guarding against the possible influence of inaccurate polls late in the election campaign by allowing for a period of criticism and scrutiny immediately prior to election day is of sufficient importance to meet the first step of the s. 1 analysis. The purpose of this particular limitation on expression is to ensure that information which the evidence indicates has an important influence on the choice of at least some voters is presented according to the standards of accuracy which polls are normally expected to attain. To the extent that the votes of some might be distorted as a result of polls being presented in a misleading fashion, such a distortion is clearly a matter which the government may legitimately be concerned to remedy. The three-day blackout period on the publication of polls will serve, to some degree, the purpose of preventing the use of inaccurate polls by voters by giving critics the opportunity to assess the methodological information made available by the pollster and to question the validity of the poll on that basis. To that extent, the ban is rationally connected to the purpose of the legislation. However, since s. 322.1 does not require the publication of methodological information, the most that could be achieved by the blackout period, if an opinion survey is released without such information, is that the validity of a poll could be undermined by pointing out the failure of the pollster to publish the methodology of the poll.

Section 322.1 does not minimally impair freedom of expression. The section is a very crude instrument in serving the government's purpose. The social science evidence did not establish that Canadian voters are a vulnerable group relative to pollsters and the media who publish polls. The presumption should be that the Canadian voter is a rational actor who can learn from experience and make independent judgments about the value of particular sources of electoral information. While some voters clearly do consider polls to be of some value in making their electoral decision, no evidence has been adduced that voters have suffered from any misapprehensions regarding the accuracy of any single poll. Voters are constantly exposed to opinion poll results throughout the election and a single inaccurate poll result is likely to be spotted and discounted appropriately. This is not an appropriate case for the government to respond to the paucity of evidence by relying on the "reasoned apprehension of harm" test. First, the claims of widespread or significant harm based on a logical inference derived from surrounding factors are not compelling in the context of factors which, as in this case, refute such logical inferences. Second, the government is not dealing with a vulnerable group which is in danger of manipulation or abuse by the pollsters or the media because of an essential opposition of interests, or because of the nature of the speech itself. Nor is there a shared understanding amongst Canadians that a single inaccurate poll will mislead them to any undue extent.

Where the contextual factors indicate that the government has not established that the harm which it is seeking to prevent is widespread or significant, a deferential approach to the particular means chosen by the legislature to implement the legislative purpose is not warranted. In this case, s. 322.1 is not narrowly tailored to its objective. The ban is overbroad because it prohibits in the final three days of an

election campaign the publication and use by voters of all those polls which would meet the usual standards of accuracy. The ban is also under broad because it may not adequately disabuse voters of an erroneous impression left by a poll which did not disclose its methodology to critics or the public. The obvious alternative was a mandatory disclosure of methodological information without a publication ban. Although such a provision would still leave the door open to inaccurate poll results published immediately prior to the election having some impact, that possibility would be significantly reduced both by virtue of the reader's initial access to those methodological data, and by the opportunity for rapid response by parties whose interests are prejudiced by the inaccurate poll. The failure to address or explain the reason for not adopting a significantly less intrusive measure which appears as effective as that actually adopted weighs heavily against the justifiability of s. 322.1. Finally, the experience of the international community is inconclusive.

The doubtful benefits of the ban are outweighed by its deleterious effects. The impact of s. 322.1 on freedom of expression is profound. The section imposes a complete ban on political information at a crucial time in the electoral process. The ban interferes with the rights of voters who want access to the most timely polling information available, and with the rights of the media and pollsters who want to provide it. Although it is conceivable that some indeterminate number of voters might be unable to spot an inaccurate poll result and might rely to a significant degree on the error, thus perverting their electoral choice, the government cannot take the most uninformed and naive voter as the standard by which constitutionality is assessed. A measure which decides that information which is desired and can be rationally and properly assessed by the vast majority of the voting electorate should be withheld because of a concern that a very few voters might be so confounded that they would cast their vote for a candidate whom they would not have otherwise preferred cannot be accepted. Given the state of the evidence adduced on this issue, the postulated harm will seldom occur. The benefits of the ban are, therefore, marginal. The deleterious effects, however, are substantial. The ban sends the general message that the media can be constrained by government not to publish factual information. As well, the ban interferes with the media's reporting function with respect to the election. Further, by denying access to electoral information which some voters may consider useful, the ban interferes not only with their freedom of expression, but also with their perception of the freeness and validity of their vote. In sum, the very serious invasion of the freedom of expression of all Canadians is not outweighed by the speculative and marginal benefits postulated by the government.

In light of the conclusion that s. 322.1 of the *Canada Elections Act* is an unjustified limit on free expression, it is unnecessary to determine whether the section constitutes an infringement of the right to vote protected by s. 3 of the *Charter*.

**[DISSENTING OPINION]**

*Per* Lamer C.J. and L'Heureux-Dubé and Gonthier JJ. (dissenting): Section 322.1 of the *Canada Elections Act* does not infringe s.3 of the *Charter*. A restriction on information would constitute an infringement of the right to vote under s.3 only if it undermines the guarantee of effective representation. In the instant case, the short blackout period has no such effect. On the contrary, such a period assists effective representation.

While s.322.1 limits freedom of expression within the meaning of s. 2(b) of the *Charter*, it constitutes a reasonable limit demonstrably justified in a free and democratic society under s. 1 of the *Charter*. The objective of preventing the potentially distorting effect of public opinion survey results that are released late in an election campaign when there is no longer a sufficient opportunity to respond is a sufficiently important objective which meets the first step of the s. 1 analysis. Opinion polls on election issues influence voters' decisions and it is important that the information the polls convey not be misleading or inaccurate. By providing for timely publication of poll results to allow scrutiny and criticism, s. 322.1 improves information to the public during election campaigns, enhances the electoral process and strikes a balance between the right to vote and freedom of expression. The social science studies which composed much of the evidence show that there exists a long-standing concern about the publication of opinion survey results during election campaigns in Canada, including the problems associated with the undue influence, late publication and accuracy of polls. In enacting s. 322.1, Parliament has responded to that concern. The *Charter* should not become an impediment to social and democratic progress and be made to serve substantial commercial interests in publishing opinion poll results, by defeating a reasonable attempt by Parliament to allay potential distortion of voter choice. Several studies and reports in the last 30 years on the publication of opinion survey results during election campaigns in Canada, as well as bills in the House of Commons, and legislation in other democratic countries, support Parliament's reasonable finding that the concern at bar was serious.

The second step of the s.1 analysis -- the proportionality test-- is also met. First, the rational connection in this case is self-evident. Opinion polls significantly influence voter choice and electoral campaigns. It follows that the publication of inaccurate, though authoritative, opinion survey results that go uncorrected may well lead to voters making misinformed decisions. Logically, there is a reasoned apprehension that voters will be deprived of the full exercise of their franchise. Its importance is measured by the significant influence of polls on voters and the prevalence of misleading polls. Ensuring that polls that cannot be adequately, publicly and independently evaluated as to their correctness because of insufficient time are not published clearly addresses this problem.

**Second**, s. 322.1 passes the minimal impairment analysis. Section 322.1 constitutes a genuine mediation between the rights of voters to receive information in a timely fashion, and the right of pollsters and publishers freely to provide the information they want. Not only does the legislation protect the rights of voters but it does so by serving one of the very purposes of freedom of expression -- informing while allowing for political debate and discussion -- and by striking a balance between two basic aspects of voters' right to information -- the availability of accessible, unrestricted information and the timely availability of factual information that may be misleading so as to allow for scrutiny and criticism. In matching means to ends and asking whether rights are impaired as little as possible, a legislature mediating between the claims of competing groups is forced to strike a balance without the benefit of absolute certainty concerning how that balance is best struck. This Court should not second-guess the wisdom of a legislature in its endeavour to draw the line between competing credible evidence, once it has been established, on the civil standard of proof, that

Parliament's objective was pressing and substantial. At this stage, the question is whether there is a reasonable basis, on the evidence tendered, for concluding that a blackout on all opinion polls during the last weekend of an election campaign and during election day impairs freedom of expression as little as possible given the government's pressing and substantial objective. Parliament is not bound to find the least intrusive nor the best means. This would be too high a standard for our elected representatives to meet. Here, although one can conceive of alternatives to the impugned measure, there is simply no equally effective alternative to the current short-term blackout for achieving the legislative objective. Based upon the current legislation and the reports and studies available, Parliament reasonably determined that a 72-hour period was necessary to allow meaningful scrutiny of poll results during an election campaign. The 72-hour blackout period is very short lived and only affects one mode of expression which is not a primary source of information concerning relevant political facts. It mainly constitutes information as to the effect of relevant political information on potential voters. The scope of s. 322.1 prohibits polls of all kinds regardless of their scientific nature or quality because there is no clear cut line between reliable poll results and misleading poll results. Section 322.1 does not apply, however, to the discussion of previously released poll results. The legislation prohibits broadcasting, publication and dissemination and these expressions refer only to the initial release of poll results. Finally, both the motions judge and the Court of Appeal held that inaccurate polls at the end of an election campaign constitute a reasonable concern. Everyone is vulnerable to misinformation which cannot be verified. Our democracy, and its electoral process, finds its strength in the vote of each and every citizen. Each citizen, no matter how politically knowledgeable one may be, has his or her own reasons to vote for a particular candidate and the value of any of these reasons should not be undermined by misinformation. When Parliament identifies one matter of concern, it has no absolute duty to identify and regulate each and every factor. The government does not have to show that this concern is more serious or is causing more harm to the electoral process or to individual voters than any other potentially misleading information. There is no such standard under the *Charter*. **Third**, the salutary effects of s. 322.1 concerning both the right to vote and freedom of expression outweigh its deleterious effects. The salutary effect of s. 322.1 is to promote the right of voters not to be misled in the exercise of their right to vote. Section 322.1, however, deprives some voters, who rely on polls to make their decision, of late campaign opinion poll results. This deleterious effect is quite limited when one considers the delay between conducting the poll and ultimately publishing its results. As to the effects of the measure on freedom of expression, s. 322.1 has a positive impact, promoting debate and truth in political discussion since it gives voters the opportunity to be informed about the existence of misleading factual information. Although s. 322.1 precludes the media from publishing polls on the last weekend of the election campaign and on polling day, this ban causes only minimal impairment to freedom of expression because of its very short duration and because of the lack of satisfactory alternatives available to tailor the measure to the legislative objective.

### 6.2.3 The Role of Opinion Polls

**Pertti Suhonen**, *The Media, Polls and Political Process*, in *European Journal of Communication*, 2/1997, pp. 219-238

#### **The impact of polling on society and politics**

A couple of years ago, the *International Journal of Public Opinion Research* published a special issue on critical perspectives on the role of polling in society and politics. In the journal James Beniger (1992) summarizes, compares and evaluates the arguments of other authors. Beniger is interested in the various social and behavioural changes brought about by the increase and methodological development of public opinion polls. He also analyses the new kind of make-up of public opinion. In the same vein as many other authors, Beniger pays attention to the changes in the concept of public opinion. With the increase in polling public opinion is generally understood to be an aggregate of individual opinions. It is used to refer to the distribution of opinions or to the dominant opinion in society. What is essential is that all opinions are equal. Everybody has one universal vote in elections, and everybody is as likely as everybody else to be selected in the random sample of an opinion poll.

In the era of opinion polls public opinion is an artefact that is constructed from individual opinions in the mass audience. What was formerly seen to be behind public opinion was an active and attentive audience (Price, 1992). This train of thought is represented, for example, by Jurgen Habermas (1962) in his writings about the bourgeois publicity and Herbert Blumer (1948). In their view public opinion consisted of the thoughts formed as the result of public and rational debate conducted by individual and enlightened people.

Pierre Bourdieu's (1979) — and Susan Herbst's (1992), who adopts some of his viewpoints — critique of public opinion takes as its starting point the fact that polling dissociates people from their social and, for example, class-based contexts. People have to take a stand on issues that are often strange to them and on which they do not already have an opinion without support from their own community and its culture. Beniger's (1992) starting point is that it is, in particular, the increase in polling and the development of polling methods — 'scientific polling' — that has changed the concept of public opinion. However, it would seem more reasonable to think that the erosion and the mass nature of modern societies have made room for public opinion polls and in doing so called for change in the concept of public opinion.

The Finnish and Swedish situations are illustrative. On many significant social issues the opinions of people are no longer very clearly defined by their social position. The distribution of opinions on such issues as membership in the EU, energy policy or attitudes to environmental problems takes place inside rather than between groups of people defined by their sex, age, occupation, education and politics. As traditional political participation has diminished and new social movements mobilize only small parts of the population, referenda and opinion polls have become significant means for constructing public opinion.

Understanding public opinion as the opinion of mass audiences gives rise to the question of how sensitive it is to manipulation from mainstream publicity. As a consequence, a large proportion of the criticism on polling has taken as its starring

point the fact that polls do nothing but reflect the ideas upheld by the elite and journalists (Herbst, 1992; Habermas, 1962; Bourdieu, 1979).

The increase in the number and significance of public opinion polls has made them a social institution that has an established role in the functioning of other institutions. When the media continually commission and publish opinion polls they, in a new way, carry out part of the function of public representation that used to belong solely to political parties and interest and pressure groups. The relationship between parties and pressure groups and their membership is also nowadays often conveyed through opinion polls rather than member organizations and citizens' active participation.

Mapping out public opinion is part of the apparatus of social control, of disciplinary power, as Peer (1992), referring to Foucault, puts it. Different from many other critics who think that the central social role of polls is to help manipulate public opinion, Peer emphasizes other aspects of the use of power. 'Polls generate enormous amount of data which is used to clarify, characterize, distribute along a scale, hierarchize individuals in relation to one another, disqualify, invalidate etc.' (Peer, 1992). This process is reinforced when the media report the results to the public and help people place themselves in the distribution of opinions or among the people who have no opinion.

Public opinion polls have strengthened the position of media in the political process. By commissioning and publishing polls the media act as both tools of social control and as mouthpieces of social opposition (Goodnight, 1992). However, both majority and opposing voices are only published on issues which the financiers of polls are interested in.

A topic that is in no other way of journalistic interest often becomes newsworthy when it is the subject of a poll. Commissioning and publishing polls is thus a way of setting the agenda for public debate.

When the public opinion constituted by polls is dependent on the interests of those who commission them there arises the obvious danger that some of the issues important to citizens remain unresearched and the results unpublished. In order for the 'Gallup democracy' to function in a way that corresponds to its own ideals it presupposes that these shadowy issues should be also illuminated.

#### 6.2.4 Case-law on Opinion Polls

" *The following informal translation of Judgement n° 5302 of 4 Septembre 2001 Cour de cassation is offered solely for the purposes of this book. Users requiring a translation for any other purpose are cautioned that both the EIM and the author disclaim any liability arising from any other use*<sup>59</sup>.

##### **Judgement n° 5302 of 4 Septembre 2001 Cour de cassation – Criminal Chamber** <sup>60</sup>

##### **Repeal**

##### **[Excerpts]**

Plaintiff in appeal: *M. Amaury Philippe*

Considering today's ruling of the President of criminal court ordering the immediate examination of the appeal;

Considering the memorandum presented;

[...]

Considering article 10 of the European convention for the safeguard of human rights; Whereas according to this text, every person has the right to freedom of expression; the exercise of this right, that comprises in particular the freedom to receive and impart information, can only be subject to conditions, restrictions or constraints provided by law and be necessary in a democratic society, in particular for the protection of the reputation or the rights of the others, for the prevention of dissemination of confidential information or for the guarantee of the authority and the impartiality of the judicial power.

Whereas it appears from the opposed decision that in-between the two ballots of the parliamentary elections of 1997, held on 25 May and 1 June, an opinion poll was published on the 26 May, under the title: "First round of the Parliamentary elections – what the French people wanted to say", conducted by the Institute CSA, as well as an article analysing the poll and comments; following a complaint lodged by the Opinion Polls Commission, proceedings were instituted to the *tribunal correctionnel* against Philippe Amaury, managing director of the aforementioned newspaper, on the grounds of articles 11 and 12 of Law 77-808 of 19 July 1977 and 90-1 of the electoral code, for having published an opinion poll relevant to the election during the week preceding a ballot; the court acquitted the accused following acceptance of incidental plea of defence, based on the incompatibility of the above-mentioned texts with articles 10 and 14 of the European Convention of Human Rights; the public prosecutor appealed the judgment;

Whereas, in order to declare the offending texts compatible with the provisions of the conventions, to repeal the proceeded judgement and remove it, the appeal court gives a verdict on grounds that partially blame the medium;

But whereas, by prohibiting the publication, the dissemination and comments by any means of all opinion polls in relation to one of the elections referred to in article 1 of the law of 19 July 1977, the texts on which the lawsuit is based introduce a restriction

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<sup>59</sup> Translated by the author

<sup>60</sup> <http://www.courdecassation.fr/agenda/arrets/arrets/00-85329.htm>

on the freedom to receive and impart information that is not necessary to the protection of the legitimate interests enumerated by article 10.2 of the aforementioned Convention; being incompatible with the provisions of the conventions they could not serve as a basis to a criminal conviction;

It follows from the above that the decision should be repealed;

**ON THESE GROUNDS,**

Quashes all the provisions of the aforementioned judgement of the Paris Appeal Court, dated 29 June 2000;

And considering article L.131-5 of the Code of organisation of the justice;

SAYS that the charges made can not lead to any incrimination;

SAYS that there is no room to referral.

## 6.3 Campaign Funding

*Political parties are recognised as a necessary component of democracy. Many countries have established systems where parties are financially supported from public funds. Political communication at the time of elections is by far the most onerous activity that falls to political parties. Equally the outcome of this activity is of crucial importance for every party, since it may lead it to power. Funding the election campaign enables every party to inform citizens of their message, by all forms of communication available. It is also considered as the means to prevent corruption and unwanted influence by economic interests. The efficiency of measures introduced in many countries aiming to limit influence and corruption is open to discussion. Many loopholes exist and available means of control can not guarantee the expected results. Another alarming issue may be what the authors of the following study, conducted in 18 Central and Eastern European countries, remark: "Knowledge about campaign finance in most European countries remains rudimentary despite legislative attempts to make it more transparent."*

*In the complexity of modern economic conditions are there really effective mechanisms to control campaign funding and to avoid corruption occurring? Both the content of the study and the description of the French system of campaign financing in the ODIHR's report give only a view of the existing provisions and mechanisms. They are a starting point for reflection on these issues.*

### 6.3.1 Campaign Funding in Central and Eastern Europe

Janis Ikstens, Daniel Smilov, Marcin Walecki, *Party and Campaign Funding in Eastern Europe: A Study of 18 Member Countries of the ACEEEO*, IFES 2001<sup>61</sup>

This paper explores institutional arrangements in the crucial area of party and campaign finance in the 18 member countries of the Association of Central and Eastern European Election Officials: Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Turkey, and Ukraine. (...) This study attempts to diagram the most common patterns of campaign finance regulations and to identify a number of shortcomings of the existing regimes of campaign funding.

The paper draws on a number of sources: (1) acts of legislation regulating party and/or campaign finance in the respective countries; (2) information provided by representatives of Central Election Commissions; (3) interviews with in-country experts on party finance; (4) reports prepared by the Organization for the Security and Cooperation in Europe; (5) media publications. Information in this paper is accurate as of October 1, 2001.

Knowledge about campaign finance in most European countries remains rudimentary despite legislative attempts to make it more transparent. The available, incomplete

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<sup>61</sup> <http://www.aceeeo.org/conferences/2001/18-country.pdf>

information has led the authors to a number of observations and preliminary conclusions.

### **Growing sophistication of regulations**

After the collapse of communist regimes, ACEEEO member countries moved quickly to adopt institutional frameworks characteristic of advanced democracies. These included the area of campaign finance where no prior regulations existed. However, democratic experience prompted most members to revise and further detail their regulatory frameworks of campaign finance.

### **No single pattern**

Despite shared historical experiences and rather similar institutional arrangements in the past, ACEEEO member countries have a wide variety of regulatory ordinances governing campaign finance. Some countries have chosen notably liberal regulation (Croatia) and little state interference with campaign funding (Latvia), while others prefer much more detailed regulations (Poland) or severe restrictions on the role of non-state donors (Belarus). Regulations concerning political financing not only differ between the countries of Central and Eastern Europe, they change frequently. It is too early to speak of stable campaign funding rules in the region as many countries are in the process of revising and overhauling their legislation on political finance.

### **Similar (not uniform) income sources**

Income sources for political purposes appear to be rather similar across ACEEEO member countries, with most typical being donations, party membership fees, and party contributions to special election funds. However, some countries restrict the entrepreneurial activities of political parties or even prohibit corporate donations to parties.

### **Ban on foreign money**

As far as regulations are concerned, one of the most common is a ban, either partial or complete, on contributions from foreign sources (foreign citizens, foreign governments, international companies and organizations).

### **Direct public subsidies**

While most countries in the region provide direct state financial subsidies to parties and/or candidates, this is by no means a universal approach. Four out of 18 ACEEEO member countries refrain from giving direct state support to contenders. Besides, in some of the countries with direct public funding (such as Russia), the amounts given are very small.

### **Free broadcasting**

In all 18 countries, the Law offers free air-time on national radio and TV. In addition, some countries have gone even further by granting contenders free advertising space in state-owned newspapers.

### **Contribution limits, spending limits, and bans on paid political broadcasts**

There are contribution limits in 56 % of the ACEEEO countries for which information has been obtained, spending limits in 67 %, and a complete ban on paid political advertising on TV and radio in 11 %.

### **Disclosure and enforcement**

The Central Election Commissions of most ACEEEO countries are entrusted with the task of enforcing campaign finance regulations and disclosing financial records of electoral competitors. However, the degree and timing of disclosure varies, as does

the effectiveness of enforcement. Political parties are required to disclose their financial accounts in 83 % of the ACEEEO countries for which information has been obtained, but only some of these require disclosure of lists of donors. Some countries have ventured into the Internet to make financial records of parties and individual candidates available to wider public.

The Summary Table outlines the main patterns of law and regulation in the 18 member countries of the ACEEEO. Spaces have been left where information is still to be added.

The Table refers to broad categories, whereas more detailed information is included in the entries on individual countries. For example, 'YES' for 'Any spending limits' means that such limits apply to at least one kind election in the country concerned. The notation 'Partly' for 'Ban on Foreign Donations' means that some but not all types of foreign donations are banned.

### 6.3.2 Campaign funding in France

*Report of OSCE/ODIHR assessment on presidential elections in the Republic of France, 21 April and 5 May 2002, Office for Democratic Institutions and Human Rights, 2002*<sup>62</sup>

#### VI. ELECTION CAMPAIGN AND CAMPAIGN FINANCING

The election campaign starts after publication of the official list of candidates by the *Conseil Constitutionnel*. The election campaign is regulated by law through detailed and strict rules on the use of propaganda material as well as the use of electronic media for campaign purposes. The legislation sets the principle of equal treatment for all candidates in the information programs as well as in all other programs aired through the audio-visual media. Before the first round, each candidate disposes of a minimum of 15 minutes on national radio and TV. The duration and modalities of each campaign program are determined by the *Conseil Supérieur de l'Audiovisuel* after consultations with the candidates.

A *Commission Nationale de Contrôle* (National Control Commission) is formed to monitor the campaign and the application of equal treatment of all candidates by the State services during the campaign. The Commission is composed of five members presided by the vice president of the *Conseil d'État* (State Council). The commission reviews and approves all campaign materials, including posters and leaflets presented by each candidate. The commission cannot impose sanctions in case of infractions, but can defer cases to the administrative or penal courts. After the conclusion of the electoral process, the commission presents a report to the Government in which it outlines the problems encountered during the elections due to the conduct of candidates and it proposes recommendations to strengthen the process.

The action of the *Commission Nationale de Contrôle* is decentralised through a network of local commissions (*Commissions locales de contrôle*) that are established by the *préfet* in each department as well as in the territories overseas, and that are responsible for informing the national commission of any irregularity noted at the local level. The commission can also send delegates to a department as well as to one of the overseas territories to monitor the campaign and preparations for the electoral process. These delegates do not substitute the local commissions and are sent in areas where greater difficulties or problems are expected. Their additional monitoring is one of the means that the *Commission Nationale de Contrôle* can use to act in case of particularly difficult or controversial situations.

In 1988, strict laws were introduced to promote financial transparency in political life and during election campaigns, forbidding donations by *personnes morales* (legal entities) with the exception of political parties, and establishing a limit for campaign expenses. The legislation foresees an intermediary between the candidate and individuals contributing to the campaign. The intermediary can be either an *association de financement électorale* (association for electoral financing) or a *mandataire financier* (financial proxy). The legislation also introduced strict limits on individual donations, not to exceed 4,600 EURO. Individual donations can remain

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<sup>62</sup> [http://www.osce.org/odihr/documents/reports/election\\_reports/fr/fr\\_prel\\_april2002\\_asm.php3](http://www.osce.org/odihr/documents/reports/election_reports/fr/fr_prel_april2002_asm.php3)

anonymous if under 3,000 EURO. However, any donation above 150 EURO must be done by cheque.

The limitations on private financing of electoral campaigns are balanced by the State reimbursing campaign expenses to candidates, after approval of their campaign accounts. Also, the State covers all expenses related to the propaganda material used by candidates, which is also submitted to a strict scrutiny of other institutions, such as the *Commission Nationale de Contrôle*. Paid advertisement, either broadcast or printed, is forbidden (see Chapter VII).

Each registered candidate received 153,000 EURO from the States as an advance before the start of the campaign. After the first round, candidates who did not pull more than 5% of the votes received a maximum of 739,800 EURO. Those who passed the 5% threshold received a maximum of 7,398,000 EURO. This limit is increased to a maximum of 9,882,000 EURO for candidates who qualified for the second round. Some interlocutors stated that these reimbursement rules were responsible for the raising in the number of presidential candidates for the 2002 elections.

The law requires that each candidate maintains a campaign account recording donations received and expenses incurred during the year prior to the elections. The account is presented to the *Conseil Constitutionnel* within two months following the elections. The *Conseil Constitutionnel* reviews campaign accounts and, in case of possible infractions, imposes a fine or declines to certify the campaign account. Without this certification, the candidate does not receive reimbursement for campaign expenses from the State.

The system regulating the financial aspects of the electoral campaign was introduced in response to concerns raised by the authorities and the population and in light of alleged past violations. The provisions and practices concerning the financing of the electoral campaign and political parties have ensured a level playing field among candidates as well as stricter controls on campaign finances.

## 6.4 The New Environment

*The traditional radio and television environment has dramatically changed over the past decade along with the whole system of information dissemination. Notwithstanding these developments the greater part if not all of regulatory systems are directed to traditional broadcasters. The most frequently asked question is not “how” but “whether” there should be monitoring and regulation of the Internet with regard to election campaigns. In some cases, as for example in relation to the publication of opinion polls, reference is made to the Internet but, so far, little progress has been made on the whole issue.*

*A public consultation started in the United Kingdom has yet to deliver its results . It is interesting though to consider the way the issue is approached by The Electoral Commission and the questions it formulates at the behest of interested parties. The Commission believes that some regulation “may be necessary... in order for the campaign environment to be fair”.*

*Broadcasters are already facing the new environment in the sense that some of their services have already gone online. Determining policy lines is now imperative. One of the leading world broadcasters, the BBC has circulated a number of guidelines that complement the “Producers’ Guidelines” of the Corporation. They are not exhaustive, but rather may be considered a first step in framing a comprehensive policy dealing with the various aspects of a broadcaster offering online services.*

### 6.4.1 Public consultation in the United Kingdom

*The implications of online campaigns, Consultation paper, The Electoral Commission, September 2002<sup>63</sup>*

#### **23.5 Summary of questions**

5.1 The issues and proposals raised in The Electoral Commission’s consultation paper considering the regulation of online campaigns are summarised below. The paragraphs from which these proposals are taken are indicated. Areas where further comments are invited are also summarised below, and more detailed discussion on all these points is provided in the relevant sections of the paper.

#### **Our approach**

5.2 The Commission accepts that the technological environment will continue to develop and change over time, and we recognise that it will be important to assess the ongoing impact of new technologies on election campaigns. We would welcome your comments on how developments in this area should be reviewed in future.

#### **Content of online campaign material**

5.3 We consider that campaigners should be free to promote their messages online without excessive restriction or censorship. However, in the interests of maintaining and protecting a fair campaign environment, some restrictions on the content of

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<sup>63</sup> [http://www.electoralcommission.org.uk/files/dms/EC44\\_7378-6607\\_E\\_N\\_S\\_W\\_.doc](http://www.electoralcommission.org.uk/files/dms/EC44_7378-6607_E_N_S_W_.doc)

campaign communications may be necessary. Do you agree with this general approach?

5.4 In our view, it will be appropriate to consider issues relating to any specific requirements for the content of online campaign material within the broader context of such requirements in the non-broadcast media. As such, we consider that online campaign material should be considered as part of The Electoral Commission's forthcoming review of the case for a code on political advertising in the non-broadcast media. We do not propose examining the case for specific rules for online campaign material as part of this review, although the Commission will take into account views raised during this consultation in any future review of this issue. Do you agree with this approach?

5.5 We consider it important that restrictions on the content of election campaign material should be broadly applicable across the range of non-broadcast communication technologies currently used by campaigners. Do you agree? What are the practical implications of this approach for online campaign material? Might this approach raise any potentially negative implications for the online campaign environment?

5.6 Are existing mechanisms for dealing with alleged breaches of current restrictions on the content of election material sufficiently responsive and flexible to safeguard the integrity of the campaign environment online? Some respondents proposed that an independent ombudsman be responsible for investigating alleged breaches of regulations relating to online election material. Do you agree with this proposal? How might any ombudsman help to ensure that a fair online campaign environment is protected, and would such a position be workable in practice? What role might ISPs play in regulating the campaign environment online?

#### **Accountability and transparency**

5.7 We consider that regulations under section 143 of the PPERA 2000 requiring non-printed election material to carry details of the originator of the material should be introduced. Any such regulations should apply to material produced on web pages, email messages, messages sent to mobile phones and any interactive Digital TV information pages. Do you agree with this approach? We would also welcome further comments on how regulations might be applied across the range of online communication methods, and on the possible timescale for the introduction of any such regulations.

5.8 We would welcome any further views which respondents might have on the role and impact of spoof campaign messages online.

5.9 It is important that electors are not misled by abusive registration of domain names relating to legitimate campaigners. Should the dispute resolution policies of domain name registrars more adequately reflect the concerns and priorities of legitimate political campaigners during election periods? How important is it that allegations of abusive registration are addressed before any particular campaign period?

#### **Access to campaign material**

5.10 We consider that 'online gatekeepers' in a position to control or limit access to online information should attempt ensure that all legitimate campaigners are treated equitably. Do you agree? Is it important to establish a protocol for providers of portals

or search engines to ensure fair and equitable access to genuine and legitimate campaign material?

5.11 While we are not persuaded at this time that the abuse of meta-tags by campaigners poses a significant threat to the integrity of the campaign environment at present, it will be important to continue to monitor the impact of this practice. We would welcome any further comments from respondents in relation to this issue.

#### **Data protection**

5.12 We consider that current and anticipated Data Protection legislation and associated regulations will continue to provide protection for electors from abuse of the marketing opportunities offered by online communication technologies. Do you agree? Might the abuse of data protection principles within a political context raise particular implications which should be addressed by more stringent requirements, for example, or are campaign messages less intrusive than commercial untargeted communications?

#### **Third party campaign activity**

5.13 What are the implications of the expansion in availability of cheap and freely available communication technologies for the restrictions currently placed on the activities of third party supporters? Should the online activities of third party supporters be subject to different rules to those which apply to candidates or parties? We would welcome further comments on these questions and any other issues relating to the impact of online technologies on the regulation of third party campaign activities.

### **6.4.2 The media and online information**

## **3. EDITORIAL STANDARDS<sup>64</sup>**

### **3.5. Politics**

The BBC's duty to cover politics fairly and impartially applies equally to our online services as to radio and television. For details of our obligations, see Chapter 33 of the Producers' Guidelines.

#### **Links**

The BBC should be seen to be impartial. BBC sites which cover a controversial or public policy matter will normally wish to offer links to external sites which represent a reasonable range of views about the subject, provided that any link does not give strong grounds for concern that this breaches the BBC taste and decency guidelines or the law e.g. defamation or incitement to racial hatred.

#### **Election Campaigns**

Special care needs to be taken during election campaigns when the BBC's obligations of impartiality are under intense public scrutiny. The guidelines for the BBC's online services during the 2001 General Election are attached as an appendix as an indication of the BBC's approach during elections. The same principles will apply to local government elections, elections to the devolved legislatures or any referendums and the Chief Political Adviser will issue detailed guidelines for such elections at the appropriate time.

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<sup>64</sup> <http://www.bbc.co.uk/info/online/og3.shtml#politics>

Advice on any issue concerning elections can be obtained from the Chief Political Adviser.

### **3.6. Online Voting**

Interactivity of every sort is part of the central appeal of any online site. However, inviting people to express their views on any issue by its very nature involves a self-selecting sample and is representative of nothing more than those people who have chosen to respond. On BBC sites, especially News Online and programme sites which may relate to political or public policy issues, care has to be taken that online expressions of opinion are not translated into anything that could be construed either as an accurate representation of public opinion as a whole or as the BBC's opinion.

So any summary of online voting or expression of opinion should:

- not be called a poll
- not be expressed solely in percentage terms. The results should be expressed primarily in terms of how many hits the yes or agree button has received and how many the no or disagree button. An exception to this may be made for a vote which is not concerned with a political or public policy matter. If only percentages are to be used, the approval of the Chief Political Adviser must be sought in advance
- any online summary of online voting or expression of opinion about political or public policy issues must include a disclaimer to the effect that "This can't be a representative sample and the figures don't necessarily represent public opinion".

If the vote is to be about a political or controversial public policy issue it should be referred to the Chief Political Adviser or in the case of a Web site in a language other than English, to the relevant Head of Region, who may wish to discuss this with Chief Political Adviser.

#### **Reporting the result elsewhere**

- any summary of online voting may be reported on the radio or television programme associated with the Web site, but it should not normally be reported elsewhere in news or on other radio or TV programmes or on other online services
- as with opinion polls, the programme should not lead simply with the results of an online survey. They should always be reported in the context of the story they relate to
- it should be made clear to viewers or listeners that it is not a representative poll and cannot purport to be indicative of wider opinion
- on air, the vote should be expressed primarily in numbers of votes. It should only be expressed in percentage terms after it has been expressed in numbers of votes.

For further advice, contact Chief Political Adviser.

## 6.5 Monitoring of Media Coverage of Elections

*Central and Eastern European countries have attracted the attention and assistance of their Western European partners in their efforts to consolidate democracy. To this end, election assistance and monitoring was central to the efforts deployed. The European Institute for the Media (EIM) is playing a central role and has produced several reports since the early 1990s to this day. Its activity is not limited to CEE or to Europe alone.*

*Excerpts from two reports, on Romania and the Former Yugoslav Republic of Macedonia, presented below offer the reader the opportunity to see the issues that are considered and assessed by the monitoring teams in order to evaluate the media's role in the campaign.*

### 6.5.1 Romania

The European Institute for the Media, *Preliminary report on the media monitoring mission of the 2000 Romanian general and presidential elections, 2000*

#### **Campaign coverage**

##### **Print media**

The monitored print media showed considerable involvement in the campaign coverage. In absence of regulations directly applicable to print journalism, the monitored dailies enjoyed more freedom in expressing opinions and supporting certain political options. This made the coverage more broad and vivid, but sometimes resulted in a regrettable partisan attitude. References to political actors were often more tendentious either due to an express position of a journalist or due to the news selection. The printed press therefore became the main battlefield for political actors, sometimes including participation of journalists. All four monitored outlets allocated much space to the parties and presidential candidates, for example 114 items on the PDSR and 64 items on the CDR 2000 in *Adevarul*, 106 items on the PDSR and 60 items on the CDR 2000 in *Evenimentul Zilei* (in the monitored period).

In general terms, newspapers reported on candidates and parties' activities and took paid political advertising. The team has not encountered any coherent analysis or comparison of parties' and candidates' platforms, although two dailies, *Adevarul* and *Evenimentul Zilei*, published candidates' answers to a set of identical policy questions. The newspapers accepted advertising from all parties and candidates, however the team was informed that the advertising rates for the campaign material by far exceeded the rates applied normally.

Some of the rubrics allocated to the election coverage were confusing for the readers, being signed by the staff writers they were in effect paid political advertising. The team also noted that in some instances the campaign activities outside of the capital were followed by the papers only in case a party had an advertising contract with the newspaper.

Despite an expansive political coverage, print media ran no investigative materials on the parties' and candidates' professional record, and the only critical coverage with regard to the 1996 campaign finance was outside of the monitored period, in summer 2000.

The monitoring team had reasons to believe that loose regulations on the parties' campaign financing led to a situation when state companies or companies with a share of state capital were involved in financing the advertising campaign in newspapers.

Among the monitored dailies, *Adevarul* allocated the largest number of articles to the election. Of these, the largest number of articles in a negative news context were allocated to the PDSR and CDR 2000. The two parties received the most of tendentiously negative references (30/6,915 sq. cm and 17/4,526 sq. cm respectively). Among presidential candidates, I. Iliescu (PDSR) was most frequently shown in a negative manner (15/3,673 sq. cm) and Th. Stolojan (PNL) was favoured. *Evenimentul Zilei* allocated most frequently negative news context to the PDSR and the PRM (items in a negative news context exceeded these in a positive or a neutral context. They were also more often negatively referred to by journalists (the PDSR 47/11,908 sq. cm, the PRM 27/11,092 sq. cm). The paper leaned first towards candidate M. Isarescu (independent), then towards Th. Stolojan (PNL). The candidate who consistently garnered negative coverage was C. Vadim Tudor. *Ziua* progressed from an anti-PDSR editorial policy to targeting the PRM and its leader, C. Vadim Tudor. Both parties were consistently negatively covered in terms of presentation (the PDSR 32/15,460 sq. cm, the PRM 26/11,288 sq. cm). Among presidential candidates, I. Iliescu and C. Vadim Tudor were subject to the same treatment as their respective parties, and Th. Stolojan had fewer negative references than other candidates. *Journalul National*, of all monitored media, was the only one openly supportive of the PDSR and candidate I. Iliescu. The PDSR benefitted from the most favourable balance between negative context references and those in a neutral or a positive context. The only party whose negative context references surpassed those in a neutral or a positive context was the CDR 2000.

### **Radio**

Radio Romania Actualitati exercised great diligence in meeting its duties under the law and CNA Decision 240 to open its nationwide programme and 8 regional programmes to the parliamentary and presidential campaigns. It had established a consultative council which comprised all parties *etc.* involved where the strategy of the campaign on radio was approved and matters of concern were settled. These close contacts made it easy to execute necessary editorial decisions on spots which needed to be altered or modified completely to be eligible for transmission under Decision 240. There were no protests from any side.

Special electoral programmes 'Agenda Electorale' were broadcast nationwide three times a day on Monday through Saturday, for the whole duration of the campaign. Additionally, special 'Electoral Studios' were broadcast daily in the evening, covering both general and presidential elections.

13 parties and national minorities received time slots according to their relative strength in the parliament, which ranged between 28 min and 6 min 40 sec per week, the time of the individual presentation varying between 4 min 40 sec and 1 min 46 sec

per broadcast. Each party was on air daily. 12 candidates received coverage in the presidential campaign, 3 min 20 sec daily for each. Parties or candidates not represented in the parliament could buy air time at the reasonable price of 200,000 Lei/min. Only three did.

This form of presentation was certainly correct and equal to all parties and candidates; whether the audience profited much from it might be questioned. From a journalistic point of view one could expect better information if time were collected and lengthier slots allowed to dig deeper into a given issue or to debate the platform in an exchange of arguments with fellow contenders. It might be asked also why all the campaigning was scheduled after 18:00 hrs. Prime time for radio are morning hours and a peak at noon and early afternoon. Decision 240 left scheduling to the station and parties' discretion.

Of 295 election-related news items broadcast on the channel, most showed balanced attention to all candidates and political parties. The PDSR had a slight advantage in terms of frequency and duration of items (51 references/3,666 sec), however, the figures for other parties were comparable (between 1,600 sec and 2,700 sec), with the exception of the UDMR (762 sec). Among presidential candidates, I. Iliescu fared best (16 references/1,535 sec), with M. Isarescu (independent) following (16/1,146 sec) and the lowest amount of time allocated to C. Vadim Tudor (6/223 sec).

That a public service broadcaster can find ways of reaching its audience in a more satisfactory way can be shown by the Romanian service of the BBC. According to the agreements with its about 120 affiliate stations in Romania and Moldova, they offer 7 time slots with world, national and regional news, features and background reports.

The coverage of the Romanian affairs, produced in Bucharest, was fact-based in the classical way of BBC but did not abstain from opinion. Such broadcasts, being transmitted by a Romanian station, indirectly fall within the remit of CNA Decision 240. Thus one of its affiliates was admonished by the NAC because a news item on the PNL presidential candidate Th. Stolojan (6:00 hrs news bulletin of November 15<sup>th</sup>) was, according to the NAC, in violation of the Decision. The BBC staff are confident that their broadcasts on electoral matters served their audience well since controversial matters like conflicting polls, the selection of anchors for special electoral programmes on TV by candidates, the 'hijacking' of the campaign by the presidential candidates to the disadvantage of the parliamentary campaign were addressed.

Quantitatively, the station was the most dynamic in terms of broadcast news and aired the largest number of relevant items, 534. The number of references in a negative and positive context were higher than in case of other monitored stations. The PDSR was mostly presented in a negative context (38 references/6,146 sec), of presidential hopefuls I. Iliescu (PDSR) and C. Vadim Tudor (PRM) were most frequently presented in a negative context (17 and 14 references respectively).

### **Television**

The first and second channels of TVR were involved in the campaign coverage to meet its obligations under the electoral provisions. Channel 1 has the national coverage, thereby being the main source of information for the rural population which is hardly reached by the press, Channel 2 reaches about 32%, mainly in urban areas. Several types of electoral programmes were designed, among them information programme on electoral items, 'Agenda Electoral' (30 min, Tuesday through Saturday)

and 'Electoral Studios' were designed to equally cover the parliamentary campaign according to the number of lists in the counties and to the presidential candidates. The programmes were broadcast from 17:00 to 17:30 on channel 1 and from 19:05 to 19:35 on channel 2. All parties and presidential candidates insisted on being on the screen daily which led to contributions between 2 min 02 sec and 30 sec for parties and app. 2 min 30 sec for candidates for the presidency.

The main presentation of the campaign platforms took place in the so-called 'Election 2000 Talk Shows' on both channels which lasted between 45 min and 120 min, the maximum time permitted by Decision 240. The format of presenting candidates in talk shows led by moderators gave them an opportunity to profile themselves. However, in absence of any meaningful dialogue between the candidates and no challenge posed by either journalists or the other contenders, it became a somewhat boring exercise which lacked journalistic appeal and did not do much to enlighten the audience.

This non-journalistic approach stemmed from the philosophy of the Laws on Elections and NAC Decision 240 which in fact handed over programming initiative and exercise to the parties, candidates and a parliamentary commission, leaving to the station almost nothing more than the technical production. One observes a great dissatisfaction within the station; the critics want the amount of air time granted reduced drastically. They hope for a more liberal attitude to the coverage which allows investigative and evaluating journalism, the use of archive material on topics and persons, in short, a journalistic rather than party politics coverage.

While providing a comprehensive coverage to political actors, TVR 1 was surpassed by other TV stations with the amount of news items (128). The frequency of references to independent candidates M. Isarescu was higher than to other candidates (13 references compared to 11 to I. Iliescu). Additionally, M. Isarescu received 14 references in his capacity of premier. The station dedicated a relatively balanced attention to the main parties in the elections, with the PDSR the most frequently mentioned (17 references/2,223 sec) followed by the PNL (16/1,822 sec). Other parties received between 1,200 and 1,700 sec. The presentation of the parties and candidates was neutral, the activities of the political actors were mainly presented in a neutral context.

On the other hand, the private TV, for example, Antena 1, conducted the special programmes in a less demanding but probably more informative way. On the parliamentary election the channel had 12 programmes, 60 minutes each, at 17:00 hrs. and a final round of 120 min. at 20:00 hrs. They had a reported viewer's share of 11 – 15%. On the presidential election there were 5 broadcasts of 120 min, each at 20:00 hrs, to which only 8 candidates were invited. Four programmes hosted two candidates each, the last one hosted all candidates. These broadcasts reportedly reached 25 to 35% of the viewers. All programmes had a talk show format. 20% of the air time were made up by electoral spots, which were sold on commercial basis, applying the normal rates, unlike the press which reportedly charged about the double to normal. The station admitted that only those candidates and parties were invited which had bought air time, but without discrimination on the amount of time paid for.

Despite this broad coverage, 18 programmes, totalling 24 hours, half of them in absolute prime time within 45 days, the journalistic output was disappointing. Monologues prevailed over dialogue, negative approach, addressing the drawbacks of

competitors rather than one's own platform, were abundant. The anchors, avoiding a reprimand from the NAC, played strictly by the book, a position not conducive to a lively and controversial discussion on crucial issues.

Antena 1 broadcast the highest number of news items on the campaign (203), with all significant parties presented in the news. The PDSR ranked first (22 references/2,859 sec) followed by the PNL (18/756 sec). Of presidential candidates, most attention was allocated to M. Isarescu (independent, 11 references/1,523 sec) followed by I. Iliescu (PDSR, 8 references/756 sec). A special attention was granted to the CDR 2000 in its public capacity (29 references/2,697 sec) and M. Isarescu as premier (12/964 sec). A considerable amount of references in both cases were negative (22 and 6 respectively). The most frequent references in a positive context were in case of the PDSR (7) and its leader I. Iliescu (4). The editorial political option was clearly indicated in case of omission of certain news associated with the current government.

#### Conclusions and recommendations

1. Limitation of application for air time on public and private stations within 48 hours after announcement of the voting day (Art. 46(3) Law 68/92) favours established party structures and is detrimental to independent candidates and newcomers. The Law on Local Elections (Art.57 (4), Law 70/91) grants five days for application which seems more appropriate. As a matter of fact in at least two requests for air time on public radio had to be turned down because they failed to meet the 48-hour term.
2. It is a positive change that the campaign period was limited from 60 to 45 days which appears to be still a relatively extended period, in particular taking into account that according to the election law the second round of presidential elections is practically unavoidable. It remains questionable however whether the duplication of parliamentary and presidential elections serves the development of democracy in this country well. Legally and from an administrative and financial point of view this cannot be criticised. But taking into account communication and information aspects, the domination of and overriding attention to the presidential election is detrimental to the coverage of the parties, their programmes and platforms and their candidates for public offices. As one journalist put it, the presidential campaign hijacked the parliamentary.
3. It is debatable whether the allocation of air time on public stations should be left completely to a parliamentary body as the sole decision maker. This highly politicised process could lead to undue privileges for established political forces. The NAC and the stations, which are independent public bodies under the law, are well equipped to do this professionally. A possibility for appeals should be instituted. The broadcast media could approach the NAC with a request for a regulation which leaves broadcasters more leeway in establishing the schedule and the format of special election programming. More specifically, allocation of equal time to all candidates standing election hinder the informative value of the programme or a debate.
4. In addition, the law on local elections contains the features (Art. 57 (5) Law 70/91) which could improve the national campaign. These stipulate that air time on public and private programmes should be granted proportionally to the number of

complete lists of candidates, whereas the private stations in national elections are free in time allocation.

5. The NAC is invited to analyse the effects of the strict rules applied to the broadcasting sector in the campaign period. While these protected the candidates and parties from being neglected, they also left the public underinformed, as the electorate deserves analysis, comparison of platforms, critical assessment of the personality of candidates.
6. The transmission of electoral programmes would be better scheduled at hours of maximum audience, which was not the case with the national radio, but prescribed by Art. 57 (5) of Law 70/91 on Local Elections.
7. Compensation of campaign costs appears to be governed unsatisfactorily. If there are subventions available, their allocation should not be the sole responsibility of the parliament in power on a case by case basis, a law which stipulates the procedure in general would better serve the purpose.
8. It is advisable that the broadcast media in the following four years should try and raise public awareness of the most topical political issues in the country. This can be achieved through identifying such political and social topics and comparing the parties' tactics in dealing with them.
9. While the print media operated practically unhindered by regulations of the campaign coverage, the degree of their partisan involvement seemed remarkable. The interests of their readers would be better served by a more balanced editorial policy which would provide a more comprehensive analysis of political options. This might also help to reach out to a broader circle of readers.
10. The format of political advertising carried by the print media should be clearly defined. In this campaign it appeared confusing even for the monitoring team members. The fact that staff writers were allocated to cover political parties' activities as part of the advertising contract undermines the credibility and independence of journalists.

### **6.5.2 Former Yugoslav Republic of Macedonia**

European Institute for the Media, *Final Report on Media Monitoring of the Parliamentary Election in the Republic of Macedonia of September 2002*, 2002

### **3. Campaign coverage in the media**

#### **3.1 Campaign in the electronic media. Public service broadcaster**

The public service broadcaster MTV was obliged to provide **free access time** to the parties running in the election (Decision, Art. 12) as well as broadcast **voters' education material** in cooperation with the State Electoral Commission (Decision, Art. 8). According to the Broadcasting Council, MTV complied with the regulation on the free access.

In the monitored time slots, **MTV 1 (Macedonian programme)** introduced a special section at the end of its news bulletin reporting on the party activities, rallies, and press conferences. The planned debate programmes were infrequent because several parties refused to participate in them. The planned discussion programmes about NGOs (*NGOs in Macedonia*) turned out one-sided due to non-participation of NGO representatives.

Reporting on the two main Macedonian coalitions, **MTV** in its news bulletins **allocated twice as much time to the ruling VMRO-DPMNE-led coalition** (25,931 sec, of which 13,873 sec were direct speech) compared with the SDSM-led coalition (11,142 sec, of which 4,635 sec were direct speech). The team considers that the time allocation was unbalanced in favour of the ruling coalition, especially because other parties were minimally covered. Concerning reporting on the ethnic Albanian parties, the member of the governmental coalition DPA received most of the time (3,901 sec, of which 712 sec were direct speech); the opposition PDP received 1,437 sec (of which 286 sec were direct speech), followed by the newly formed DUI (789 sec, of which 106 sec were direct speech). The NDP was the least covered party with 352 sec (of which 52 sec were direct speech).

Although the tone of coverage was predominantly neutral, the VMRO-DPMNE-led coalition was the only party which received positive coverage (11 items vs. 42 neutral). Interestingly, the SDSM-led coalition (one negative item vs. 41 neutral) and the NGO sector (one negative item vs. three neutral) received negative coverage.

Selection of news unrelated to the campaign served as another confirmation of an editorial policy supportive of the ruling party. MTV 1, with an incredible zeal, covered every activity of the incumbent government, both on the national and local levels. The news followed protocol activities of members of the government, as well as events of minor importance, such as an official opening of a relatively short local road, or an official opening of a renovated apartment building. On the other side, the TV station seldom reported on factories' closures or labour protests.

*Quantitatively, the ruling coalition of VMRO-DPMNE and LP received an extraordinarily positive coverage. Out of the total of 124 news items unrelated to the campaign, 63 were neutral, while 61 were positive. The opposition coalition led by the SDSM was mentioned in only one such "non-election" news item in a negative context.*

*The two main coalitions bought most of the advertising time on MTV 1, the VMRO-DPMNE-led coalition 37,404 sec and the SDSM-led coalition 15,688 sec. Other parties bought relatively negligible time on MTV 1.*

**MTV 3 (Albanian programme)** similarly to MTV 1 introduced a bloc of parties' activities at the end of the news bulletin. The **time allocation** in news bulletins mostly **focused on the DPA** (20,764 sec, of which 10,057 sec were direct speech). The newly founded DUI (6,744 sec, with 1,610 sec of direct speech) and the opposition PDP (5,816 sec, with 1,920 sec of direct speech) received comparable time. The team considers that the ruling **DPA** received **undue prominence in the news** at the expense of other contestants. This misbalance was further exacerbated by minimal coverage of the ethnic Macedonian parties (the VMRO-DPMNE-led coalition 900 sec, the opposition SDSM-led coalition 850 sec, no direct speech for either coalition).

Most of the coverage was neutral, none of the parties received negative coverage. The positive coverage was noticed only in case of the DPA (15 items vs. 72 neutral) and minimally, in case of the DUI (one item vs. 42 neutral).

*The Albanian-language programme of the public service broadcaster informed its audience of the activities of the state mostly through coverage of the DPA-affiliated members of the government. For example, in a news bulletin, two news items related*

*to leaders of the VMRO-DPMNE and LP coalition, and six news items, (two of which were positive) related to the DPA leaders.*

Marketing time has been bought predominantly by the DPA (8,040 sec), compared with DUI (340 sec). The other ethnic Albanian parties, PDP and NDP, bought no time on MTV 3.

**MTV 3 (Turkish programme)**, due to its relatively small time slot in the total schedule of MTV 3 and its limited resources, followed the campaign with lower intensity. Thus most of the time was allocated to the major coalitions comprising ethnic Turkish parties, as well as to the DUI, which has Turkish candidates on its electoral list. Activities of the SDSM-led coalition were covered with 3,636 sec (of which 390 sec were direct speech), activities of the DUI were covered with 3,000 sec (of which 204 sec were direct speech). Activities of the VMRO-DPMNE-led coalition were covered with 2,026 sec (of which 316 sec were direct speech).

Some positive coverage was given to the SDSM-led coalition (five items vs. 33 neutral), and of the VMRO-DPMNE-led coalition (one item vs. 24 neutral), the rest of coverage was neutral.

As other language services of MTV, the Turkish-language programme covered activities of members of the incumbent government more often than those of the opposition leaders. In the monitored period, one could see a total of 18 news items (one item in a positive context) reporting on members of the government and leaders of the VMRO-DPMNE and LP coalition. The DPA party leaders were allocated one item in a neutral context.

The SDSM-led opposition coalition and its leaders were mentioned in a non-election context in three news items, all in a neutral context.

In the monitored period, MTV 3 Albanian- and Turkish-language programmes broadcast more special debate programmes than the Macedonian-language MTV 1. Only the DUI bought advertising time on MTV 3 Turkish programme (40 sec).

These figures suggest that the editorial decision of MTV 1 and MTV 3 alike to **relegate the campaign coverage to direct reporting from parties' events** did a disservice to both the broadcaster and the audience. The team believes that the editors of a public service broadcaster could have exercised more selectivity and introduced issue-based reporting and analysis in the programmes.

### **3.2 Campaign in the electronic media. Private media outlets**

On the whole, the monitored television stations followed the activities of the main political actors. Similar to the public service MTV, the Macedonian-language stations followed mainly the ethnic Macedonian parties, whereas the Albanian-language TV Era followed mainly the ethnic Albanian parties.

**TV A1**, much like the public service broadcaster, covered the parties' campaign activities in a special segment of its news bulletin, usually in its second half. Journalists mostly abstained from commentaries on the parties. **Two major coalitions**, the SDSM-led (6,032 sec, of which 2,455 sec were direct speech) and the VMRO-DPMNE-led (5,104 sec, of which 1,797 sec were direct speech) **received the highest amount of time, distributed in a comparable manner**. Other ethnic Macedonian parties received between 351 sec and 1,053 sec, in relation to the parties' activities. The ethnic Albanian parties, in comparison, received the least

amount of time, however, the newly-formed DUI was allocated the highest amount of time among them (499 sec).

The coverage of all parties was predominantly neutral, however the SDSM-led coalition received some positive coverage (four items vs. 49 neutral), and the VMRO-DPMNE-led coalition received negative coverage (eight items vs. 33 neutral).

*A1 reported on the non-electoral activities of the government and leaders of the VMRO-DPMNE and LP coalition as well as on the DPA mostly in a negative context. The ruling Macedonian coalition received eight neutral news items, as opposed to 26 negative, the DPA received three news items, all negative.*

Most of the marketing time was bought by the SDSM-led coalition (24,040 sec), followed by the DS (10,832 sec) and the DA (12,026 sec). The only Albanian party which advertised on A1 was the DUI with minimal 129 sec. Ostensibly, the reason for absence of the VMRO-DPMNE-led coalition in the paid political advertising slots on A1 was the stand-off between the station and the ruling party. We will refer to the incident in section *Incidents* below.

**TV Sitel** covered the campaign of the two major coalitions in a relatively balanced way. The SDSM-led coalition received 5,609 sec (of which 3,098 sec were direct speech) and the VMRO-DPMNE-led coalition received 5,214 sec (of which 3,340 sec were direct speech). However **the preferred party of the station's campaign coverage was the Socialist Party (SP)** which led with 15,994 sec (of which 10,845 sec were direct speech). All other Macedonian parties of the standing similar to that of the SP received negligible coverage. Of the ethnic Albanian parties, only the DUI received some coverage (762 sec)

The special treatment of the SP was obvious in distribution of positive, negative and neutral references. For example, the SDSM-led coalition received four positive references compared to 37 neutral, the VMRO-DPMNE-led coalition received three positive items compared to 32 neutral, whereas the SP received 24 positive references compared to 27 neutral.

TV Sitel, following non-election activities of the ruling coalition, did not carry any negative items. Namely, 19 news items on the VMRO-DPMNE and LP coalition and its leaders were neutral, while one was positive. The third party in the government, the DPA, and its leaders received less coverage, with two neutral and two negative news items.

Four negative and one neutral news items were allocated to the non-election activities of the SDSM-led opposition coalition, the Socialist Party and the Democratic Alliance were allocated one positive news item each.

The two parties which bought most of the paid political time on Sitel were the SP (41,786 sec) and the VMRO-DPMNE-led coalition (41,001 sec), with the SDSM-led coalition far behind (6,624 sec). Characteristically, the SP bought very little advertising time on other TV stations.

**TV Telma** mostly reported on press conferences, press releases or politicians' statements, rather than covering parties' rallies. The station also organised several special debate programmes. The monitoring team found that the **format of the debate programmes on TV Telma was well-chosen**. Although there was no strict time allocation per participant, the discussion was relaxed and devoid of conflicts.

The highest time allocation in the news was to the SDSM-led coalition (5,940 sec, of which 3,808 sec were direct speech), followed by the VMRO-DPMNE-led coalition (3,023 sec, of which 944 sec were direct speech). The other Macedonian parties received much less time, the highest time allocation per party was 770 sec. Of the ethnic Albanian parties, the highest amount of time was given to the DUI (2,380 sec, of which 1,637 sec were direct speech).

Although coverage of all parties was predominantly neutral, the ruling VMRO-DPMNE was the only party which received a negative reference (one item vs. 15 neutral). The marketing time on TV Telma was bought primarily by the SDSM-led coalition (19,806 sec) and by the VMRO-DPMNE-led coalition (13,393 sec), followed by the DC (4,221 sec) and the DS (3,369 sec).

Political information, which was unrelated to the election campaign and which followed activities of the government and the leaders of the VMRO-DPMNE and LP coalition, was basically critical, 18 negative news items vs. nine neutral and one positive item. The SDSM-led coalition was allocated one neutral news item unrelated to the election. Two neutral news items were allocated to the DA. Among the Albanian parties, six news items related to the DPA; the PDP and DUI were allocated four news items each; and the NDP two. All of these were neutral. Outside the election coverage, three neutral news items were allocated to the international monitors.

**TV Channel 5** covered the campaign much in line with TV Sitel. The main difference was **the party of choice**. In this case it **was** the **VMRO Makedonska** (7,124 sec in the news, of which 3,785 sec were direct speech). The leading coalitions were covered to a lesser degree, the SDSM-led coalition received 4,554 sec (of which 2,246 sec were direct speech) and the VMRO-DPMNE-led coalition received 4,282 sec (of which 1,792 sec were direct speech). The other ethnic Macedonian parties received not more than 100 sec each. Among ethnic Albanian parties, the most represented in the news was the PDP (667 sec, of which 211 sec were direct speech) and the DUI (413 sec, of which 90 sec were direct speech).

The mentioned favourable treatment of the VMRO Makedonska was obvious in distribution of positive, neutral and negative references (seven positive items vs. 33 neutral). Interestingly, the ruling coalition of the VMRO-DPMNE received 24 negative vs. 14 neutral, and the VMRO Vistinska was negatively covered in both of the two items. The coverage of the opposition SDSM-led coalition was predominantly neutral (34 items vs. one positive & two negative items). The most actively covered ethnic Albanian parties (PDP and DUI) were reported on in a predominantly neutral manner. The PDP received two negative items vs. eight neutral and the DUI received one negative vs. seven neutral. The ruling DPA received four negative references vs. three neutral.

Much in line with its editorial policy, TV Kanal 5 in its political coverage unrelated to the campaign, presented an exceptionally critical view on the government. Kanal 5's political leanings were quite obvious and completely opposite to those of MTV 1. Much like TV A1 and TV Telma, TV Kanal 5 routinely followed lay offs, closures of factories, unlawful privatisation, corruption scandals, *etc.* in its news programmes. The government and the leaders of the ruling VMRO-DPMNE and LP coalition received 62 negative items vs. 34 neutral; and the DPA received four negative vs. eight neutral items. The opposition coalition, in comparison, received two negative vs. one neutral

news item. The newly-formed DUI received in total three news items, two negative and one neutral. Reporting on its 'own' political party, the VMRO-Makedonska, the channel carried two news items, both positive. No other small political party received comparable attention.

It should be commended that Channel 5 tried to inform the audience in a **more comprehensive manner** inviting public figures and academics **to discuss important issues** of the campaign, such as the Framework Agreement, relations with the international community, and security issues.

The highest amount of marketing time on the station was bought by the VMRO Makedonska (32,643 sec), followed by the SDSM-led coalition (19,838 sec) and the VMRO-DPMNE-led coalition (12,944 sec).

**TV Era concentrated** its coverage **on the ethnic Albanian parties**, giving most attention to the ruling DPA (7,496 sec, of which 2,563 sec were direct speech) and the DUI (6,353 sec, of which 2,074 sec were direct speech). The opposition PDP received 4,539 sec (of which 784 sec were direct speech), the NDP received 3,782 sec (of which 1,587 sec were direct speech). In comparison, the ethnic Macedonian parties received considerably less coverage, the SDSM-led coalition 2,023 sec, and the VMRO-DPMNE-led coalition 2,134 sec.

In the news, all parties were covered in a predominantly neutral fashion, only the DPA received four positive references compared to 51 neutral items, and the VMRO-DPMNE-led coalition received one negative reference compared to 26 neutral items.

The TV station did not show any specific attitude to the government within the monitored TV news bulletins. It reported on the activities of the government by reporting on the leaders of the VMRO-DPMNE and LP coalition, in 10 neutral news items.

In cooperation with other local stations, in a special weekly programme, TV Era covered campaign developments outside of Skopje.

The DPA was the biggest buyer of the marketing time of this station (15,848 sec), with the PDP (5,400 sec) and the DUI (4,073 sec) following. The NDP did not buy any advertising time on the station.

### **3.3 Campaign in the printed media**

The **campaign coverage** in the **printed media** aimed to **provide more comprehensive information** to the audience than was the case on television. Most of the monitored dailies had special pages or inserts covering the campaign, published on the daily and weekly basis. The print media made attempts to analyse the parties' previous and current performance, although often on the partisan basis. For example, relevant pages carried interviews with several leading candidates on the parties' lists in the same electoral unit.

Our interviews suggested that in the last two months **state institutions** have become **a single major advertiser** in the print media. The preliminary results of the quantitative analysis support this conclusion, and furthermore suggest that the **election-related advertising** in the **print media** comprised two channels, **party advertising per se** and **advertising placed by state institutions**, however with a strong partisan tendency. Namely, advertisements placed by various ministries and state agencies publicized their successes and associated these with the VMRO-DPMNE government.

Such commercial presentation of the government's successes, which in essence was party canvassing, deserves special attention. The total size of the space bought by state institutions in the media in the campaign period implies considerably high spending of funds from the national budget for campaign purposes. The monitoring team did not note any similar case during its previous missions in 1994 and 1998 general election campaigns.

For example, in the monitored period, the government bought 41,097 square cm in the daily *Vecer* for such publicity, in comparison, in the same period the ruling VMRO-DPMNE and LP coalition bought 28,069 square cm of advertising space in the daily. The government bought 27,324 square cm in the daily *Dnevnik* for advertising purposes, the ruling coalition published election adverts on 113,409 square cm in the same daily. In the pro-opposition paper *Utrinski vesnik*, the government bought advertising 24,080 square cm space, while the ruling coalition bought 168,405 square cm of advertising space. And finally, in the daily *Vest*, the VMRO-DPMNE and LP coalition did not place a single election ad, whereas the government bought 3,834 square cm of advertising space.

The monitoring team, in particular, noted publication of a 136-page supplement to *Vecer*, *Utrinski Vesnik*, and *Dnevnik*, with a total space of 76,704 square cm, under the title 'The White Book of Government'. The publication contained several advertising pages for the VMRO-DPMNE. According to the publisher's data, the publication was compiled by the National Election Headquarters of the VMRO-DPMNE and LP. The *Utrinski Vesnik* carried the supplement twice, reportedly, due to dissatisfaction of the VMRO-DPMNE functionaries with the distribution of the first supplement.

The monitoring team tabulated the entire space of the supplement as paid political advertising, which accounts for a striking difference in figures of advertising space allocation between the VMRO-DPMNE and LP and other coalitions and parties.

*Dnevnik* focused on the two main coalitions in the Macedonian bloc of political parties, however provided some coverage to the ethnic Albanian parties as well. These received amount of space comparable to that allocated to the minor ethnic Macedonian parties. The governing VMRO-DPMNE-led coalition received 6,885 square cm, of which 1,642 square cm were photos. In comparison, the SDSM-led coalition received 5,098 square cm, of which 1,234 square cm were photos. The other ethnic Macedonian parties received between 300 and 1,000 square cm. Among the ethnic Albanian parties, most attention was given to the member of the ruling coalition DPA (1,064 square cm, of which 197 square cm were photos). The DUI received 703 square cm, of which 235 square cm were photos.

***Dnevnik* did not favour any particular party.** The ruling VMRO-DPMNE-led coalition, albeit covered mainly neutrally, received some negative coverage (12 negative items vs. 31 neutral). The SDSM-led coalition received less negative coverage than the ruling party (five negative items vs. 28 neutral). Among the ethnic Albanian parties, the DPA received two negative references (vs. 11 neutral), and the DUI was always neutrally referred to.

Referring to non-election news items, the daily's attitude to the government and to the ruling coalition VMRO-DPMNE and LP was mostly neutral (49 items), and with a significant amount of negative (11) items, and only one positive item. The third party in

the government, the DPA, was cited more often in neutral news items (five), than in negative ones (two). The non-election news items on the opposition coalition were mostly neutral (18) vs. only two negative items. In this context, five neutral news items were allocated to the DUI, and three neutral news items to the DA 3.

The biggest buyer of the advertising space in *Dnevnik* was the VMRO-DPMNE-led coalition which by far exceeded any other party; 113,676 square cm in total ('The White Book' 76,704 square cm; advertising 36,972 square cm). The other active advertiser was the SDSM-led coalition (16,718 square cm). The only ethnic Albanian party which bought advertising space in the daily was the DUI (692 square cm).

The status of ***Utrinski Vesnik* as a leading opposition paper** was confirmed during the campaign. Although the VMRO-DPMNE received the most coverage in absolute figures (17,249 square cm, of which 1,460 square cm were photos), most of it was negative (48 negative items vs. 22 neutral). On the other side, the SDSM-led coalition received 9,131 square cm (of which 1,846 square cm were photos). The coalition received positive coverage in 11 items in comparison with 0 negative and 40 neutral items. The minor ethnic Macedonian parties received up to 500 square cm each.

The ruling DPA received the biggest attention (1,979 square cm, of which 179 square cm were photos) and the distribution of neutral and negative references was equal (three vs. three); and the newly-founded DUI received 857 square cm (of which 92 square cm were photos) with distribution of one positive and one negative item vs. seven neutral items. The opposition PDP received 549 square cm (of which 53 square cm were photos), there was one positive and six neutral items.

*Utrinski Vesnik* confirmed its pro-opposition editorial policy in the political reporting unrelated to the elections. The news items covering the government and the ruling coalition were more often negative (37), than neutral (24), and only one positive article was noted. Four negative vs. two neutral articles were allocated to the DPA, as the third governmental party. The Macedonian opposition parties received two neutral and one negative article. The opposition Albanian parties received less attention.

In this paper, the governmental coalition led by the VMRO-DPMNE was the biggest buyer of the advertising space; with total of 168,405 square cm ('The White Book' 153,408 sq cm; advertising proper 14,997 sq cm), compared to 18,131 square cm bought by the SDSM-led coalition.

On the other side, ***Vecer* confirmed its editorial line of a hard-line pro-governmental paper**. Statistically most of its coverage went to the opposition coalition led by the SDSM (10,493 square cm, of which 2,329 square cm were photos). Yet, the number of negatively colored references (33) by far exceeded the neutral references (13). The space given to the VMRO-DPMNE-led coalition amounted to 6,100 square cm (of which 683 square cm were photos), with five positive vs. 22 neutral references. The minor ethnic Macedonian parties received between 200 and 400 square cm each, which is comparable with the space allocation to the ethnic Albanian parties PDP (159 square cm) and DPA (313 square cm). Both parties received only neutral coverage. The DUI received much more coverage (1,199 square cm, of which 235 were photos), and the coverage was mainly negative (five negative vs. one neutral item).

The above-mentioned editorial policy of the daily *Vecer* was confirmed in the articles unrelated to the election. Items concerning the government and the ruling coalition were mostly in a positive (33 articles) and neutral (24 articles) context. No article on

the government and the ruling Macedonian parties was a negative context. The SDSM-led opposition was covered predominantly negatively (ten articles) vs. one neutral and one positive item. The Albanian governmental partner, the DPA, received two neutral and one negative article, while all three articles about the DUI were negative. Outside the election context, a negative attitude to the international monitors was also noticeable, with three negative and one neutral article.

The VMRO-led coalition bought 104,773 square cm in total (the 'White Book' 76,704 square cm; advertising proper 28,069 square cm) of space in the daily, and the SDSM did not place any advertising in the paper.

**Vest** based its campaign reporting on press conferences, statements, especially focusing on the inter-party controversies, no reports on parties' rallies were published in the monitored period. The daily **produced a weekly dossier**, which comprised analytical and critical texts about the governmental performance in the last twelve years. The dossiers were critical to both the SDSM and the VMRO-DPMNE governments.

Quantitatively, the largest amount of space was allocated to the VMRO-DPMNE-led coalition (2,648 square cm, of which 1,371 square cm were photos), followed by the SDSM-led coalition (687 square cm, of which 305 square cm were photos) and the DPA (653 square cm, of which 153 square cm were photos). The daily was mainly negative towards the VMRO-DPMNE-led coalition (12 negative vs. seven neutral references), and its coverage of the SDSM-led coalition was more balanced (one positive vs. three negative vs. five neutral references). The DPA received three negative and two neutral references.

The daily *Vest* showed its negative attitude towards the government and the ruling coalition in articles unrelated to the campaign, 15 negative vs. 12 neutral articles. The articles about the opposition coalition were mostly neutral (four articles), while there was also one positive and one negative article. The attitude towards the Albanian governmental party, the DPA's coverage was almost equally split between neutral (four articles) and negative (three articles). There was a neutral article on each of other Albanian parties, the DUI and PDP.

The VMRO-DPMNE-led coalition did not buy any advertising in the paper the SDSM-led coalition bought 11,511 square cm of advertising space. Some minor ethnic Macedonian parties, such as the SP and DS, bought 5,874 square cm and 4,611 square cm respectively.

**Fakti concentrated its campaign coverage on the ethnic Albanian parties**, among the ethnic Macedonian parties some coverage was given to the two leading coalitions. The DPA (9,560 square cm, of which 454 square cm were photos) and DUI (8,806 square cm, of which 758 square cm were photos) received most of the space. To a lesser degree, the daily covered the PDP (5,743 square cm, of which 319 square cm were photos) and the NDP (4,513 square cm, of which 211 square cm were photos). The SDSM-led coalition received 2,508 square cm of which 388 square cm were photos, and the ruling VMRO-DPMNE-led coalition received 1,301 square cm, of which 113 square cm were photos.

The daily covered all kinds of campaign events and carried get-out-to-vote material. Judging by distribution of positive and negative references, the DPA and DUI had a preferential treatment. *E.g.* the DPA received seven positive, four negative and 38

neutral references, whereas the DUI received six positive, three negative and 41 neutral references. The PDP received most critical coverage (two positive vs. six negative vs. 35 neutral references), and the NDP received a predominantly neutral coverage (two positive vs. three negative vs. 29 neutral references). Among the major ethnic Macedonian coalitions, the VMRO-DPMNE-led coalition received four negative and four neutral references, and the SDSM-led coalition received many more neutral (14) than negative references (two).

*Fakti*, in articles unrelated to the elections, wrote about the ruling coalition more often in a negative manner (three articles) than in a neutral manner (two articles). Four articles in a neutral context were carried about the Albanian party in the government, the DPA, and one article in a neutral context was published about the DUI.

Concerning the advertising space, only the DUI (7,874 square cm) and the NDP (499 square cm) bought it.

In the campaign period, ***Flaka* proved to be a pro-DPA paper**. Quantitatively speaking, this party received incomparable amount of space (28,041 square cm, of which 3,078 square cm were photos). There were no negative references to the party, 25 items were positive, and 37 neutral. At the same time, this was the only party which bought advertising space in the daily (18,900 square cm). Other Albanian parties received a more or less similar amount of space, the DUI 4,820 square cm, of which 281 square cm were photos, the NDP 2,609 square cm, of which 125 square cm were photos, and the PDP received 2,533 square cm, of which 117 square cm were photos. Most of the parties' coverage was neutral, DUI one positive vs. two negative vs. 22 neutral references, the NDP none positive vs. one negative vs. 14 neutral references. The PDP received one positive vs. two negative vs. 14 neutral references.

Even in articles unrelated to the campaign, *Flaka* paid more attention to the Albanian party in the government, the DPA, than to any other party. The DPA was covered in a neutral manner (six articles) and in a positive manner (three articles). Two articles not related to the campaign were published on the ruling coalition VMRO-DPMNE and LP, both in a negative context. Among the other Albanian parties, only the PDP was mentioned, in a negative context in an article unrelated to the election.

The VMRO-DPMNE-led coalition received 953 square cm of which 120 square cm were photos, and the opposition SDSM-led coalition received 487 square cm, without any photos.

*Flaka*, like *Fakti*, published get-out-to-vote articles, however, some of these articles were openly pro-DPA. Similarly, almost every day of the monitored period, articles signed by as Editorial Staff were published on its last page. The main message of the articles was 'directing the Albanian vote in favour of the more successful [party]'.

The **Turkish-language *Birlik*** which comes out three times a week, covered the campaign **mainly through coverage of the two main ethnic Macedonian coalitions**. Both these coalitions have the Turkish parties as members. Similarly, the DUI, which has Turkish candidates on its list, was covered. The SDSM-led coalition received the highest amount of space 4,833 square cm, of which 623 square cm were photos. The coalition received a more favourable treatment, with five positive vs. one negative vs. 17 neutral items. The VMRO-DPMNE-led coalition received 1,325 square cm, of which 203 square cm were photos. The DUI received 446 square cm, of which 234 square cm were photos. The two latter parties did not receive any positive

references, the VMRO-DPMNE received one negative vs. seven neutral references, and the DUI received one negative and three neutral references.

*The daily, informing on the activities of the government and the ruling coalition outside the electoral context, did so mostly in a neutral fashion (four articles), and only one article had a negative connotation. Three articles were published on the SDSM-led opposition coalition.*

The DUI bought the biggest amount of marketing space, 417 square cm, followed by the VMRO-DPMNE-led coalition (417 square cm) and the SDSM-led coalition with only 55 square cm.

#### **4 Incidents**

In the pre-campaign period, there were reports on **harassment of journalists**, mainly working at the outlets critical of the incumbent government. For example, a correspondent of TV Telma in Ohrid, Simeon Ilijevski, was attacked. Similarly, a correspondent of A1, Mare Stoilova, was attacked in Vinica and Stip. In the campaign period, only one incident of physical violence was reported, an armed attack on the printing house of the daily *Global* in Mala Recica and setting the car of editor and publisher, Mr. Ljupco Palevski, wife on fire. A press release of the Ministry of Interior warned internationals and journalists against publicizing the so-called scenarios which 'would destabilize the country and the current government'. At the same time, the **Ministry of Interior** announced that **charges had been pressed** against a journalist of the opposition weekly *Start*, Marijan Gjurovski.

The monitoring team estimated that the worst incident involving media was the **boycott of the television channel A1** by the ruling VMRO-DPMNE. It is especially upsetting that the ruling party organized a campaign against the station in the media, accusing it of 'anti-Macedonian activities' and 'disseminating destructive lies'. The VMRO-DPMNE also exercised economic censorship of the station refusing to buy political advertising time on the channel. However A1 continued coverage of the party's electoral campaign.

The team's main concern is involvement of the main daily newspapers in the campaign against their colleagues. The attitude of editors and publishers of these dailies **blurred the border** between the **commercial interests** of a media company and **ethical standards**, especially concerning professional autonomy and solidarity. The team believes that **this issue** should be **widely discussed** by the media community in the Republic of Macedonia **as soon as possible**.

#### **5 Conclusions and recommendations**

The EIM team concludes that

- **registered parties and coalitions**, in particular, bigger political parties, **had access to the media**;
- a **variety of political opinions** was present in the media market **on the whole**, while individual media outlets sometimes adopted partisan attitudes;
- *reporting on the campaign, print and electronic media **did not mix commentary with reporting**. Most of direct reporting on the parties' events was neutral;*
- *with a few exceptions, the **monitored media** succeeded in **providing a balanced editorial coverage** of the political parties and coalitions running in the election, which shows that a certain level of professionalism has been reached by the media on the whole;*

- some **media outlets** (MTV, Vecer, Fllaka) gave **undue prominence** to the **protocol activities** of state officials thus participating in their party campaign and never bringing up any critical items concerning social and political problems in the country. Some, on the other hand, (A1; TV Telma, Dnevnik) showed **editorial independence** and were critical of the government's poor performance in some areas. Another group (Channel 5, Utrinski Vesnik) **criticized** the governmental **track record**, while giving **preferential treatment to one of the parties**;
- the **most flagrant cases** of partisan journalism were noted on TV Sitel, especially when **Mr. Dragan Pavlovic-Latas** (TV Sitel) hosted the news bulletin, e.g. when he openly appealed to the audience 'to vote for the third option';
- the **print media** adopted a **more analytical approach** to issues of the campaign than the electronic media. At the same time, **NGOs**, which adopted a **pro-active attitude** in this campaign, provided background information and **initiated discussion** on relevant campaign issues;
- **massive paid political advertising** was carried by the media which was **paid for by various state institutions** which implies using the budget funds for party campaign purposes.

**The EIM team recommends that**

- issues of **editorial independence** and **ethics** be urgently discussed by the journalistic community in the RM;
- a **broad public discussion on regulation of the media** and specifically of the public service broadcasting be initiated by the relevant state authorities and professional associations as soon as possible. The issue of the **mandate and powers** of the **regulatory authority** still needs to be discussed (as recommended in the Report of the EIM 1998 monitoring mission);
- **improvement of the election-related regulations** be considered, which concerns **participation of state institutions** in the election campaign **by means of paid advertising**.

## 7 General Overview

### 7.1 Interpretation and Implementation

*The document below anticipates the implementation and interpretation of a set of rules for media coverage of elections in the Former Yugoslav Republic of Macedonia. It brings to light the very great number of issues that merit regulation. It also explores issues connected to such regulations or raised in the course of implementation. It also covers the many aspects that should be considered both by the drafters of regulatory frameworks and those charged with implementation. In dealing with this specific case, the document summarises the whole spectrum of the issues connected with media and elections.*

Christophoros Christophorou, *Written comments on the implementation of the rules for equal access to media presentation in the 2002 elections for members of parliament of "the Former Yugoslav Republic of Macedonia"*, Council of Europe, Strasbourg 2002<sup>65</sup>

#### **General**

The Decision on "*the Rules for Equal Access to Media Presentation in the 2002 Elections for Members of Parliament of the Republic of Macedonia*", adopted on the 11th of July is based on the relevant Recommendation of the Council of Europe R(99)15 and conforms in general lines with its main provisions. However, the implementation of this Decision, setting up basic principles for the media to conform to, is not an easy task; the issues arising from this text and its implementation are numerous and of a complex nature necessitating further elaboration. The aim is to facilitate the work both of the Broadcasting Council and of the Media, and to turn the Decision into an effective tool in the service of democracy. Drawing from the relevant literature, experiences from other countries, as well as from my own experience as former director of the Cyprus Radio and Television Authority, I will try to focus both on issues of the general philosophy, the interpretation of the clauses of the Decision and on the practical aspects of implementation.

#### **The scope of the Decision**

##### ***The media***

The relevant Recommendation of the Council of Europe refers to all media, print and electronic, as subjects of the rules regarding the coverage of elections. In the specific case, as might be the case in other countries, monitoring conformity with these rules may be the task of different bodies; the Broadcasting Council has no jurisdiction on print media or on news agencies. It would have been desirable to have separate Decisions for each media; both the rules of implementation, monitoring, enforcing conformity and the authorities competent for are different, as are the actions to be taken in each case.

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<sup>65</sup> <http://www.humanrights.coe.int/media/atcm/2002/FYROM/Media%20%20&%20elections.pdf>

**It is here suggested that the Broadcasting Council be responsible as to the observance of the rules by the electronic media, while the Electoral Council or Committee be the body to supervise the organisers of the elections campaign and the print media.**

***The period of time covered***

Equal treatment should be the rule all the year round. This is set in Article 33 of the *Law on Pursuit of Broadcasting Activity*, stipulating that “*The program of the broadcasting organization must meet the following conditions: - a truthful presentation of events, with equal treatment of different approaches and opinions*”... This clause implies that political parties and other forces should also be treated in fairness in all times, with special attention given during elections, since this is a fundamental process in democracy.

The fact that the Decision defines that a set of rules should be issued by the broadcasting and other media as to how they will cover the one-month long electoral campaign should not be interpreted as allowing them to be unfair to any organiser or to favour any one of them outside the above period.

**The Broadcasting Council has the authority to monitor the broadcasting media as to the observance of equal treatment in all times, both within and outside the one-month long campaign.**

**OBSERVATIONS AND GUIDELINES**

**1. Defining “equality”** “Equality” in media coverage is defined in various ways and according to many different criteria:

- to some, “equality” means literally the treatment of all in the same way, give them the same amount of time, etc.
- to others, “equality” means fairness and balance, treat each one according to his/her merits, in a way “proportionally”. In this case “equality” is interpreted as “equitability”;
- in other cases and in order not to discriminate against those newcomers for which there is no base for defining their share, “equality” is implemented in a way combining the allocation of a minimum to all, i.e. five minutes each, plus extra time allocated on the basis of proportionality.

The fact that all three above interpretations of proportionality are acceptable in democracy shows the following:

- The advantage one may draw from more coverage is less of a major concern, or to put it differently, if one party gets 10% or 20% in time coverage, this does not **necessarily** lead to an effective advantage. It depends on how this time is used and on the response of the electorate.
- It is very important in a democratic society **not to discriminate against** any one and give all the opportunity to present their case, views and programmes.
- The debate focuses mainly on two arguments; there are those who say that **small parties need be allocated more time** than big ones because they have less other means at their disposal, while their opponents claim that it is more democratic to give **big parties big share** in time.

Further to the above there is another form of equality, applied in the case of paid political advertising in the USA and Italy, defined as “equality of opportunities”, which

is to offer all contenders the same opportunities. If one can buy one hour of advertising at a certain rate all others should be offered this possibility. What makes the difference is that this form of “equality” is a real one only when all contenders have the necessary funds to buy the same amount of time. Otherwise it remains a matter with only theoretical value.

#### **Suggestion**

**It is up to the Broadcasting Council to define the method to adopt. It may accept that one broadcaster adopts plainly equal time, while others opt for one of the other two methods, of proportional or mixed allocation. We will see further that the decision depends on other factors as well, where in the case of paid advertising the necessary funding is not within the reach of all contenders. In this respect, the Decision has set a ceiling which makes it impossible to reach equality since the ceiling is set to one third of the time available and the parties present are more than twenty.**

**It may also be useful to remind not only “equal access” etc but also to add “without discrimination”, in order to emphasize the value of the latter.**

#### **2. Elaborating on “equality”**

As noted above, “equality” is frequently referred as “equality of access” or “equality of opportunities”. There are though many aspects to it and it could be helpful to define the criteria on which to base it. Some may seem as deriving from common sense; a lot of help to all though is expected when these criteria are put onto paper.

#### **Suggestion**

A set of rules may be drawn in this respect, as follows:

**a. Equality under the present Decision is defined with respect to the present share of seats in parliament (or the vote share in the last elections), the territorial organisation and presence of a party and its historical role in the country’s political life.**

NOTE: The above broadens the meaning of equality. It is up to the Broadcasting Council to decide whether equal will be “same for all” or a kind of proportionality or whatever of the above options is chosen by broadcasters. It should be borne in mind that media coverage can be effected on one of the above bases; in the case of paid advertising, not all have the money needed to purchase the same amount of time. So, what kind of equality will be chosen in that case? Some questions also emerge with regard to parties or lists of candidates with very limited territorial coverage. Are all those to be treated equally on commercial broadcasters having national coverage?

**b. The principle of equal treatment of the organisers of electoral campaign should be applied with regard to events, activities and public interventions, which are/form directly or indirectly part of the electoral campaign.**

**c. In implementing the principle of equal treatment, the electronic media should count the time of presence or speech in a programme of political personalities, such as party leaders, government ministers or other officials, members of parliament and other representatives of parties, as well as the time dedicated to present the activities and other public interventions of the candidates, of the parties and of their representatives.**

**d. The time dedicated to the activities or public interventions of groups or personalities, under a partisan or not partisan capacity, should also be counted**

when they are providing support to or publicise specific parties or candidates.  
e. **Statements and activities by persons occupying public offices, when made under their official capacity, should not be considered as part of the electoral campaign. However, when these statements and public interventions are publicising the achievements or work done, or are exploited for electoral purposes or are used in support of an electoral platform, in all these cases the time dedicated to such activities is counted to the time allocated to the organiser of electoral campaign supported by the said statements or activities.**

### **3. Aspects of equal treatment**

In this section it could be given some more attention on aspects of equal opportunities; we could define the elements which could form the criteria of equality.

- a. **The electronic media should take care and ensure that when they invite to participate in or give access to electoral campaign organisers to a programme, this is done in conformity with the principle of equality; no discrimination against or exclusion of any party or candidate or their representatives is allowed, whether from the whole spectrum of or from specific programmes.**
- b. **Equal treatment and no discrimination should apply with regard to participation in programmes of candidates contesting a seat in the same constituency, when the issues are relevant to the said constituency.**
- c. **The policy of addressing invitations and giving access to programmes should ensure equal treatment of men and women.**
- d. **The public activities of the parties should be covered with respect to the number, the type and importance /significance of the said activities or events and with the same attention for all parties, on the basis of equal treatment.**
- e. **When commenting on or reproducing the activities, events, statements and press releases of the electoral campaign organisers, the broadcasters should ensure that the comments and the excerpts presented are such as not to alter their substance.**

### **4. Defining the organisers**

According to Article 1 “*organisers of electoral campaign are the following: a political party, two or more political parties acting together, or a group of voters, submitters of candidates' lists*”.

In practical terms, they can be categorised as follows:

- a. parties with national appeal, presenting **full lists in all six constituencies**;
- b. parties presenting **lists in all six constituencies**; in a number of cases there are **full lists** and in other only **partial lists**, i.e. the number of candidates is smaller than the number of seats in a constituency;
- c. parties presenting lists **in four or five constituencies** (more than half). There is a further criterion, which is the total number of candidates; we may suggest that the limit is put **at half the number of seats**, creating thus two categories, **above** and **below this limit**;
- d. parties presenting lists in **one to three constituencies**, either **full** or **partial lists**;
- e. individual candidates.

The rights of the above for equal access to the media may differ; their target audience may be limited in only part of the territory of the country, leading to the need to limit their access to only local media.

The Broadcasting Council is called to define the rights of each category in respect of access, taking into account their target audience, the media that should offer them access and the kind and other parameters of access:

a. who are entitled to **access to national media** and who to **only local media** and to which ones?

b. what **kind of** access are entitled to, with regard to: i. **media reporting** on their activities, ii. participating in **debates**, iii. **speaking** to the media, iv. **free** airtime, v. **paid** political advertising?

c. on which **basis** their access is defined with regard to **equality**, in each of the above i. to v. cases?

d. Are **individual candidates** entitled to **media access** and on which basis?

**Suggestion** In order for the Broadcasting council to define the limits and constraints of media access and the nature and parameters of this access, crucial factors should be taken into account: Freedom of expression, the extremely big number of parties, the peculiarities with regard to the ethnic origin of the various communities of the country and their presence in specific regions/constituencies etc. The decisive factor is summarised in the following question: How is democracy better served, i. by refusing one “right” to some electoral campaign organisers, or ii. by giving this right to all and running the risk to turn the electoral campaign into a game with so many actors (some of questionable stature), alienating thus the electorate? Before deciding, a further question is posed: With reference to the second option, shall we accept this kind of problems as unavoidable in a democracy or shall we protect democracy from this “nuisance”? Are there any objective criteria to decide upon? On the other hand, the local and national media may not be in a position to define their obligations. It will necessitate the Broadcasting Council to reflect on and define the obligations of the local and the national media in respect of coverage, participation on debates, free and paid media access of each category of the contestants, etc.

#### **5. Provisions concerning the print media**

A clause is needed with regard to the coverage of the campaign also:

**a. the print media in the predominant ownership of the State, when they choose to report on the electoral campaign, they should treat equally and without any discrimination all the organizers of election campaigns.**

#### **6. On free presentations**

NOTE: The definition of “free presentations” should not be interpreted as prohibiting any party to use a form where journalists are present or the party’s views are confronted to another party’s positions. The meaning of “**free presentation**” should be that **editorial responsibility for its preparation lies with the electoral campaign organiser** without any interference by the broadcaster; the electoral campaign organiser may choose a form which is not a monologue and adds to the presentation a flavour of interest to attract the attention of the audience. **Any other interpretation may lead to violation of freedom of expression.**

#### **Suggestions**

**Once the list of those having the right to free airtime is dressed, there is the need to define the basis of time allocation. Even in the case where all are**

**entitled to free airtime and on equal basis, it should be important to define the details; not all contestants have the right to national media, not all media, national and local alike put at the disposal of contestants the same total duration of free airtime, nor they follow the same system of free airtime allocation.**

Crucial elements are missing from the Decision, i.e.

- a. the specific time during which free presentations are broadcast,
- b. the total time allocated to free presentations, in local and national-wide media,
- c. the basis on which this allocation is done, for each category of contestants and for national wide and local media.

Leaving this to the Public Broadcaster to decide may lead to two extremes: a. to allocate very short time to this kind of presentation, or b. to cede to pressures by parties and allocate too much time.

The option that the Broadcasting Council decides upon these matters is preferable and avoids undesirable effects. At the same time, one should bear in mind that commercial and political advertising will be on air as well as reporting on the elections, debates, interviews, etc, thus creating the need for a balance between the various types of programmes.

#### **7. Paid political advertising**

This is a most complicated issue since **equality** may be defined as “**equal access**” or “**equality of opportunity**”. If the choice is “equal access”, then all contestants should be allocated the same amount of airtime. However, the Decision has already set a different basis, where there is “equality of opportunity”, which in practice is a quite doubtful principle, since one may purchase up to one third of time available and parties present are more than twenty. Even without the latter ceiling, things are not as simple as that with this issue.

In the case of the United States, equality of opportunities is feasible because there are only two major contestants with virtually the same capabilities as to fund-raising. So, the principle according to which “a broadcaster should make available to a contestant the amount of time purchased by another contestant with the same terms” can be applied.

In the case under study, we are faced to a different situation, with a multitude of parties, having at their disposal different financial potential. The amount of air time set as time-ceiling (40 minutes per prime time period), is extremely high. One may wonder whether any party or even any commercial company has the financial means to purchase such an amount of advertising time. In practical terms, also, one may wonder how to fill this time with 90 seconds spots, or transmission of rally and gathering scenes, should it be possible for one party to find the necessary funding. A simple calculation leads to the following: a. In case of 90 seconds advertising spots, the number of spots per prime time period (PTP) will amount to 27 (twenty seven) per TV channel.

- b. If spots are 60 seconds long, one may broadcast 40 (forty) spots per PTP and per channel.
- c. If this space is to be filled with 30 seconds spots, then 80 (eighty) spots are needed per PTP and per channel.

When the above are translated per 30 day campaign period, the respective figures

would be, 810, 2400 and 4400 spots per channel. This means that in case of producing 10 or 20 different spots, they will be broadcast hundreds of times in one month creating saturation of the public. Some changes occur when we add rally or other activity scenes. The question is whether this will make a dramatic difference. Whatever the case, the relevant clause rules away any possibility of equality both of access and of opportunities. The richest party will be amply publicised on the media. At the same time, **secondary effects may be produced** should one party purchase all advertising time during the core hours of prime time, i.e. 19:30 – 21:30, pushing all others in earlier or later hours. In order to partly remedy this inequality, it would be possible to take some measures, without prejudicing respect for the Decision.

#### **Suggestion**

A **per hour time ceiling** may be set for each contestant; no one can purchase more than **three minutes** on a **public** service broadcaster and **eight minutes** on a **commercial** broadcaster of advertising time **per hour**. This means that the total of 14 and 40 minutes respectively (Article 17) per contestant should be equally distributed, leaving space for the other political forces in prime time.

The allocation for radio may also be done accordingly.

In order to cover the cases set in article 16 (maximum time for rallies and other activities), it could be allowed that **once or twice per week** a contestant may purchase up to **nine (9) minutes** on **public** service broadcaster and 25 minutes on **commercial** broadcaster of airtime **in one hour**.

#### **8. Other forms of paid political advertising**

The Decision defines paid political advertising in a way that excludes productions prepared by the parties. These could be in various forms, such as: a. presentation of the positions and the programme of a party by one of its officials or another person; b. a kind of interview or debate between an official or other person presenting the positions of the party and one or more journalists / other persons asking questions or discussing the parties positions; c. a documentary presenting the history or other aspects of the party's life and activities; d. other possible forms.

#### **Suggestion**

**The Broadcasting Council should be reluctant to prohibit any of the above forms of presentation on grounds of non-conformity to the Decision. In the opposite this will be a violation of freedom of speech, while at the same time the decision is imposing forms of presentation (rallies, meetings etc) which may lack creativity or interesting features.**

#### **9. Content responsibility (article 18)**

The right of the broadcaster to refuse a paid political advertisement may lead to complicated situations; are the broadcasters in a position to act without prejudice and do they have the knowledge and ability to judge on such delicate issues? There may be cases where the interpretation of the terms used in article 18 might prove a difficult task asking for very specific knowledge and extensive experience.

#### **Suggestion**

**The Broadcasting Council may set a mechanism for resolving any conflicts arising with respect to the content of a paid political advertisement. This should be a speedy one and very efficient. The internal situation of the country should not be exacerbated by eventual decisions for banning advertisements in a way**

that may be interpreted as founded on discriminations against one or another ethnic group.

#### **10. Live or recorded broadcasts of rallies, gatherings etc**

The relevant **article 24** and the prohibition thereafter **clearly interfere with editorial independence** and its application may prove a violation of freedom of expression in both directions, the **right** of the broadcasters and of the parties **to inform** and of the **citizens to be informed**.

#### **Suggestion**

The Broadcasting Council should be very reluctant in applying this article. Should the case arise, the broadcaster should treat parties equally, by broadcasting the rallies of all parties, in whole or partially.

**Whatever the choice, the Broadcasting Council should define the meaning of the term “integral”. In case of a rally which lasts 30 minutes, is it possible for a broadcaster to air free of charge, in the framework of its information activity, 20 or 25 minutes, live or recorded scenes without this to be considered as breaking the law?**

#### **11. Advertising individual candidates**

The present text makes no reference to the eventuality that advertisements promote the candidacy of one person, present on a list or contesting the election as individual candidate.

Each of these two cases is different in nature, since being on a list is not the same as being an independent candidate. The question is whether it is allowed that an individual promotes his/her candidacy either in a paid or free of charge advertisement.

#### **Suggestion**

In the case of free of charge airtime, time is allocated to a party, so it would be not desirable to use this time to promote on Radio or on TV individual candidacies. The question whether the same can also be applied in paid political advertising remains doubtful; it may open the door to a money race between rich candidates adding more problems to the money race between rich parties. **My personal view is that promotion of individual candidates in PPA should not be allowed.**

With reference to independent candidates, the question remains open; there are arguments for and against this practice. One may also argue that with so many parties and lists, rights to individual candidates may add more saturation elements to the campaign. In case PPA is allowed for the independent candidates, it should be limited to their respective constituencies, i.e. broadcast on local media of their constituency.

#### **12. Payment for access to the media**

Measures should be taken in order to dissuade any attempts on behalf of broadcasters to be paid in return for access offered to parties or candidates, other than paid political advertising.

The same prohibition should apply to parties or candidates which may attempt to pay in return for their access to the media.

#### **Suggestion**

The following guideline may be issued to the broadcasters.

**No broadcaster may ask for or receive payment or compensation in any form by any electoral campaign organiser or other legal or natural person in return for offering an electoral campaign organiser or any person supporting it in any way**

**access to airtime, except in the case of paid political advertising.**

A similar guideline for the electoral campaign organisers:

**No electoral campaign organiser or a candidate or other legal or natural person may offer or give payment or compensation in any form to a broadcaster in return for in any way access of the electoral campaign organiser or a candidate or other person supporting an organiser to airtime, except in the case of paid political advertising.**

### **13. Prohibitions to journalists and other media people**

There are **two problems** with regard to **article 25** and the prohibitions to journalists and other media people: a. The right to work should always be respected and no one can ban it; b. the right to free expression allows the journalists and all persons to campaign for their election.

Article 25 violates the above two rights.

In fact, this article should **target** to the following: To **prohibit media people from exploiting their position and the “visibility” they enjoy for promoting their own candidacy.**

On the other hand, it is up to the broadcaster to ensure fairness and justice in covering the electoral campaign, by applying the principles laid down in the Law, the present Decision and eventual internal codes of ethics.

The only measure that the Broadcasting Council could take in this respect is to ask the following:

**a. journalists or other media professionals presenting news or other programmes, should they decide to run as candidates, they must be assigned such duties as not to gain unfair advantage from the exercise of their duties;**

**b. the prohibition in the above paragraph includes their abstention from presenting any kind of programmes;**

**c. broadcasters in which journalist(s) or other professional(s) mentioned above in a. work should be particularly vigilant as to their obligation to observe equal treatment of all electoral campaign organisers.**

### **14. Campaign silence**

The questions related to the breaking of campaign silence may be less complicated than they initially appear; they are built around two questions:

a. Who decides about an eventual violation?

b. What are the media allowed to report on the issue?

In case **a broadcaster violates the campaign silence**, only the Broadcasting Council is habilitated to decide about it. No media and no parties have the competence to decide upon.

Should they believe that a violation took place, they must apply to the Broadcasting Council which should deliberate on that. Media can only refer to announcements by the Broadcasting Council on the issue, i.e. **“the BC is examining”** or **“has deliberated on such a case”**.

When the eventual violation is done by an electoral campaign organiser, the authority to decide upon is the Electoral Committee or Council. What the media can do in that case? If a party makes such claims, i.e. that another party has violated the campaign silence, the media are habilitated to inform the public about the claims. The media can not decide about the issue and do anything more than just reporting on the statements

made, or the relevant decisions taken by the Electoral Council. Otherwise they might face charges by the Broadcasting Council for violation of the campaign silence period.

### **15. Opinion polls**

Some more explanations are needed in order to make it clear that results of opinion polls should not be announced but also that “no announcement or reference to any opinion polls results is allowed”.

#### **Suggestion**

A new sentence may be added to the existing first sentence of article 28, as follows: **“No announcement or reference to opinion poll results is allowed thereafter”, i.e. after the 10 of September 2002.”**

### **16. Enforcement of the Decision**

Monitoring and ensuring conformity with the rules set by the Decision is a crucial factor. The Broadcasting Council has limited powers and this may prejudice the efficiency of its work. It nevertheless has the possibility to be vigilant and do what the law entitles it to. It might seek the cooperation especially of important broadcasters, a factor which may prove decisive about the outcome.

**EXPERT’S NOTE :The above comments and suggestions give reference points in order to facilitate implementation of the Decision of 11 July 2002. They are not intended or considered to be the only solution on any issue. In some cases they may form the basis for devising other ideas as to how to face the situation.**

## 7.2 Regulation of News Media — Trends

### Kathleen Cross and Robert A. Hackett, *Political Communication and the News Media in Democracies: Competing Perspectives*<sup>12</sup> *Regulatory Framework*

(...) The legal and regulatory context for media institutions can be seen as a collection of measures divided into *constraints and supports for media as economic institutions*, and *constraints and supports for media as vehicles of democratic speech*. Restraints on media as *economic institutions* may include tax laws, anti-trust regulations to curb ownership concentrations, or indirect laws of general application such as employment standards or recycling regulations. Supports on media as economic institutions may include tax incentives or subsidized postal services. Restraints on media as *vehicles of free speech* may include libel and slander laws, or laws against disseminating hate literature. Supports for the media role as vehicles of free speech may include constitutional protections of free speech and press, the absence of censorship laws, a “shield law” which protects journalists from having to reveal the identify of their sources in legal proceedings, and laws providing for citizenry access to information in government files.

Three models of regulation have been suggested which historically have generally been applied to three forms of communications media. These are the free press model (print media), the broadcast model (radio and television), and the common carrier model (telecommunications media) (McQuail, 1994, 171-73).

At the core of the **free press model** is the value of *free speech*. The free press model generally tends to apply to print media: newspapers, books, etc. It is characterized by freedom from any government regulation and control that implies censorship or limits on the freedom to publish. As mentioned above, this freedom is often protected in constitutions, as in the US and Canada, or in charters such as the European Treaty on Human Rights.

This free press model is often associated with the political philosophy of libertarianism, which stresses the absolute freedom of the individual from government. Nevertheless, this model does concede a certain role for government regulation—for instance, to protect against monopolies which can be seen to reduce citizen choices or voices in the press. The press may also receive economic benefits, such as postal services and tax concessions, or loans and subsidies. Press conduct, like other individual liberties, may only be restricted for specific reasons justified on liberal democratic grounds. One form of legitimate restriction notes the existence of competing individual rights and the need to limit one person’s right where it infringes on another’s—a classic illustration suggests that one person’s right to move their fist ends where the other person’s face begins. An example of such a restriction of one person’s rights in order to protect those of another is the provision for a right to a fair trial and good reputation. Another form of legitimate restriction on the press is based on those principles which support the very survival of the liberal-democratic state, such as

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<sup>12</sup> <http://qsilver.queensu.ca/sps/teaching/courses/perlindocuments/UKmonopolcom.doc>

restrictions on the betrayal of state secrets, or on the advocacy of hate crimes, genocide, and the overthrow of the state through violent means.

At the core of the **broadcast model** is *public service*. The broadcast model applies to radio and television which have from the beginning been subject to some level of restriction and direction by government and, as mentioned above, public ownership. This regulation originally stemmed from the scarcity of the broadcast spectrum and therefore the need to ensure its fair allocation. The rationale for public broadcasting is often to meet programming needs not likely to be met in a commercial system dominated by audience-building and marketing imperatives—for example, children's programming or the needs of minority cultures. Also, in some countries in a culturally vulnerable situation, public broadcasting is mandated to promote inter-regional communication within the country, and to protect its national culture through providing "shelf space" for cultural producers to tell their country's own stories (as in Canada's creation of the Canadian Broadcasting Corporation). Concern about the "quality" and "fairness" both in terms of a) ensuring the airwaves don't fall under the control of those with the most money, and b) ensuring equitable opportunities for differing viewpoints, is another rationale for public broadcasting.

Stronger forms of the public broadcast model are found in Europe, and weaker forms in the US. In Britain this model is fully developed and supported by public policy; its features include the provision of universal service; financial support from all taxpayers (the public purse) not just consumers; and guidelines on how access to the airwaves (and therefore broadcast audiences) is to be allocated to ensure certain principles such as "fairness," "political neutrality" and independence from vested (economic) interests and the state. This model usually is supported by a public service bureaucracy to implement the regulatory requirements. It is significant that this model is declining in strength because of trends towards "privatization" (the transfer of ownership from public to private) and "commercialization" (increasing financing from advertisement and franchises).

At the core of the **common carrier model** is the idea of an *equal right to access* without discrimination. This model originates with the historical role of the state in facilitating communication among citizens through such methods as mail services, telephone and telegraph. It is primarily concerned with the universal distribution of communication services, which are regarded as public utilities, available in principle to all citizens. The government may not, under this principle, preclude certain types of people from using highways or telephones, for instance. The focus of the regulatory regime, then, is on efficiently building and managing these services and their "hardware" infrastructure, with little concern for content. Although this model may not seem directly related to our discussion here of news media, the recent use of the Internet as a news source draws attention to this model of regulatory framework. It also demonstrates the increasing overlaps and complexities in maintaining these three different models. In fact, McQuail notes that the technological convergence of the different modes of communications challenges the applicability of separate regulatory structures, and he suggests the discreet regulatory logic of these three different modes will diminish. As well, the metaphor of a common carrier has been used by supporters of the notion that the press has social responsibilities beyond its role as a privately owned business. In this view, given the decline of competition in the

newspaper industry, and the growth of monopoly markets where consumers have access to only one daily paper, the press ought not to reflect the views of its owner alone. Rather, it should strive to offer access for all significant viewpoints, access much like that provided by a common carrier (Black, 1982). (...)

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