JOURNALISTS' RIGHTS, FREEDOM OF EXPRESSION AND MEDIA INDEPENDENCE IN NORTH MACEDONIA

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INTRODUCTION

Independent, objective, and professional media are the heart of any thriving democracy and are the very pillar that upholds the values of transparency and accountability. Vital for any democratic fabric is the ensuring of basic prerequisites, creating fertile ground for free journalistic expression and instigating opportunities for the development of media pluralism.

It is the duty of every democratic state not only to nurture these prerequisites, but also to constantly improve on them, drawing from the experiences of well-established democratic societies. In contrast, the recent evaluations of international bodies and the reports of domestic associations reveal the delicate state of the media landscape in North Macedonia, showing both the progress, but also the continuous problems and challenges that journalism faces in the country.

Although the challenges and problems are numerous, this publication attempts to analyse those related to copyright infringement, the establishment of a media pluralism fund and the disruption of the media market by paid political campaigns during the electoral process.

Below in this metadata report, we analyse the copyright issue of journalists and media workers, including the legal framework, enforcement mechanisms, new trends and technological developments, which concern copyright protection in the media industry in RNM. Then, we analyse the need to establish a fund for media pluralism to ensure an objective and fair distribution of support, promoting quality content, diversity of editorial positions and working conditions of journalists. Finally, we analyse the impact of the rules about paid political advertising during electoral processes (Electoral Code) on media independence, with a focus on the provision that allows participants in an election campaign to pay for advertising in traditional and digital media with public money.

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PART 1

INFRINGEMENT OF COPYRIGHT OF JOURNALISTS AND MEDIA WORKERS

1.1. Introduction

Copyright protection has always been complex. Before the digital age, the owners/holders of rights had the possibility of direct control over their copyrighted works, however, with the rapid development of the Internet, i.e., digital media (websites, email addresses, social media, mobile apps (smart phones and tablets), blogs, podcasts etc.), it is very difficult to protect the copyrighted work from unauthorized use. Today it is very easy and cheap to infringe copyright, resulting in a decrease in its value.

According to the economic study of the Audio-Visual Anti-Piracy Alliance, in 2021, legal IPTV providers marked a loss of about 3.2 billion US dollars due to broadcasting pirated content, and providers of illegal IPTV make more than 1 (one) billion euros every year in the EU, thereby harming creators and legitimate businesses. In fact, digital piracy is another lucrative market for infringers, especially in the case of IPTV - television content delivered over Internet Protocol (IP) networks[1].

1.2. Sources of copyright and related rights

Starting from Article 47 of the Constitution of the Republic of North Macedonia (hereinafter: RNM), our state guarantees the rights arising from scientific, artistic or other types of creative work and it undertakes to encourage, help and protect scientific and technological development. The regulation of copyright and related rights is basically in accordance with the international conventions and agreements to which our country has acceded and ratified. Unfortunately, lately, a certain «fatigue» has been noticed among the competent authorities, so even though new regulations and/or directives have been adopted within the EU, our country has not transposed them into the legislation that regulates copyright and related rights.

1.3. Domestic sources

Provisions for the regulation of copyright and related rights in RNM are found in a number of laws. However, copyright, and related rights are basically regulated by the Law on Copyright and Related Rights[2] (hereinafter: LCRR). In addition to the LCRR, in practice the following are most often applied: the Law on Audio and Audio-Visual

1 Audiovisual Anti-Piracy Alliance, Illicit IPTV in EUROPE – economic study: https://www.aapa.eu/illicit-iptv-in-europe-an-aapa-economic-report, December 2022

2 "Official Gazette of the Republic of Macedonia" no. 115/10, 140/10, 51/11, 147/13, 154/15 и 27/16.

Media Services[3] (hereinafter: LAAVMS); The Law on Media[4] (hereinafter: LM); The Law on Electronic Communications[5] (hereinafter: LEC); The Law on Customs Measures for the Protection of Intellectual Property Rights[6] ((hereinafter: LCMPIPR); The Law on Obligations[7] (hereinafter: LO); The Law on Culture[8] (hereinafter: LC) and the Criminal Code (hereinafter: CC).

1.4. International sources

The regulation of copyright and related rights, to a large extent, depends on and must be in accordance with the ratified international conventions and agreements[9], so provisions regulating the principles of assimilation, national treatment and minimum rights are incorporated into the existing LCRR.[10]

Pursuant to Article 71 of the Stabilization and Association Agreement, the 2010 LCRR was, to a large extent, harmonized with the current EU legislation, while also considering the existing good practices in the country and in comparative law. However, with the amendments, especially from 2013, 2015 and 2016, the achieved compliance was violated and now the LCRR does not correspond with the European regulations and the practice of the EU Member States[11]. Contrary to the current trends in the world and in the European practice in the field of collective management, provisions were incorporated into the LCRR which, instead of ensuring progress, made it impossible to establish a functional and efficient system for the collective management of copyright and related rights, and impermissible interference of the state occurred in this area.[12]

Currently, the LCRR is in the parliamentary procedure for amendment[13] in order to comply with: Directive 2004/48 EC of the European Parliament and the Council, of April 29, 2004, on the enforcement of intellectual property rights; Directive 2014/26 EC on collective management of copyright and related rights and multi-territorial licensing of musical works and use over the Internet and Directive 2011/77/EU amending Directive 2006/116/EU on the duration

3 "Official Gazette of the Republic of Macedonia", no. 184/13, 101/2014, 132/14, 142/16, 132/17, 168/18, 248/18 и 27/19; and 27/19; and "Official Gazette of the Republic of North Macedonia" no. 42/20 and 77/21.

4 "Official Gazette of the Republic of Macedonia" no. 184/13 и 13/14

5 "Official Gazette of the Republic of Macedonia" no. 39/14, 188/14, 44/15, 193/15, 11/18 и 21/2018.

6 "Official Gazette of the Republic of Macedonia" no. 88/15, 154/15, 192/15 и 23/16.

7 "Official Gazette of the Republic of Macedonia" no. 18/01, 78/01, 04/02, 59/02, 05/03, 84/08, 81/09, 161/09, 23/13 and 123/13, "Official Gazette of the Republic of Macedonia" no.215/21.

8 "Official Gazette of the Republic of Macedonia" no. 31/98, 49/03, 82/05, 24/07, 116/10, 47/11, 51/11, 136/12, 23/13, 187/13, 44/14, 61/15, 154/15, 39/16, 11/18 и 11/18 -"Official Gazette of the Republic of Macedonia" no. 15/2008.

9 Кои меѓународни конвенции и договори од авторското право и сродните права ги има прифатено, односно ратификувано РСМ, see more at: Dabović-Anastasovska, J., Pepeljugoski, V. (2015). „Авторско право"", Faculty of Law "Justinian the First", Skopje, page 65.

10 Ibid, page 67-70

11 See the EU Progress Report on MK from 2016, 2021 and 2022.

12 See page 4 of the Explanation to the proposal for the adoption of a law to amend and adopt the Law on Copyright and Related Rights, prepared by the Ministry of Culture, July 2022.

13 https://kultura.gov.mk/wp-content/uploads/2022/04/Predlog-Zakon-za-avtorsko-pravo.pdf, on 06.11.2023

of protection of copyright and related rights in relation to the protection of co-authors of musical works with text, as well as the duration of musical works of performers and phonogram producers of recorded musical performances, i.e., phonograms from 50 to 70 years and with Directive 2012/28/EU on the permitted use of orphan works, and harmonizing the use of the Marrakesh Agreement to facilitate access to published works for persons who are blind, visually impaired or otherwise disabled from using printed materials.

At the same time, a working group appointed by the Decision of the Minister of Culture developed and submitted a draft text of amendments to the LCRR, in order to comply with: Directive 2019/790/EU of the European Parliament and the Council of April 17, 2019 on copyright and related rights of the single digital market (hereinafter: Directive 2019/790) and EU Directive 2019/789/EU of the European Parliament and of the Council of April 17, 2019 on establishing rules for the exercise of copyright and related rights applicable to certain internet transmissions and for the retransmission of television and radio programs (hereinafter: Directive 2019/789).

Directive 2019/790 will modernize the text of the current LCRR in several areas, which are of interest to both journalists and media workers. Namely, the proposed text will remove certain uncertainties related to certain types of use, exceptions, and limitations of copyright and related rights in relation to new ways of using copyrighted works and other protected content, such as analyses of large amounts of information in digital form. In that direction, this directive foresees new mandatory exceptions for the analysis of information in digital form, the so-called text and data mining[14] etc. Furthermore, the protection of the rights of the publishers of news publications online will be foreseen and the use of copyrighted and related rights-protected content by Internet service providers will be regulated. It is particularly important that grounds for fair compensation of authors and performers will be created in the contracts with which they cede their rights for the use of their works and other objects of protection in a way that prescribes adequate and commensurate compensation, an obligation is introduced for greater transparency of the information on the use of the objects of protection, a mechanism for adjusting the contracts is prescribed, if the agreed compensation turns out to be disproportionately low in relation to the income earned by the holder.

Directive 2019/789 will modernize the text of the current LCRR from the point of view of providing favourable conditions for the transmission of radio and television programs originating from other EU Member States. It will also determine the application of the principle of the country of origin in a situation where broadcasting organizations also want to provide certain cross-border online services such as services that monitor the broadcasting, and the obligation for collective realization will be extended for all types of retransmission of programs and clear and precise rules will be introduced for the regulation of copyright and related rights in cases of program signals transmitted through direct flow procedures.

14 means any automated analytical technique aimed at analyzing text and data in digital form in order to generate information including but not limited to patterns, trends and correlations.

In order to fully harmonize the Macedonian legislation with the above directives, in addition to amending the LCRR, i.e., enacting a new LCRR, there is an option to implement Directive 2019/789 by passing a law on the responsibility of Internet providers that provide communication services to the public and provide public access to works protected by copyright and related rights posted by their users[15]. As a matter of fact, 11 EU Member States, including Bulgaria, Denmark, Finland, Poland, and Portugal, have not yet harmonized their legislation with these directives and the European Commission referred them to the European Court of Justice[16].

The draft strategy for intellectual property of RNM 2022-2026[17] additionally supports the necessity of urgent alignment of the LCRR with the above-mentioned directives. The strategy is up for adoption in governmental procedure, and the government has not yet adopted it due to unknown reasons.

1.5. The journalist as author

Starting from the nature of the activity they perform, journalists and media workers create original works every day, but they also use other people's original works. According to international conventions and agreements in the field of copyright and Article 17 of the LCRR, an author is the natural person who created the original work. The author owns the copyright over their original work by the very creation of the work. The author is considered the person whose name, pseudonym, code or other insignia is marked in the usual way on the piece, i.e., its copies or is mentioned during the publication of the work, until the contrary is proven.

Regardless of whether journalists create the copyrighted works individually or as co-authors, they carry out their activities within certain editorial offices, as employees of certain media (radio, TV, newspapers, magazines, magazines, online media, etc.), but also as freelancers, who offer their works of authorship to the media through a signed contract.

Pursuant to Article 19 of the LCRR, the copyright of a work created in collaboration between two or more persons belongs to all those persons and those persons are called co-authors. Any use of the co-authored work requires the consent of each of the co-authors. A single co-author cannot refuse to give consent for reasons contrary to the principle of conscientiousness and honesty. When the work created by co-authors consists of independent parts, which are separable, each of the co-authors can allow independent use of their respective part, provided that such use does not harm the use of the joint work, that is, the rights of the other co-authors.

15 Such is the case with Germany.

16 https://digital-strategy.ec.europa.eu/en/news/european-commission-referred-11-member-states-court-justice-european-union-failing-fully-transpose

17 http://ippo.gov.mk/docs/xFiles/xfile/1045/1254ce13-fd75-4ec0-b170-d922562c162d.pdf, on November 6, 2023

When journalists and media professionals create their works of authorship in the course of performing their work tasks or on the instructions of the employer, it is considered that the property rights of the author of that work are exclusively transferred to the employer for a period of five years after the completion of the work, if it is not determined otherwise by a collective agreement, that is, by a work contract. Pursuant to Article 86 of the LCRR, after the expiration of the five-year period, the property rights belong to the employee/ journalist, with the employer being able to request their exclusive transfer again, if they pay the employee/journalist compensation for each separate type of property right. In practice, journalists and media workers seldom use this provision, and they voluntarily waive their additional income.

On the other hand, the author has the right to compensation for any renting/ leasing of the original work created during their employment and cannot waive this right. This right is especially important for journalists and media workers to generate additional income.

Pursuant to Article 87 of the LCRR, even though the work of authorship was created during the author's employment, the employee retains the exclusive right to use the original work created as a result of the employment within their own collected works. Journalists and media workers use this right often, especially when issuing publications, where they move their texts, analyses, columns, Facebook statuses, photo monographs, etc.

The contract for commissioning a future work has a special place and significance for authors, journalists and media workers who are freelancers. Namely, the media very often commission the authors to write an article, a column, an analysis, to make a report, an artistic portrait, a poem, a novel, an audiovisual work, various studies, projects, etc. The provisions of the LO that refer to commissioning contracts are also applied to this contract. When ordering a work of authorship, the author retains the freedom of scientific and artistic creativity, which is guaranteed to them according to the Constitution of RNM. Therefore, paragraph 2 of Article 85 of the LCRR establishes that the client has the right to supervise the work and give instructions, as long as it does not interfere with the author's right to free creativity. With the agreement to commission the work of authorship, the author undertakes to create the commissioned work and deliver it to the client, and the client undertakes to pay them a fee for it. If the author fails to fulfil their obligations, the client can only demand compensation for damages. The author retains the copyright on the commissioned work, unless otherwise determined by law or contract. According to LCRR, the author can transfer the copyright to the client if so agreed.

Media workers and journalists will have to pay attention to these provisions when signing contracts.

1.6. Copyright holder

The author, as the original holder of the moral and property powers, can transfer a part of those powers, which are transferable, to another physical or legal entity – media outlet, publishing house, theatre, radio-television, gallery, computer company, faculty etc. That person, in that case, becomes the holder of the copyright, as well as the subject of copyright protection. One can become a holder of copyright on the basis of contract, law, and inheritance. By transferring the transferable legal property powers, the author loses the capacity of the holder of those powers, but never loses the powers bound to their person, that is, the legal personal powers. Hence, they must always, when possible, be cited as the author.

The most common way for a person to become a copyright holder is through a contract. The contract is made between the author and another natural or legal person, who at the moment becomes the copyright holder. Disputed or unclear provisions in the contract are interpreted in the interest of the author. At the same time, it is important for journalists and media workers authors to know that, when concluding a publishing contract for a work in literary form, the right to publish the work in electronic form is not automatically included. A separate agreement is concluded for the publication of the work in electronic form.

There are different types of contracts (publishing contract, commissioning contract, audio-visual work contract, etc.), which are conditioned by the type of work of authorship and the extent of the transfer of property rights from the author to the copyright holder.

The holder of an exclusive copyright, according to our law, can mark the original or copies of their work, with the mark © before their name, pseudonym or designation and the year of first publication. Unless proven otherwise, the exclusive rights to the works belong to the person marked with © (presumption of authorship).

There are two ways to become a copyright holder through inheritance. By operation of law - the legal heirs inherit the rights according to the provisions of the Inheritance Law and LCRR. Testamentary - the author determines the heirs of his copyright.

It is interesting to note that according to Article 65 of the LCRR, the transfer of copyright that is not made with an agreement in written form, shall be null and void. Also, Article 67 of the LCRR establishes that the transfer of: copyright as a whole of moral rights and unknown types of copyright use shall be null and void.

1.7. Work of authorship

Journalists and media workers create works of authorship, i.e., copyrighted works, transfer copyrighted works, share other people's copyrighted works, transfer their own copyright, acquire other people's copyrighted works, etc, on a daily basis, through the media. According to LM, the media are means of public information, i.e., any type of communication, such as newspapers, magazines, radio and television programs, teletext, and other means for daily or periodic publication of editorially shaped content in print, sound, or image, with the aim to inform and meet the cultural, educational, and other needs of the general public. Furthermore, the LM determines that the contents of a media outlet are all types of information (news, opinions, announcements, reports, and other information), as well as works of authorship that are published, that is, broadcast through a media outlet.

According to Article 12 of the LCRR, a work of authorship indicates an intellectual and individual work in the field of literature, science, and art, expressed in any way and form. Furthermore, the legislator has provided an exhaustive list of which works are particularly considered to be copyrighted works. The question arises whether, apart from humans, someone else can create a work of authorship. The answer is negative, and the best rationale is given in the American jurisprudence, in the case of the monkey that has taken a photo with a tourist's phone[18].

In that line, the first cases of jurisprudence in the world that refer to artificial intelligence should be observed. Namely, those works are not created by a human being and are not considered works of authorship (in the majority of jurisdictions in Europe, including Spain and Germany, only a human being can be an author, that is, human-created works are considered eligible for protection)[19]. Hence, traditionally, copyright ownership of computer-generated works has never been questioned, as the computer has been regarded as a tool in the process of creative content generation, similar to a pencil and a sheet of paper. Currently, there are two approaches to the assessment of works created by artificial intelligence where human input is minimal or non-existent: they are not protected by copyright law or protection is attributed to the creator of the computer program. But what is indisputable is that the works created in this way can infringe someone else's copyrighted work / copyright and in that case the question of responsibility arises. For these reasons, it is important to take a specific stand about the author of the works created in this way, so that possible compensation claims can then be directed to them.

Journalists and media workers usually create: written works (book, article, column, manual, brochure, dissertation, study, etc.); verbal works (lecture, speech, sermon, etc.); musical works; photographic works and works created in a procedure similar to photography; audiovisual works (cinematographic and other works presented through moving images); works

18 2015 US 9th Circuit Court of Appeals decision (https://edition.cnn.com/2016/01/07/us/monkey-selfie-peta-lawsuit-feat/index.html, 03.10.2023)

19 See cases: C-5/08 Infopaq International A/S v Danske Dagbaldes Forening, Feist Publications v Rural Telephone Service Company, Inc. 499 U.S. 340 (1991), Acohs Pty Ltd v Ucorp Pty Ltd.

of fine art (painting, drawing, graphics, sculpture etc.); works of applied art and design and plan, sketch, technical drawing and project[20].

A reproduction of a work of authorship is also considered a work of authorship, if it meets the criteria provided by the LCRR, e.g., translations, collections of works of authorship, databases. A constituent part of the copyrighted work, as well as the title or headline of the work, if it represents an intellectual and individual work by itself, is considered as a separate copyrighted work. According to Article 13 of the LCRR, it is not allowed to use a title of a work of authorship that has already been used for a work of the same type, if such a title would create confusion regarding the work of authorship and the author. In these cases, the final decision is given by the case law because there are no firm rules about what is considered copying, plagiarism[21] etc. The examples/opinions that if a title, i.e., a work is 30 percent different, then it is a new copyrighted work and there is no copyright infringement are wrong. It is the same with taking someone else's text or audiovisual work and other copyrighted work. The determination of the percentage similarity, in many cases, can be misleading[22]. These cases are always subject to the discretion of the judge, although they may be supported by appropriate expertise and even a survey.

Copyright over the work of authorship lasts during the life of the author and 70 years after their death. Copyright can be transferred during the author's lifetime, but also after their death.

1.8. Types of copyright

Copyright contains exclusive moral rights, exclusive property rights and other rights, specified.

Moral rights, which protect the author in terms of their personal and spiritual (intellectual) connection with the work, are recognition of authorship; the right of first publication; the right to protect integrity of the work and the right to surrender. These exclusive moral rights cannot be waived by the author. In that direction, the LM contains a provision, according to which, the content, the meaning of which has been significantly changed in the editorial procedure, shall not be published under the name of the author without their consent. The editor-in-chief is responsible for the content published against the will of the author. If the author believes that their reputation has been damaged with the content published against the will of the author, they have the right to compensation for damages in accordance with the law. Case law has documented several cases for protecting the integrity of a work and against its desecration.

20 Article 14 (2) of the Croatian LCRR ("Narodne novine" no. 111/21) provides for journalistic works of authorship, such as articles, photographs and audiovisual contributions.

21 "Plagiarism" means taking someone else's work and presenting that work as their own. (https://www.law.cornell.edu/wex/plagiarism, on 6.11.2023)

22 See judgment, Rev. 2 no. 148/2022 of the Supreme Court of RNM, for the case "Dajte muzika", page 3.

Exclusive material rights of the author when using the work or copies of the work are: the right to reproduce the work; right to market the work; the right to public communication of the work and the right to adapt the work.

Other rights of the author are the right to access the work and transfer it; resale royalty right; the right to compensation from reproduction for private use; the right to rent compensation and right to service compensation.

Both the material and other rights of the author are very important for journalists and media workers, who can earn additional income from the works once created, just as musicians and filmmakers do. Some of these rights can be exercised individually, but most are better exercised collectively. The LCRR also contains provisions for determining and the method of payment of fees from the reproduction of the work, marketing the work; public announcement of the work, rental, and service of the work.

1.9. Unprotected works

Very often you will hear a statement like *"They stole my idea"* or *"they have the same concept as mine"*, i.e., *"this professor is using my methodology without paying me"*. It should be known that according to Article 14 of the LCRR, ideas, theories, concepts, work methodologies or mathematical concepts, regardless of the way of explanation or expression, are not considered works of authorship. Likewise, official texts of a political, legislative, administrative, and judicial nature and their official translations are not copyrighted works.

It is interesting to note that some media houses believe that anyone who takes over a news story like the one when there was an "Earthquake in Turkey" will have to pay for the use of the first person who published it. That is not entirely true, because according to the LCRR, daily and other news that have the character of ordinary media information, simple facts and data, are not considered copyrighted works. However, on-the-spot reporting and footage taken as photography and/or video content are copyrighted works and may not be downloaded and used for free.

Article 52(3) of the LCRR regulates a similar matter, according to which, public announcement of the headline of an article, column and other similar work on current economic, political, religious and other similar topics, in an electronic publication taken from another electronic publication or from another source for the purpose of informing the public, shall be done without payment of compensation, unless it is specifically prohibited by the author, i.e., the holder of the right, on the condition that the source is indicated, as well as the name of the author if it is possible.

1.10. Related rights

The development of new technology of the 20th and 21st centuries (phonograph, gramophone, cinematographic apparatus, etc.), including the development of digital technology and the Internet, influenced the emergence and recognition of new rights, which are related to the right of the author. Related rights have their own special object of protection, which is mainly linked to the copyrighted work. Related rights differ from copyright, especially in terms of the holder, the subject of the right and the duration of the right.

LCRR regulates 6 (six) types of related rights, namely: (1) rights of performers over their performances, (2) rights of phonographs of producers of phonographs, (3) rights of videograms of film producers, (4) rights of programs of the radio and television organizations, (5) rights to the publications of publishers and (6) rights to the databases of their creators. The aforementioned subjects/holders have rights over their phonographs, videograms, stage works, shows, publications and databases, which all together represent objects of related rights. In practice, almost all types of exploitation of the subject of protection of related rights, simultaneously represent types of exploitation of the copyrighted work.

Related rights last for 50 years, with the exception of database creator rights, which last for 15 years.

1.11. Individual and collective exercise and protection of rights

Holders of copyright and related rights can exercise the rights determined by the LCRR individually/personally (separately for each copyrighted work, i.e., subject of related rights), that is, through a representative or collectively (together for several works or subjects of related rights and for multiple rights holders) through an organization for collective management of rights, in the manner and under the conditions determined by the LCRR. The collective management of the rights includes legal affairs with the users of the rights, collection of fees from the use, their distribution and protection of the rights before the state authorities and other entities. Copyright and related rights are collectively managed only for published works of authorship and for published subjects of related rights.

Pursuant to Article 130 of the LCRR, collective management is carried out for certain rights in cases where it is not possible to individually exercise the rights due to the nature of the copyrighted works, that is, the subjects of related rights and due to the conditions and manner of their use. Collective management can also be exercised for exclusive rights that are exercised

individually, if that right has been transferred to the collective management organization by the author, i.e., the right holder, by contract.

The author, that is, the holder of the right, with a declaration of exemption (prohibition) from collective management, certified by a notary, delivered to the organization for collective management, can prohibit the organization for collective management from managing his right. Namely, Article 131 of the LCRR determines that, as a rule, the following are collectively managed, including the right to remuneration of the author and publisher from reproduction on paper or a similar media, by means of photocopying or any similar technique with similar effects, for private use; the right to compensation for the author, performer and producer of the videogram from the reproduction of the videogram for private use and the right to cable rebroadcast of copyrighted works and subjects of related rights, which, as an exclusive right, must be managed collectively, except for the right to broadcast by a radio and television organization, regardless of whether it is its own right or the right has been transferred to it by another right holder.

Unfortunately, in our country there are only two collective organizations (ZAMP – Musical Copyrights Society of Macedonia and MMI – Macedonian Music Industry) and the Ministry of Culture (hereinafter: MC) seems to be afraid to issue a license for other collective organizations. Journalists and media workers have an interest in forming a collective organization for some of their rights that they can exercise exclusively collectively. The reason would be the improvement of their material status. The rest of the surrounding countries have already done it, and the example of Slovenia, Croatia and Serbia should be a guide. In our country, one of the reasons why journalists do not dare to form a collective organization is the provision of Article 148 paragraph 1 item 3 of the LCRR, according to which the collective organization must submit to the MC evidence that the organization meets certain requirements in terms of premises, staff etc. During the next amendments to the LCRR, the MC should make an effort to ensure that these conditions are not identical for all types of copyright works in order for them not to be inhibiting.

1.12. Judicial, extrajudicial protection and self-protection of the copyright of journalists and media workers

In conditions where a huge number of copyrighted works are created worldwide, when an even greater amount of information is transmitted and all this, both on classical and digital media, there is a greater possibility of copyright infringement. Journalists and media workers have little knowledge of copyright, which results in cases of unauthorized downloading of other people's copyrighted works, without obtaining consent from the author and/or the copyright holder, that is, without paying for the taking/using the work and without stating the name of the author and the source. Pursuant to LEC, operators must publish the most commonly used ways of using electronic communication services to carry out illegal activities or spread harmful content, especially when this may affect the rights and freedoms of other persons, including infringement of copyright

and related rights and the legal consequences of them. On the other hand, according to the LAAVMS, the Agency is obliged to cooperate, give opinions, proposals and exchange data with the body responsible for the protection of copyright and related rights and with other state bodies, in order to ensure legal protection of the services that are based on or include conditional access, as well as in preventing the possibility of using unauthorized devices, which allow access to services with conditional access in accordance with the law.

In order to facilitate the detection of infringements of copyright and related rights, the media publisher is obligated to publish, for each piece of content, in an appropriate place, the name and surname of the author of the published article, the name and surname of the person, i.e. the company holding the copyright for the published content, except for print media and radio programs, the date of production (month and year), when it is an audio/audiovisual work - the origin of the audio/audiovisual work, and if the work was created by an independent production, information about the production should be published, the name of the legal entity, i.e. the name and surname of the person who is the holder of the used cultural good or archival work, i.e., the appropriate reproduction and the name of the media publisher from which the program segment or a clip from the program segment was taken, unless otherwise mutually agreed.

LCRR provides for civil, administrative, and criminal legal protection. Although the legal protection of copyright is not unique, all forms of protection, in principle, are not mutually exclusive.

Civil protection is used to protect against unauthorized use, i.e., unauthorized disposal of copyright. With a lawsuit, the holder of the right can request compensation for the damage (including a civil penalty), a ban on further violations and public announcement of the verdict in the media at the expense of the defendant. The procedure for a copyright infringement claim is urgent.

When an organization for collective management, through which the right is exercised, proves that a violation of a right determined by the LCRR has been committed, it is not necessary to establish the violation by an individual holder, whose right is collectively managed.

Plagiarism, i.e., ''copy- paste content theft'' is a common subject of criminal proceedings, in accordance with Article 157 of the Criminal Code[23] of RNM, and that is unauthorized use of someone else's copyrighted work and unauthorized use of someone else's software (integrated circuit topography)[24].

Courts in the RNM have an obligation to respect the European Convention on Human Rights when making decisions, as well as in conducting all disputes. Courts are also obliged to keep statistics on the type and volume of cases they process each year. Unfortunately, the

23 In addition to this criminal offense, three other offenses have been moved to the CC, namely 157a, violation of the distributor's right to a technically specially protected satellite signal; 157 - b, piracy of an audiovisual work and 157- c, piracy of a phonograph.

24 See Article 286 paragraph 2 of the CC.

Ministry of Justice has not published statistics on their website since 2013[25], nor have such data been published on the website of the Supreme Court of the Republic of Macedonia, for a longer period.

Arbitration settlement of disputes, including disputes in the field of copyright and related rights, is an alternative to regular courts. The permanent elected court, Arbitration at the Chamber of Commerce of the Republic of Macedonia, unlike the arbitration institutions in countries in the region and in the EU, does not keep statistics on the type and number of disputes it has processed. However, it is significant to note that, since its establishment until today, it has processed only one dispute in the field of industrial property - violation of provisions of a license agreement, but not for violation of copyright.

In civil disputes, where the parties are two legal entities in a situation where the subject of the dispute does not exceed an amount of 1,000,000 denars, a mandatory stage of the procedure is mediation, where the parties also have the opportunity to settle the dispute out of court. It would be good if mediation in infringement of copyright and related rights became a common way of resolving disputes between journalists and media workers, thereby avoiding expensive and lengthy court proceedings. It should be considered for AJM to incorporate this proposal into its internal acts, so that voluntary mediation becomes a preliminary stage of judicial settlement of disputes.

So far, no differences have been observed in copyright protection for journalists and media workers from traditional and digital media. As in the traditional environment, the infringement of copyright and related rights online, in addition to civil, enjoys administrative, that is, criminal protection. It is recommended to corroborate the infringement of copyright online as soon as possible through a Fact-Finding Record at a notary, in the presence of an expert in the field of intellectual property[26] because the courts are not technically staffed and are slower in their actions.

There are cases of involvement of Macedonian users of social media and similar systems in copyright disputes at the international level. Foreign companies insist on consistent application of international conventions and agreements and domestic legislation. Their engagement is primarily and predominantly aimed at users who benefit economically from the unauthorized use of their copyrighted works. In recent years, there have been more requests from foreign photo reporters for using photos without authorisation. Interestingly, according to the international private law laws of most EU Member States, but also the positive legal regulations governing the establishment of general jurisdiction, rights holders have the right to sue in the country from which they can access our electronic media.

25 https://www.pravda.gov.mk/Upload/Documents/Òàáåëè%20êðèâè÷íè%20è%20îðåêðø%20îñíîâíè%20ñóäîâè2013.pdf (3.10.2023); https://www.pravda.gov.mk/Upload/Documents/ÒÀÁÅËÈ%20ãðàäàíñêè%20ïðèâðåìåíè%20ñóäîâè2013.pdf (3.10.2023); https://www.pravda.gov.mk/Upload/Documents/ÒÀÁÅËÈ%20ãðàäàíñêè%20îñíîâíè%20ñóäîâè%202013.pdf (3.10.2023); https://www.pravda.gov.mk/Upload/Documents/Òàáåëè%20êðèâè÷íè%20ïðåêðøóâíè%20ñóäîâè2013.pdf (3.10.2023).

26 This practice was established by the Verdict of the Supreme Court of RNM Rev1 no. 50/2017 and it is "mandatory" in cases, despite the fact that the legal solution does not provide for this method.

1.13. Recommendations

SHORT-TERM RECOMMENDATIONS	
1	Urgent adoption of a strategy for intellectual property for 2022-2026 and an action plan of the strategy, by the Government of RNM.
2	Adoption of prepared proposals for amendments to the LCRR and its alignment with Directive 2004/48 EC for implementation; Directive 2014/26 EC on collective management of copyright and related rights and multi-territorial licensing of musical works and online use; Directive 2011/77/EU amending Directive 2006/116/EU on the duration of copyright and related rights protection; Directive 2012/28/EU on the permitted use of orphan works; Directive 2019/790/EU and Directive 2019/789.
3	Creation of a model contract for the work of journalists and media workers, with the aim of improving their status when creating works of authorship as part of their employment.
4	Creation of price lists for the use of certain types of copyrighted works (photos, texts, audiovisual works, reports, etc.), for the purpose of easier determination of damage in case of unauthorized use.

LONG-TERM RECOMMENDATIONS	
1	Constant alignment of the LCRR with the acquis communautaire.
2	Establishment of a state office for intellectual property.
3	Changing jurisdiction and determining a basic court that will adjudicate on cases of infringement of intellectual property rights.
4	Development of the AJM Council of Ethics into a body that will perform voluntary mediation in copyright infringement disputes between journalists and media workers.
5	Establishment of a collective organization for the exercise of copyright and related rights of journalists and media workers.

1.14. Examples of good practice

1. LCRR of the Republic of Serbia, Republic of Croatia, https://www.zakon.hr/z/106/Zakon-o-autorskom-pravu-i-srodnim-pravima

2. LCRR and the Law on Related Rights of the Republic of Slovenia

3. Law on the responsibility of internet providers, which provide communication services to the public and provide public access to works protected by copyright and related rights uploaded by their users in Germany

4. Draft law on amending the LCRR prepared by the MC

5. Proposal-text for amending and supplementing the LCRR prepared by a Working Group appointed by the MC.

PART 2

MEDIA PLURALISM FUND

2.1. Introduction

Independent, objective and professional media are a pillar of any democracy. Every democratic state should provide basic prerequisites, which will be fertile ground for free journalistic expression, but also create opportunities for encouraging and developing media pluralism. Those prerequisites should not only be nurtured, but also improved, following the experiences of developed democratic societies.

A total of 107 radio broadcasters operates on the market of audio and audiovisual media services in the Republic of North Macedonia (hereinafter RNM). More specifically, there are 44 TV stations, of which 11 broadcast programs at a national level, and 63 radio stations, of which four broadcast programs at a national level. Their total revenues in 2022 were slightly more than 40.8 million euros (17.9 million belong to the Macedonian Radio-Television and 20.1 million to the other commercial television stations)[27]. Print media, electronic publications, online media, non-profit media, etc. are also fighting for their place on the market. In the context of a modest media market, achieving independence has long been a serious challenge for the media. Financial constraints and vulnerabilities in this media landscape hinder the possibility of creating an independent media sector.

One of the prerequisites for the independence of the media is their economic independence, which is seriously difficult to achieve in the conditions of a small market, such as the Macedonian one, but also due to the fact that over the years a polarized media market has been created with favouritism and state funding of only certain larger media outlets, creating the conditions for the emergence and development of media clientelism. This situation is also confirmed by Freedom house, in its report on the progress of democracy in the country for 2022.

"The media landscape is deeply polarized along political lines, and private media outlets are often tied to political or business interests that influence their content. However, several critical and independent outlets operate, mainly online"[28]. Economic independence in the media sector is intricately linked to political independence and both are key pillars of a thriving democracy. The country's media often face financial challenges, which can undermine their ability to provide impartial and comprehensive reporting.

In many cases, media organizations rely on advertising revenue, which can create economic dependency and potentially lead to self-censorship, to protect their financial interests. This financial vulnerability can open the door to undue political influence. According to the European Commission, media associations continue to raise concerns about media integrity and independence due to the precarious financial situation of media entities. *"Additional*

27 AAVMS analysis of the audio and audiovisual media services market for 2022 https://avmu.mk/analiza-na-pazar

28 Freedom House Report on North Macedonia for 2022 https://freedomhouse.org/country/north-macedonia/freedom-world/2022

steps are needed to support professional and investigative journalism," according to the EC[29].

It is suggested to further develop a fair and transparent system of public subsidies for the media, in order to nurture the professional integrity of journalists and media literacy. Appropriate (balanced) compilation of financing, transparency of ownership and prevention of concentration should be regulated and effectively implemented[30]. Creating a system for permanent support and financing of the media, free from political influence, would be a prerequisite for strengthening media pluralism in the country.

This will pave the way for the creation of a fairer media market, for equal opportunities for development, normal functioning, and a greater opportunity for prosperity, for both national, local and regional media.

Below, we analyse the need, problems, and challenges for creating a fund for media pluralism, to ensure an objective and just distribution of support, supporting quality content, diversity of editorial positions and working conditions of journalists in RNM.

This report attempts to clearly articulate the advantages of creating a media pluralism fund, offering a comprehensive survey of the benefits associated with the establishment of this instrument of financial support.

In doing so, we not only emphasize the vital role of the media in the development of democracy, but also lay the foundation for a more informed and resilient society, ready to respond to the challenges and take advantage of the opportunities of the future.

2.2. Financial support for the media: European experiences

A series of models of state support for strengthening media pluralism exist in a number of countries within the European Union - from direct subsidies, tax incentives, state financing and grants to promote journalism of public interest.

As stated in the recently published expert report created at the request of the Council of Europe: *"State financing should respond to both economic and socio-cultural as well as democratic needs, especially protection and promotion of public interest journalism and media diversity"*[31].

29 North Macedonia 2022 Report https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/North%20Macedonia%20Report%202022.pdf

30 Regulatory bodies for media and media pluralism-regional publication https://avmu.mk/wp-content/uploads/2022/01/Regional-Media-pluralism_MKD_25.10.2021.pdf

31 State financial support for print media: standards and European practices of the Council of Europe https://rm.coe.int/file-2-marius-report-eng/1680a4d519

It goes on to say that state media funding schemes should be designed as a complementary and corrective measure rather than a dominant funding model.

"When the government tries to create a dominant public funding model, they distort the media market and erode the potential for sustainability in the sector," says the report created at the request of the Council of Europe.

According to this analysis, in recent years, more EU countries are experimenting precisely with state support based on grants for projects to promote public interest journalism. According to this model, funds are allocated to the media on a contractual basis to carry out specific projects and are also aimed at improving the quality and variety of content in the media. There are many positive examples of such schemes operating in EU countries and beyond.

Such is the example with the Dutch Fund for In-Depth Journalism (Fonds BJP)[32]. It is a fund of 3.5 million euros, established in 1990, whose primary goal is to promote high-quality, diverse and independent journalism. It focuses on providing financial support to newspapers, magazines and media projects, which face economic threats. Namely, this Fund places a strong emphasis on supporting the most vulnerable media, such as local print media, allocating at least three quarters of its funds to local media projects in the Netherlands.

The fund maintains its independence, with a Supervisory Board consisting of six members, who are appointed based on strict professional criteria. Members do not receive compensation or access to funds from the fund. The fund has two primary programs - investigative journalism and special reporting, collectively known as Journalism Project Grants. The fund also supports young talented journalists, providing them with funds for professional training and improvement.

The Fund for In-Depth Journalism allocates money to the media after consultation with a committee of advisers, composed of media experts, who are politically independent. According to the report of the International Press Institute (IPI), the model of the Fund for In-Depth Journalism of the Netherlands would represent an efficient and successful model for replication in North Macedonia[33].

In all Nordic countries (Iceland, Norway, Finland, Denmark, and Sweden), privately owned media can apply for state subsidies. By providing media subsidies, governments aim to promote media pluralism, so that citizens can access a diverse and independent range of news[34].

32 Fund for In-Depth Journalism https://fondsbjp.nl/

33 Direct media subsidies to news media - Nordic overview https://www.nordicom.gu.se/sites/default/files/faktablad/fact-sheet-2022-1-direct-media-subsidies-to-news-media.pdf

34 Policy paper: Finding a new model of support for pluralistic and public interest journalism in North Macedonia - International Press Institute (IPI) https://ipi.media/policy-paper-support-for-public-interest-journalism-in-north-macedonia/

These funding models have generally been focused on print media, but with the digital transformation, they are becoming more general and include almost all media. The Danish government is planning a new model for media support, which will favour local and regional media, while funding digital development and transformation. According to the announcements, one of the objectives is to redistribute a part of the support for national media to regional and local media in order to strengthen local journalism.

A similar model of financing specific media projects, like the Dutch one, is also applied in Flanders, Belgium. The system is functionally independent of the government and is used to support investigative journalism and other public interest projects. The model works in such a way that public funds support the Audiovisual Fund of Flanders (VAF).

The European Commission, through a series of instruments, also supports projects that promote a free, diverse and pluralistic media environment and/or deal with the structural challenges of the media sectors[35].

Funding opportunities are broken down into the following categories:

- Media freedom and pluralism
- Collaboration and innovation
- Civic engagement and the public sphere

Where relevant, the Commission includes an independence clause in signed grants so that beneficiaries operate with full editorial independence. In its Media and Audiovisual Action Plan, the Commission decided to launch a "new media initiative", which will combine existing and new actions and support for the media sector[36].

This initiative looks at the challenges that the news media industry is facing and seeks to provide a coherent response, bringing together various policy and funding instruments under a common umbrella.

35 EU funding opportunities for the media sector, European Commission https://digital-strategy.ec.europa.eu/en/policies/funding-news-media-sector

36 European Media and Audiovisual Action Plan https://digital-strategy.ec.europa.eu/en/policies/funding-news-media-sector

2.3. Media Pluralism Fund: experiences in the region

Financial support for the media, through the support of specific projects through dedicated funds, which opens the way for pluralism and diversity of content in the Balkan region, is applied in Montenegro and Croatia. For North Macedonia, it is of crucial importance to follow the experiences, positive and negative, of these two countries, in the context of the functioning of the funds in the two indicated countries.

Montenegro is a country whose market and territory are smaller than the Macedonian, but they are faced with similar problems and challenges. Just like North Macedonia, Montenegro is a country aspiring to join the European Union. On the other hand, the Croatian media market is far more powerful than the Macedonian one, and the country is also a member of the European family, but according to Reporters Without Borders' Media Freedom Index, Croatia is ranked 42nd, below Montenegro (39th) and North Macedonia (38th)[37]. While in North Macedonia, the idea of a fund for media pluralism is in its early stages, Montenegro, and especially Croatia, already have many years of experience in allocating public money to support specific projects in the media sphere.

2.3.1. Montenegro

The main mechanism for state support of the media in Montenegro is the Fund for Stimulation of Media Pluralism and Media Diversity, which has been in existence since 2021.

With the Media Law ("Official Gazette of Montenegro" No. 82/20), which was adopted on August 14, 2020, the Fund for Stimulation of Media Pluralism and Media Diversity in Montenegro was created. In its announcements on the establishment of the Fund, the Government of Montenegro assessed that media pluralism, essential for the functioning of a democratic society, is the basis for freedom of expression and information[38].

According to the Government of Montenegro, media pluralism is predominantly influenced by the size and power of the market and the purchasing power of the population, and in addition, the media should find new ways for further development, in accordance with technological and economic changes.

The Government of Montenegro believes that the introduction of the Fund for Stimulation of Media Pluralism and Media Diversity guarantees transparent financing of online publi-

37 Reporters Without Borders Media Freedom Index https://rsf.org/fr/classement-mondial-de-la-libert%C3%A9-de-la-presse-2023-les-dangers-de-l-industrie-du-simulacre

38 Information about the Fund for Stimulation of Media Pluralism and Media Diversity in Montenegro https://www.gov.me/clanak/informacija-o-fondu-za-podsticanje-pluralizma-i-raznovrsnosti-medija

cations and print media, enabling them to provide a wide range of pluralistic information and diverse content with complete independence from influence and pressure. Pursuant to the Law on Media, the Fund for Encouraging Media Pluralism and Diversification of Media Content is financed from the budget of Montenegro, in a fixed amount of at least 0.09 percent of the current budget, the amount of which is determined based on the guidelines of macroeconomic and fiscal policy.

Since the Fund was created, there have been four calls for the allocation of funds, as competitions are organized separately for print and online media and separately for electronic media. In 2022, the Council of the Agency for Electronic Media announced a public competition for the allocation of funds from the Fund for Stimulation of Media Pluralism and Media Diversity intended for commercial and non-profit electronic media for 2021, in the amount of 516,056 euros[39].

Of the total funds, 464,450 euros are grants intended to increase the volume, structure and diversity of program offers, content from their own production dedicated to thematic areas of public interest, and 25,802 euros are grants to cover the operational costs of self-regulatory bodies. In February 2023, the Council of the Agency for Electronic Media announced a public competition for the allocation of funds from the Fund for Stimulation of Media Pluralism and Media Diversity intended for commercial and non-profit electronic media for 2022, in the amount of 822,781 euros[40].

From the total funds, 767,967 euros are grants intended to increase the volume, structure and variety of program offers, content from their own production dedicated to thematic areas of public interest, and 54,813 euros are grants to cover the operational costs of self-regulatory bodies.

According to the Government of Montenegro, the distribution of funds for print and online media is carried out by an independent commission, which is established by the Ministry of Public Administration, Digital Society and Media on the basis of a public call. 5 percent of the funds are allocated from the Fund for the work of this body.

The distribution of funds from the Fund is carried out once a year, based on a public competition, in accordance with special by-laws. *"In this way, enough space is left to define the forms of financial support that will be provided through the Fund, depending on the specifics and challenges faced by the various media (print or online)"*, concludes the Government of Montenegro.

39 Decision on the allocation of funds from the Fund for Stimulating Media Pluralism and Media Diversity for 2021 https://aemcg.org/wp-content/uploads/2023/06/01-1339-Rjesenje-o-raspodjeli-sredstava-iz-Fonda-za-pluralizam-za-2022-godinu.pdf

40 Decision on the allocation of funds from the Fund for Stimulating Media Pluralism and Media Diversity for 2022 https://aemcg.org/wp-content/uploads/2023/02/01-392-Odluka-o-raspisivanju-javnog-konkursa-za-raspodjelu-sredstava-iz-fonda.pdf

The experiences of beneficiaries of support from the Fund for Stimulating Media Pluralism and Media Diversity in Montenegro are mostly positive. The media that are beneficiaries of the support are obliged to the Commission that monitors the realization of the projects, to submit a plan for the realization of the project twice a year, with expense documents, or in other words a semi-annual and an annual report. Journalists' associations are very active in criticizing the way funds are distributed because, as they say, a system for project evaluation and a system for evaluating the contribution to media pluralism has not been established.

2.3.2. Croatia

The Fund for Promotion of Pluralism and Diversity of Electronic Media in the Republic of Croatia has been operating since 2005. It was formed as part of the fulfilment of the criteria for Croatia's accession to the European Union, committing itself to the protection of media pluralism, as a key guarantee for the realization of the right to information and freedom of expression[41].

The fund was established in accordance with Article 56 of the then valid Electronic Media Act "as a budget fund whose financial sources are funds from the state budget, unspent funds according to the final account of the Council for Electronic Media and funds paid by Croatian Radio and Television, 3 percent of the monthly total funds collected as fees"[42].

The fund is under the jurisdiction of the Agency for Electronic Media (AEM). The Ministry of Culture adopted the first Rulebook on the method and procedure for the implementation of the public call for the allocation of the funds of the Fund, and the Council for Electronic Media adopted the Decision on the method of evaluating applications for the call for the allocation of the funds of the Fund.

The funds from the Fund aim to encourage the production and broadcasting of: audiovisual and radio programs, television and/or radio content at the local and regional level, of non-profit television and/or radio stations, as well as non-profit providers of audiovisual media services on demand, and satellite, Internet, and cable transmission of audiovisual and/or radio programs, to nonprofit providers of electronic publications and nonprofit producers of audiovisual and/or radio programs.

The regulation of the manner and procedure of the public tenders for co-financing of audiovisual and radio programs from the resources of the Fund, the monitoring of the

41 Analysis of the Social Impact of the Fund for Promotion of Pluralism and Diversity of Electronic Media 2016-2019 https://www.aem.hr/wp-content/uploads/2021/07/Analiza-drus%CC%8Ctvenog-utjecaja-Fonda-za-poticanje-pluralizma-i-raznovrsnosti-elektronic%CC%8Ckih-medija-2016.-%E2%80%93-2019-za-web.pdf

42 Analysis of the social impact of the Fund for Promotion of Pluralism and Diversity of Electronic Media 2013-2015 https://www.aem.hr/wp-content/uploads/2019/02/AEM_Studija-utjecaja-Fonda-2013.-2015..pdf

spending of the money and the realization of the programs is determined by a separate Rulebook[43].

During its many years of existence, legal amendments were made, some of which did not affect the functioning of the Fund and the method of distribution of funds, but also legal amendments, which significantly affected the change of the functioning of the Fund and the method of distribution of funds.

Namely, the number of entities that can compete in the public call for funding has increased, with the addition of non-profit media, and the number of topics of public interest that are supported through the Fund has also increased, from the initial eight to 16.

With the changes, the following topics of public interest are supported:

- Enabling citizens' right to public information
- Encouraging cultural diversity and nurturing tradition
- Development of upbringing and education
- Development of science
- Development of art
- Encouraging the creation of content in dialects of the Croatian language
- Encouraging special cultural projects and events
- National minorities in the Republic of Croatia
- Encouraging the development of awareness of gender equality and other paramount constitutional values
- Encouraging awareness of equality of gender identities and sexual orientation
- Encouraging the development of high-quality programs for children and youth aimed at promoting their well-being
- Raising public awareness of the abilities and contribution of persons with disabilities, as well as the promotion and respect of their rights and dignity, including the fight against stereotypes, prejudice and harmful actions towards persons with disabilities
- Historically reliable depiction of the Homeland War
- Development and promotion of media literacy programs
- Environmental Protection
- Promotion of health and encouragement of health culture

43 Rulebook on the Fund for Promotion of Pluralism and Diversity of Electronic Media https://narodne-novine.nn.hr/clanci/sluzbeni/2022_07_84_1279.html

Similar to Montenegro, the Fund in Croatia allocates a different percentage of the planned funds to support different categories of media. According to the Regulations of the Croatian Pluralism Fund, the funds are divided into six (6) categories, with a minimum percentage of support:[44]

- Television houses and non-profit televisions at the local and regional level - 35%
- Radio stations and non-profit radio stations at the local and regional level - 38%
- Electronic publications from Article 71 paragraph (1) of LEM - 9%
- Non-profit electronic publications from article 55 paragraph (5) of LEM - 5%
- Non-profit radio and television stations from Articles 26 and 92 of LEM - 1,5%
- Non-profit producers of audiovisual and radio programs - 1,5%

The Council for Electronic Media distributes the remaining 10 percent of the Fund's funds among the six categories of publishers, based on an assessment of the public's needs, the development of trends and the development of the media industry, before the publication of the public call. The public call for allocation of funds from the Fund is published by decision of the Council for Electronic Media for a period of one or more years.

A closing date for applying for a public tender for allocation of funds from the Fund is 30 days from the day of the announcement of the call. The Council monitors the spending of the Fund's approved funds and the implementation of each individual program/content in the following ways:

- Through an online application, within the Fund's financial justification module
- Through quarterly program reports
- Within the regular supervision of compliance with program principles and obligations
- With direct supervision

The Council may, at any time, request from the users of the funds of the Fund a statement of compliance with the dynamics of the realization and purpose of the funds, or for that purpose, perform extraordinary or immediate supervision. The Croatian Journalists' Association (HND) has been highlighting the need for a more independent Fund for several years, advocating for the need for greater independence of the members of the media regulator from any source of political power. Namely, HND considers that the manner in which the six members of the Council for Electronic Media are elected is disputed, that is, they are elected in the Croatian Parliament (Sabor) at the proposal of the government[45].

44 Rulebook of the Fund for Pluralism and Diversity of Electronic Media https://narodne-novine.nn.hr/clanci/sluzbeni/2022_07_84_1279.html

45 Comments of HND on the Law on Electronic Media https://www.hnd.hr/hnd-komentari-na-pojedine-clanke-prijedloga-zakona-o-elektronickim-medijima?seo=hnd-komentari-na-pojedine-clanke-prijedloga-zakona-o-elektronickim-medijima

"If anyone can turn knowledge about media practice into informed regulatory oversight, it's professional journalists," according to HND.

For that reason, HND requests that the Croatian Parliament elect two members of the Council from the lines of journalist professionals, instead of public invitation from the government, on the proposal of the Croatian Association of Journalists, which will first conduct an appropriate public call. In its efforts, HND is trying to set the models for financing local media at the national level as well. HND is also pushing to increase the funds available to the Fund by taxing digital platforms such as Facebook and Google.

2.4. Perspectives for establishing a media pluralism fund in RNM

The need to establish a fund for media pluralism in RNM has been the subject of debate and analysis by professional journalist associations and other institutions working in and around the media sphere for a long time. The most active is the Association of Journalists of Macedonia (AJM), which, during the last year, started a proactive campaign and public debate about the establishment of a fund for media pluralism as a mechanism through which pluralism in media reporting will be promoted, but also to improve media content in general, where the public and not the party interest will prevail[46]. In that context, at the regular election assembly of AJM, at which the new management of AJM was elected, a Declaration for the support of professional journalism was adopted, in which, among other things, the idea of establishing a fund for the support of professional journalism was supported.

"We ask the Parliament, the political parties and the Government to be proactive partners towards establishing a fund to support professional journalism, through which projects of public interest will be supported, for journalistic and media products. This fund should enable the financing of projects for investigative, analytical journalism, for documentary, educational, children's and informative content of wider public interest, but also of public interest of local importance for all communities in the country. The fund should apply to all media that work in accordance with the ethical principles of the journalistic profession, regardless of whether they are traditional or online," the Declaration states[47].

In June 2023, AJM and representatives of five international journalist and media associations AJM and representatives of five international journalist and media associations had working meetings with key institutions in RNM: with President Stevo Pendarovski, Prime Minister Dimitar Kovacevski, Parliament President Talat Xhaferi, with the directors of AAVMS and MRT, with the Minister of Information Society and Administration, Azir Aliu, with the

46 A public debate begins on the creation of a fund for journalistic products https://znm.org.mk / a public-debate-for-creating-na-pho begins/

47 Declaration in support of professional journalism, AJM Assembly, December 3, 2022, Skopje

embassy of the EU and the USA in RNM and with a group of journalists, and one of the key topics was the establishment of a media pluralism fund[48].

In addition, according to the findings of the AJM membership survey, conducted for the purposes of drafting the association's new Strategic Plan for the period 2023-2026, as well as the preliminary conclusions of the fact-finding mission related to press freedom, conducted in June (June 5-7) 2023 in Skopje, as one of the most pressing challenges and needs that require additional analysis of the situation, the establishment of a fund for media pluralism was imposed.

In that context, AJM actively cooperates with the Agency for Audio and Audiovisual Media Services (AAVMS), an institution that is the regulatory body for media in North Macedonia. AAVMS emphasized the need to establish a system to support media pluralism in its Regulatory Strategy for the development of audio and audiovisual activity for the period from 2019 to 2023[49].

"It is necessary to start with activities to develop a strategy and mechanisms to support the media in the Republic of Macedonia. The agency will actively participate in the process, presuming that the Government of the Republic of Macedonia enables the inclusiveness of the regulator in this process", and

"It is necessary to seriously consider the creation of a fund to support domestic feature and documentary production, especially in deficient television forms and genres, such as for example children's programs."

AAVMS derives this need from the Recommendation CM/ Rec (2018)1 of the Committee of Ministers to Member States on pluralism in the media and transparency of media ownership (Adopted by the Committee of Ministers on March 7, 2018, at the 1309th meeting of the deputy ministers), where it is indicated that:

"For the purpose of enhancing media pluralism, States should develop, in consultation with representatives of the media and civil society organisations, strategies and mechanisms to support professional news media and quality independent and investigative journalism, including news production capable of addressing diverse needs and interests of groups that may not be sufficiently represented in the media[50].

States are also encouraged to support projects relating to journalism education, media research, investigative journalism and innovative approaches to strengthen media pluralism

48 Media freedom in North Macedonia: Fragile progress https://znm.org.mk/wp-content/uploads/2023/11/MK-Fact-Finding-PFM-Report-251023-web-final.pdf

49 Strategy for the development of audio and audiovisual activity for the period from 2019 to 2023 https://avmu.mk/strategija-na-razvoj

50 Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on pluralism in the media and transparency of media ownership https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

and freedom of expression". The Macedonian Institute for Media refers to this recommendation of the Committee of Ministers of the Council of Europe in the analysis Mechanisms for subsidizing the media and journalism in Macedonia and in European countries which states:

"The government should take measures to support the media and media pluralism, in accordance with the recommendations of the Council of Europe, which were accepted by the Committee of Ministers of the Council of Europe on March 7, 2018"[51].

In its documents, AAVMS also offers proposals on how the fund would function and how it would be financed. According to AAVMS, the source of funds for the fund would be the state budget (part of the funds that MIOA does not pay in full to AAVMS, MRT and MRD), funds that would be paid by private companies based on the law, donations and other sources of financing.

According to the proposals of AAVMS, part of the funds would be used to organize workshops, and part would be intended for the production of: *"Quality narrative/feature, documentary and educational programs, as well as for supporting professional media with informative programs, independent and investigative journalism and other deficient types of media and content, which contribute to the improvement of media pluralism."*

The need to establish a fund for media pluralism was recently recognized by the International Press Institute (IPI), which supports the idea of the leading journalist associations in the country. *"This proposed system envisions a model in which media apply for journalistic projects and receive financial support in return. These projects would be designed for media at the national and local level"* [52].

In its analysis, the IPI considers that the structure and financing of this fund would be essential for its functional independence and suggests that it be budgeted through the Ministry of Information Society and Administration, that is, that the money from the state budget be channelled into a project-based support scheme. The IPI also proposes taxation of telecommunications companies, including social media companies, similar to what HND is proposing in Croatia.

According to IPI's analysis, the fund should be managed by a committee composed of media experts, academics, and editors, who will be appointed based on strict professional criteria.

51 Mechanisms for subsidizing the media and journalism in Macedonia and in European countries https://mim.org.mk/mk/istrazhuvanja/1125-analizata-mehanizmi-za-subvencioniranje-na-mediumite-i-na-novinarstvoto-vo-makedonija-i-vo-evropskite-zemji

52 Policy paper: Finding a new model of support for pluralistic and public interest journalism in North Macedonia - International Press Institute (IPI) https://ipi.media/

2.5. Benefits of establishing a media fund

Analysing the experiences and analyses in countries where funds for media pluralism are successfully functioning, it can be concluded that the benefits of establishing a media pluralism fund are multifaceted, both for the media landscape in a country and for society as a whole. These benefits are particularly relevant in regions or countries where media diversity and independence are key to a well-functioning democracy. Here are some key advantages of creating a politically independent and functional fund for media pluralism:

Strengthening freedom of speech

The Media Pluralism Fund can support and protect freedom of speech by providing resources to diverse media and journalists, allowing them to express their opinions without economic and political influence.

Support for journalistic research

By providing financial support, the fund can encourage the production of high-quality journalism, which is based on research and in-depth analysis.

Sustainability and development of the media

By providing stable sources of funding, the fund can help national, local and regional media establish long-term sustainability, reducing their vulnerability to dynamic market changes. It would also bring economic benefits by creating jobs, encouraging creative industry and attracting advertising revenue.

Media Innovations

The funds can support experimental and innovative media projects, promoting new formats and application of new technologies in journalistic reporting.

Educational and informative content

Through financial support of certain thematic projects, diversity of content will be ensured in the media landscape by creating educational and informative content on various topics, from educational, health to environmental issues.

Cultural and linguistic diversity

The Fund can promote media that represent different cultural and linguistic groups in a country, preserving cultural diversity and the right to information for all citizens.

Protection of vulnerable or marginalized groups

The fund can support media initiatives that care about or advocate for marginalized communities, giving them voice and representation in the media.

2.6. Recommendations

If the current state of the media in RNM is analysed and if all the positive benefits of creating an independent and effective fund for media pluralism, which are listed in this analysis, are taken into account, then these recommendations should be followed:

- A media pluralism fund should urgently be established in the Republic of North Macedonia.
- The Media Pluralism Fund should be an independent body under the umbrella of the Agency for Audio and Audiovisual Media Services (AAVMS).
- The Media Pluralism Fund should be independent from partisan and political influence in its decision-making in the allocation of funds.
- The commission responsible for determining the allocation of funds must demonstrate political independence and should consist of representatives from the media sector and representatives of civil society organizations. To ensure transparency and respect the highest ethical standards, it is recommended that representatives of the media sector adhere to strict regulations to avoid conflicts of interest, thereby contributing to the integrity of the allocation process.
- In order to effectively monitor the spending of the received funds, there should be an independent and non-partisan supervisory board, similar to the model in the Netherlands.
- The fund should have a constant source of financing and a growing fund for the distribution of assets.
- It would be best if the funds were distributed several times a year (up to four times), in order for those interested to have the opportunity to compete with different projects at different times of the year.
- The fund is required to support any type of media, civil associations, consortiums of journalists, but also have the possibility of supporting persons who perform journalistic activity as an independent occupation (freelance journalist), and who are recognized according to the Law on Media.

- There must be a fair distribution of funds with constant support to local and regional media, non-governmental organizations and freelance creators of journalistic content.
- It is necessary to allocate funds for projects on multiple different topics that will be defined beforehand, and which are not sufficiently presented in the media in the country, following the positive example of Croatia.
- The public call for allocation of funds should have an adequate deadline, which will be sufficient, and which will allow those interested to collect the necessary documents to apply for financial support.

2.7. Conclusion

The need for free and economically independent media has never been more imperative in North Macedonia. An independent and objective media sector is a cornerstone of democracy. The prerequisites needed for the development of media pluralism need to be constantly nurtured and upgraded. One of those instruments that will contribute to the support of independent media is precisely the establishment of a fund for media pluralism in RNM. The benefits are multifaceted and transcend the media sphere and affect the wider socio-political and economic fabric of the nation.

Overall, the Media Pluralism Fund can help create an environment where free and independent media, offering diverse content, play a key role in maintaining democratic values and ensuring citizens' access to accurate, diverse, and reliable information.

If a functional and independent fund is established, it will contribute to fostering an informed, engaged and responsible society and will have an impact on democracy, freedom of speech, cultural wealth and economic vitality. Journalism is a public good and therefore must be financed from public sources in a transparent manner.

2.8. Examples of good practice

1. Fund for In-depth Journalism of the Netherlands
   https://fondsbjp.nl/

2. Media Pluralism Fund of Croatia
   https://www.aem.hr/kategorija/fond-za-pluralizam/

3. Media Pluralism Fund of Montenegro
   https://aemcg.org/fond-faq/

PART 3

ELECTORAL ADVERTISING REGULATION AND MEDIA INDEPENDENCE

3.1. Introduction

Political advertising is a very effective way to reach potential voters. Its essential task is to attract the attention and gain the confidence of the voters in order to influence their vote, which is a legitimate aim, which is protected by the right to freedom of expression and the right to information. Political communication during elections has long been subject to regulation, although political speech is the most protected form of speech[53]. Many countries have established rules for paid political advertising, while in others it is completely prohibited. There is no single approach at European level. The regulation depends on the socio -political context and the development of the media system in a specific country, and should ensure the protection of the integrity, fairness, and legitimacy of the electoral processes, that is, to limit the opportunities for private interests and groups of power to control the results of the elections[54].

The digital revolution has transformed election campaigns. They are increasingly moving online, especially on social media. Political advertising has also changed significantly. Technological advances allow political actors to target voters based on personal data collected about them by online platforms. With such rapid development of the online sphere, it is becoming more and more difficult to protect the objectives of the election regulation and said regulation needs to adapt to the new times in which we live.

The media play an important role in the implementation of democratic electoral processes and must therefore be independent. They allow political parties and candidates to express their views and ideas. They provide diverse, pluralistic, and relevant information for voters. At the same time, they make sure that the government and all political actors are responsible for their actions. The purpose of this analysis is to review the national rules on paid political advertising during elections, in terms of their impact on media independence.

3.2. European standards and new legislative initiatives

According to the standards, which largely derive from the Council of Europe, countries where paid political advertising is allowed must ensure equal and non-discriminatory treatment of all political candidates and parties. In its Recommendation on measures related to media coverage of election campaigns from as early as 1999[55], the Committee of

53 Council of Europe, Information Documents (2022) Freedom of political speech: an imperative for democracy, 6 October 2022, available at https://rm.coe.int/use-of-internet-in-electoral-campaigns-/16807c0e24

54 Council of Europe, (2017) INTERNET AND ELECTORAL CAMPAIGNS, Study on the use of internet in electoral campaigns, prepared by the committee of experts on media pluralism and transparency of media ownership (MSI-MED), p. 7, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e3c6b

55 Council of Europe, (1999) Recommendation No. R (99) 15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns, 9 September 1999, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e3c6b

Ministers points out that the regulatory framework should ensure that the opportunity to purchase advertising space is available to all participants in the elections under equal conditions and prices.

Also, that *"the public should be aware that the message is a paid political advertisement",* and recommends that countries consider introducing provisions in their election regulations *"to restrict the political advertising space that a party or candidate can buy"*. In its latest Recommendation on election communication and media coverage of election campaigns from 2022[56], nit points out how regulatory frameworks for online election campaigning should be adjusted to restore the fairness and legitimacy of election processes. It introduces the principle of transparency in online advertising and campaign financing and recommends ensuring reliable and pluralistic content online with safeguards against electoral disinformation.

The European Commission, with several of its more recent legislative initiatives, such as Regulation (EU) 2022/2065 known as the Digital Services Act[57], and the Proposal for a Regulation on the Transparency and Targeting of Political Advertising[58], has attempted to establish rules for advertising in the online environment. which will be applied in the same way in all EU member states.

The Digital Services Act establishes that all online platforms have an obligation for each advertisement presented to each individual user, to enable the user to identify at least the following data in a clear and unambiguous manner and in real time: that it is an advertisement; the natural or legal persons who paid for the advertisement; the main parameters used to select the users to whom the ad will be presented and, where appropriate, information on how to change those parameters. Large online platforms also have other obligations, the most significant of which is to provide publicly available archives of all published advertisements, which can be searched by multiple criteria.

The purpose of the Draft Regulation on the transparency and targeting of political advertising, which is in the final stage of the legislative process and is expected to be adopted soon, is to contribute to the proper functioning of the EU market for political advertising through harmonized rules for a high degree of transparency of political advertising and its related services, as well as to protect natural persons in relation to the processing of personal data in political advertising by establishing rules for the use of targeting and amplification tech-

56 Council of Europe, (2022) Recommendation CM/Rec (2022) 12 of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns, 6 April 2022, available at https://search.coe.int/cm / Pages/result_details.aspx?ObjectId=0900001680a6172e

57 European Union, (2022) REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), available at https: //eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065

58 European Union, (2022) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising, available at https://eur-lex.europa.eu/resource.html?uri=cellar:9ce-c62db-4dcb-11ec-91ac-01aa75ed71a1.0001.02/DOC_1&format=PDF

niques. Unlike the Digital Services Act, the Proposal for the Regulation expands the categories of information to be made available in the context of political advertising, as well as the scope of relevant service providers, and will apply to both online and offline activities.

The Parliamentary Assembly of the Council of Europe, in its Resolution - Media freedom as a condition for democratic elections[59] from 2019, once again emphasized the key role of the media during elections, reminding countries that they should guarantee the right to information through independent media, and that they should implement effective strategies to protect the electoral process and democracy from the threats of information manipulation and social media propaganda. From there, it called on countries, where necessary, to revise their regulatory frameworks related to media coverage of election campaigns to *"promote a free, independent and pluralist media environment as an essential precondition for combating disinformation and undue propaganda"*. Also, develop regulatory frameworks for online content during elections, including provisions for the transparency of sponsored content posted on social media so that the public is aware of the sources of funding for election advertising, or any other information or opinion.

3.3. The key challenges in advertising rules

All Macedonian rules for paid political advertising during elections are laid down in the Election Code. A precise overview of the key issues therein is provided by the Audio and Audiovisual Media Services Agency's Report on Broadcast Paid Political Advertising During the First Round of the Local Elections 2021 Election Campaign[60],which summarizes that:

"Despite multiple amendments to the Electoral Code, the provisions on permitted advertising limits are still unclear and are interpreted differently. But most importantly, they do not provide equal conditions for access for all participants in the electoral process. The amendments made in terms of determining the prices for PPR are positive, but they are still restrictive, they are calculated based on the prices of the last five electoral processes, and not on current economic parameters... And finally, the financing of political advertising with funds from the State Budget - not only this model was not abandoned, but with the latest amendments to the Electoral Code, additional funds were established for PPA in the second round for local elections and for presidential elections if they are held. In addition to the previous two euros in denar equivalent value without calculated VAT, one more euro has been added per registered voter out of the total number of registered voters on the territory of

59 PACE (2019) Resolution 2254 (2019) Media freedom as a condition for democratic elections, available at https://pace.coe.int/en/files/25409/html

60 Audio and Audiovisual Media Services Agency, (2021) Local Elections 2021, Report on paid political advertising broadcast during the first round of the election campaign between 27 September and 15 October 2021, p. 5, available at https://avmu.mk/локални-избори-2021

the state... In addition, the distribution of budget funds is still not fair and is in favour of the largest parliamentary parties from the government and from the opposition."

The problems indicated in the Agency's Report are not in accordance with the principles of democratic elections because they do not provide equal conditions for all participants in the elections. These shortcomings of the regulation have also been ascertained in the ODIHR reports from the observation missions during the election processes in the country[61].

From the perspective of demands for media independence, however, the method of financing paid political advertising has the greatest capacity to exert direct influence.

3.4. Budget financing of political advertising

The financing of political advertising with funds from the State Budget causes concern due to the practice in past years of using public funds (from state advertising and from political advertising during elections) to create financial-clientelistic ties with media owners, which negatively affected the editorial media policies and the quality of journalism and public debate in Macedonian society. The Association of Journalists of Macedonia, in its comparative analysis of political advertising in the media from 2018[62], clearly points out that *"This practice not only ruined the function of the media and journalism as an independent critic of government policies, but cumulatively, over the years, seriously disrupted the pluralistic public debate and led to the manipulation of public opinion."*

The provision itself (Article 76-e of the Electoral Code) poses the risk of potential corruption, which was also concluded by the State Commission for the Prevention of Corruption (SCPC)[63]. Perhaps not so much because political entities are given funds from the state budget, because in many countries in the world and in the region state money is allocated for the regular operation of political parties, but more because of the way the funding model itself works, and that these are additional budget funds, beyond

61 In the Final Report of the ODIHR Mission to Observe the Local Elections, October 17 and 31, 2021, it is recommended that "Regulations on paid political advertising in the media should be reviewed, in order to allow unhindered access to the media based on reasonable and objective criteria..." and "In accordance with the principle of equality of opportunity, the campaign rules should be revised to ensure more equal access to the media and the allocation of poster and billboard space for minor parties and independent candidates."
In the Final Report of the special mission of the ODIHR for the assessment of the Early Parliamentary Elections, July 15, 2020, it is recommended that "The regulation on paid political advertising in the media needs to be reviewed, in order to enable unhindered access to the media on a non-discriminatory basis." and " To ensure transparency of media ownership and campaign costs, online media interested in selling space for paid political advertising should comply with some basic transparency requirements, including verifiable information about ownership and funding."

62 Association of Journalists of Macedonia, (2018) Comparative analysis of political advertising in the media, p. 39, available at https://znm.org.mk/wp-content/uploads/2020/04/Belegexemplar-2018-Comparative-Analysis-of-the-political-advertising-MK.pdf

63 State Commission for the Prevention of Corruption, (2020), National Strategy for the Prevention of Corruption and Conflict of Interest (2020-2024), p. 58, available at Nacionalna-strategija-17.1.2020.pdf (dksk.mk)

those for regular operations and are intended exclusively for paid political advertising in radio broadcasters, print media and online media. These funds do not include the money spent on advertising in various forms of outdoor advertising (advertising panels, billboards, city-lights, etc.) and on social media. For the latter, there is no precise insight into how much money is flowing out, because there is no explicit obligation to report advertising on social media.

3.4.1. Characteristics of the model

As for the model of budget financing of paid political advertising, it is definitely unique for our country, because nothing like it exists anywhere. The Electoral Code stipulates that a certain amount of funds can be used by the participants in the elections to purchase air-time/ space for paid political advertising exclusively on radio stations, television stations, print media and web portals, which have registered to provide such services with the State Election Commission (SEC) during a specific election process. And then, on the one hand, in the model we have the participants in the elections who conclude contracts and order the broadcasting or publication of advertisements in the media, often without precise information on how much funds from the Budget they actually have available for the specific campaign, this especially applies to smaller political parties and independent candidates[64], and on the other side is the State Election Commission, which is in charge of directly paying the media for the services provided, although it is not involved in the process of concluding contracts. Somewhere in between is the process of checking and verifying the advertising data, which includes the Agency for Audio and Audiovisual Media Services for checks with broadcasters and the SEC for checks with print and online media. Such a model, as a concept, probably suits the participants of the elections the most, because someone else is in charge of checking whether what was ordered by them is actually delivered, but also because they are freed from the administrative obligations related to the payment. For the media, this model may give a little more certainty that they will actually collect payment for the services, because in the past there have been cases where the participants in the elections did not complete their part of the contract before closing the election transaction accounts, but it imposes a lot of additional obligations on them[65], which make it difficult for them

64 This is also stated by the ODIHR Mission in the Final Report on the observation of the Local Elections, October 17 and 31, 2021, which is why it recommends that "A clear mechanism for dividing the budget between smaller parties and independent candidates should be established. The official decision on the allocation of the advertising budget during the campaign in the media should be announced in a timely manner."

65 Within three days from the day of announcement of the elections to be registered in the SEC; take out a new current account from the Central Register for the registration; within five days from the day of announcing the elections, determine price lists that they should submit to four competent institutions and publicly announce them at least twice; immediately after concluding the contracts for broadcast advertising, to submit them to the competent institutions; to submit media plans for advertising verification on a daily or periodic level; broadcasters outside Skopje should deliver recordings of the program, and print and online media printouts of the announcements; all media should submit reports of the performed services to the competent institutions and, if necessary, make corrections; the reports should be accompanied with confirmation from the participants in the elections, and at the end of the campaign, they should submit a complete report on the income and receivables for the services rendered for paid political advertising.

to work during elections. The entire burden of proof for paid political advertising, in fact, falls on the media rather than on the users of budget funds. Even the legal provision (Article 76-e of the Electoral Code), accidentally or not, completely wrongly states that the funds from the Budget were allocated to finance the legal obligations of the media[66].

3.4.2. Financing of political parties

The amount of funds allocated from the Budget for financing political parties on various grounds is quite sizeable. Apart from the budget funds for paid political advertising (2 euros per voter + 1 euro per voter for the second round), political parties also receive funds for regular operations on an annual basis, which they can also use to finance an election campaign. With the amendments to the Law on Financing of Political Parties in 2018, the budget funds allocated for the regular financing of parties were increased by almost 2.5 times - from 0.06 percent to 0.15 percent of the budget's source revenues. Pursuant to this and the Law on Party Research and Analytical Centres (PRAC), political parties receive an additional total of 320,000 euros annually to finance these centres.

Just for illustration, according to the State Commission for the Prevention of Corruption[67], in 2021, for the regular operation of political parties, a total of 200,688,157 denars (or 3,247,381 euros) were paid from the state budget to 45 parties, including the funds for the parties' centres. That same year, for paid political advertising for the 2021 Local Elections, a total of 316,348,851 denars (or 5,127,625 euros) were paid to 8 participants in the election campaign, which are parliamentary parties, and a total of 6,755,109 denars (or 109,492 euros)[68] for non-parliamentary parties and independent candidates participating in these elections.

This amount of over eight million euros of budget money in 2021 was obviously more than enough to cover both the regular operation and the expenses for the election campaign of the parliamentary political parties, because the SCPC stated in the Report on the 2021 Local Elections that the parliamentary parties and coalitions led by them, secured the financing of the election campaign with budget funds. Donations were the dominant source of funding for independent candidates and parties with smaller budgets. Otherwise, the possibility of budget funds for the regular operation of political parties, that is, the funds from their regular account to be used for an election campaign, was added by the amendments to the Elec-

66 "Article 76-d
(1) Financial resources shall be provided from the Budget of the Republic of Macedonia to fulfill the legal obligations of broadcasters, print media and electronic media (portals), in the part of publishing paid political advertising,.
(2) These funds are intended exclusively for the financing of broadcasters, print media and electronic media (portals), in the part of publishing paid political advertising of the participants in the election process.

67 State Commission for the Prevention of Corruption, (2022), Special report on the identified abuses in the financing of the election campaign for the 2021 Local Elections, p. 37 and 40, available at https://dksk.mk/wp-content/uploads/2022/02/Посебен-извештај-7.2.2022.pdf

68 The Report indicates that these funds, according to the notification from the State Election Commission, have not yet been fully distributed because the candidates were late with the delivery of the documentation.

toral Code in 2020[69] and deserves to be reviewed in the context of the principle of "equality of opportunity" of the participants in the elections, for which the Venice Commission advocates[70].

3.4.3. The parties are spending more since the state started paying

Bearing in mind that: the funds allocated from the state budget for paid political advertising should be spent only on advertising by broadcasters, print media and online media; as well as that, according to the Electoral Code, 90 percent of these funds go to four parties (the two largest political parties from the coalition in power and the two largest political parties from the opposition, which won the most votes in the previous parliamentary elections); it is logical that due to the amount of the funds, these parties can afford irrational spending, i.e., buying advertising space that they do not need.

If you look at the Agency's reports on paid political advertising among broadcasters, in terms of which participant in the elections bought advertising airtime with which media and how much in total, it is clear that some of the data do not correspond to the influence of the specific media, i.e., the numbers of viewers or listeners. It can also be concluded that a huge amount of airtime is spent on advertising for only 20 days of the election campaign[71], which creates doubts about the real motives behind the concluded broadcasting contracts. Probably the data (both for the total volume of advertisements and for the selection of advertising media) would have been different if the participants in the elections had not compensated the costs of broadcasting with the additional funds for advertising from the State Budget.

Journalistic analyses indicate that *"Political parties are spending more on pre-election promotion in the media after the state has started paying for broadcasting their advertisements on television, radio, newspapers and portals... BIRN's analysis shows that 12 parties and coalitions reported that they spent a total of 2.5 million euros on "advertising and propaganda" for the 2016 elections, and in last year's presidential elections, when the new rules were already in effect, 3.6 were million were spent, although only three candidates ran, i.e., a total of 3.8 million euros, if the local elections in three municipalities that were held parallel to the presidential ones are also taken into account"*[72].

69 Law on Amendments to the Electoral Code (Official Gazette of the Republic of North Macedonia No. 42/2020)

70 European Commission for Democracy through Law (Venice Commission), (2018): Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report, p. 6, available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(2003)034-e

71 For example, in the Early Parliamentary Elections in 2020, televisions broadcast almost 368 hours of advertisements, and radios about 102 hours, while for the Local Elections in 2021, in both rounds together, televisions broadcast about 640 hours of paid political advertising, and the radio just over 125 hours.

72 Vlado Apostolov, (2020) When the state pays, the parties spend more - Prizma, available at https://prizma.mk/koga-drzhavata-plaka-partiite-troshat-poveke/

On the other hand, the participants in the elections are almost not interested in using the legal opportunities for free political representation[73], which are provided by the program services of the Public Broadcasting Service - MRT1, MRT2, MRA1 and the Assembly channel.

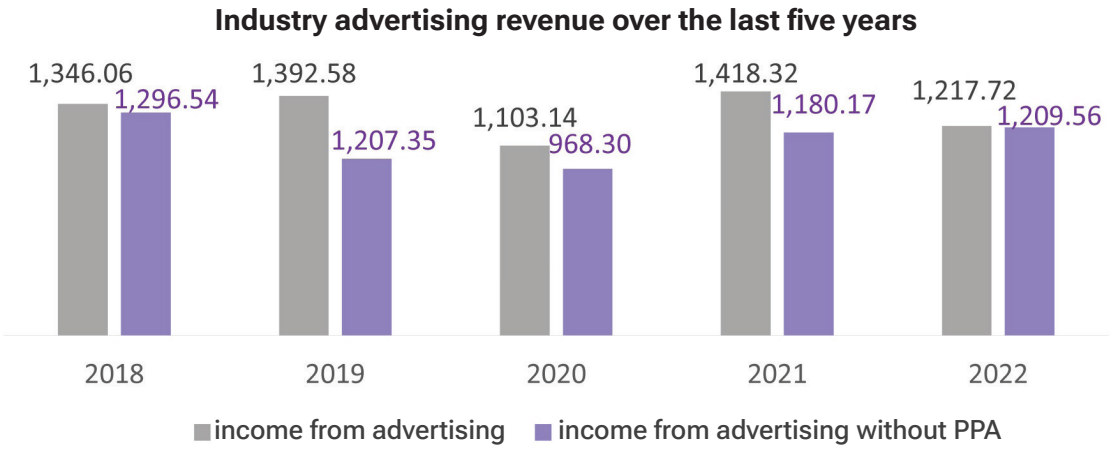
3.4.4. The state of the media market and the position of journalists

The fact that budget funding of paid political advertising carries risks of potential corruption becomes real when the economic conditions of the media market are taken into account. According to the analysis of the market of audio and audiovisual media services for 2022[74], commercial radio and television stations operated at a loss, namely radio stations with a loss of 0.61 million denars, and television stations with a loss of 107.94 million denars. Commercial televisions had a worse financial result only in 2020, during the coronavirus pandemic.

The data from the analysis also show that the revenue from paid political advertising was a significant segment of the total advertising revenue in the broadcasting industry. The figure below shows advertising revenue in the broadcasting industry over the past five years, providing a comparison of the total advertising revenue (which includes paid political advertising revenue) versus commercial advertising revenue alone (that is, excluding paid political advertising revenue).

73 Thus, for the 2021 Local Elections, out of almost 34 hours total planned for free political representation of the mayoral candidates and councilor lists during the election campaign, on each of the two television services of the Public Broadcasting Service, on MRT1, a total of 40 minutes and 40 seconds, and on MRT2 - 2 hours 13 minutes and 43 seconds were used. In the second round of the campaign, there was no interest in free political representation at all. On the Parliamentary channel, out of 13 parliamentary parties participating in the elections, only 6 used a part of the offered time for presentation. Out of the total of 57 hours and 38 minutes offered to the parliamentary parties in the first round of the campaign, a total of 16 hours, 9 minutes and 2 seconds were used. Of the 112 submitters of lists that are not represented in the Parliament, only 17 used time for free presentation with a total duration of 1 hour 54 minutes and 37 seconds of the offered 20 hours 5 minutes and 52 seconds (source: Agency for Audio and Audiovisual Media Services).

74 Audio and Audiovisual Media Services Agency, (2022) Audio and Audiovisual Media Services Market Analysis 2022, p. 9, available at https://avmu.mk/wpcontent/uploads/2023/06/Analizata-na-pazarot-za-2022-godina.pdf



Source: Audio and Audiovisual Media Services Agency, Audio and Audiovisual Media Services Market Analysis 2022

The data shows that radio and television stations have earned income from broadcasting paid political advertising for all five years. Their scope was different, depending on the political process in question. They earned the most income in 2021, during the Local Elections; then in 2019, during the Presidential elections and the Early elections for mayors of the municipalities of Debar, Novo Selo and Ohrid; and in 2020, during the Early parliamentary elections and the Early elections for mayors of the municipalities of Shtip and Plasnica. In 2022, local elections were held for the mayors of the municipalities of Mavrovo and Rostuse and Centar Župa and for the election of members of the Council of the Municipality of Tetovo, but paid political advertising was broadcast only for the council elections in Tetovo, and only on four television stations,[75] therefore this year the least amount of income was generated on this basis. Revenues in 2018, on the other hand, were from public propaganda during the Referendum on the name of the state.

In the three years that paid political advertising revenues were higher, they accounted for a significant portion of broadcasters' total advertising revenues, namely: 17 percent in 2021, 13 percent in 2019, and 12 percent in 2020. In 2022, compared to 2021, total radio and television advertising revenue decreased by 14 percent, which is mostly due to the small volume of paid political advertising in 2022, as well as the fact that commercial advertising revenue this year was only 2 percent higher than the previous year 2021. The analysis confirms the importance of the income from paid political advertising for the broadcasting industry, especially considering the negative overall results of its operation and the economic situation in the country.

75 Agency for Audio and Audiovisual Media Services (2022), 2022 Local elections - Elections for members of the Tetovo Municipality Council for the remainder of the election period, Report on the broadcast paid political advertising during the election campaign in the period from July 31 to August 18, 2022, p.3, available at https://avmu.mk/wp-content/uploads/2022/09/Izvestaj-za-emituvano-plateno-politicko-reklamiranje-za-vreme-na-izborna-kampanja_compressed.pdf

In the publication of the Council of Europe from 2023[76], titled *"Economic vitality and sustainability of the audiovisual media industry in the digital environment - North Macedonia"*, the authors of the analysis state that *"...without the budget funding intended for local TV stations through political advertising and subsidies related to the economic crisis in 2020, this sector could hardly exist at all."* While regarding regional televisions, they state that *"... the budget funds that flowed into the regional TV sector through political advertising only mitigated and concealed its severe economic situation."*

On the other hand, the 2020 comparative study on the regulation of political advertising in the countries of Southeast Europe[77], prepared within the joint program of the European Union and the Council of Europe - JUFREX, indicates that the ban on paid political advertising is not an appropriate way to deal with the identified problems in the countries of the region, including ours, because it can threaten the difficult-to-attain balance in the media environment in the region.

Furthermore, the analysis of the Independent Union of Journalists of Macedonia from 2022[78], speaks of the deteriorated material and financial position of journalists and media workers - low salaries, unlimited working hours, unpaid overtime, lack of insurance against injuries, etc.

And finally, the Country Progress Report of the European Commission dated November 8, 2023,[79] underlines that additional efforts are needed to protect the professional and labour rights, freedoms and safety of journalists, and that *"This, together with difficult socioeconomic conditions in the sector, contribute to a culture of self-censorship and create opportunities for media owners to influence editorial policy".*

Therefore, not by chance, the Association of Journalists of Macedonia and other organizations from the media sector, continuously express their concern about the legal provisions, which allow political parties to use state funds for advertising in private media,

76 Council of Europe, (2023), Project "Protection of Freedom of Expression and Freedom of the Media in North Macedonia" - PRO-FREX, Economic Vitality and Sustainability of the Audiovisual Media Industry in the Digital Environment - North Macedonia, prepared by Asja Roksha-Zubčević and Snezhana Trpevska, p. 76 and 79, available at https://rm.coe.int/assessment-media-viability-and-sustainability-north-macedonia-mkd-/1680ac5bcf

77 Council of Europe, (2020), Freedom of Expression and Media Freedom in South East Europe (JUFREX) Project, Regulation of Political Advertising: A Comparative Study of the Situation in South East European Countries, Authors: Jean-Francois Fournemont and Deirdre Kevin, p. 47, available at https://rm.coe.int/regulation-of-political-advertising-mkd-final/1680a0cf30

78 SSNM (2022), Analysis - The security and socio-economic situation in the media 2022, available at https://ssnm.org.mk/wp-content/uploads/2022/02/Bezbedni-Mediumski-Rabotnici-Analiza-Book-WEB-MKD.pdf

79 European Commission, (2023) COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, p. 32, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf

as well as about the lack of transparency of political advertising., especially on social media[80].

3.4.5. Budget funding stimulates the creation of online media

The same article 76-e of the Electoral Code stipulates that the amount that can be paid to one digital media outlet (web portal) and print media by one participant in the electoral process cannot exceed 15,000 euros, and the total amount that one participant can spend on media representation on all digital media (web portals) and print media, cannot exceed 25 percent of the allocated financial resources for paid political advertising.

All the election processes after 2018, when this legal solution was adopted, have shown that the provision stimulates the emergence of a large number of online media, more precisely entities in the online sphere that are interested in publishing political ads, because, apart from web-based media, there were also news aggregators, websites and other entities. They also showed that most of the entities in the online sphere registered in the SEC for advertising do not have a publicly published Impressum, i.e., data on the ownership structure and the people who prepare the content, and for some of them, there are doubts that they are related and with political parties[81].

This problem, apart from Article 76-e of the Electoral Code, is also due to the lack of a definition of which entities fall into the category of "digital media (web portals)" used by the Electoral Code; then to the fact that the requirements that they have to meet in order to publish paid political advertising have not been determined; as well as the fact that there are no legal provisions to prevent the conflict of interests between the owners of these entities

80 See in: Agency for Audio and Audiovisual Media Services (2018), Scandalous solutions in the amendments to the Electoral Code, available at https://avmu.mk/ /scandalozni-reshenija-vo-izmenite-na-i/

- AJM, (2020), V. Summarized recommendations of the Association of Journalists of Macedonia (AJM) in the context of the Electoral Code, from the Handbook for Ethical Reporting of Elections in North Macedonia, p. from 65 to 67, available at https://www.znm.org.mk/wp-content/uploads/2020/06/prirachnik-za-etichko-izvestuvane-od-izbori-vo-severna-makedonija.pdf
- Metamorphosis, (2021), Halfway completed reforms – The political will is here one minute, gone the next, p. 10, available at https://metamorphosis.org.mk/wp-content/uploads/2021/11/reformi-na-polovina-pat-politichkata-volja-chas-ja-ima-chas-ja-nema.pdf
- AJM, (2023), North Macedonia: Indicators for the degree of freedom of the media and for the safety of journalists in 2022, p. 35 and 36, available at https://safejournalists.net/wp-content/uploads/2023/03/MK-MK-2022.pdf

81 See:

- Vasko Magleshov, (2023) Without control, thousands of euros for the elections flow into web portals, available at https://prizma.mk/bez-kontrola-iljadnitsi-evra-za-izborite-se-slevaat-vo-portali/
- Vlado Apostolov and Goce Trpkovski, (2020) Portals and money for elections: Crowded in front of the goalpost, available at https://prizma.mk/portalite-i-parite-za-izbori-guzhva-pred-gol/
- Nasser Selmani, (2020) Two euros of propaganda in the media will "buy" the voice of citizens, available at https://mediaobservatorium.mk/so-dve-evra-propaganda-vo-mediumite-ke-se-kupuva-glasot-na-graganite/

and political parties. These problems in the Electoral Code are to some extent generated by the fact that online media do not exist in the media regulation, that is, they are not included in the Law on Media and in the definition of the term "media" from this law.

In the national reports for 2022 and 2023, from the Monitoring of Media Pluralism in the Digital Age of the Centre for Media Pluralism and Media Freedom, it is stated that there is a high risk in the digital media sector in relation to the indicator "political independence of the media", and that these weaknesses are a cause for concern due to the importance of this sector for political communication and clientelist culture in the country[82].

82 See:

- Center for Media Pluralism and Media Freedom (2023), MONITORING OF MEDIA PLURALISM IN THE DIGITAL AGE, National report: Republic of North Macedonia, authors Igor Micevski and Snezhana Trpevska, from the Research Institute for Social Development - RESIS, publisher European University Institute, Robert Schuman Center for Advanced Studies, p. 11, available at https://cadmus.eui.eu/bitstream/handle/1814/75743/_северна_македонија_results_mpm_2023_republic_of_north_macedonia_cmpf.pdf?sequence"
- Center for Media Pluralism and Media Freedom (2022), MONITORING OF MEDIA PLURALISM IN THE DIGITAL AGE, National Report: Republic of North Macedonia, authors Igor Micevski and Snezhana Trpevska, from the Research Institute for Social Development - RESIS, publisher European University Institute, Robert Schuman Center for Advanced Studies, p. 22 and 23, available at https://cadmus.eui.eu/bitstream/handle/1814/74710/MPM2022-North-Macedonia-MK.pdf?sequence=3

3.5. Recommendations

- The rules for financing election campaigns and for financing political parties are important for the regularity of electoral processes. Therefore, they should be appropriately sized, and the manner of their implementation must be transparent and subject to inspection, among other things, in order to maintain the confidence of the citizens in the credibility of the elections themselves.

- The regulation on paid political advertising and other rules of the Electoral Code should not violate the independence of the media, because media freedom is a prerequisite for democratic elections, and citizens have the right to be informed by independent media, as reminded by the Parliamentary Assembly of the Council of Europe in its 2019 Resolution.

- The Macedonian model for financing the paid political advertising of the participants in the elections with budget funding, established in Article 76-e of the Electoral Code, represents an additional burden on the state budget, which is also a risk for potential corruption from two possible sources: from the provisions themselves in the Electoral Code, and from their application in practice. At the same time, this financing of political advertising creates opportunities for creating new or renewing old clientelist ties between political parties and the media.

- The most logical solution to the existing and potential problems would be to completely ban paid political advertising, as it does not exist in a large number of Western European countries, and for the participants in the elections to use the legal opportunities for free political representation on the Public Broadcasting Service and the Parliamentary Channel. However, taking into account the economic situation in the country and the state of the media sector, a complete ban on paid political advertising during elections may not be the best solution. Instead, the existing model for financing paid political advertising from the state budget, as well as reimbursing media costs for published advertising through the State Election Commission, should be abandoned. The participants in the elections should cover the advertising costs with their own funds and independently.

- In addition to abandoning the existing model for budgetary financing of paid political advertising, there is also the fact that, instead of being used as a tool to ensure equal opportunities for the participants in the elections, the method of distribution of funds creates discrimination and different conditions for electoral competition.

- The restrictions on how much money the participants in the elections can spend on advertising in print and online media are not logical. Participants in the elections should be free to plan their campaigns. However, in order to ensure fair conditions for electoral competition, a mechanism should be found to limit the total funds that can be spent on paid political advertising during elections.

- Therefore, the first step would be: to delete Article 76-e of the Electoral Code; to further specify the provisions for digital media (web portals); and to establish obligations for the participants in the elections to report which social media they will use for paid political advertising, as well as to ensure transparency of the funds that will be spent on such advertising.

- But that is not enough. A thorough revision of the Electoral Code is needed, which will provide clear provisions that will not leave room for different interpretations, and a stable regulatory framework, which will guarantee legal certainty and will not be amended before each subsequent election process. Also, the provisions of the Code, especially those on media representation, as well as on the competences of the responsible institutions, must be urgently adapted to the new information environment and the challenges it brings.

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