



Political advertising and media campaign during the pre-election period: A Comparative Study

Commissioned by the OSCE Mission to Montenegro

May/July 2017

Author: Davor Glavaš

Table of Contents

1	EXECUTIVE SUMMARY.....	4
2	INTRODUCTION	5
3	DEFINITION OF TERMS	7
3.1	Elections	8
3.2	Paid political advertising	8
3.3	Free political advertising	9
4	COMPARATIVE STUDY	10
4.1	Examples of legal definitions (in alphabetic order):.....	11
4.1.1	The period of the campaign and of election silence	11
4.1.2	Rights and obligations of electoral subjects during the campaign.....	14
4.1.3	Electoral polls	16
4.1.4	Electoral campaign on the Public Radio and Television	19
4.1.5	Paid advertising	21
4.1.6	Free political advertising	24
4.1.7	Examples of the election regulatory frameworks in other countries	27
4.1.8	Different models of the election regulatory frameworks	51
4.1.9	Protection of minors.....	54
4.1.10	Measures concerning all media/General provision	58
4.1.11	Measures concerning broadcast media	60
4.1.12	Measures concerning the print media	61
5	FINAL RECOMMENDATIONS.....	62
6	FINAL RECOMMENDATIONS MONTENEGRO	65
7	FINAL OBSERVATIONS	69

8	ANNEXES.....	70
8.1	AGCOM Regulation (Italy)	70
8.2	Switzerland: Federal Act on Radio and Television	71
8.3	Draft Maltese standard: Participation of children in political communication.....	72
8.4	Code of Ethical Conduct (Local Elections, Canada)	79
8.5	European Broadcast Union (EBU).....	83
8.6	OFCOM Broadcasting Code (April 2017):	85
8.7	BBC Election Guidelines.....	91

1 EXECUTIVE SUMMARY

The present Comparative Study provides for a results of the work performed and the relevant findings within the project "Political advertising and media campaign during the pre-election period", commissioned by the OSCE Mission to Montenegro, under the project number 2700395.

As required in the Terms of Reference, this Study represents a part of the project "Support to Media Institutions, Information Pluralism, Freedom of Media and Safety of Journalists in Montenegro". The aim of the Comparative Study is to assist the Agency for Electronic Media in improving the legal framework by producing a comparative analysis of the legal frameworks in seven OSCE and Western Balkan region countries related to the political advertising and media campaign during the pre-election period. The final objective of the project is to improve the quality of the media legal framework regulating political advertising.

The main project components are summed up below.

Brief description of the service:

Reviewing legal framework and prepare comparative analysis of the legal frameworks in seven OSCE and Western Balkan region countries relate to the political advertising and media campaign during the pre-election period. Produce recommendations for legal amendments needed in regards political advertising.

Objective:

Improve the quality of media legal framework regulating political advertising.

Tasks and responsibilities:

- Comparative analysis of the legal frameworks in seven OSCE and Western Balkan region countries relate to the political advertising and media campaign (before and) during the pre-election period;
- Best practices as regards the balance between regulation and self-regulation of political advertising;
- Roles and responsibilities of different stakeholders: media, political parties, media regulatory and self-regulatory bodies, PBS and their supervisory bodies, election commission, anti-corruption agency, parliament, etc.;
- Best practice to ensure efficient enforcement of the rules (monitoring, supervision, prevention and sanctioning);
- Best practice to ensure sufficient complaint procedure related to media coverage of the election and political advertising;
- Protection of minors (children) within political advertising (use of children in media materials, on line political advertising and protection of minors)

Deliverables:

- Drafting of the final report, of at least 30 pages, with clear recommendations needed for enforcement of media standards and improvement of media legal framework
- Present the report at the event to be held in Podgorica

2 INTRODUCTION

Free and fair elections are one of the basic foundations of democratic societies. It is a fact that the media play an important role in the modern society as a platform for the dissemination of information. This role acquires a special dimension at the time of elections given the fact that, by carrying out their activities in a professional, fair and balanced manner, the media substantially – if not even decisively - contribute to creating an enabling environment for free and democratic elections, based on the well-informed electorate's decisions.

However, the political advertising and, especially, the exercise of media campaigns during the pre-election period are among the issues that, regardless of their important role in informing (or influencing) the electorate, have escaped precise, unambiguous and legally binding stipulations. Despite that, it could be said that allowing the candidates' access to the media, together with creating conditions to provide for a balanced, impartial and fair coverage of an election, in order to provide the electorate quantum of information needed for an informed decision, represents one of the main pillars of the modern democracy. The lack of explicit definitions resulted primarily from the great diversity of national political and culture traditions, different approaches to regulation and self-regulation in a direct relation to the development and specifics of the media landscape and civil society sector in each respective country.

Any attempt at a comparative analysis that includes references to political advertising and regulation and self-regulation of the media during the election process should take into thorough consideration these diversities, duly avoiding any attempt to classify them in a qualitative way by using one single, universal criterion. Different level of restrictions on the political advertising does not reflect the restrictions in exercising the vital political communication at the time of elections or in general. Quite the contrary: some of the most developed democracies and exemplary open societies (Sweden, Norway or France, for example) have different levels of restrictions of political advertising, including even the total ban of it. Some countries are allowing political advertising only during the pre-election period, considering the dissemination of the message as critically important for an informed decision by voters, while some other countries (Denmark, for example) do not allow advertisements with political messages to be broadcast during the election campaigns, where a total ban is considered necessary to protect voters from "inappropriate influencing" and to ensure "equal democratic rights of candidates" regardless of the economic means or funding. The most often justification for the latter is that well-established parties with a more generous campaign funding would be able to afford significantly more advertising time than new or minority parties – thus amounting to a possible discriminatory practice. However, the same rules do not (necessarily) apply to all the media: print and radio have usually a more relaxed regulation when it comes to the political advertising.

Another argument against paid advertising is that it increases the “dumbing down” of political debate. It is clear that paid political commercials are generally much shorter in length than free direct

access slots and generally tend to sell a candidate or party (or denigrate the opponent) rather than developing an argument. The difference in length is striking: average length of **paid advertising slots** in Finland is 10-25 seconds and in the United States 30-60 seconds. In France, the United Kingdom and Denmark the **length of free slots** ranges from five to 10 minutes.

Adding to the pool of diversities different categories of the political promotion (paid political advertising, free of charge air time), one could conclude that a comparative analysis of the rules and regulations on the political advertising could be only a compendium of different solutions deriving from different political traditions and media landscapes, with the common denominators reduced only to some marginal aspects of the analysis.

Not so.

Taking into consideration the importance of a free and fair access to the media for the plurality of political options, equality and fairness are not to be taken for granted even in the "traditional" and "mature" democracies. For example, political opponents to former Italian Prime Minister Silvio Berlusconi complained, probably rightfully, that the Prime Minister used his cross-sectoral media portfolio for an undue influence on the electorate. This is yet another example to prove that a sophisticated legal and regulatory system, based on the constitutional and normative principles that ensure elections are played out in the media and public space in general according to certain criteria, should be maintained and constantly upgraded, nowadays primarily in order to meet the challenges of the new communication/dissemination platforms and profoundly changed patterns of consuming the media content. Not all of them (patterns) are contributing to the ideal of the "well-informed" citizens; even a superficial notion of neologisms such as "fake news" or "alternative facts" opens some brand new aspects to the issue the fairness of the elections-media relations, even in the most elaborated democracies.

Being aware of these new challenges, political advertising and media campaigning during the pre-election period remain among issues that have a desirable regulatory framework, especially for "new" democracies and societies emerging from the transition, in order to help and support democratic solutions, institutions and procedures to become "organic" and, in basic terms, irreversible. Different experiences derived from different traditions, but deeply rooted into the democratic fabric of societies that have experienced dozens of undisputed elections and changes of governments and political options, should not be considered a "double standard" policy in this regard, but rather a plurality of solutions.

In this regard, political advertising and media campaign during the pre-election period are not the only examples of different (although, as mentioned, not "double") standards and solutions applied to countries with different democratic traditions. The issue of defamation could be presented as another example. Considering the negative impact of the imposition of criminal sanctions in defamation cases on the media and on the freedom of expression in general, especially in transitional and emerging democracies, the European-based and international human rights and media watch-dog organisations are strongly advocating decriminalisation of defamation. Still, criminal defamation laws continue to be applied in, for example, France, Italy, Greece, Portugal, having resulted in occasional convictions of journalists, even in the states typically considered as strong defenders of the media freedom such as Denmark, Germany and Switzerland. Among the countries in which defamation remains a criminal offence, nearly all foresee the possibility of imprisonment. At the level of pure facts, one could say that the countries that strongly advocate media freedom and free speech issues feature by themselves the legal provisions with a potential to

limit it, while being active in the emerging democracies in promoting standards that are sometimes opposite to their own legal practice.

The answer to the dilemma which seemingly opens an issue of the (lack of) consistency is: media systems and their subsequent relations to the democratic process must be understood within the historical conditions within which certain notions of the media freedom and autonomy have developed. As mentioned, while understanding the diversities resulted from a genuine democratic development and differences in political systems, traditions, media landscapes and other, for the subject of this analysis, the defining elements, the key international institutions (or for that matter, watch dog organisations) have adopted a different approach to the "new", emerging democracies and/or transitional societies. The lack of the genuine, organic and time-tested solutions, in many aspects important (or even vital) to the functional democracy, and the concerns about preventing any eventual hijacking of the fragile democracies by the authoritarian residues have resulted in an attempt to identify a set of the "good governance" criteria, even if they do not have a common base in the "old" democracies.

Taking this notion into consideration, defining a set of recommendations in the field of establishing and consolidating the effective democratic election standards and procedures is of the utmost importance, as well as identifying the country specifics (if they exist) that should be respected. There is no media system that does not have weaknesses. Some new challenges are common both, to the "old", and the "new" democracies, such as, for example, the need for redefining the traditional standards (the "day of reflection" or the "election silence", for example) in a communication environment ever more populated by social media platforms.

These challenges, however important they could be, go beyond the scope of this report.

3 DEFINITION OF TERMS

For the purpose of this analysis, political advertising will refer to paid political advertising while the term free airtime will be used for free political advertising, such as party political broadcasts, for example.

Definition:

Political advertising is advertising whose central focus is the marketing of ideas, attitudes, and concerns about public issues, including political concepts and political candidates. The essential task of political advertising is to gain the confidence of the people for their acceptance of ideas and, in the case of political campaign advertising, to influence their vote. Political advertising differs from commercial advertising in that the product is either a person or a set of values rather than goods and services. In addition, the advertising objectives must be met within a specific time frame.

Political advertising carries a clear moral implication, because the results have potentially far-reaching effects on the population at large.

3.1 Elections

In principle, all political elections taking place in countries encompassed by this Study are included under the term "elections", that is, presidential, legislative, regional and local elections, as well as the political referenda. However, certain provisions will not be directly applicable to all of these elections since, for example, some of the principles – primarily for the reasons of practicality - could be difficult to implement at the level of local elections.

3.2 Paid political advertising

In a sharp contrast to the commercial advertising, which has been strictly regulated and harmonised within the EU Member States' jurisdiction¹ (which is also a requirement for the EU accession candidate/potential candidate countries), political advertising appears in different regulation formats. In some European countries, paid political advertising is a legal and unrestricted form of political communication, while, in others, political advertising is either allowed only during the pre-election period or prohibited as such.

In countries where political advertising is permitted, the same criteria must be applied to the allocation of the air time for paid political advertising as for free political advertising, based either on the principles of equality or proportionality. Candidates and/or political parties should be given a fair and non-discriminatory treatment in terms of the access, timeslots and the rates/pricing policies. In some countries, the broadcaster has the possibility to preview the spot and reject it in limited cases (e.g. criminal offence, hate speech, defamation), subject to the national regulatory authority or to the court scrutiny. This is the case, for example, in Germany, where the competence to decide upon the unconstitutionality of a party's messages lies with the Federal Constitutional Court.

Most of the countries which allow paid political advertising also foresee certain legal restrictions to avoid the discriminatory character of the practice. The European Platform of Regulatory Authorities (EPRA) mentioned the following restrictions in this regard: limits on the duration and frequency of airing paid political advertising, limits related to the scheduling (a paid political advertisement is not allowed during news, religious, sport, culture, entertainment or children programmes, for example), limits on the charges for such ads (the price lists must be submitted to the regulator for review usually 15 or 30 days prior to the elections period), or on the maximum election expenditure that is permitted by the law (Greece and Latvia, for example). The regulation of the election campaigns defines a specific labelling/identification requirements (paid political advertising should be properly and visibly labelled, from the commencement to the end of the programme, as "paid political advertising", by visual and audio "separations" from the regular programme). The broadcasters are obliged to provide all parties with equal conditions and equal access to political advertising (the price per second for paid political advertising should not exceed the average advertising price), an equitable access to the same programme period etc.). The Law on general elections in the Republic of Kosovo stipulates, for example, that the price per second charged for paid political advertising spots shall be "no higher than the lowest rate charged for that time and day of the week in the past six (6) months" (Article 49.14). The Election law in the former Yugoslav Republic of Macedonia stipulates that "the price per second for paid political advertising should not exceed the average

¹ Audiovisual Media Services Directive 2010/13/EU)

advertising price, as calculated in the 3 months preceding the day of calling elections" (Article 75.7), while the Election Law in Bosnia Herzegovina (Article 16.5) says that "Advertisements shall be paid in advance and the prices (...) must not be higher than the prices in the existing marketing price-list of the given media".

Most of the countries that allow the paid political advertisement (including all WB countries) also impose specific restrictions concerning the total amount of paid political advertising.

In some countries (for the purposes of this Study, in the former Yugoslav Republic of Macedonia, for example²) the public service media are not allowed to broadcast paid political advertising - only private, commercial broadcasters may do so. Article 49.12 of the Kosovo Election law allows the private broadcasters the right to choose not to air paid political advertising time for any certified political entity. In that case, private broadcasters are not required to offer the minimum free airtime as specified for the broadcasters who are accepting paid political advertising.

However, there are a number of countries with no restrictions on the paid political advertisement. This is the case, for instance, in Austria, Estonia, Finland and Poland. In Poland, the issue of restrictions to political advertising is regulated by each broadcaster by means of the internal advertising codes.

The main rationale for paid political advertising is that it may enable new candidates to obtain recognition and a profile. It is also often argued that the right to political advertising is an integral part of the right to the freedom of expression and information.

3.3 Free political advertising

Free political advertising allows politicians to address voters directly. In most European countries, candidates and/or political parties are granted free political advertising or spots, primarily (but not exclusively) in the public service media (PSM). In practice, the candidates and/or parties themselves are responsible for the content of their spots. The European Broadcast Union (EBU) in its Principles for Election Coverage³ allows PSM to put the production facilities at the candidates' or parties' disposal, if they are reimbursed for their technical costs either by the State or directly by the parties.

The determination of which candidates and/or parties should be given free political advertising time, and the amount of time or the number of slots allocated to each candidate/party may be based either on the formal **equality principle** (or the principle of an equal access) or on the **proportionality principle** (see below).

- **Principle of equal access:** each candidate and/or party (irrespective of their power base or popular support) is allocated the same amount of airtime;

² Article 76 (5) of the Electoral Code

³ Anne-Catherine Berg and Radka Betsheva: EBU Principles for Election Coverage in new and developing democracies, Le Grand-Saconnex Switzerland, February 2014). This chapter is based on a digested presentation of the main principles, as defined by the authors

The advantage of equal distribution of free political advertising time is that it may give a chance to new and small parties. At the same time, it can also lead to an overload of screen-time with obscure messages that can confuse the audience⁴.

- **Principle of proportionality:** candidates and/or parties are allocated time according to certain objective criteria, e.g. the results of the previous elections; the number of seats currently held in the Parliament; the number of candidates standing; the number of seats contested; the support in current opinion polls.
- **Principle of mixed access:** a minimum amount of time is allocated to all contenders; supplementary time is allocated on a proportional or other basis

The advantage of the proportionality approach is that it tends to focus on the candidates most likely to succeed and on the most important issues. However, it may work towards the status quo by ensuring that the main parties are heard, while smaller and newer parties are marginalised.

Many Western European countries (such as Germany, Ireland, the Netherlands, Spain, Greece) have chosen a system of proportional access in their distribution of free air time. This means that criteria such as the latest results of the political parties are taken into account in allocating broadcasting opportunities.

4 COMPARATIVE STUDY

In order to allow for an easier navigation, this section of the study is presented in the key components of the electoral campaign and the media relations, country by country. The list includes the relevant legal definitions and regulatory solutions in all countries in the Western Balkans (plus Turkey), in the alphabetic order, compared against the widely accepted international standards (the Council of Europe recommendations, for example)⁵ as well as some relevant experiences from countries with a substantially greater number of election cycles.

At the end of the section, a list of recommendations, internal guidelines and good practices for the role of the Public Service Media in the election campaign is presented, based on the Election Principles set by the European Broadcast Union and on the relevant sections of the Ofcom Broadcasting Code (United Kingdom) and BBC Editorial Guidelines, as probably the most elaborated self-regulation acts, with an outstanding reputation within the international media community. This section of the Study is presented with subsections, as follows:

- The period of the election campaign and of election silence
- Election campaign and principles of balance, fairness and impartiality

⁴ For example, at the 2011 elections in Croatia, a total of 47 political parties ran for the Parliamentary seats. Each party were allocated a 10-minute slot to present their list/policy on the PSM. As the result, the strongest opposition party got the 10-minute slot only at 1:15 am, after a number of irrelevant and even obscure political parties.

⁵ [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=ExpRec\(99\)15&Language=lanEnglish&Ver=original&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=ExpRec(99)15&Language=lanEnglish&Ver=original&direct=true)

- Electoral/Opinion polls
- Electoral campaign on the Public Radio and Television
- Paid political advertising
- Free airtime
- Protection of minors
- Measures concerning both the print and the broadcast media
- Measures concerning the print media

4.1 Examples of legal definitions (in alphabetic order):

4.1.1 The period of the campaign and of election silence

Stipulations on the period of campaign and of the election silence in most of the WBT countries are in line with the international standards.

The following subchapter presents the basic legal definitions of these issues in the WBT election laws and regulatory acts.

4.1.1.1 Albania

The Electoral Code of the Republic of Albania stipulates that the electoral campaign „begins 30 days before the election date and ends 24 hours before the election date“.

Article 77 of the Electoral Code reads: “The day prior to the election date and the election date until the hour of the closing of the polls constitute the period of electoral silence. During the period of electoral silence no electoral campaign through media outlets, as well as rallies or other electoral activities, is allowed”.

4.1.1.2 Bosnia and Herzegovina

The Election law of Bosnia and Herzegovina (Chapter 16: Media in the Election Campaign), defines that „the electoral campaign begins 30 days before the election date and ends 24 hours before the election date“.

Article 16-11-1 says: “No media coverage of any political and electoral campaign activity shall take place in the whole territory of Bosnia and Herzegovina during the period beginning twenty-four (24) hours prior to the opening of the Polling Stations (...)

The campaign silence period shall continue until the close of Polling Stations”.

4.1.1.3 The former Yugoslav Republic of Macedonia

Article 69a (2) of the Electoral Code: “The election campaign commences 20 days prior the Election Day and in the first and the second round of election cannot continue 24 hours before elections and on the Election Day”. Article 76-b (1): “During the election silence, all forms of electoral media presentation of the participants of electoral campaign shall stop”.

4.1.1.4 Montenegro

Law on Election of Councillors and Representatives in Article 50 stipulates that the election campaign lasts “From the day of verifying the list of candidates to the completion of the election propaganda”.

Article 6 says that “The election promotion via media and public gatherings shall cease 24 (twenty four) hours prior to the polling day”.

4.1.1.5 Kosovo*⁶

Law on General Elections in the Republic of Kosovo, Chapter VIII (Media during the electoral campaign) in Article 52.1 (Prohibition of Media Coverage) stipulates: “No person or media outlet shall broadcast or publish any material pertaining to campaign activity during the period commencing twenty-four (24) hours prior to the opening of the polling stations until the official close of the polling stations”.

Article 52.2: “No publication or broadcast of opinion poll and survey results relating to the election campaign, including exit polls, shall take place in Kosovo during the period commencing 24 hours prior to the official close of the polling stations and until the official closing of the polling process”.

4.1.1.6 Serbia

Law on elections, Article 5: “Electoral promotion through the mass media and public gatherings, as well as publication of estimated electoral results shall be forbidden in the period of 48 hours before the day of the elections, as well as during the election day until the closing of polling stations”. Article 49 defines that the election campaign starts “from the day of calling the elections”.

4.1.1.7 Turkey

Law on basic provisions on elections and voter registers (law no: 298), Article 52: political parties which take part in the election may conduct electioneering activities on radio and television after the 7th day in advance of the election day until 18:00 hours on the day before the election day.

Supreme Election Board and the Radio and Television Supreme Council decide on election silence, usually starting at midnight the day before elections and lasting until the official closing of the polling stations.

⁶ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

The Day of Reflection or the Election Silence is a ban on political campaigning prior to a presidential or general election, starting usually from midnight on the day preceding the election day and ends on the end of voting. The election silence operates in a number of countries to allow a period for voters to reflect on the events before casting their votes. During this period, no active campaigning by the candidates or political parties is allowed. However, some countries (among others, the United States, have declared that the election silence is in violation of the law regarding freedom of speech.

Western Balkan countries and Turkey (WBT) observe the basic notion of the Day of reflection. Considering that voters should have time to reflect on the information received during the election campaign, all WBT countries have included provisions in their regulatory frameworks to impose a ban on dissemination of partisan electoral messages on that day. With some variances of the marginal importance, these countries have aligned their respective regulatory frameworks with the standard election silence provisions. There is no apparent need for any changes in this regard.

Recommendations:

Western Balkans countries and Turkey should keep the current legal and regulatory provisions that define the beginning of the election campaign and the election silence. Some variances in legal stipulations (primarily on defining the day of commencement of the campaign) are in no way in collision with the internationally accepted standards. Given the fact that the news and information other than partisan electoral messages may have an implicit political message or content, especially where the line between the newsworthy information (the election does not happen in isolation) and the promotion of a political agenda tends to be blur, it is important that self-regulatory practices by the media also address this problem. More on that in the following chapters.

Specific Recommendations (Montenegro):

The election law does not specify when the **official campaign period begins**; it only states that the right to free airtime on public broadcaster (RTCG) starts on the day the candidate list is registered by the State Electoral Commission (SEC). Actual campaigning for the parliamentary elections in October 2016 started long before the elections were called, with billboards of several contestants appearing even before they had submitted their lists. Also, some contestants organized rallies before their lists were registered.

In order to make the election law more precise and unambiguous, Article 50 of the Law on Election of Councillors and Representatives should be amended by saying that the official election campaign period starts „30 days before the election date and ends 24 hours prior to the opening of the polling stations“.

Article 6 (3) of the Law on Election of Councillors and Representatives opens a possibility for **different interpretations of the clause on electoral silence** (“The election promotion via media and public gatherings shall cease 24 (twenty four) hours prior to the polling day”). Article 6 (3) should be amended to read as follows: “During the period of electoral silence no electoral campaign through media outlets, as well as rallies or other electoral activities, is allowed. The electoral silence shall

begin twenty-four (24) hours prior to the opening of the polling stations and shall continue until the official close of polling stations”.

4.1.2 Rights and obligations of electoral subjects during the campaign

On the normative level, the election codes and regulatory acts in the Western Balkans countries respect the internationally recognised standards on “impartial and balanced” reporting on the election campaign and on the right to the “equal access to the media” and “similar levels of coverage” to all election lists during the campaign.

4.1.2.1 Albania

The Electoral Code of the Republic of Albania, Article 1: During the election campaign, every electoral subject has the right to make electoral propaganda in every lawful manner.

Article 2. Each electoral subject has the right to have its electoral programme and messages broadcast by all radio and television operators in a fair, unbiased and uncensored manner.

4.1.2.2 Bosnia and Herzegovina

The Election law of Bosnia and Herzegovina, Article 16.2: Electronic media shall cover pre-election activities and observe the principle of balance, fairness and impartiality.

4.1.2.3 Montenegro

The Law on Election of Councillors and Representatives, Article 6:

(1) Voters shall have the right to be informed via media on the election programmes and activities of submitters of the lists of candidates, as well as about candidates from the lists.

(2) In order to enable permanent residents to exercise their suffrage referred to in a paragraph 1 of this Article, the media shall be obliged to consistently implement the principles of equality of all submitters of the lists of candidates and the candidates from the lists.

4.1.2.4 Kosovo

The Law on General Elections in the Republic of Kosovo, Article 48:

All media shall ensure that all certified political entities receive fair and equitable coverage during the electoral campaign, and all broadcast media shall ensure fair and equitable access to political discussion shows and debates for all certified political entities.

4.1.2.5 Serbia

The Law on elections Article 5:

(...) The mass media shall be obliged to ensure equal accessibility of information about all submitters of the electoral lists, and about all candidates on those electoral lists.

Article 49

Organizations which broadcast radio and television program, and are founded by the Republic of Serbia shall, from the day of calling of the elections, in their political-informative programs which can be seen or heard throughout the territory of the Republic, ensure the presentation of the submitters of the electoral lists and of the candidates from the electoral lists, as well as the exposition and explanation of the electoral programs of the submitters of said lists, in accordance with this law.

Organizations referred to in paragraph 1 of this Article shall not be allowed to, under any circumstances, enable the presentation of candidates and the exposition and explanation of programs of submitters of electoral lists in the commercial, entertainment or other program.

Article 50

Editors and anchormen of political-informative and specialized broadcasts of organizations referred to in Article 49 of this law shall independently and impartially present all the candidates during the election campaign, and anchormen of broadcasts shall have impartial attitude towards all presented political, social and ethical-cultural programs of the political parties whose candidates are presented. Pursuant to paragraph 1 of this Article, and paragraph 2 of Article 5 of this law, the broadcasts shall be organized in order to ensure the public confrontation of the electoral programs of submitters of electoral lists and candidates from those lists.

"Due impartiality"

"Due" is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. "Due" means adequate or appropriate to the subject and nature of the programme. So "due impartiality" (as defined in probably the most elaborated regulation act of the kind, in The Ofcom Broadcasting Code from April 2017) does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.

Regulatory frameworks with provisions on equal treatment of political parties by the media exist in many countries. Nevertheless, in practice there are generally shortcomings and some frameworks are insufficient. The basic frameworks in WBT countries include the principle of fair, balanced and impartial treatment of political parties by the broadcast media. Despite the existence of legislation incorporating such a principle, it is nevertheless also recognised that the internal rules of broadcasters and professional codes of conduct, that is, all types of self-regulatory practices, will be the factors that largely determine how the election is actually covered.

The Recommendation underlines that the obligation to report elections in a fair, balanced and impartial manner should apply to both public service and private broadcasters. There is unanimity that publicly funded broadcasters should provide a complete and impartial picture of the political spectrum in the coverage of an election, given the remit of such broadcasters, which is to serve the public interest and offer a diverse, pluralistic and wide range of views at all times, especially during election periods. Private broadcasters should have this obligation as well (although not necessarily as

elaborated as in case of the PSM), since they are using the limited public good (frequencies) which should go with at least a certain level of responsibilities towards the public.

Aside of that, it is considered that such (private) broadcasters should also abide by impartiality principles given that they also play a significant role in influencing public opinion at the time of elections. Therefore, all private broadcasters, irrespective of their audience share, coverage area or whether they operate thematic or pay-channels, should be under impartiality obligations when they deal with elections.

Addressing this problem, the BBC Guidelines defines as follows: “To achieve due impartiality, each bulletin, programme or programme strand, as well as online and social media channels, must ensure that the parties are covered proportionately over an appropriate period and overall across the Election Period. Determining appropriate levels of coverage should take into account levels of past and current electoral support. Electoral support in the most recent equivalent elections (that is, the 2015 and 2010 General Elections) is the starting point for making those judgements. However, other factors should be taken into account where appropriate, including evidence of variation in levels of support in other sorts of elections, changed political circumstances (e.g. new parties or party splits) as well as other evidence of current support. The number of candidates a party is standing may also be a factor”.

More on this set of issues please find under the Chapter 5 (Final recommendations).

4.1.3 Electoral polls

Electoral/opinion polls are almost a standard feature in the media coverage of the election campaign, both in broadcast and print media. Some media are using polls in order to attract additional audiences, which is a legitimate aim if the general rules about reporting on polls are implemented.

The BBC Editorial Guidelines defines three key factors which needs to be „scrupulously followed“ in reporting on the opinion polls:

- opinion polls are part of the story of the campaign and audiences should, where appropriate, be informed about them;
- context is essential, and we must ensure the accuracy and appropriateness of the language used in reporting them;
- polls can be wrong - there are real dangers in only reporting the most “newsworthy” polls – i.e. those which, on a one-off basis, show dramatic movement. For that reason, we should not normally base a news story on a single voting intention poll, unless its impact has caused a separately newsworthy story.

In the following subsection, examples of different stipulations on election polls in some countries of the WBT region election regulations are presented.

4.1.3.1 Albania

The Electoral Code, Article 78 (3): “The results of electoral polls may not be made public during the last 5 days before the election date and on the election date until the closing of the polls”.

Article 78 (4): “The publication of electoral poll results must (...) include the name of the pollster, its sponsor, the number of persons interviewed, the margin of error, and the time period during which the poll was taken”.

4.1.3.2 Bosnia and Herzegovina

Article 16.5 (1): The electronic media shall clearly and without reservation disclose the following information in releasing results of a public opinion survey:

- a) Name of the institution or person that ordered and paid the survey,
- b) Name and the seat of the institution that conducted the survey,
- c) Size of the sample and a possible tolerance in the survey results,
- d) The period in which the survey was conducted.

Article 16.5 (2): “Results of a telephone public opinion research or street poll conducted among voters during the campaign shall not be presented as a reliable or trustful opinion of a particular social group, which must be particularly emphasized by the media that conducts the survey and announces results”.

Article 16.10: “Results of public opinion research related to the voting and elections shall not be released during the period beginning 48 hours prior to the opening of Polling Stations and until the close of polling stations”.

4.1.3.3 Kosovo

Article 47 (5): The publication or broadcast coverage of opinion polls and surveys during the campaign period and relating to the elections shall be accompanied by the total number of respondents, the name of the implementing company, the name of the party responsible for it, and the margin of error.

4.1.3.4 The former Yugoslav Republic of Macedonia

Article 77 (1): “Opinion polls related to participants in the election process shall be published no later than five days before Election Day for the first and the second round of voting”.

Article 77 (2): “When publishing the opinion polls related to participants in the election process the media and electronic media (internet portals) are obligated to provide information on the client who ordered and financed the poll, the institution that conducted the poll, applied methodology, size and the structure of the sample and the period when the poll was conducted”.

Article 77(3): “The results of the opinion polls carried out on the day of voting must not be announced before 19:00 hours, i.e. before the closure of polling stations”.

4.1.3.5 Montenegro

Law on Election of Councillors and Representatives, Article 63 (1): “During the period of ten days prior to the polling day, the public radio-broadcasting services shall be forbidden to publicise the results of polls, researches and analyses related to the preferences of the permanent residents regarding the estimation of the election results”.

Article 63 (2): “On the polling day, during the voting, the public radio-broadcasting services and other media shall not be allowed to publicise the estimations of the election results in their programmes”.

Despite the fact that it is difficult to show the extent to which opinion polls have an impact on the actual results of an election, it is nevertheless generally assumed that opinion polls do or can have a certain degree of influence on the outcome of elections.

In order to ensure fairness and avoid undue influence on the electorate, it is considered that the media, when reporting the results of opinion polls, should provide the public with sufficient information to make a judgement on the value of the polls. In this respect, the BBC Election Guidelines recommends a number of elements which could be provided by the media at the time of releasing the poll results. Most of these recommended rules have been observed in a proper way in the WBT regulatory framework (for example, to identify the organisation which carried out the poll; size of sample and methodology), while others deserve to be mentioned, such as:

- not to lead a news bulletin or programme with the results of a single voting intention poll;
- to report the findings of voting intentions polls in the context of trend.
- not to use language which gives greater credibility to the polls than they deserve: polls “suggest” but never “prove” or even “show”;
- to report the expected margin of error if the gap between the contenders is within the margin, etc.

Polls can be wrong, warns the BBC Election Guidelines, underlying the need for “scrupulously follow” the general rules. It is acknowledged that this is a topic that should mainly be addressed via self-regulation and that it is internal media guidelines which should specify how opinion polls should be reported.

Most countries (including the WBT region) have regulations restricting the dissemination of poll results on the day or the immediate days preceding the election. For example, the Ofcom Broadcasting Code (April 2017), Article 6, reads: “Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes”.

However, if a national regulator chooses to forbid the publication of opinion polls a certain period of days before the election, such a restriction should comply with Article 10 of the European Convention on Human Rights. In line with the general approach developed by the European Court of Human Rights, three criteria will have to be met for any limitation on the publication of opinion polls to be valid: the prohibition to publish opinion polls should be set down in a law, be “necessary” in terms of promoting a democratic society and be “proportionate to the aim” of protecting another interest. In that regard, it could be said that some of the WBT countries have used this option in excess. For example, regulators in Albania and the former Yugoslav Republic of Macedonia restricted publication of polls to five days before the election day, while in Montenegro this period of time is ten days before elections.

As regards exit polls, which are conducted outside polling stations on voting day and assess what people have actually voted, it is suggested that member States consider the possibility of prohibiting the dissemination of such poll results until all polling stations have closed, given that they could have an influence on the outcome of the elections.

Recommendation:

The effectiveness of the silence rules for the opinion polls is sometimes questioned, given that the public may obtain the poll results, not necessarily from the media to which the restrictions apply, but by other means, such as by accessing the Internet or from foreign newspapers or broadcasters. Given this fact, it is considered that too restrictive rules in this area should be avoided, and that the duration of the prohibition to publish the opinion polls should not be excessive.

In that regard, the Ofcom regulation about reporting election polls is widely considered as the most balanced solution. The national regulators in Albania, Bosnia and Herzegovina, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey should amend the regulatory and self-regulatory acts accordingly. The substance should be in presenting the poll adequately, rather than in depriving the audience of the newsworthy content of it.

4.1.4 Electoral campaign on the Public Radio and Television

The election codes of all countries in the Western Balkans precisely and in many details stipulate regulations on the Public Service Media performances during the election period.

In the following subsection, the examples of these regulations from the respective legislations of Albania, Montenegro and Serbia are presented. Considering the great similarity of the provisions on the basic role of the Public Service Media during the election campaign, the examples refer to different areas of regulation.

4.1.4.1 Albania

The Electoral Code, Article 81: During the electoral campaign, the Public Radio and Television provides to registered political parties and to the Central Election Commission (CEC) free airtime for campaigning, which is allocated according to the following rules:

- a) a total of two hours is provided to the CEC according to the time slots it requests. At least two-thirds of this time shall be between 18:00 and 22:00;
- b) for parliamentary parties that received more than 20 per cent of the seats in the last elections to the Assembly, the CEC allocates equal airtime of no less than 30 minutes on the Public Television and the same airtime on the Public Radio; for the rest of the parliamentary parties, this airtime is no less than 15 minutes. If airtime is increased for one party or one respective coalition, the time allotted to another party or coalition shall be proportionally increased;
- c) each party that does not hold a seat in the Assembly, but runs in elections is allocated 10 minutes of airtime on the Public Television and 10 minutes of airtime on the Public Radio;
- d) the respective electoral subject must be clearly identifiable on any political programme or advertisement for purposes of electoral propaganda. If the political programme or advertisement is not clearly identifiable, the CEC orders the immediate suspension of its broadcast until the subject is rendered identifiable according to the requirements in this point.

2. The Public Radio and Television covers the electoral campaign through news or informative programmes in compliance with the principles of impartiality, completeness, truthfulness, and pluralism of information set forth in the legislation that regulates electronic media. The free airtime

allocated to political parties in accordance with point 1 of this article may not be allocated as part of news or information programming.

3. The Public Radio and Television broadcasts free political advertising by calculating the broadcasting time within the allocated airtime in accordance with point 1 of this article.

4. During the electoral campaign, advertisements of central and local public institutions are prohibited except for those serving to raise the awareness of voters on election-related aspects and/or other announcements envisaged by law.

5. During the political airtime of news broadcasts, the Public Radio and Television must apply an equal time ratio to all parliamentary parties that in the last elections to the Assembly, obtained up to 20 per cent of the seats in the Assembly. The parties that obtained more than 20 per cent of the seats in the Assembly are entitled to airtime that is allocated equally among them. Each of these parties is entitled double the amount of airtime of a party that has obtained up to 20 per cent of the seats in the Assembly.

4.1.4.2 Montenegro

The Law on elections of councillors and representatives

Article 53: During the election campaign period, Radio-Television of Montenegro, regional and local public broadcasting agencies shall be obliged to provide presenting of announcements of all promotional gatherings of submitters of lists of candidates, on daily basis, in equal duration and at the same time, fully free of charge and equally, in commercial marketing blocks, which can be heard or seen on the entire territory of Montenegro and/or a local self-government unit.

Article 53a: 1. During election campaign period, Television of Montenegro and Radio of Montenegro shall be obliged to provide each submitter of verified candidate list with free, equal and daily broadcasting of the following within relevant commercial marketing blocks, on a TV channel, or within a Radio programme which can be seen or heard on the entire territory of Montenegro:

- political and propaganda TV-clips or audio-clips in all political marketing blocks, the duration of which is not less than 200 seconds a day, depending on the planned number of advertising blocks of political marketing;

- three-minute coverage of promotional gatherings, twice a day, at the time immediately after the central evening informative TV and Radio shows.

2. The production of the contents referred to in paragraph 1 line 1 of this Article shall be the obligation of the submitters of lists of candidates being promoted.

3. During election campaign period, regional and local public radio-broadcasting agencies shall be obliged to provide each submitter of verified candidate list with free, equal and daily broadcasting space within commercial marketing blocks which can be seen or heard on the entire territory of the local self-government unit in the scope and fashion referred to in paragraphs 1 and 2 of this Article

Article 54: The media that are broadcasting the advertisements of the submitters of the lists of candidates promoting the elections, electoral programmes and candidates on commercial basis shall signalize on particular advertisement it is the “paid electoral advertisement”.

4.1.4.3 Serbia

The Law on elections, Article 50: Editors and anchormen of political-informative and specialized broadcasts of organizations referred to in Article 49 of this law shall independently and impartially present all the candidates during the election campaign, and anchormen of broadcasts shall have impartial attitude towards all presented political, social and ethical-cultural programs of the political parties whose candidates are presented.

Pursuant to paragraph 1 of this Article, and paragraph 2 of Article 5 of this law, the broadcasts shall be organized in order to ensure the public confrontation of the electoral programs of submitters of electoral lists and candidates from those lists.

More on the role of the Public Service Media during the elections please find under the Chapter 5 (Final recommendations).

4.1.5 Paid advertising

Paid political advertising in the broadcast media has traditionally been prohibited in many countries, whilst it has been accepted in others. One of its major advantages is the opportunity which it provides for all political forces to widely disseminate their messages/programmes. On the other hand, as mentioned, it may give an unfair advantage to those parties or candidates who can purchase important amounts of airtime.

As it has already been mentioned, most of the countries which allow paid political advertising also foresee certain legal restrictions to avoid the discriminatory character of the practice.

The following subchapter presents the basic legal definitions of the paid advertising in the WBT election laws and regulatory acts.

4.1.5.1 Albania

The Electoral Code, Article 84 (5): The total airtime for political advertisements during the entire election campaign on each private radio and television station may not exceed 90 minutes for each party registered in elections. In any case, radio and television broadcasters apply the same fees for the same time slot throughout the campaign. Five days before the beginning of the electoral campaign, the radio and television broadcasters shall submit the fees for each time slot to the CEC. The fees are published on the official website of the CEC.

Article 84 (9): Private radios and televisions make available extra airtime for the advertisements of non-parliamentary parties and candidates proposed by the voters, in addition to the airtime applied according to point 5 of this article. The airtime for the advertisements of each non-parliamentary party and candidates proposed by voters shall not exceed 10 minutes for the entire electoral campaign.

4.1.5.2 Bosnia and Herzegovina

The Election Law of Bosnia and Herzegovina, Article 16.12 (1): The electronic media shall provide equal conditions for paid political advertisements of political entities (commercials, public calls, jingles, video-clips and any other type of promotion of a political entity) in the period of 30 days prior to the election day.

(2) The electronic media shall ensure that paid political advertisements are clearly separated from the rest of the program and shall not be counted within the limit on the allowed time for commercials set by the Communications Regulatory Agency (CRA/RAK) of Bosnia and Herzegovina.

(3) The electronic media shall receive orders for paid political advertisements directly from political entities or through the legal or private persons so authorised by the political entities.

(4) Orders including the contents of advertisements shall be delivered to the electronic media not later than 48 hours prior to broadcast.

Article 16.14 (3): No conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign. No conduct of an election campaign shall be allowed by way of electronic and printed media where the contents are stereotype and offensive against men and/or women or which encourages any stereotype and offensive behaviour on the grounds of gender or any humiliating attitude against the members of different genders.

(5) The public electronic media shall provide equal conditions for paid political advertisements of political parties in the duration of maximum 30 minutes per week during 30 days prior to the election day.

Article 16.15 (1): The private electronic media shall provide equal conditions for paid political advertisements of political entities in the duration of maximum 60 minutes per week during 30 days prior to the election day.

(5) Advertisements shall be paid in advance and the prices of political advertisements must not be higher than the prices in the existing marketing price-list of the given media.

4.1.5.3 Kosovo

Law on General Elections in the Republic of Kosovo, Article 49.1: Political advertising spots shall be no longer than 2 minutes (120 seconds).

Article 49.2 Broadcasters which choose to air paid political advertising are required to offer a minimum number of minutes of free airtime to each certified political entity during the campaign period as following:

- a) 20 minutes for private Kosovo-wide television broadcasters;
- b) 40 minutes for the Public Service Television Broadcaster;
- c) 15 minutes for private Kosovo-wide radio stations;
- d) 30 minutes for each of the two Public Service Radio channels;
- e) 15 minutes for all other television stations;
- f) 10 minutes for all other radio stations.

Article 49.3 This free airtime may be provided, at the discretion of individual broadcasters, in the form of participation in debates, discussion shows, interviews outside regularly scheduled news programs, or as free political advertising spots.

Article 49.14: The price per second charged for paid political advertising spots shall be no higher than the lowest rate charged for that time and day of the week in the past six (6) months

4.1.5.4 The former Yugoslav Republic of Macedonia

The Electoral Code, Article 75-e (1): From the day of the announcement of the elections until the beginning of the election campaign, the broadcasters and printed media shall not broadcast, i.e. publish paid political advertisements, except for advertisements and announcements for collecting signatures for supporting a candidature of a group of voters.

(4) From the day of the announcement of the elections until the day of their completion, the broadcasters and printed media and electronic media (internet portals) must not broadcast, i.e. publish advertisements financed by the Budget of the Republic of Macedonia, the budgets of the municipalities and the City of Skopje and other persons who have been entrusted by law with performing public authorities.

Article 75-f 43 (1): During the election campaign, in the first and second round of voting, the broadcasters covering elections may broadcast a total of 18 minutes of additional air time for advertising to every hour of real-time broadcasted programme, exclusively aimed for paid political advertising, of which for the ruling political parties may be allotted maximum of 8 minutes, for the political parties in opposition maximum of 8 minutes, for the political parties in the Parliament of Republic of Macedonia who do not have a parliamentary group may be allotted one minute of air time, and for the political parties which are not represented in the Parliament of Republic of Macedonia may be allotted one minute of air time. (...)

(3) The broadcasters, the printed media and the electronic media (internet portals) are required, within 5 days of the day of calling elections, to establish pricelists for paid political advertising of the participants in the electoral process.
(...)

(6) The pricelists must not be subject to change during the election campaign.

(7) The broadcasters, the printed media and the electronic media (internet portals) are required to use regular pricelist for paid political advertising during the election campaign, whereby the price per second for paid political advertising should not exceed the average advertising price, as calculated in the 3 months preceding the day of calling elections.

(8) The broadcasters, the printed media and the electronic media (internet portals) in the Republic of Macedonia are required to provide equitable access to paid political advertising to all participants in the electoral process.“

Article 76(4): Broadcasters cannot broadcast paid political advertising during news, special informative programmes, educational and children programmes and during live broadcast from religious, sport, cultural, entertainment and other events.

(5) The public broadcasting service shall not broadcast paid political advertising.

4.1.5.5 Montenegro

Law on Election of Councillors and Representatives, Article 64 (1): Presentation of submitters of candidate lists through commercial and non-profit broadcasting agencies shall be carried out based on the rules to be adopted by the broadcasting agency with the aim to ensure fair editorial policy and equal presentation of submitters of verified lists of candidates.

2. The commercial and non-profit broadcasting agencies shall adopt the rules referred to in paragraph 1 of this Article and make them available to the public no later than 10 days from the day of election calling

Recommendations

In view of the different positions on this matter, and different backgrounds for its implementation in terms of the development of the media scene, different traditions etc this analysis does not take a stance on whether this practice should be accepted or not. What is important is to underline that if paid advertising is allowed it should be subject to some rules: primarily, that equal treatment (in terms of access and rates) is given to all parties requesting airtime. In addition, the public must be aware that the message does not represent an organic, editorial part of the content, but has been paid for. In that sense, for example, regular presenters of news and current affairs programmes should not take part in paid political advertising.

As mentioned, it may also be considered important to set limits on the amount of paid advertising that can be purchased by a single party. There are no strict regulations to specify whether it is desirable to set any precise limits on the amount of paid advertising, as it is considered that the decision on this matter should be taken at the national level.

4.1.6 Free political advertising

It is a practice in many countries for political parties to access, at no cost, the public service broadcast media to deliver their electoral messages. This is what is generally called “free airtime” or “free political advertising”. It is a direct form of communication between politicians and voters, without any intermediary role by the media. One of the main advantages of giving free airtime to political parties is that it can compensate the risk of unfair and biased coverage of the campaign by certain media. In addition, unlike paid political advertising, the lack of financial strength of a party is not an obstacle to access the electorate

The following subchapter presents the basic legal definitions of the free political advertising in the WBT election laws and regulatory acts.

4.1.6.1 Albania

Electoral campaign of electoral subjects on the Public Radio and Television, Article 80 (1): During the electoral campaign, the Public Radio and Television provides to registered political parties and to the CEC free airtime for campaigning, which is allocated according to the following rules:

a) a total of two hours is provided to the CEC according to the time slots it requests. At least two-thirds of this time shall be between 18:00 and 22:00;

b) for parliamentary parties that received more than 20 per cent of the seats in the last elections to the Assembly, the CEC allocates equal airtime of no less than 30 minutes on the Public Television and the same airtime on the Public Radio; for the rest of the parliamentary parties, this airtime is no less than 15 minutes. If airtime is increased for one party or one respective coalition, the time allotted to another party or coalition shall be proportionally increased;

c) each party that does not hold a seat in the Assembly, but runs in elections is allocated 10 minutes of airtime on the Public Television and 10 minutes of airtime on the Public Radio.

4.1.6.2 Bosnia and Herzegovina

The Election law of Bosnia and Herzegovina, Article 16.15 (2): The private electronic media may provide free broadcast time for direct access by political parties, during 30 days prior to the Election Day, but under equal conditions applicable to all.

4.1.6.3 Kosovo

The Law on general elections in the Republic of Kosovo General Rules for Political Advertising on Radio and Television, Article 49.1 Political advertising spots shall be no longer than 2 minutes (120 seconds).

Article 49.2 Broadcasters which choose to air paid political advertising are required to offer a minimum number of minutes of free airtime to each certified political entity during the campaign period as following:

- a) 20 minutes for private Kosovo-wide television broadcasters;
- b) 40 minutes for the Public Service Television Broadcaster;
- c) 15 minutes for private Kosovo-wide radio stations;
- d) 30 minutes for each of the two Public Service Radio channels;
- e) 15 minutes for all other television stations;
- f) 10 minutes for all other radio stations.

Article 49.3 This free airtime may be provided, at the discretion of individual broadcasters, in the form of participation in debates, discussion shows, interviews outside regularly scheduled news programs, or as free political advertising spots.

Article 49.10: The total time of aired free political advertising spots on one broadcaster shall have a maximum of 20 minutes per certified political entity.

Article 49.12: Private broadcasters which choose not to air paid political advertising time to any certified political entity are not required to offer the minimum free airtime as specified in paragraph 2 of this Article.

Article 49.14: The price per second charged for paid political advertising spots shall be no higher than the lowest rate charged for that time and day of the week in the past six (6) months

4.1.6.4 The former Yugoslav Republic of Macedonia

The Electoral Code, Article 75 (5): During the election campaign, in the first and the second round of voting, the Public Broadcasting Service is required to broadcast free political presentation of the participants in the election process, in line with the principles for balanced coverage of elections, determined in Article 75-a of this Code.

(6) The date and the order of the broadcast of free political presentation of the participants in the election campaign shall be determined by drawing of lots.

(7) The free political presentation of the TV programmes services of the Public Broadcasting Service should be broadcasted in the period between 16:00 to 23:00 hours.

(8) The programme service aimed at broadcasting the activities of the Parliament of Republic of Macedonia in the duration of 3 hours shall provide free political presentation of the campaigns of the political parties represented in the Parliament of Republic of Macedonia, as well as one hour of free political presentation of the campaigns of the list submitters who are not represented in the Parliament of Republic of Macedonia. As regards the use of the three hours i.e. the one hour, the participants in the campaign may decide to submit recorded material or use their time slot for direct address from studio.

4.1.6.5 Montenegro

The Law on Election of Councillors and Representatives, Article 64 (1): Presentation of submitters of candidate lists through commercial and non-profit broadcasting agencies shall be carried out based on the rules to be adopted by the broadcasting agency with the aim to ensure fair editorial policy and equal presentation of submitters of verified lists of candidates.

2. The commercial and non-profit broadcasting agencies shall adopt the rules referred to in paragraph 1 of this Article and make them available to the public no later than 10 days from the day of election calling

The Public Service Media (RTVCG) self-regulatory act:

Article 17: Each candidate list will be allocated at least 200 seconds of free political advertising per day, in six advertising slots, out of which two will be broadcasted on RTVCG Channel 1, and four on RTVCG Channel 2.

4.1.6.6 Serbia

The Law on Elections, Article 49: Organizations which broadcast radio and television program, and are founded by the Republic of Serbia shall, from the day of calling of the elections, in their political informative programs which can be seen or heard throughout the territory of the Republic, ensure the presentation of the submitters of the electoral lists and of the candidates from the electoral lists, as well as the exposition and explanation of the electoral programs of the submitters of said lists, in accordance with this law.

Organizations referred to in paragraph 1 of this Article shall not be allowed to, under any circumstances, enable the presentation of candidates and the exposition and explanation of programs of submitters of electoral lists in the commercial, entertainment or other program.

4.1.6.7 Turkey

The Law on basic provisions on elections and voter registers: Political parties shall be given the following electioneering rights: a) two speeches not more than 10 minutes on the first 10 days and the last day to explain their programs and projects, b) an additional 10 minute for political parties having a group in the Grand National Assembly, c) an additional electioneering time of 20 minutes for the party having the political power or the larger one of the parties sharing the power and additional 15 minutes for other parties holding the power.

Recommendations

Acknowledging the positive aspects of free political advertising, recommendations go to further strengthening provisions granting free airtime to political parties/candidates on public broadcasting services. Nevertheless, it is also recognised that there are some disadvantages with the practice of free airtime. For example, giving access to extremist views might help the propagation of ideas which are harmful to democracy and/or create a kind of congestion of the communication channels which might hurt major political parties in delivering their messages to the audience.

The way of dividing free political advertising space among parties, that is, deciding which parties qualify for airtime and in what amounts of time is a difficult and sensitive question, the solution to which differs from one country to another. Sometimes the division of airtime is based on the past performance of a political party or the number of seats it holds in parliament (proportional access). In other countries, such as the new democracies, there is a tendency to divide airtime equally among all the contending parties (equal access). Another possible way of dividing airtime is to allocate a minimum amount to all contenders and add supplementary time on a proportional or other basis (mixed access). Considering the fact that the proportional access gives certain advantage to the incumbent or a small number of stronger political parties, and taking into consideration the usually dynamic political scene in the “new” democracies, the mixed access would probably be the most appropriate solution.

When airtime is made available to parties, it should be granted in a fair and non-discriminatory manner and on the basis of transparent and objective criteria.

4.1.7 Examples of the election regulatory frameworks in other countries⁷

4.1.7.1 Denmark

A diverse and open media environment plays an important role to enable a vibrant political climate in the country. In addition to the active participation of the major broadcast media (DR, TV2) during the elections, print media also play a significant role in informing the public of political matters. Advertising of a range of public associations, including political parties, is prohibited on television, as

⁷ The following country chapters are based on the adapted reports published in the IRIS Special edition „Media coverage of elections: the legal framework in Europe“, European Audiovisual Observatory, Strasbourg, July 2017 (ISBN 978-92-871-8480-1). The relevant OSCE/ODIHR country election monitoring reports have been consulted as well.

is television advertising of “political messages” during the campaign period. The Press Council, established by law, adjudicates media-related complaints. Its decisions are not subject to appeal.

The official campaign period commences when the elections are announced by the prime minister and can be as short as three weeks. Campaigning can continue up to and on election day, except in the vicinity of polling stations (as, for example, in Finland).

All Danish broadcasters are subject to the Radio and Television Broadcasting Act. At the same time, DR, TV2 Danmark and TV2 regional channels have public service obligations determined by a political agreement in the parliament and are embodied in public service contracts that outline principles of their programming. Main political parties raised no concern with access to or coverage by the media.

In accordance with the Radio and Television Broadcasting Act, advertising by a range of public associations, including political parties, is prohibited on television. Additionally, television advertising of 'political messages' is prohibited in the period between the announcement of elections and election day. The term “political messages” is interpreted broadly and includes messages that aim to promote public opinion on political matters. It is understood that this prohibition extends to advertising by organizations and unions, in which they express political views. Additionally, the law expressly prohibits sponsorship of all programs by political parties or other public associations, as well as any sponsorship of the news and current affairs programs on television and on the radio.

Newspapers, especially major dailies with large circulation, such as Politiken, Berlingske Tidende and Morgenavisen Jyllands-Posten, form a significant part of the media landscape. Newspapers usually have extensive coverage of the elections, and also publish paid political advertising.

All print and broadcast media are regulated by the Media Liability Act of 1998. This law specifies that the “content and conduct of mass media shall be in conformity with sound press ethics.” Although a major media outlets have internal codes of conduct, they participate in formulating the overarching rules of ethics for media under the auspices of the Press Council.

The Press Council is established by the Media Liability Act to adjudicate media-related complaints. It is composed of eight members, representing editors, journalists and the public, and is chaired by a Supreme Court judge. The Press Council receives some 200 complaints yearly, a number of which are deemed inadmissible. Where possible, complainants are informed of deficiencies in their claims and advised to correct them.

In admissible cases, after the parties to the dispute are asked for comments, the Press Council may order a correction to be published. Adjudication of media-related complaints may take up to two months. Decisions of the Press Council are final and binding and cannot be appealed, although they are made public. Complaints related to coverage of political actors in the media are rare, especially as social media provide ample and timelier opportunities to react to possible issues.

Radio and Television Broadcasting Act

(The Radio and Television Broadcasting Act, cf. Consolidated Act no 827 of 26 August 2009, as amended by Act no 1269 of 16 December 2009)

Part 11

Advertising and programme sponsorship etc. and entering into partnerships

Advertising

(3) Advertisements for employers' organisations, trade unions, religious movements, political parties, political movements and elected members or candidates for political assemblies are not allowed on television.

(4) Advertisements for political messages are not allowed on television during the period from the date on which an election for a political assembly or a referendum is called until the election or the referendum has been held. If the date of the election or the referendum is announced more than three months before it is held, the advertisement-free period comes into force three months before the election or referendum is held.

4.1.7.2 Finland

Electoral campaigning in Finland is liberal, with no fixed campaigning period or campaign silence period, nor any restrictions on campaign advertising. Campaigning is largely unregulated and is allowed up to and on election day. The only restriction is prohibition of campaigning in vicinity of polling stations during voting days.

Finland topped the world press freedom index in 2014, a standing that speaks for itself about the quality and responsibility of the media and the public discourse in general. The media environment offers a pluralistic and diverse range of views with a variety of public and private television channels and radio stations, as well as a range of daily and weekly newspapers. Eighty-nine per cent of the population use the internet, with a majority using it to access political information. The comparison of these data with some countries in the Western Balkans would show a significant difference. In Serbia, for example, about 70 percent of the population regularly use the internet, but only one third of them using it to access political information. The media in Finland generally enjoys high public trust and its reports and coverage of politics are perceived to be professional and influential.

The Finnish public service media (Yleisradio- YLE) plays an important role in providing political information to voters. YLE has the legal obligation "to treat all political parties equally and to follow uniform criteria", with a number of electoral programmes to give all contestants equitable conditions for campaign. It largely operates on the basis of the Finnish Broadcasting Company Act, Code of Conduct and Article 10 of the Political Party Act, which allows YLE to take "aspects relating to public service programming" into consideration when implementing this obligation of equal treatment.

During the presidential elections, YLE provides debates, interviews (giving each candidate a 30 minutes primetime slot) and reporting on campaign events. The election coverage package includes one major debate with all candidates, plus a series of live radio interviews and broadcasts as well as election-related programs for Swedish speaking TV and Radio (Svenska Yle). Private TV channel MTV3 is organizing a number of discussions and interactive panels, to which all candidates are invited. In addition, the public service media coverage of the parliamentary elections gives the opportunity to each candidate to record a four-minute interview in the language of his/her choice to be posted on

YLE's website. YLE is also organizing various television debates with the participation of parliamentary and non-parliamentary parties in separate programmes.

There are no legal regulations on the media coverage of the campaign. Media is largely self-regulated, with the only rule concerning elections stemming from the Act on Political Parties, according to which "state institutions should treat all parties equally." It also gives discretion to YLE to choose an appropriate way of implementing this obligation in its programming, which is comparable, for example, to the editorial flexibility given to the UK broadcasters by Ofcom regulation. Digitalization of the news production has led to various changes in newsrooms and the Internet has become an important source of information during elections. Voting advice applications and "election machines" which help voters identify candidates most close to their policy preferences, have become popular digital tools. Similarly, Helsingin Sanomat has its own software, which assesses quantitatively the coverage provided to political parties in online media.

The Council for Mass Media is a self-regulating independent body, which developed guidelines for journalists with the aim of supporting the responsible use of freedom of speech. The Council promotes good journalistic practice and considers complaints on breaches of professional ethics, including during the election campaign.

It enjoys the investigative role when violations pertaining freedom of the media are brought to its attention. The Council's decisions are then published on its website, including the complete decision if the complaint is upheld. Such verdicts tend to be very influential, and media journalists largely act within the legal and ethical norms.

The Council for Mass Media is comprised of a chairperson and thirteen members appointed for a three-year term. The chairperson is appointed by the Managing Group of the Council for Mass Media (Julkisen sanan neuvosto, JSN). Eight members represent areas of expertise in the field of media and five are recruited through open competition.

Only journalists that have declared affiliation with the Council and accepted the principles promoted by it are bound by the Council's decisions.

4.1.7.3 Germany

Regulation of broadcast media during elections and referenda

The regulatory environment in Germany is characterised by the dual broadcasting system, as part of which the relevant regional legislators (Articles 30 and 70-1 of the Grundgesetz⁸) adopt separate provisions for public and private broadcasters. Among these provisions, a distinction should be made between the regulation of election advertising and that of election reporting, since the scale and magnitude of legislative intervention in these areas vary considerably.

⁸ Basic Law of the Federal Republic of Germany, version of 23 December 2014 (Federal Gazette I p. 2438)

Election advertising in broadcasting

Under Article 7(9)(1) of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement), political advertising is, in principle, prohibited by broadcasters in an effort to prevent individual social groupings and forces from exerting a disproportionate influence on public opinion by purchasing advertising time. However, exemptions apply during election campaigns. All public service broadcasters except Radio Bremen, Radio Berlin-Brandenburg and Saarländischer Rundfunk are obliged to allocate airtime for election advertising free of charge. As far as national broadcasters are concerned, for Zweites Deutsches Fernsehen (ZDF) this requirement is set out in Article 11(1) of the *ZDF-Staatsvertrag* (ZDF Inter-State Agreement – “the ZDF-StV”), under which parties are entitled to a reasonable amount of airtime in the run-up to *Bundestag* (lower house of parliament) and European Parliament elections if they feature on at least one state list or nomination. The broadcasters that make up the ARD⁹ however, are subject to their respective regional provisions, which are essentially similar but also extend the airtime allowance to include *Landtag* (regional parliament) elections in the broadcast area concerned. For national private broadcasters, Article 42(2) of the RStV sets out an obligation equivalent to that of Article 11 of the ZDF-StV, at the same time ensuring that broadcasters’ costs are reimbursed. However, the rules for regional private broadcasters are more diverse: while some regional media laws require broadcasters to allocate airtime, others merely give them the option of doing so. One common feature of all the aforementioned regulations, however, is that broadcasters must respect the principle of equal opportunities for all parties when allocating airtime, as required at constitutional level by Articles 3(1) and 21(1) of the GG and in ordinary law by Article 5 of the *Parteiengesetz* (the Parties Act – Part G), to which many regional media laws refer. This principle has been frequently reiterated by the courts in relation to airtime allocation during election campaigns ever since the *Bundesverfassungsgericht* (Federal Constitutional Court) took a landmark decision in 1957, and has become known as the principle of “graded equal opportunities”. It states that airtime should be allocated in accordance with the importance of the parties, which can be measured according to factors such as previous election results and the size of the parliamentary representation of the party in question. The parties alone are ultimately responsible for the content of their election advertisements. Broadcasters’ right to monitor and to refuse to broadcast them is therefore limited to situations in which it is obvious that their content seriously infringes general laws in the sense of Article 5(2) of the GG, which particularly include criminal laws.

Election reporting in broadcasting

In contrast to election advertising, German law contains no specific provisions concerning editorial programmes with election-related content. Article 32(2) of the *Bundeswahlgesetz* (the Federal Elections Act) prohibits, across all sectors and in all media, the publication of results of exit polls conducted on election day before polling stations are closed. When reporting on opinion polls, broadcasters are also always obliged, under Article 11(2) of the RStV, to indicate whether they are representative. The same Article, along with corresponding provisions of regional laws, requires broadcasters, in accordance with general programming principles, to remain objective and impartial, while Article 10(1) of the RStV demands that they verify the accuracy of their own comments and label them as such. Although this is usually sufficient to protect parties’ interests in purely news-based programmes, the lack of regulation of editorial programmes covering election campaigns (television debates between party leaders, political discussion programmes, etc.) is offset by very

⁹ The ARD is short for the “Association of Public Broadcasting Corporations in the Federal Republic of Germany” (“Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland”). With its nine self-governed regional public broadcasting corporations, which are independent from the state or government and publicly funded, the ARD offers a diversity of programmes on television, on the radio and online for all.

clear case-law, since such programmes usually have a significant influence on the formation of public opinion. This is based on the assumption that, although the principles applicable to election advertising cannot be transferred directly to editorial election reporting, broadcasters must respect the “graded equal opportunities” principle. However, since programming freedom carries much greater weight in such reporting, all that is ultimately required is a coherent overall programming concept that takes sufficient account of all parties in proportion to their importance.

Self-regulatory codes or practices concerning elections/referenda

In broadcasting, self-regulation is achieved through the publication of guidelines for the allocation of airtime for election advertising and programming guidelines by the public broadcasting authorities. The Landesmedienanstalten (regional media authorities), which are responsible for monitoring private broadcasters, have also jointly published a set of guidelines on the implementation of Article 43(2) of the RStV. Although these guidelines are not legally binding, they describe the legal interpretation of the media regulators, in particular their view on what is reasonable in terms of the volume and scheduling of election advertising.

For the written press, the Pressekodex (Press Code) sets out general requirements for journalists. Although it has no direct legal binding force, it is referred to by courts verifying compliance with the due diligence obligations of the press in cease-and-desist, right-of-reply and compensation cases. With regard to election campaign reporting in particular, Guideline 1.2 of the Press Code requires the press to report opinions with which it disagrees in order to fulfil its obligation to inform the public truthfully. Guideline 7 states that (political) advertising should be separated from editorial content and labelled as such. The Presserat (Press Council) can punish breaches of the Press Code after conducting a complaints procedure by issuing a simple notice, a letter of disapproval, or a (public) reprimand, which is the harshest sanction available.

The Press Code’s provisions also apply to journalistic telemedia. Incidentally, German law only invites online service providers to adhere to a voluntary system of self-regulation.

Claims regarding reasonable coverage

Even though election advertising and election reporting are already regulated in the broadcasting sector, disputes frequently arise in the run-up to German elections, usually between broadcasters and small political parties that do not think they are receiving sufficient coverage. In such cases, it is often left to the courts to assess the importance of the party and, on that basis, whether the broadcaster’s overall programming concept is compatible with the “graded equal opportunities” principle, taking programming freedom into account.

Conclusion

The above description of current regulation of the media during election campaigns shows that there are major disparities between the rules applicable to broadcasters, print media and online media in Germany. While the legislative authorities attach particular importance to the role of broadcasters during election campaigns (imposing strict regulations as a result), it only sets out general principles for print media, combined with a self-regulatory system based on the Press Code, and maintains a ‘hands-off’ approach in the online sector, where it relies entirely on voluntary self-regulation.

Conflicts between media freedom and the rights of political parties in the broadcasting and press sectors can and therefore must be resolved – albeit over and over again – on the basis of existing

regulations and established case law. However, the lack of rules for the digital world creates problems that cannot be resolved (or at least can only be partly resolved) through the use of existing tools. Since the risks posed to diversity of opinion and equal opportunities for political parties by phenomena such as “fake news”, social bots and the online activities of state authorities cannot be tackled effectively, there is clearly a fundamental need for regulation in the online sector in Germany.

4.1.7.4 France

Current regulations

A number of regulations that apply to all media, both traditional and online, govern the dissemination of information concerning elections or a referendum. Article L. 52-1 of the Electoral Code prohibits, during the six months prior to an election, “the use, for the purpose of election propaganda, of any commercial advertising in the press or any means of audiovisual communication”. This rule, which can also apply to referendum campaigns, additionally covers online public communication.

The Law of 19 July 1977 which, under the supervision of the Opinion Polls Commission, aims to ensure “the objectivity and the quality of opinion polls” published in France and “concerning issues directly or indirectly linked to electoral debate”, requires that media publishing such polls also include various details concerning how they were conducted. Article 11 prohibits, “on the day before and the day of any vote”, the publication of or commentary on any pre-election opinion poll “by any means”. In other words, the media cannot publish the results of exit polls or forecasts based on partial results until all polling stations are closed. Under Article L. 52-2 of the Electoral Code, “no election results, either partial or final, may be communicated to the public by any means” before the last polling station is closed. In order to maintain the adversarial nature of the electoral debate, the media are also banned, under Article L. 48-2 of the Electoral Code, from publishing comments by a candidate that include “a new electoral argument to which their opponents are unable to offer a considered response before the end of the election campaign”.

Lastly, under Article L. 48 of the Electoral Code, media coverage of an election or referendum campaign is governed by the provisions of the Law of 29 July 1881 on freedom of the press concerning electoral propaganda. Candidates or parties criticised by the media in the run-up to an election or referendum can instigate legal proceedings for insult, defamation or incitement to hatred, violence or discrimination, or demand the right of reply. The 1881 Law states that, during an election period, the deadlines for publishing a reply in a daily newspaper and appearing in court in cases involving alleged defamation or insult against a candidate for elective office should be twenty-four hours, with the judgment required before election day.

Regulation of broadcast media during elections and referenda

During election and referendum periods, in order to guarantee “respect for the pluralist expression of schools of thought and opinion in radio and television programmes,” audiovisual media must obey strict rules laid down in the resolution of the Conseil supérieur de l’audiovisuel (Higher Audiovisual Council – the “CSA”) of 4 January 2011, which are usually supplemented with recommendations specific to each election. During the six weeks leading up to an election, audiovisual media must, in their election coverage, ensure that the candidates and their supporters “are presented fairly and

given fair access to airtime". News coverage unrelated to the election remains subject to the rules that apply outside election periods. Once an election campaign is underway for presidential, legislative and European elections and most referenda, stricter editorial obligations apply to all public service radio and television channels (France Télévisions, Radio France and France Médias Monde). Legal provisions determine the overall length of campaigns for the various elections, and how airtime should be distributed between the different candidates, parties or groups. The CSA lays down "the rules concerning conditions for the production, scheduling and broadcast of programmes" during the official campaign before each election.

Audiovisual media must respect the so-called "quiet period" beginning at midnight on the day before the election, which is required under Article L. 49 of the Electoral Code, during which "the dissemination to the public, by electronic means, of any message that constitutes election propaganda is prohibited". Promotional audiovisual programmes of a political nature are prohibited at all times. During election periods, press advertisements must not contain "references, verbal or visual, to candidates or election-related issues".

Self-regulatory codes or practices concerning elections and referenda

Generally speaking, journalists' codes of ethics and the editorial or programming charters adopted by the media do not set out any specific principles regarding media election coverage. The Broadcasting Charter of France Télévisions contains the current regulations. In 2012, opinion poll organisations agreed to uphold the ban on the publication of opinion polls on the day of and the day before an election. In 2017, Le Parisien decided to stop commissioning political opinion polls during the presidential election campaign.

Recent and emergent issues

The regulation of airtime allocated to politicians and political parties in the audiovisual media was relaxed for the presidential election by an organic law of 25 April 2016. Although radio and television channels retain a degree of editorial freedom, the application of the fairness principle remains mandatory. The organisation of a televised debate involving the five main candidates also raised the question of whether, in accordance with the fairness principle, all candidates should be invited. On the other hand, a debate involving all the candidates close to the election could damage the adversarial nature of the electoral debate.

The rules on opinion polls, which were completely overhauled under a law of 25 April 2016, still appear out of touch with the widespread use of the Internet and social networks during election periods. The new legal definition of an opinion poll does not include the numerous online surveys conducted among panels of Internet users, which do not constitute representative samples of the electorate. Often published with electoral forecasts, they do not fall within the supervisory remit of the Opinion Polls Commission. The ban on publishing opinion polls on the day before and the day of an election day can easily be bypassed by publishing, on foreign websites or social networks, the results of exit polls or forecasts based on partial results. Violations of this ban, and of the other rules applicable to the media during election periods, are rarely punished. The criminal sanctions laid down in law are never imposed. The CSA makes little use of its power to impose sanctions, often merely issuing caution. The media can justify the publication of private or defamatory information about election candidates by claiming that it is contributing to a debate of public interest. An election can be cancelled if irregularities or abuses have affected the election result.

Conclusion

During election periods, rather than simply distinguishing between traditional and online media, French regulations impose contrasting requirements on the written press and the Internet on the one hand, which enjoy fairly extensive editorial freedom, and audiovisual media on the other hand, which are subject to more stringent rules and are monitored by the CSA. In line with the CSA's recommendations, these regulations were significantly improved in preparation for the 2017 presidential election. After the principle of equal speaking time and airtime was replaced with that of greater fairness during the interim period between the publication of the list of presidential election candidates and the start of the official campaign, the candidates were given much more exposure in the audiovisual media, with 61.5% more speaking time than in 2012. The harmonisation of voting hours in the different constituencies should help to prevent breaches of the ban on the publication of opinion polls on the day of and the day before an election. As far as election propaganda is concerned, the fact that the quiet period (which the CSA had said should be shortened) remains in place means that there are serious imbalances between the written press (to which it does not apply), audiovisual media (which are monitored by the CSA), and online media (which, apart from the websites of media supervised by the CSA, are not regulated at all).

Although they are still often perceived as excessively interfering in the freedom of information of the media and the freedom of political expression, the regulations applicable during election periods nevertheless appear to "reconcile the constitutional requirements of the pluralist expression of schools of thought and opinions with the freedom of communication in a way that is not manifestly imbalanced".

4.1.7.5 Italy

The Italian legislation governing political communication during elections and referenda is based on the principle of "information pluralism" and the right to free information, which make up the constitutional cornerstone of media regulation in Italy. These fundamental principles require that citizens be granted access to a plurality of cultural and political views. Accordingly, Italian law aims at providing representatives of the various political groups with equal access to the media.

The Italian legislation regulating political communication via the media during elections and referenda is relatively recent compared to that of other European countries. Indeed, the first piece of legislation to address political communication was only introduced in 2000, when Law no. 28 of 22 February 2000 (General provisions on equal access to media during elections and referenda and political communication – commonly known as the "Par Condicio Law") entered into force.

Current regulation

The Par Condicio Law sets forth a detailed and comprehensive set of rules governing the media presence and the media coverage of candidates, politicians and political parties. With specific regard to the provisions applicable during elections and referenda, the Par Condicio Law contains "equal air time" rules that are applicable to broadcast media, and procedural rules that are applicable to both broadcast and print media. In addition, some specific provisions regulate the publication of polls by

broadcast and non-broadcast media. Moreover, when elections and referenda take place, the Italian Communication Authority (Autorità per le garanzie nelle comunicazioni – "AGCOM") and the Parliamentary Commission for Public Service Broadcasting (the "PSB Commission") issue ad hoc regulations specifying the provisions of the Par Condicio Law that are applicable, respectively, to private broadcasters and to the public service broadcaster (Radio Televisione Italiana – "RAI").

As to "silence periods", under Italian law political "propaganda" may not be conducted the day before the date of an election or referendum. Within this context, private television and radio broadcasters are forbidden to broadcast electoral campaign material.

Although the Par Condicio Law lacks a similar provision, AGCOM and the PSB Commission apply a "non-campaigning rule" to broadcast media when adopting their respective regulations. In particular, AGCOM and the PSB Commission usually extend the statutory ban governing electoral campaigning to political programmes, stipulating that political programmes cannot be broadcast the day before the vote and on the voting day.

Regulation of broadcast media during elections and referenda

The Par Condicio Law sets out different rules in respect of informational programmes and political programmes. These provisions apply from the official announcement of an election or referendum until the end of voting.

"Political programmes" include political programming, debates, roundtables, presentation of candidates and election programmes, interviews and any other programmes presenting any kind of confrontation between political opinions and candidates.

Strict equal air time rules apply to political programmes in which candidates and political parties present their electoral programmes. Broadcasters that wish to offer political programmes (for example, debates or roundtables) shall notify AGCOM within five days of the date of the official announcement of an election or referendum. Furthermore, private radio and television broadcasters are allowed to offer party political broadcasts. However, only the public service broadcaster is obliged to provide party political broadcasts. Radio or television broadcasters that wish to offer party political broadcasts shall notify the PSB Commission and AGCOM that their respective broadcasting schedules shall include this type of content 15 days in advance of such broadcasts being aired. The broadcasting of political programmes and party political broadcasts is made available free of charge and is not considered to constitute advertising for the purposes of the relevant advertising limits. Private broadcasters are not obliged to provide party political broadcasts, but if they elect to broadcast such kind of programmes, they are required to make them available free of charge to all political parties. This option aims at making effective the equality of chances of political parties to compete each other: since the amounts of funds available to each political party may be significantly different, requiring them to pay for political broadcasts may actually undermine the goal of a level playing field among political parties regardless of their respective funds and financial resources.

Less arduous obligations are stipulated in respect of information programmes (for example, news programmes and newscasts). Indeed, they are not subject to any equal air time rule. However, they are required to provide balanced information to the public and to comply with the duty of impartiality, equality and completeness of information.

Finally, non-informational programmes (such as entertainment programmes) must avoid expressing any voting suggestions or preferences with regard to elections and referenda until the end of the

voting period. More generally, non-informational programmes are required not to influence voters in any way.

It is worth noting that, as far as parliamentary elections are concerned, Law no. 515 of 10 December 1993 (Regulation of electoral campaigns for the election of the Parliament) also applies. Article 1, paragraph 5 of this law provides that from the official announcement of an election until the end of voting, the participation of the following parties in informational programmes that are under the responsibility of a media provider must be limited, to the extent necessary, in order to meet the requirements of impartiality and completeness of information: election candidates; members of political parties; and members of the government, regional councils and regional governments. Also prohibited is the coverage of such parties and their participation in any other programmes. Additionally, specific rules are established in respect of local broadcasters.

Opinion polls

Article 8 of the Par Condicio Law stipulates several restrictions on polls, which are further specified by the Regulation on the publication and the diffusion of polls on mass media (the "Polls Regulation") adopted by AGCOM by Resolution no. 256/10/CSP of 9 December 2010. In particular, the Polls Regulation prohibits (until the end of voting) reporting on polls that start 15 days before the date of an election, even if other polls have been undertaken before this date. The ban encompasses voting polls, polls regarding political preferences, and any questions posed to the public that, even if not based on scientific criteria, may nevertheless influence public opinion and, accordingly, the results of elections and referenda. During the same period, reporting third parties' statements regarding polls is also forbidden, unless the results of such polls were already public before the 15-day period. In any case, the publication of poll results must comply with the procedural rules stipulated by the Polls Regulation. In the case of the publication of poll results, an information notice, inter alia, containing specific details must be provided.

Enforcement and penalties

When an election or a referendum is to be held, AGCOM is in charge of the enforcement of the rules set forth in the Par Condicio Law and by the regulations issued by AGCOM and the PSB Commission. AGCOM may act ex officio or upon complaint. In the event that a violation is found, AGCOM may order the non-compliant broadcaster to suspend those programmes being broadcast in violation of the law. If necessary, AGCOM may also order the adoption of remedy measures, including making available a specific slot in the broadcasting schedule to the relevant parties. Fines shall apply only in the event of repeated non-compliance with the orders issued by AGCOM.

Self-regulatory codes or practices concerning elections and referenda

No specific self-regulatory code or practice has been adopted in Italy with a view to ensuring equal access to media during elections and referenda.

The overlapping roles of AGCOM and the PSB Commission

When an election or a referendum is called, AGCOM and the PSB Commission implement the provisions of the Par Condicio Law by means of ad hoc regulations that apply, respectively, to private broadcasters and to the public service media (RAI). However, the Par Condicio Law does not provide for any form of coordination of the respective courses of action. This may lead to practical problems, since AGCOM and the PSB Commission might issue different regulations in respect of media players

that act in the same market as competitors. In fact, just such a situation arose in 2010 in relation to the ad hoc rules issued by AGCOM and the PSB Commission in respect of informational programmes.

On that occasion, AGCOM and the PSB Commission adopted the relevant regulations governing the media presence of politicians and political parties during local elections. The PSB Commission published the regulation applying to the public service broadcaster (RAI) before AGCOM. This regulation, however, contained an unusual rule governing informational programmes, which read as follows:

“Informational programmes, with the exception of newscasts, are subject to the rules governing political programmes”.

This provision was also in breach of the Par Condicio Law. Indeed, Article 2, paragraph 2 actually stipulates that the provisions on political programmes do not apply to informational programmes. Therefore, AGCOM had to consider two alternative options: (i) it could extend the same rule to private broadcasters, but by doing so it would violate a statutory provision; or (ii) it could regulate informational programmes by setting different rules than those governing political programmes, but in this case competing broadcasters would have to comply with different rules.

Ultimately, AGCOM introduced, by means of Resolution of 24 February 2010, a provision that, similarly to that established by the PSB Commission, extended the rules governing political programmes to encompass information programmes.

However, the Regional Administrative Court of Lazio (Tribunale Amministrativo Regionale) found this provision to be illegal, as it was in breach of Article 2 of the Par Condicio Law. As a consequence, AGCOM annulled the provision and informational programmes broadcast by private broadcasters were eventually subject to different rules than those applying to political programmes.

Other issues

False statements about candidates (that may be spread through broadcast, print and online media) are a hotly debated social and legal issue in Italy. Some controversial episodes have occurred quite recently where, during the course of electoral campaigns, allegedly “false information” has been spread concerning the reputation of candidates: for example in 2010, when the candidate who was eventually elected mayor of Milan (Giuliano Pisapia) was falsely accused of having a criminal record during a debate with the other candidate running for mayor.

There is no specific legislation governing such cases; thus, the general provisions on defamation apply. However, the spread of “false information” has increased dramatically because of the rise of populism and the growing use of the Internet and social media for political purposes. After the constitutional referendum held in December 2016, a huge debate began, resulting in some proposals aimed at preventing “fake news” that may lead to the imposition of strict liability on media platforms. Inter alia, a very controversial proposal was presented recently by Senator Adele Gambaro (“DDL Gambaro”). This proposal aims at criminalising the circulation of “fake news”, as well as biased or exaggerated information.

Conclusion

Although the Par Condicio Law and the relevant resolutions of AGCOM and the PSB Commission provide a detailed set of rules for broadcast and print media during elections and referenda, some loopholes remain open as far as online media are concerned. In the absence of any appropriate

corrective actions, the situation that arose in 2010 could easily arise again in the future, with potential damage to pluralism and competition in the broadcasting market.

The framework that is currently in force seems to be much too specific to traditional broadcasters and less detailed as far as print media are concerned, while no regard is paid to specific characteristics of online media that may be difficult to reconcile with this legal background. Even though AGCOM and the PSB Commission have the power to issue specific regulations, the Par Condicio Law could probably be improved by taking into account the different nature of the Internet compared to other forms of media and that the same content provided by broadcast media and print media can now be delivered through the Internet, including social networks. A more "holistic" approach, then, would be helpful in this respect.

With this in mind, in 2012 the outgoing President of AGCOM called for the implementation of certain legislative steps aimed at ensuring equal access to the media, affirming that it was necessary to reconsider the existing legal framework in the light of the new role of the Internet within the media context.

4.1.7.6 The Netherlands

A diverse and open media environment, comprising a wide variety of public and private television channels, radio stations, and daily and weekly newspapers, contributes to a vibrant political climate in the country. Television is considered to be the primary source of political information. Print media circulation rates are declining but are still relatively high, while digital media and Internet-based news services are growing in popularity. In general terms, the media are working with a high degree of professionalism and ethical standards.

The Dutch public broadcasting is not run by a centralized media company, but it is formed of member-based broadcasting associations that share common facilities gathered under the umbrella of NPO (Nederlandse Publieke Omroep). These broadcasting associations provide editorial media content to three television channels and seven radio stations nationwide, and thirteen regional television and radio broadcasters as well as to a number of online media. Within NPO, there are two main general broadcasting organizations, NOS (Nederlandse Omroep Stichting), and NTR (uniting the former public broadcasters Nederlandse Programma Stichting, Teleac and Radio Volks Universiteit). Besides these two general broadcasting organizations, there are 8 member-based associations that represent a large part of the public media. NPO operates independently from the government, even though it is funded both by taxpayers' money and by advertising revenues.

The main two commercial broadcasters are RTL Nederland, with four national TV channels including RTL4, the most popular commercial channel in the country, and SBS Broadcasting, with three national TV channels. Newspapers with the highest circulation are national dailies De Telegraaf followed by Algemeen Dagblad, and de Volkskrant. Internet has a high penetration and its role as a source of information is growing with the Netherlands being among the top EU countries by percentage of citizens having access to Internet.

The media system is largely based upon self-regulatory practices and institutions. The Constitution guarantees freedom of expression and freedom of speech. Detailed media-related regulations are

stipulated in the 2008 Media Act, last amended in October 2016. The amendments included new provisions for the appointment of members of the Board of Directors and the Supervisory Board of the NPO.

Self-regulatory codes or practices concerning elections and referenda

While the media system in the Netherlands is strongly influenced by several self- and co-regulatory instruments, none of these instruments has a specific focus on the role of the media during election campaigns. The general codes governing the media are the Code for Journalism (of the Netherlands Union of Journalists), the Code for Dutch Journalists (of the Netherlands Society of Editors), and the Guidelines of Netherlands Press Council. Advertising is also strongly influenced by self-regulation. The “Advertising Code Commission” has also issued several decisions on political advertising.

The key media regulatory body is the Media Authority (Commissariaat voor de Media, CvdM), which is responsible for overseeing publicly funded and private media for their compliance with the 2008 Media Act, the 2008 Media Decree and the 2008 Media Regulation. The CvdM grants licenses to private broadcasters, processes complaints related to the Media Act, and has the power to impose sanctions if outlets do not comply with the legislation. The CvdM currently consists of three members appointed by the Ministry for Education, Culture and Science (MECS), which also finances their activities. The members can be dismissed by the minister if found to be unfit for violating conflict-of-interest rules. The law does not specify required qualifications for appointed members, beyond the conflict-of-interest provisions.

The Press Council is a self-regulatory body that oversees compliance with journalistic ethics and good practice and can comment on all media production. It is possible for all citizens to file a complaint with the Press Council related to journalistic work. The Press Council has no power to impose sanctions or fines; however, its decisions contribute to public opinion regarding journalistic conduct. It reported receiving no complaints related to the journalists’ work during the last election campaign (parliamentary elections in March 2017).

During the 2017 parliamentary elections, and based on the 2008 Media Act, the CvdM (in agreement with the MECS and the Electoral Commission) granted free airtime to 19 parties that registered lists in at least 19 districts. The MECS decided to grant each party 18 minutes of airtime on television and 20 minutes on radio. The CvdM drew lots to allocate time slots for the spots on both television and radio. From 20 February to 10 March 2017, 18 of 19 eligible parties used their free airtime, while one party declined the opportunity. Besides the allocation of free airtime during the elections, the political parties represented in parliament are entitled to free airtime in the public media on an annual basis. The legislation does not further specify the conduct of the campaign in public and private media beyond the free airtime allocation.

The media covered the election campaign extensively, allowing citizens to have access to various political views and to make an informed choice. The main parliamentary political parties’ leaders received daily coverage in broadcasting media in a number of formats, including news programmes, electoral debates, current affairs programmes and election talk shows.

In general, the election media coverage focused on television debates and interviews. The main electoral debates for the 2017 parliamentary elections were organized by the public broadcaster NOS on 13 and 14 March, and by the commercial broadcaster RTL on 26 February and 5 March. NOS invited 14 political parties (using both the number of seats in the parliament as well as public opinion polls as criteria for the selection), while RTL invited parties that according to an average of combined opinion polls had the highest electoral ratings (top five for the first debate and top eight for the second). NOS also organized interviews with 13 party leaders in the framework of its Nieuwsuur news programme. Debates among party leaders and other election-focused programmes were also broadcast by other channels. Two non-parliamentary parties complained about unequal access to media claiming that the media only focused on the bigger parties.

For the election day (2017 parliamentary elections), NOS and RTL jointly commissioned an exit poll and broadcast the results following the closure of polling stations. They also organized a live election night programme to announce preliminary results and first reactions from political parties.

4.1.7.7 Spain

Introduction

The Spanish system regulating media and elections is notable in at least three aspects:

- Firstly, the Ley Orgánica del régimen electoral general (Representation of the People Institutional Act – “the LOREG”), that is to say the Spanish Elections Act, regulates the use of mass media for electoral campaigning.
- Secondly, political advertisements are forbidden on both public service media and private channels; however, parties and other entities participating in elections are entitled to free advertising slots on public service television and radio in a percentage relative to the total number of votes obtained by them in the previous round of equivalent elections.
- Thirdly, television channels’ coverage of political parties’ campaigning has to be proportional to the results obtained by each political grouping in the last equivalent elections.

The current regulations

In its Article 1(1), the Spanish Constitution states that “political pluralism” is one of the highest values that it upholds. Article 20(3) states that the law shall guarantee that the main social and political groupings have access to social communications media under the control of the State or any public agency, while respecting the pluralism of society and of the various languages of Spain. Furthermore, Article 149(1)(27) provides that the State holds exclusive competence over basic rules relating to the organisation of the press, radio and television and, in general, all the means of social communication, without prejudice to those of the powers vested in the Autonomous Communities that relate to their development and implementation.

The LOREG sets out some general rules that apply to all media, although the regulatory bulk concerns broadcast media. Under its Article 51, the electoral campaign begins on the thirty-eighth day after

the calling of elections. It lasts fifteen days and ends at midnight on the day immediately preceding the vote. From the calling of the elections to the legal start of the campaign, it is prohibited to disseminate advertising or electoral propaganda through posters, commercial media or advertisements in the press, radio or other digital media. Furthermore, no electoral propaganda can be disseminated once the electoral campaign has legally ended. Moreover, the publication and dissemination or reproduction of electoral polls by any means of communication is forbidden during the five days prior to Election Day.

Regulation of broadcast media during elections and referenda

Distribution of free advertisement slots

As a general rule, political advertisements are forbidden on both public service media and private channels. However, during the electoral campaign parties participating in the elections are entitled to free advertising space on public service television and radio.

The LOREG contains detailed rules about the distribution of free advertising slots. In general terms, this distribution is done according to the total number of votes obtained by each party, federation or coalition in the previous equivalent elections. If the territorial scope of the broadcaster (or its programming) is more limited than that of the election at stake, the distribution of free advertising slots is calculated according to the total number of votes obtained by each party, federation or coalition in the constituencies that fall within the corresponding broadcasting area or, where appropriate, programming. In the case of elections to the European Parliament, the allocation of advertising space is calculated taking into account the total number of votes obtained by each party, federation or coalition in the territorial scope of the corresponding broadcaster or its programming in the last such election.

The distribution of free advertising slots in respect of each public service broadcaster and its different programming areas is calculated according to the following scale:

Distribution of free advertising slots

Parties	Time allotted
Did not participate or did not obtain representation in the previous equivalent elections.	Ten minutes
Won representation in the previous equivalent elections but did not secure 5% of the total valid votes cast over the national territory or, if applicable, in the constituencies referred to in	Fifteen minutes

Article 62.

Won representation in previous equivalent elections and secured between 5 and 20 per 100 of the total votes cast.

Thirty minutes

Won representation in the previous equivalent elections and secured at least 20% of the total votes cast.

Forty-five minutes

The right to free advertising slots corresponds only to those parties, federations or coalitions that field candidates in more than 75% of the constituencies included in the broadcasting area or, as the case may be, the programming area of the broadcaster in question.

Parties that do not meet the required number of candidates are, however, entitled to fifteen minutes of broadcast time in the general programming of national public service media if they obtained in the previous equivalent elections at least 20% of the votes cast in an Autonomous Community, under hourly conditions similar to those agreed for the broadcasts of the parties referred to above. In such case, the free advertising slots shall be confined to the territorial scope of that Community. This right is over and in addition to that noted above.

Groups of voters that join together to advertise in public service media will be entitled to ten minutes of broadcast time if they meet the required number of candidates mentioned above.

There are special rules for cases in which two or more elections are held simultaneously. Depending on the nature of the elections at stake, the rules governing the distribution of free advertising slots differ slightly.

In order to determine the timing and order of free advertising slots, the relevant Electoral Commission give preference, in order, to the parties that gained the highest numbers of votes cast in the in the previous equivalent elections.

Regulatory authority during elections

The Junta Electoral Central (Central Electoral Commission) is the authority that distributes free broadcast advertising slots among public service media; it determines the proportion of slots available according to a calculation issued by the Radio and Television Commission. This Commission is appointed by the Central Electoral Commission and is composed of a representative of each party that is both participating in the elections and is already represented in the Congress of Deputies.

Such representatives will have a weighted vote in proportion to the composition of the Congress of Deputies. The Central Electoral Commission also elects the President of the Commission from among the representatives appointed.

The Central Electoral Commission may delegate to Provincial Electoral Commissions the duty of distributing free advertising slots in the regional and local windows of public service media. In such case, a territorial commission is created with the same powers as those noted in paragraph 2 of this article and with a composition that takes into account the parliamentary representation in the Congress of Deputies of the respective territorial area. This commission acts under the direction of the corresponding Provincial Electoral Commission.

In the event that only elections to a Legislative Assembly of an Autonomous Community are held, the functions noted in this article with respect to public service media shall be limited to the territorial scope of the said Autonomous Community, and shall be exercised by the Electoral Commission of that Autonomous Community or, in the event that it is not constituted, by the Electoral Commission of the province whose capital holds that of the Community. In such case the Electoral Commission of that Autonomous Community shall also have at least those powers enjoyed by the Central Electoral Commission, including that of the management of a Radio Television Commission (if so provided by the legislation of the Autonomous Community that regulates the elections to the respective Legislative Assemblies).

Furthermore, the Central Electoral Commission provides instructions to ensure that public and private media observe the principles of political and social plurality, equality and neutrality information concerning information relating to the electoral campaign (article 66 of LOREG). The CEC is as well competent to sanction the electoral infringements of the LOREG that are not considered as a criminal offense (art 153.1 of LOREG).

The role of public service and private media

Under Article 66(1) of the LOREG, public service media will undertake to respect political and social pluralism, as well as equality, proportionality and “information neutrality”, in their programming during the electoral period. The decisions of their administrative bodies can be appealed against to the competent Electoral Commission, in accordance with the provisions of the LOREG, and according to the procedure that the Central Electoral Commission has put in place.

In its Instruction 4/2011 (as modified by Instruction 1/2015), the Central Electoral Commission has further explained the obligations arising from an undertaking given by the media to respect during the election period the principles of pluralism, equality, proportionality and information neutrality.

Public service media

Governing bodies of public service broadcasters have to submit to the relevant Electoral Commissions their plans for covering the electoral campaign, including specific electoral debates, interviews and programmes that they intend to broadcast, as well as the criteria to be applied to specific information related to the electoral campaign. Such plans must reflect the principles of pluralism, equality, proportionality and information neutrality. The campaign coverage plans of public service media, as well as the events and programmes broadcast during the electoral period by

public service media that have an impact on the elections, may be challenged before the competent Electoral Commission.

Private broadcasters

In its Article 66(2) the LOREG provides that private broadcasters must also respect the principles of pluralism and equality during the election period. Likewise, they must respect the principles of proportionality and information neutrality in debates and electoral interviews, as well as in respect of information that they broadcast related to the electoral campaign, in accordance with the Instructions issued by the competent Electoral Commission. The principle of proportionality is taken to mean that the degree of coverage given to each political grouping should reflect the results obtained by that political grouping in the last equivalent elections. They can provide information on those parties that were not represented or did not obtain representation in the last elections, but these parties should not receive greater informational coverage than the political groupings that did obtain representation in the previous elections.

Management bodies of private televisions are allowed to organise or broadcast interviews or electoral debates, but in so doing they shall take particular account of the results obtained by each political grouping in the last equivalent elections. If a private television channel decides to organise a debate between the two candidates who obtained the most votes in the previous equivalent elections, it shall organise other bilateral or multilateral debates or provide sufficient compensatory information on those other candidates who also won representation in the previous equivalent elections.

Events and programmes broadcast by private television channels that have an electoral impact may also be challenged before the competent Electoral Commissions.

Self-regulatory codes or practices concerning elections and referenda

No specific self-regulatory code or practice or "soft law" has been adopted in Spain with a view to regulating the media during elections and referenda.

Recent and emergent issues

The so-called Jornada de reflexión ("Day of Reflection"), that is to say the day before Election Day, during which no campaigning or electoral advertising is allowed, has given rise to some criticism. It is argued that in the era of social media and the borderless Internet, such a rule cannot be enforced properly and no longer makes any sense. Moreover, examples such as that in which the Andorran version of a Spanish journal which published the daily prices of water and fruits (everybody in Spain understood them to represent political parties, according to their colours), in contravention of the five-day prohibition rule mentioned above, show how easily these rules can be circumvented.

Conclusion

The reform of the LOREG in 2011 was heavily criticised by the media at the time that it was implemented. The Unión de Televisiones Comerciales Asociadas (UTECA), which represents Spanish private broadcasters, argued that it infringed upon freedom of expression and information. According to UTECA, the rules introduced by the reform are not comparable to those in force in

other countries. Indeed, a comparison at European level shows that the Spanish system is unique among neighbouring countries, in particular due to two aspects:

1. The activities of the media during electoral periods are regulated by a political body in which neither the media nor the audiovisual regulatory bodies are represented.
2. The degree of coverage given to each political grouping in daily news programmes has to reflect the results obtained by that political grouping in the last equivalent elections.

The Spanish system has also been harshly criticised by different associations and journalistic organizations. In 2015, the College of Journalists of Catalonia brought a case before the European Court of Human Rights against Spain, although the Court declared the application inadmissible. In the same year, Reporters Without Borders (RWB) made a public declaration against the LOREG before the beginning of the electoral campaign for the municipal and autonomic elections. According to RWB, “Spain is the only European country that restricts electoral information through a political body such as the Central Electoral Commission, which controls the information [disseminated by] public broadcasters, applying criteria that seem more like political propaganda than journalism, and has as a result ‘corseted’ information – [which is] hardly professional and lacking in interest – thereby generating mistrust among citizens.”

4.1.7.8 Switzerland

Switzerland’s media landscape follows the multilingual and federal character of the country. Separate television, radio and newspaper outlets report in German, French, Italian, and Romansh.

The print media includes several high profile daily newspapers and weekly magazines, as well as a large number of local newspapers in the three main languages. As in many countries, the print media in Switzerland suffers from a shrinking circulation due to competition with online news sources and free-of-charge newspapers. The result has been consolidation of ownership, merging of editorial teams, and reduction of staff, which, according to some sources, has led to more uniform political information and editorial opinions across the country. Nonetheless, the print media actively covered the political campaign and parties in its regular reporting, as well as in feature articles, surveys, and investigative reports.

Political advertising on television and radio is not permitted in Switzerland. This ban includes advertising in support of parties, candidates, office-holders, and issues which are the subject of popular vote (see ANNEX).

The dominant source of political information remains the public radio and television SRG-SSR, which is the only national broadcaster. SRG-SSR is obliged to be objective and to present diverse facts and opinions. SRG-SSR developed detailed internal policies on electoral coverage. It devoted coverage to political parties and candidate lists based on their strength at the federal and cantonal levels. Programmes were regionally tailored according to different languages. SRG-SSR radio and television produced special information programmes on the elections, including debates featuring party leaders and candidates, as well as various roundtables on political issues.

Framework for Complaints on Media Issues

Complaints against print media may be lodged with the Swiss Press Council. During the last federal assembly elections (October 2015) only one unofficial complaint was filed by a candidate claiming that he was not provided with sufficient coverage.

For broadcast media, there is a three-tier complaints mechanism, including ombudspersons and the Independent Complaints Authority (ICA), with appeal possible to the Federal Supreme Court. Most complaints are resolved directly between parties that consider themselves aggrieved and the broadcaster, without a formal complaint being filed. Approximately 15 complaints were filed with ombudspersons during the 2015 federal assembly elections, almost all by candidates alleging that they did not receive a fair share of airtime. Only one appeal was filed with the ICA, which dismissed it. Officially, the ombudspersons have 40 days to rule on a complaint, while the ICA and the courts have no deadlines. In practice, however, election-related complaints are dealt with expeditiously.

International experts have noted that, in order to guarantee effective remedy, authorities should consider instituting short, mandatory deadlines for adjudication of election-related complaints concerning the broadcast media.

4.1.7.9 United Kingdom

Although the official campaign period starts 25 working days before election day, parties and prospective candidates may campaign at any point ahead of the election. Contestants may use public venues and air campaign broadcasts free of charge and receive discounts on distributing materials via post. Campaigning on election day is allowed, except in the vicinity of polling stations. Following complaints from previous elections, the EC has elaborated its guidance to local election authorities to enhance regulation on election day campaigning.

The media landscape is pluralistic and represented by a strong tradition of public service broadcasting led by the British Broadcasting Corporation (BBC), along with several other commercial broadcasters and a variety of print outlets. Broadcasters are legally obliged to ensure impartiality in their political and election coverage. Newspapers and magazines are less regulated and widely considered partisan.

The 2003 Communications Act is the main legislation regulating broadcast media concerning obligations on standards and content. Within this framework, the Office of Communications (Ofcom) oversees compliance of broadcasters and develops secondary regulations, which includes the Broadcasting Code, Rules on Party Political and Referendum Broadcasts and other guidance and instructions. Section 5 of the Broadcasting Code specifies general obligations of due impartiality and due accuracy, and Section 6 specifies requirements during an election (See Annex 2)

In March 2017, Ofcom amended the Broadcasting Code and Rules on Party Political and Referendum Broadcasts concerning the publication of a defined list of 'major parties' as means for

broadcasters to determine the amount of election coverage for political parties. Instead, OFCOM publishes guidance on “Evidence of past electoral support and evidence of current support ahead of elections”, and other recommendations, which would give broadcasters more flexibility while still requiring them “to report with ‘due accuracy, present with due impartiality, to give ‘due weight’ to the coverage of major parties and appropriate coverage to other parties and candidates”.

Paid political advertising on television and radio is prohibited. However, parties contesting the election are offered a number of broadcasts on television and radio, depending on their ‘due weight’ as defined by the broadcaster based on the OFCOM guidance. Debates among party leaders may be held with broadcasters free to decide their format in line with the Broadcasting Code.

In 2016, amendments to the media regulatory framework shifted oversight of the BBC from the BBC Trust to OFCOM. The BBC has longstanding guidelines on broadcasting during an election and retains its internal first instance review mechanisms for complaints on alleged non-compliance (See Annex 3). While OFCOM conducts selective monitoring of some larger broadcasters, it primarily acts upon complaints. It may convene a dedicated committee to review election-related complaints in an expedited manner, though it noted that often complaints are sufficiently addressed by the respective broadcaster.

The role of the media during elections and referenda is a complicated and complex topic. It is important to distinguish the media’s short-term impact during a campaign and its long-term cumulative impact. Also, it must be asked which media is being referred to? Thus, it is all too easy to ignore other media, including non-mainstream and community journalism. An authoritative source examining the issue is “Media in Context” and “The 2015 General Election: How Traditional and Social Media Shape Elections and Governing”, a study funded by the Economic and Social Research Council. Moreover, a snapshot after the 2015 General Election is offered by the Political Studies Association; and according to a survey conducted by the Panelbase research group of 3,019 people, 38% were influenced by the leaders debates, 23% by television news coverage, and 10% by party political broadcasts – according to the survey’s conclusions, television was “by far the most influential media source”, outscoring newspapers and social media. The Reuters Institute for the Study of Journalism specifically addressed the topic of social media during the 2015 general election, concluding that “the evidence points to traditional media, particularly broadcast media, remaining more influential than new digital platforms this time around”.

Regulation of broadcast media during elections and referenda

The UK communications regulator, Ofcom, is tasked with ensuring that the special impartiality requirements in the Communications Act 2003 and other legislation relating to broadcasting on elections and referenda are applied at the time of elections and referenda. Rules are included in the Communications Act 2003 and the BBC Charter and Agreement (2017). Broadcasters should also have regard to relevant sections of the Representation of the People Act 1983 – in particular sections 66A, 92 and 93 – and the Political Parties, Elections and Referendums Act 2000. In March 2017, Ofcom published a statement regarding changes regarding section 5 (due impartiality and due accuracy) and section 6 (Elections and referendums) of the Broadcasting Code, supplemented by guidance notes (see Annex 2 and Annex 3).

Rules stipulated by section 333 of the Communications Act 2003 – regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts – and the BBC Agreement are contained in Ofcom Rules on Party Political and Referendum Broadcasts. However, such broadcasts are also required to comply with the relevant provisions of the Broadcasting Code – for example the provisions regarding “harm and offence” – notwithstanding the fact that broadcast content is normally the responsibility of the political parties concerned. In March 2017, Ofcom published its decision to remove the concept of the list of “larger parties” from the rules on party political and referendum broadcasts (“PPRB Rules”). The previous PPRB Rules required broadcasters to offer a minimum of two party election broadcasts (“PEBs”) to each of the defined “larger parties”; in relation to broadcasters’ own election programming, broadcasters were required to give “due weight” to the “larger parties”. However, under the new PPRB Rules, broadcasters “use their own judgement, based on the criteria of past electoral support and/or current support”.

The Election Committee is a delegated authority from the Ofcom Board to determine disputes between broadcasters and political parties regarding the allocation/scheduling of party election broadcasts and referendum campaign broadcasts under PPRB Rules. The Committee also make decisions on complaints received in relation to standards set by Ofcom on due impartiality in respect of programmes during an election or referendum period.

Local items during elections and prohibition on exit polls

In relation to local items broadcast during election periods, Ofcom is required to adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in items about the constituency or electoral area during the election period. Moreover, under the Representation of the People Act 1983, there is a prohibition on publication of the results of exit polls "before the poll is closed".

Party political and referendum campaign broadcasts

Broadcasters are to have regard to the Electoral Commission’s views on party political broadcasts. The Electoral Commission is an independent statutory body that regulates elections. Moreover, Section 37 of the Political Parties, Elections and Referendums Act 2000 provides that a broadcaster “shall not include in its broadcasting services any party political broadcast made on behalf of a party which is not a registered party”. In addition, paid political advertising is prohibited under the Communications Act 2003.

Further, and in relation to referendum campaign broadcasts, section 127 of the Political Parties, Elections and Referendums Act 2000 provides that broadcasters only include referendum campaign broadcasts by organisations designated by the Electoral Commission.

Adjudications and cases

Ofcom has adjudicated many complaints concerning elections and referendums over the years. A representative recent case is “Your World with Neil Cavuto” on Fox News in June 2016, where a complainant who objected to this programme discussing the referendum on the UK’s membership of the EU on the day of the vote while the polls were still open.

In *Petition of Scottish National Party (SNP) and Others*, the Scottish National Party attempted to use the courts to ban the broadcast in Scotland of a BBC TV prime ministerial debate because the corporation had allegedly breached its rules on impartiality by excluding the SNP.

Self-regulatory codes concerning elections and referenda

Firstly, the Code of Advertising Practice applies to advertisements in newspapers. However, under section 7, "claims made in marketing communications, whenever published or distributed, whose principal function is to influence voters in a local, regional, national or international election or referendum are exempt from the Code". Further, marketing communications by central or local government, as distinct from those concerning party policy, are subject to the Code.

Secondly, the Editors' Code of Practice is applied by the two press regulators (although it is under review by both IMPRESS and the Editors Code Committee). The Code, as noted, does not have a section specifically about elections and referenda coverage. Given that the Code applies to both offline and online versions of printed media, a fortiori, the permission to be partisan covers both platforms. Finally, the Broadcasters' Liaison Group comprises broadcasters who make airtime available to registered political parties to help them promote their manifestos to the electorate and to designated organisations in referendum campaigns. Meetings of the BLG are chaired by the BBC's Chief Adviser, Politics. The BLG has a remit for party political/election broadcasts and referendum campaign broadcasts, including production guidelines. The BLG has no remit for editorial coverage of elections or referendums. It has no decision-making powers, so the key elements are decided by the individual broadcasters.

Recent and emergent issues

The first issue worth mentioning relates to the content of campaign literature. Currently, the general position is that "there is very little regulation of election or referendum campaign literature", with political parties, candidates and referendum campaigners being responsible for the content of their own campaigns and "subject to the general restrictions of criminal and civil law". Increasingly, and in particular regarding the recent EU referendum, the accuracy of campaign arguments and the correlated control over political advertisements is an issue. However, the Electoral Commission has stated that "we do not believe that a role as a "truth commission" would be appropriate for us given the breadth of our other functions".

The second issue is the increasingly prominent and influential aspect of elections is the so-called "leaders debates". There is no statutory footing for such debates – which are, in essence, simply a genre of broadcast programming. Ofcom has stated: "The decision on which leaders are represented in any broadcast debates is an editorial matter for broadcasters in agreement with the political parties taking part." The Scottish National Party and Plaid Cymru have both complained about issues of (non) allocation, the former going to court to seek an interim interdict in respect of a debate's publication in Scotland (the attempt failed). An academic paper has noted how "striking" the relatively ad hoc way the occurrence of debates and the rules that govern them are negotiated, with the process essentially being understood as a private enterprise between political parties and broadcasters. Notably, the current Prime Minister, Theresa May, has ruled out participating in a televised election debate with other party leaders in the June 2017 snap election.

Conclusion

With the holding of local elections in May 2017, and an early general election in June 2017, the rules applicable to media coverage of elections will again fall into focus in the UK. As noted above, Ofcom has been adopting some new rules relating to electoral coverage, and the Electoral Commission has been providing helpful guidance on the rules applicable to online media.

The majority of print media are overseen by the Independent Press Standards Organisation (IPSO), established in 2014. The IPSO ensures that print media follow the Editors' Code of Practice and may investigate complaints on any breaches and can impose sanctions for serious violations.

4.1.8 Different models of the election regulatory frameworks

An essential element of media regulation and self-regulation which is, given the sensitivity of the matter (popular vote) and a short period of the time in which these measures could be applied, especially important during election campaigns, is a complaints procedure. By "complaints procedure" should be understood the means and procedures by which the regulatory and self-regulatory bodies, political parties or politicians and other stakeholders can implement (or seek) adjudication on alleged breaches of the law, regulations or good practice on election coverage. As mentioned, the procedure applies only during the short period of time; therefore, complaints mechanisms should be designed to provide a speedy resolution of a complaint. If, for example, the alleged breach concerns a factual or "contextual" inaccuracy, negative, biased or stereotyped portrayal of an opponent that may influence popular vote, there is little use in correcting the error once the election is over.

In a standard routine, complainants always have the right to take legal proceedings that are laid down in the respective country's laws - a civil suit claiming financial compensation for defamation and the alleged moral damage, for example. Also, there should always be a built-in appeal process that allows disappointed complainants or the media themselves to seek a higher judgement from an independent court of law. It can last for months, sometimes (and in some countries, the Western Balkans region notably included) even for years. However, during the election period of time the emphasis should be absolutely on a speedy, no-cost, non-confrontational resolution of the alleged breaches of regulations and good practice.

This may be particularly important in situations in which intolerance – or even hostility - between the competing parties (or communities they represent) is tangible and there are likely to be many issues of dispute. This is a common feature in many transitional and post-conflict societies (again, the Western Balkans notably included), where the tradition of unprotected changes of political power on general elections is still within one-digit number and where ethnic or religious background is often used to be identified with a certain political option. An efficient complaints procedure could help to reduce tensions between the different political options, by not allowing (or at least suppressing)

disputes between the political parties (and the media coverage of it) to escalate into disputes between communities. One could say that basically all Western Balkans' countries could be considered as "fragile" in that sense.

The variety of complaints procedures in different countries reflects the variety of different types of political culture, democratic tradition and regulatory frameworks. There may not even be a single uniform procedure applicable in more than one country. Great Britain, for example, has a statutory Broadcasting Complaints Authority to deal with the electronic media and a voluntary Press Complaints Council with responsibility for the print media. Neither of these is confined to elections in its mandate, but it generates its efficiency from a tradition of a mature democracy with established and respected institutions and procedures. Finland, Denmark or Switzerland, for example, have a very "light" model of the complaining procedures (using basically the same regulation and self-regulation tools during the election period as in the non-election media activities), which is primarily result of the high level of public trust in media, and high professional standards, both, in freedom of speech and in responsible, accurate and unbiased reporting. On the other hand, regulatory and complaints procedure in Italy, for example, is more elaborated and in legal terms more strictly defined, which is result of taking into account concerns about concentration of private media ownership, and perceived political bias within the public broadcaster.

One of the most important practical aspects of the law or regulations on media in elections is who is responsible for implementing it. It is logical to expect during the election campaign greater day-to-day contact between editors and the regulatory authority responsible for media during elections than there would normally be with, for example, a broadcasting regulator. The relationship is likely to be (or at least should be) a collaborative one.

There are several possible approaches that can be taken:

- **An existing regulatory body may be given responsibility for the specific issues that arise during election periods**

It may often be the case that an existing regulatory body will take on the function of supervising and monitoring of media coverage of elections, either on its own or in conjunction with the election administration itself. The advantage of this model is, for sure, the fact that the media would not consider as existing regulatory body as "imposed" over the media/broadcast sector, but rather as continuation of the "standard" regulatory activities with a slightly redefined scope of work. The main disadvantage could be a presumable lack of resources of an existing regulatory body to take on a demanding supervising/monitoring activities. It is also about a lack of resources and internal mechanisms that would allow for a speedy resolution of disputes, which is an essential component of the election media regulation.

- **The media may set up their own regulatory body, possibly in collaboration with the political parties themselves**

Many in the media would see a system of self-regulation in elections as an ideal solution. This clearly works only in environments with a long tradition of democratic elections and independent and

responsible media, so that the solutions adopted to the problems of election coverage are sanctified by long-established practice.

Perhaps the best-known example of this approach is in Britain, where direct access Party Election Broadcasts are allocated by a joint committee of broadcasters and political party representatives. This is a strange hybrid solution, since the requirement for Party Election Broadcasts is established in law. The broadcasters then use the rough division of direct access broadcasters as a guideline for measuring their own allocation of time to the different parties in the course of news programmes.

Denmark and Finland, as mentioned, also has a self-regulating system. The law in Denmark forbids paid political advertising but says nothing about how (or whether) other forms of direct access broadcasting should be allocated. In practice, the public Danmarks Radio has allocated direct access slots equally between all parties running for parliament. This approach has been reinforced by decisions of the Ombudsman and Supreme Court, but is essentially voluntary (see more under: “Denmark” and “Finland”).

As mentioned, this model is designed primarily for a long-established democracies and tradition of independent media that have adopted an efficient and almost “interiorized” self-regulatory approach. Adoption of this model in countries with the less-than-required level of tradition and efficiency of democratic institution and free media (such as in Poland in early 1990ies, or – for example – in Zimbabwe when talking about the non-European countries) have not yielded the expect results in terms of self-regulation and efficiency of the complaint procedure.

- **An existing regulatory body shares responsibilities for the specific issues that arise during election periods with a specialized supervisory body**

It is quite common for different aspects of electoral coverage to be regulated by different bodies. The advantage of such an approach is that it separates areas where the regulator may have to develop strict and binding rules from those matters of professional practice that are best left to the media themselves to determine. The disadvantage is that two different regulatory bodies are operating in two closely related areas, with the danger for overlapping of their mandates, which would have a direct negative impact on the key requirement of efficiency and speedy procedure handling.

- **An existing electoral supervisory body, such as an electoral commission, may take on this responsibility, sometimes through a specialized sub-committee**

In many instances, responsibility for implementing any regulations on the media during election campaigns rests with the main electoral supervisory body itself. This is often seen as an appropriate solution if the electoral supervisory body has sufficient guarantees of independence - but also the expertise to conduct the specialized work of media regulation. The advantage of a specialized election monitoring/complaints body is that it will be designed to the address the need for speedy resolution of disputes.

Still, the danger of overlapping and blurring the line between responsibilities of the specialized electoral commission and the standard media regulator is not to be underestimated. The example of the election media coverage regulation in Croatia is illustrative in this regard.

The regulations applying to broadcast media in Croatia during elections are outlined in the election law and supplemented by the Rules of Procedure for Electronic Media with National Concession in during the Election Campaign, and by the rules issued by the State Electoral Commission (SEC).

The amendments to the election law removed the obligation of national broadcast media to give equal time to every contestant in journalistic coverage of the campaign. This change granted Public Service Media (HRT) and private broadcasters editorial discretion to give candidates proportional rather than equal time in news, analysis and other election-related coverage. While HRT is obliged to cover the campaign, private broadcasters could decide whether and to what extent to follow it. The rules adopted by the parliament stipulate that HRT give at least five minutes of airtime to each contestant. Pursuant to the legislation, public and private national TV channels could each host just one debate during the campaign.

On the other hand, the 2009 Law on Electronic Media mandates the Agency for Electronic Media (AEM) to monitor the broadcast media for their adherence to the provisions of the law. The agency, which employs a full-time staff of media monitors, can impose sanctions ranging from fines of up to one million HRK (some 130,000 EUR) to termination of a broadcast licence. Given that both the parliament and the SEC's rules instruct that media-related complaints during elections be directed to the SEC, the agency received no complaints during the campaign. However, the Ethics Commission for supervision of elections dealt with eight media-related cases, one of which it referred to the SEC, despite the fact that both bodies have limited capacity to investigate such cases and do not hold any sanctioning powers.

In terms of efficiency and the rational use of resources available, it could have been much better solution to assist the SEC in the implementation of media-related provisions in the electoral legislation, by granting Agency for Electronic Media a more formal role in monitoring elections coverage.

4.1.9 Protection of minors

Despite its undeniable importance, the topic of protection of minors¹⁰ in political advertising (use of children in media promotional materials and political advertising), as well as a set of protection tools to safeguard the agreed principles, seems to attract media regulators and election monitoring process only occasionally. Even considered in a much broader terms (protection of minors in advertising industry in general, or protecting minors from harmful content), this topic divides

¹⁰ "Minors" are usually referred to as children under the age of 16

legislators, regulators, industry or audience greatly. There seems to be a widely shared perception that the number of approaches towards protection tools and the variety of tools actually used pose a serious problem for any comparative analyses even in the wider scope, where the ultimate question stays the same as of the introduction of the multiplatform media environment, and that is: how to effectively ensure that parents and guardians of minors are provided with enough relevant tools and resources to protect their children and to make sure that such tools and resources will withstand the risks and traps of the online/converged world?

The lack of common standards is even more visible in the field of the protection of minors specifically in political advertising. It is to be noted that there is hardly any debate taking place on the issue of political advertising and whether the media (and other) regulators need to safeguard children and minors (and if so, how) from potentially negative influences.

Considering the sensitivity of the issue, the need for the regulatory restrictions seems obvious, although their definition is much more complex than it appears to be. Any regulatory framework should be aware of the issue of consent, the notion of exploitation, the measure of maturity, the role of the regulatory restrictions contrasted with that of the parents/guardians, the involvement of minors in society, amongst others.

First of all, the United Nations Convention on the Rights of the Child grants minors the right to participate, form an opinion and to form part of a political party. Despite this right, however, active participation by minors is often exploited both by commissioning agents, as well as by parents and guardians who give their consent for such participation. Children are undoubtedly fragile, vulnerable and need protection.

The reasons for self-regulation of the issue arise from the following:

- There is a general consensus that children and minors need to be “protected” but they also have a right to be proactively involved in terms of political participation
- Children and minors should not be treated as “second class” citizens, but they rather should have a say on the way they would like to see their communities develop.

The following articles (Article 12 and Article 13) from the UN Convention on the Rights of the Child (1989) are at the core of this debate:

Article 12

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 13

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

Elaborating on the rights of the child enshrined in the UN Convention, sociologist Roger Hart developed with UNICEF the following classification of the young people's political and social participation ("Ladder of Youth Voice"):

Rung 1: Young people are manipulated

Rung 2: Young people are a pure decoration

Rung 3: Young people are tokenized

Rung 4: Young people are assigned and informed

Rung 5: Young people are consulted and informed

Rung 6: Adult-initiated, shared decisions with young people

Rung 7: Young people lead and initiate action

Rung 8: Young people and adults share decision-making process

The first three "rungs" represent forms of a manipulative non-participation. They also implicitly make a recommendation that children and minors need to be protected from situations where they are used by politicians as "decoration" or in a tokenistic manner. Rungs 6, 7, and 8 generally represent youth/adult partnerships, or intentional arrangements designed to foster authentic youth engagement in communities.

However, transitional democracies, burdened often with a pre-modern and/or manipulative concepts of "doing politics", very rarely see an active participation at levels 6, 7 or 8. Rungs 1, 2 and 3 are much more often. Since children are attractive subjects for the promotion of any product (including politics), it is very likely that their images will be used for political communication. Controversy is open (and unresolved) as of the first negative political advertisement using minors titled "The Daisy Girl", released by Lyndon Johnson's campaign during the 1964 U.S. Presidential election. The commercial showed a young girl picking the petals off a daisy, while a voice off camera began a countdown to a nuclear explosion. The ad ended with an appeal to vote for Johnson, "because the stakes are too high for you to stay home." Though the ad (as a paid commercial) ran for under a minute and only aired once, it was repeated so many times by the TV networks within the election coverage that maybe even decisively helped Johnson win majority of the electoral votes.

Few give consideration to the long term repercussions that might follow a child's participation in the election campaign for example, such as bullying or discrimination. It could be questionable whether minors understand the context of their political participation, but regardless of that, they cannot escape the consequences. In order to minimize these consequences, and to suppress a manipulative potential of using minors in political advertising to get a higher share of the so-called "emotional voting", any attempt to regulate this sector should take into account the following principles:

- Children and minors need to be protected from situations where they are "used" as "props" or in tokenistic manner in political partisan activities, especially during election campaigns

- A distinction should be made between different ages of children and minors, and with it between appropriate levels of their involvement
- Negative representations of children and minors in political ads should be absolutely avoided
- Children and minors should be discouraged from attending public (political) manifestations without undue preparation from parents/guardians.

In order to implement the above mentioned principles, a responsible regulator and monitoring body should reach a consensus between all relevant stakeholders on the following issues:

- Political parties are to commit themselves, as much as possible, to refrain from using children, particularly those under 8 years of age, in political campaigning unless the issues are evidently correlated to children
- Children and minors' images, if used in political ads, are to be, as much as possible, retrieved from stock photos to avoid possible labelling, bullying and any other negative impact
- Political parties should ensure that children and minors who are involved in advertising campaigns are depicted in a positive and constructive way, without attempting to exploit or to warp the representation and experiences of this population thus keeping in mind the best interests of the children and minors. Negative exemplifications are to be eliminated completely
- All political publicity material that involves children and minors should be screened prior to broadcasting by the responsible body. A thorough, exhaustive and mandatory screening process needs to be undertaken by media regulator
- Children and minors under the age of 16 are not to be included as a "backdrop" (seated or other) during election-time political party events
- Political parties and political candidates need to fill in a detailed and comprehensive consent form not only signed by the parents/guardians but also by the children and minors who intend to participate in newspaper, billboard, TV and other political ads.

Protection of minors in political advertising in WBT countries

There are no specific provisions in the electoral codes of the WBT countries on the protection of minors in political advertising, with exemption of the Electoral Code of the former Yugoslav Republic of Macedonia, which reads:

Article 76 (3): Participation of minors in paid political advertising is prohibited.

In addition, the RTCG Election Campaign Guidelines (Article 11) stipulates as follows:

Article 11

Public Service will strictly implement ban on using children and handicapped persons in political promotion, in accordance with the Media Act and Regulation on advertisement and sponsorship in electronic media.

Recommendations:

Considering the overall importance of the issue, and the potential to manipulate with it in the election campaign in order to get “emotional votes” of the electorate, the recommendation is to elaborate this specific problem (in terms of the explicit regulation of participation of children and minors in political advertising), in the election codes of the WBT countries. There are no specific and mandatory international regulations on this issue, but the transposition of stipulations on protection of children and minors in commercial advertising, with the needed adjustments, as well as consulting the above mentioned recommendations should serve the purpose.

It would be safe to say that Article 11 of the RTCG Guidelines (“Public Service will strictly implement ban on using children and handicapped persons in political promotion, in accordance with the Media Act and Regulation on advertisement and sponsorship in electronic media”) is not in accordance with the Article 12 of the UN Convention on the Rights of the Child, which requires treatment of children as “capable of forming his or her own views the right to express those views freely”. Understanding the main intention of the regulation (protecting children and minors from the manipulative use), Article 11 should be revised in line with the recommendations given in this Analyses, and read as follows: “Public Service will strictly implement regulations on using children...”

Also, the similar intervention should be made in Article 12 by replacing term “handicapped persons” with “persons with disabilities” with a similar wording (“regulation” instead of “ban”). The change should be implemented in the primary legislations, as well.

4.1.10 Measures concerning all media/General provision

The following universal measures, concerning all media, are based on Recommendation **CM/Rec(2007)15** of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (Adopted on 7 November 2007).

General provisions

- **Non-interference by public authorities**

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

- **Protection against attacks, intimidation or other types of unlawful pressure on the media**

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

▪ **Editorial independence**

Regulatory frameworks on media coverage of elections should respect the editorial independence of the media.

Member states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.

▪ **Ownership by public authorities**

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

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

▪ **Professional and ethical standards of the media**

All media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, *inter alia*, respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes.

▪ **Transparency of, and access to, the media**

If the media accept paid political advertising, regulatory or self-regulatory frameworks should ensure that such advertising is readily recognisable as such.

Where media is owned by political parties or politicians, member states should ensure that this is made transparent to the public.

▪ **The right of reply or equivalent remedies**

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.

▪ **Opinion polls**

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

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

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

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

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

- **“Day of reflection”**

Legislators/regulators may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction.

4.1.11 Measures concerning broadcast media

The following chapter (Measures concerning broadcast media) is based on Recommendation **CM/Rec(2007)15** of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (Adopted on 7 November 2007).

- **General framework**

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

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

Member states may derogate from these measures with respect to those broadcast media services exclusively devoted to, and clearly identified as, the self-promotion of a political party or candidate.

- **News and current affairs programmes**

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

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

- **Non-linear audiovisual services of public service media**

Member states should apply the principles contained in points 1 and 2 above or similar provisions to non-linear audiovisual media services of public service media.

- **Free airtime and equivalent presence for political parties/candidates on public service media**

Member states may examine the advisability of including in their regulatory frameworks provisions whereby public service media may make available free airtime on their broadcast and other linear

audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period.

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

4.1.12 Measures concerning the print media

In general terms, there are no special regulations for the print media on the reporting or editorial coverage of elections. On the basis of tradition and due to the different nature of the print and the broadcast media (e.g. broadcast media use the limited public good for dissemination of the content, therefore they need a licence to broadcast which creates a different set of responsibilities against the public, while the print media operate on a strict market-driven regulations) the press is free to have a distinct political leaning. In certain situations, the leading global papers are even expected to declare their election preferences (New York Times and Washington Post during the U.S. Presidential Elections, for example). The way the public has access to and is influenced by the press differs significantly compared to the broadcast media. The print media always require an „active“ approach (buying a copy, reading the content), while broadcast media in general have a free access to their audiences and therefore reach substantially higher percentage of the general public. In most of the Western Balkans' countries, TV is „the main source of news“ for more than 70% (in some countries, like the former Yugoslav Republic of Macedonia and Kosovo, more than 80%) percent of the audience, while the circulation of daily and periodical print has almost halved in the past five years.

Paid advertising in the print media is a common practice in Europe, and as a result newspaper owners are in principle free to accept or refuse advertising requests from political parties, subject to the application of relevant general rules, in particular concerning competition. Nevertheless, in rare occurrences when a public authority owns a newspaper, equal treatment and non-discriminatory advertising price list should be applied to all political parties that request the purchase of advertising space. Again, the rationale behind this exception is that such outlets should fulfil a “public service mission” and treat the different political parties on an equal footing as regards paid advertising.

Among all WBT countries, only Kosovo has strict regulations on the political advertising in the print media. This is a rare example of regulation on (political) advertising in print that go well beyond standard provisions on active prevention of hate speech, defamation, ethnic and religious hatred, sexism, stereotyping and matters constituting an offence, in (paid) advertisement in print media, usually defined in Law on media. This provision contributes to the impression of an over-regulated environment for conducting the media coverage of the election campaign in Kosovo. At the same time, this stipulation is in a sharp contrast to the fact that only Kosovo legislation/regulations allows private broadcasters to decide not to air paid political advertising during the election campaign, making a usually strictly regulated area (political advertising in broadcast media) more relaxed than an usually unregulated field of activities (advertising in print), which has been scrutinized beyond the standard norms.

Paid Political Advertising in the Print Media

The Law on general elections in the Republic of Kosovo

Article 50.1: Print media shall provide equitable access to all certified political entities that request advertising space.

Article 50.2: A print medium shall apply the same rate without discrimination to all certified political entities.

Article 50.3: Each paid political advertisement shall clearly indicate the organization or individual responsible for it.

Article 50.4: Free advertising space provided to a certified political entity shall be clearly identified as such. Similar free space shall be promptly provided to all other certified entities that request it.

Article 51.5: Print media shall charge advertising rates to certified political entities that are no higher than the lowest officially listed and published advertising rates offered to all other advertisers for similar space and lineage which are in use thirty (30) days prior to the campaign period.

Recommendations:

When it comes to the measures concerning the print media, one specific issue needs to be elaborated in a more precise wording. The right of reply is ensured in most countries by the press, broadcasting or other legislation, as well as by the professional codes of practice. As a basic rule, if a candidate or a political party is entitled to the right of reply under the national laws or systems, it should be ensured that this right can be exercised and consumed during the campaign period.

In this regard, the regulatory acts on conducting the election campaigns in the WBT countries should include more precise stipulations on the right to reply, if possible within the Election Law. This stipulation should allow for a specific procedure to guarantee an urgent right of reply, including on the reflection day/ the election silence if the right of reply cannot otherwise be exercised.

5 FINAL RECOMMENDATIONS

Regulatory framework in WBT area, with provisions on equal treatment of political parties by the media during the election campaign, is on general terms aligned with the desirable/recommended international standards. In the absence of the one defined set of rules and unambiguous guidelines (as it is the case with the AVMS directive, for example), most of WBT countries have adopted solutions and definitions that have proved their validity and resilience in the countries with a history of dozens of free and fair elections.

Nevertheless, in practice there are generally shortcomings (reported on regular basis by OSCE ODIHR monitoring missions, for example) which indicate that the frameworks are insufficient. The situation is to a large degree comparable with the media legislation. While most – if not all – WBT countries have aligned their respective national legislations with the *acquis communautaire* (or are in the active process of doing it), the warning messages about the dire media freedom environment and new challenges to the freedom of speech are coming across the WBT region. National Progress Reports (issued annually by the European Commission) provide a convincing set of indicators of the deteriorated media freedom practice in the WBT region. The most recent OSCE and European Union-sponsored media conference (SpeakUp3 Follow Up, Belgrade, November 2016) also warned on the restrictions imposed (or, sometimes, even self-imposed, such as self-censorship, for example) to the free speech. Although the focus of the conference was on media legislation and new challenges to media freedom in Serbia, the message sent could resonate in any other WBT country.

The specific, complex and volatile dynamics of political events in Turkey, with their immediate reflection on the normative, regulatory and self-regulatory framework for enabling a free and fair election campaign (and, subsequently, the role of the media in the process) have resulted with a certain degree limited number of references to Turkey and its regulatory system in this Study. In addition, even if considered from the purely normative point of view, the normative system in Turkey is obsolete, open to different interpretations and far behind the solutions adopted in countries of the Western Balkan region.

As already mentioned, some of the legal stipulations in the election laws of the WBT countries (in relation to the media coverage of the election campaigns, political advertising, election silence, publishing of election polls) could be standardised. For example, there is no apparent need to stretch the ban on publishing election polls to five or even ten days before the election day, assuming that the media scrupulously follow other professional standards on reporting on polls, as enlisted in the “Election polls” subchapter. Election Law of the Republic of Kosovo should be amended (especially Article 47.1), to avoid a potential misinterpretation of the legal position and remit of the Central Election Commission and the Independent Media Commission.

As mentioned, implementation of the Principle of proportionality in some of the WBT countries (in Albania, for example) – although completely in line with the internationally recognised standards – in political reality favours the strongest political players/parties. Article 81. of the Albanian Electoral code reads:

News broadcasts of the Public Radio and Television

Article 81(1): During the political airtime of news broadcasts, the Public Radio and Television must apply an equal time ratio to all parliamentary parties that in the last elections to the Assembly, obtained up to 20 per cent of the seats in the Assembly. The parties that obtained more than 20 per cent of the seats in the Assembly are entitled to airtime that is allocated equally among them. Each of these parties is entitled double the amount of airtime of a party that has obtained up to 20 per cent of the seats in the Assembly.

By translating this provision into the political realm, the two strongest political parties efficiently protect their mutual status as the key players of the party system. This ambivalent dynamic makes it difficult for new political parties to build up significant power and deliver their messages to the electorate. Taking into consideration the dynamic political development in most of the WBT countries, the recommendation would be, as already elaborated, to apply a version of the principle of mixed access: each candidate and/or party is allocated a minimum amount to all contenders, while supplementary time is allocated on a proportional or other basis.

On a more general level, all WBT countries – although on a different magnitude – share the problem of non-conformity of provisions stipulated in the legal frameworks and the actual procedures. Considering the number of recommendations that refer to changes and amendments to the existing rules, the need for adopting a single unified election law which would incorporate all laws, by-laws and regulations that are addressing different types of elections in a single electoral code is apparent. Although it goes beyond the scope of the self-regulation, the independent regulators should prepare this kind of document at least as an informal guide to the elections.

Even a superficial overview of the WBT region election codes and regulatory acts would show that the regulation on “impartial and balanced” reporting on the election campaign and on the right to the “equal access to the media” and “similar levels of coverage” is nominally respected and in line with the widely accepted international standards. The problem is that in most of the Western Balkan countries (not to mention Turkey, especially in the light of more recent developments) the leading political options, through combination of their influence over major newspapers, political control of public broadcasters and, in some cases (most notably – although not exclusively - in Serbia) by a direct or indirect control over the advertising market, use this influence to advance their political agenda, at the direct expense of their political opponents/competitors. The example of Serbia is indicative to show that the media, dependent on government favour for funding, or dependent on the advertising income controlled by the Government and its cronies, largely presents favourable and extensive coverage of the ruling party. Coverage of the opposition, in contrast, is generally scarce and critical, and often slanderous. At the same time, independent regulators (such as REM and the Anti-Corruption Agency in Serbia) are either largely dysfunctional due to the lack of resources or lack of effective by-laws to support their activities.

These are by no means only country-specific problems.

Election codes of the Western Balkans countries are, in general terms, in line with the international standards in adopting the strict separation between the election campaign (time and space allocated to the registered election lists in communicating their messages to the electorate) and the news programming. Political messages of the election contestants are not allowed in news, culture, education, religious, children and similar content of the public interest. But, as the BBC Editorial Guidelines warns, “the election does not happen in isolation and other elected bodies may well continue their normal activity during the campaign. However, a General Election is particularly dominant and content producers need to comply with the general requirement of due accuracy and due impartiality, aware of the possible influence of any other political coverage on the election campaign“(BBC Election Guidelines, 3.3 Coverage of other political issues). „Where there are other major news stories, special care is needed to ensure that any political element is covered comprehensively, but also reflects the fact that we are in an election period“, continues the Guidelines.

Analysing the elections in the Western Balkans countries (as mentioned, for a set of different reasons, Turkey is a specific case) an uneven playing field of electoral competition regarding the „similar level of coverage“ and „separation of election campaign and news“ criteria is more than obvious. In general terms, the incumbent parties enjoy significant advantage over opposition and exploit these benefits to gain voters’ support, particularly during the election campaign. The most common mechanism is the use of government resources in campaigning. For example, there is a “blurring” of state and party functions wherein state officials affiliated with the ruling party attract media attention through ostensibly state activities (opening new state facilities during the electoral campaign for promotional purposes, for example). Omnipresence of the key representatives of the incumbent political party in the „regular“ news programming during the election campaign – even on the Public Service Media – is more the rule than exception in the WBT region. Another incumbent

power is the ability to call snap elections before parliament's four-year mandate expires, but this goes beyond the scope of the Study.

All the above mentioned problems could not be resolved by the more precise election codes. It goes beyond the core normative acts. It takes a stronger position and a stricter mandate of the independent regulators and co-regulators, as well as their synergetic approach to the civil society organisation in creating and supporting the public opinion aware of its strength and responsibilities, to efficiently address these problems.

This is a process, rather than a goal, which requires continues activities. The state of facts is that all of WBT countries are still, in one way or another, dealing with the residues of the authoritarian past, while new challenges (interplay between the election campaign and the social media platforms, for example) are emerging.

A quantum leap in regulation and self-regulation practises is therefore needed.

6 FINAL RECOMMENDATIONS MONTENEGRO

In general terms, regulation and self-regulation of an active interaction between media (primarily although not exclusively electronic media outlets) and electoral process should be based on the following basic principles:

- Election broadcasts should be monitored and regulated by an independent, impartial body
- The body should allocate time for direct access programmes and should have the power to hear and take binding action on complaints concerning broadcast-related violations by the media, political parties or candidates, including by ordering a correction or reply
- The body should render complaints decisions promptly
- If there is a regularly constituted, independent broadcast-monitoring body, it may carry out these functions; otherwise, a special body should be established for this purpose

In the process of transposition of these basic principles into the realm of the media and the overall socio-political environment in Montenegro, this Study will derive and elaborate its recommendations from the considerations (in grey) defined in the OSCE/ODIHR Election Observation Mission Final Report (Parliamentary elections, October 2016), as well as on AEM's comments on the first draft of this Study.

Consideration could be given to amending the election law to clearly define when the official campaign period starts and ends.

As elaborated under 4.1 Examples of legal definitions (4.1.1 The period of the campaign and of election silence) the election law does not specify when the official campaign period begins; it only states that the right to free airtime on public broadcaster (RTCG) starts on the day the candidate list is registered by the State Electoral Commission (SEC). Actual campaigning for the parliamentary elections in October 2016 started long before the elections were called, with billboards of several contestants appearing even before they had submitted their lists. Also, some contestants organized rallies before their lists were registered.

In order to make the election law more precise and unambiguous, Article 50 of the Law on Election of Councillors and Representatives should be amended by saying that the official election campaign period starts „30 days before the election date and ends 24 hours prior to the opening of the polling stations“.

Article 6 (3) of the Law on Election of Councillors and Representatives opens a possibility for different interpretations of the clause on electoral silence (“The election promotion via media and public gatherings shall cease 24 (twenty four) hours prior to the polling day”). Article 6 (3) should be amended to read as follows: “During the period of electoral silence no electoral campaign through media outlets, as well as rallies or other electoral activities, is allowed. The electoral silence shall begin twenty-four (24) hours prior to the opening of the polling stations and shall continue until the official close of polling stations”.

Effective supervision of media compliance with the law during the electoral campaign could be strengthened by a proactive independent body authorized to decide on complaints and take prompt and effective action against infringements of the law.

The election law provides general requirements for the coverage of the election campaign in the media, focusing mainly on the allocation of free airtime. The Electronic Media Law does not specifically regulate election campaign coverage, but provides for general standards of programme content and paid advertisements. In addition, the rulebook of the Agency for Electronic Media (AEM) required news to be presented objectively, accurately and in an impartial manner. Private broadcasters largely disregarded the legal requirement to adopt and adhere to internal rulebooks on campaign coverage based on the principle of equality; no sanctions were applied for non-compliance.

An efficient election monitoring may be particularly important in situations in which intolerance between the competing parties (or communities they represent) is tangible and there are likely to be many issues of dispute. As it has been already elaborated, an efficient complaints procedure could help to reduce tensions between the different political options, by not allowing (or at least suppressing) disputes between the political parties (and the media coverage of it) to escalate into disputes between communities.

Taking into consideration the AEM resources and expertise available (including the media monitoring capacity for the electoral period) the AEM should be involved in the election campaign monitoring and regulation in a more active and systematic way. As elaborated under 4.1.8 (Different models of the election regulatory frameworks), there are reasons to believe that the model defined as using of an existing regulatory body that may be given responsibility for the specific issues that arise during

election periods, would probably be the most appropriate for the specifics of the media and political scene in Montenegro. The model was additionally defined as:

“It may often be the case that an existing regulatory body will take on the function of supervising and monitoring of media coverage of elections, either on its own or in conjunction with the election administration itself. The advantage of this model is, for sure, the fact that the media would not consider as existing regulatory body as “imposed” over the media/broadcast sector, but rather as continuation of the “standard” regulatory activities with a slightly redefined scope of work. The main disadvantage could be a presumable lack of resources of an existing regulatory body to take on a demanding supervising/monitoring activities. It is also about a lack of resources and internal mechanisms that would allow for a speedy resolution of disputes, which is an essential component of the election media regulation”.

The new role for the AEM should be aligned with the role and responsibilities of a temporary parliamentary committee. The division of responsibilities should be based on a notion that the “media” portfolio is part of the AEM responsibilities (primarily in “measurable” terms of the program quotas and the appropriateness of the political advertisement and messages sent), while a temporary parliamentary committee should be involved – aside of the general electoral procedures – mostly in other aspects of the media coverage, such as a fair representation of political parties and individual candidates in “political programming”, such as election debates, round tables, etc. Of course, the nature of the election campaign and the media coverage of it makes impossible any utmost precise division of responsibilities; both the AEM and a temporary parliamentary committee should work in a close conjunction.

In order to make the monitoring and the complaint process more efficient, the AEM should be given a clear mandate to impose sanctions on any breach of the media coverage standards, in a range from an immediate publicising of corrections of inaccuracies or false reporting in media where it occurred, to penalty fees and up to temporary revocation of broadcasting licence.

The existing legal framework for the media would benefit from a revision to clearly define a political advertisement

Revision of the term “political advertisement” in the existing legal framework should be based on the following definition:

Political advertising is advertising whose central focus is the marketing of ideas, attitudes, and concerns about public issues, including political concepts and political candidates. The essential task of political advertising is to gain the confidence of the people for their acceptance of ideas and, in the case of political campaign advertising, to influence their vote. Political advertising differs from commercial advertising in that the product is either a person or a set of values rather than goods and services.

Shorter version:

Political advertising is a form of campaigning used by political candidates and political parties to influence political debate and to reach and influence voters.

It is recommended that the public media makes additional efforts to actively cover the campaign in an impartial and professional manner, rather than relying on the coverage submitted by the political parties.

Inaccurate or biased reporting is the problem that encompasses the whole media sector in Montenegro, not only the Public Service Media. Acknowledging the special importance of the Public Service Media in informing the general public, as well the fact that the present PSM self-regulatory mechanisms and internal rulebook do not provide for clear and unambiguous guidelines for covering electoral processes and campaign, a more comprehensive PSM editorial/election guidelines and editorial guidance should be drafted (see Annex 3, BBC Election guidelines).

Political parties could consider agreeing on and adopting a Code of Ethical Conduct during the election campaign.

Political parties are institutions of central importance to electoral democracy. The actions of political parties, their leaders, elected representatives, candidates, constituency associations, paid staff and volunteer members make a significant contribution to the integrity of democracy and democratic institutions, not only in the electoral arena but more broadly within the wider parliamentary and political processes.

Based on these considerations, the search for sound public policy frameworks for ethical conduct of candidates and political parties during the electoral process and beyond it – especially, although not exclusively – in transition countries and so-called “new democracies”, should be an important goal in raising trust in democracy and making the system more efficient.

The benefits of codes of conduct and ethics have long been recognized in such professions as journalism, medicine, law and accounting, for example. With increasing frequency, codes have been adopted in the business field and in parts of government, such as the public service.

The basic principles of the code of ethical conduct during the election campaign should be as follows:

- To lead political parties and individual candidates in a manner that will reinforce a culture of tolerance towards all other parties and candidates contesting election
- To refrain from using speech or from participating in actions which will have the effect of provoking either parties’ or candidate’s supporters or members of the general public to commit acts of intolerance or take other inflammatory actions

The code should also prepare a list of prohibited conduct including:

- Using language which provokes violence
- Intimidation of candidates or voters

- Publishing false information about other candidates or parties
- Plagiarising any other party's symbols, name or acronyms
- Offering any inducement or reward to a person to vote for a party
- Destroying, removing or defacing posters of other parties

7 FINAL OBSERVATIONS



Active implementation of most of the above-mentioned recommendations depends to a large extent on the public perception of the regulation and self-regulation bodies and their reputation within the wider professional community. Generally speaking, one of the basic prerequisites for a successful implementation of regulation and self-regulation mechanisms is a vibrant and well-established network of civil society organisations and a rich NGO scene. In some aspects (additional monitoring of the campaign expenditure by political parties or individual candidates, for example), non-governmental organisation may even have a formal role, especially in relation to a range of anti-corruption activities.

These constitutive elements (public perception, reputation, interaction with CSOs and NGOs) are not available on demand. Many established democracies, such as Denmark for example, do not have any limits on campaign expenditure by political parties or any other entities, nor require political parties to report the expenses incurred in their campaign. The reason is both simple and complex – it is about the trust in democratic institutions and procedures, built on many decades of their synergetic development. And, of course, it is about a tradition of independent and responsible media.

The process of defining a more efficient regulatory framework, that would reflect both basic, common international standards in electoral regulation and the country's specifics, is therefore only the first step in the long and complex endeavour.

At the same time, this process depends almost exclusively on the stakeholders themselves. Taking into account the paramount importance of it, there should be no delays in starting the process.

8.1 AGCOM Regulation (Italy)

Legal principles on political pluralism

Every political subject has to be ensured an equal treatment by broadcasters and has to be given a balanced access to information programs and political communication programs (Law n.28/2000, art.2)

Basic principles on political communication

TV and radio broadcasters must ensure all political subjects an equal access to:

- Information programs
- Advertising messages
- Political communication programs (debates, round tables, etc)

Political advertising messages

Videoclips produced by political parties, to make electors aware about their political programme

PSM is compelled to broadcast political messages for free in electoral period, and to offer the technical equipment (studios etc) to the political parties for the production of their messages.

These clips cannot interrupt other programs and have to be broadcasted in appropriate spaces (“containers”).

Times and spaces are equally shared between political parties.

Rules during non electoral periods

- Total time of political communication programming on commercial TV stations has to be shared in a balanced way among the political parties.
- PSM has specific obligations and has to broadcast periodical cycles of political communication programs
- Opinion polls have to be conducted according to qualified, statistical methods and, when published, need to be accompanied by a note giving the public the essential data.

Rules during electoral periods

- Specific application rules of the law principles are drafted by the AGCOM for commercial broadcasters and by Parliamentary Commission for Public Service Media before each election
- Broadcasters have to ensure that any information is presented impartially. It is forbidden to influence the public even indirectly. Candidates may only appear on TV during information programs
- Opinion polls about the outcome of elections and the political orientation of voters are forbidden to be made public, in fifteen days prior to the election day
- Political communication programs must be aired during determined time slots, so to assure they may be able to reach maximum audience
- Broadcasters must send AGCOM a schedule containing the total time dedicated to political communication programs, including the list of politicians and candidates taking part to it
- The presence of political representatives of ethnic minorities is specifically guaranteed

Monitoring and sanctioning

- AGCOM verifies that no political subjects takes part in programs aside from news and information programmes, political communication programmes and advertisement messages.
- AGCOM monitors the balanced presence of all candidates in the news and information programs and the appropriately equal and impartial behaviour of journalists
- In case of violation, AGCOM orders the broadcasters to restore equity and balance by transmitting programs with the prevalent participation of the damaged political subjects. In case of non-compliance, AGCOM may impose penalty fees up to 258.320 euro.

8.2 Switzerland: Federal Act on Radio and Television

(RTVA)

(Status as of 1 January 2017)

(...)

Section 3: Advertising and Sponsorship

Art. 10 Bans on advertising

1 Advertising for the following is prohibited:

a. tobacco goods;

- b. alcoholic beverages which are subject to the Alcohol Act of 21 June 1932; the Federal Council shall impose further restrictions for the protection of health and young people;
- c. political parties, persons holding political office or candidates for such offices and matters which are the subject of a popular vote;
- d. religious beliefs and the institutions and persons representing them.

2 The following are prohibited:

(4) Advertising which:

- a. disparages religious or political convictions;

(...)

is prohibited.

Art. 12 Sponsorship

(5) News programmes and programmes on political current events, as well as programmes and sequences of programmes which are related to the exercise of political rights in the Confederation, cantons and communes may not be sponsored.

Ordinance on Radio and Television

(RTVO)

(Status as of 1 July 2016)

Art. 17 Political advertising

- 1 Any group which takes part in popular elections is considered to be a political party.
- 2 Political offices are offices to which persons are appointed by popular elections.
- 3 The prohibition on advertising relating to matters that are the subject of a popular vote applies from the moment of publication of the date of the vote by the competent authority.

8.3 Draft Maltese standard for the participation of children and minors in political communication

The following document is presented for a number of reasons. Primarily, this is one of the few documents of its kind, it has been adopted only recently (July 2017), and it applies to a country with population and media market comparable to the size of Montenegro.

DRAFT MALTESE STANDARD

The participation of children and minors in political communication, election campaigns and all poll-related matters

July 2017

The Malta Competition and Consumer Affairs Authority has approved and endorsed this standard which now has the status of a National Standard as from the date of its publication in the official Government Gazette.

1. Foreword

This Standard provides Commissioning Entities with information guidelines for planning, preparing and producing political productions in which minors participate actively and/or passively in order to ensure their physical, psychological and emotional well-being.

This Standard promotes self-regulation by providing the necessary guidelines to commissioning entities when involving or engaging minors in political activities, this shall be without prejudice to the powers of competent authorities in the exercise of their functions at law.

2. Scope

This Standard is aimed to guide the commissioning entities during the planning and production of political communication and advertising efforts such as electoral campaigns, referenda and other related activities which involve the participation of minors. These guidelines are intended to ensure the protection of minors during all stages of these productions in support of the Maltese legal framework. Commissioning entities providing productions which are in line with these guidelines and related national legislation may declare self-compliance with the guidelines of this standard. Self-compliance is a sign of good practice that impinges positively on the campaign.

3. Definitions

3.1. Commissioning Entity

The commissioning entity is the body that is legally responsible for the production which comprises the political communication. This entity may either develop the production in-house or may finance a production house to develop and publish the production.

3.2. Election Campaigns

Electoral campaign duration

3.3. Minor

For the purpose of this standard, minors are under the age of 16

3.4. Participation (active or passive)

Participation is an essential principle of human rights and plays an important role in citizenship. The importance of the right of minors to participate is enshrined in a number of articles of the United Nations Convention on the Rights of the Child.

Minors may participate both as actors and/or models, as well as actual consumers. Active participation should be based on the evolving capacity of the minor; however commissioning entities are advised to always include shared decisions with the participating minors. It is strongly recommended that non-participatory contributions that would involve degrees of tokenism and manipulation are not practised.

3.5. Political Communication

Marketing communications in their entirety whose content encompasses themes related to the political, socio-economic, cultural and religious thought and life of the local community.

3.6. Production

For the purpose of this standard, a production consists of audio-visual media, print media (e.g. flyers, books, billboards and advertising locations) and online media (e.g. social media) used for political communication, election campaigns, referenda and poll related matters.

3.7. Referenda and Poll Related Matters

Any poll related matters such as the cases of the divorce, hunting and the EU membership referenda. Any other instances where, despite not requiring the direct vote from the public, political parties, unions, NGOs or religious organisations use marketing communication means to sway public opinion.

4. Planning

4.1. General Requirements

The commissioning entity shall establish a production plan which includes provisions for the protection of those minors intended to participate in the political communication. These provisions should ensure that participating minors are protected physically, psychologically and emotionally throughout all stages of the production. During planning any suggestions, opinions, preoccupations and perspectives originating from the prospective minors and their guardians are to be given full consideration. Planning may include considerations on:

- Production Objectives
- Production Context
- Production Contents
- Production Resources

This plan shall eventually be communicated to the prospective minors and their guardians prior to the commencement of any production.

4.2. Production Objectives

The potential participants and their guardians have the right to know the production objectives and target audience. These objectives may be designed for information purposes, to educate, to sway opinion, to bring about a discussion, or to convey political messages.

4.3. Production Context

This involves the identification of positive and negative issues related to the participation of the prospective minors within a politically polarised context. These issues pertain to their protection prior, during and after production to secure their well-being.

Considerations may include:

- Minors as individual human beings in their own right
- Minors' portrayal during participation, (i.e. positive and empowered)
- Inclusion and diversity as opposed to discrimination and tokenism

The commissioning entity shall review these issues with the prospective minors and their guardians.

4.4. Production Content

During the creative process, the commissioning entity will determine the narrative for the production establishing whether the minors will have primary or secondary roles (including stock footage). The portrayal of children must be age appropriate. Any changes to the content during the production shall be agreed on by the minors and their guardians.

4.5. Production Resources

The type of production may determine the necessary resources required. When planning resources, the following considerations are to be made:

- Health and Safety aspects,
- Responsible behaviour by adults in the presence of minors,
- Legal and other obligations.

5. Preparation

5.1. General requirements

These guidelines strongly recommend that production preparations be kept in accordance with the planning programme described in Clause 4. Preparations shall ensure that the production fulfils all applicable legal and other requirements and that there is agreed consent among all parties.

5.2. Identification of prospective minors for participation

To identify prospective participants the commissioning entity may request prospective minor participants to provide a profile (e.g. CVs) with the consent of the minors and their guardians. The commissioning entity is obliged to evaluate these profiles to identify participants who meet the production objectives established in Clause 4.3. The personal data of both selected and unselected

candidates shall be destroyed or returned once the campaign is over. The best interests of the prospective minors shall be adhered to throughout the selection process.

5.3. Information to potential participants

It is imperative the commissioning entity provides all information related to the production plan to the identified minors and their guardians. Information may be related the following aspects:

- The relevant part of the story board in which the minor will be involved
- Production location
- Duration of use of the production
- Dissemination of the production
- Agreed payment terms if applicable.

The positive and negative impacts related to their potential participation are to be communicated effectively to the identified minors. These impacts may include short term and long term repercussions. The commissioning entity may also provide information regarding support services offered by recognised caring professionals (e.g. Psychologists, Social Workers, and Counsellors).

The commissioning entity shall inform the selected participants and their guardians about their rights to withdraw from participation at any time, even after consent and production.

5.4. Consent

The commissioning entity shall ensure the selected participants fill in a consent form prior to starting any related activities. The consent form may be similar to the template provided in Annex A. It may be customised according to fit age-specific parameters and it shall contain provisions for guardians to give consent both for participation and also for the assessment that the minor shall undergo prior to starting any related activities. The form shall also clearly indicate the right of the participant to revoke the consent at any time.

A copy of the completed consent form is to be given to the guardians and the competent person in charge of the assessment.

5.5. Assessment

The commissioning entity shall ensure that prior to approving participation of minors, an assessment is carried out on the minor by recognised caring professionals (e.g. Psychologists, Social Workers, and Counsellors). This assessment may be based on the following criteria:

- Cognitive abilities of legal guardians and minors
- Ability of legal guardians and minors to understand the meaning and effects of media exposure
- Emotional stability of legal guardians and minors

- Supportive capacity of legal guardians
- Age of minors
- Family situation
- Effect on siblings
- Medical situation of the minor

The criteria mentioned in the above list shall serve as guidelines and assessments will be conducted on a case by case basis.

The outcome of the assessment is to focus on whether the participation of the minor in the production is deemed to be harmful or not. This assessment may also provide recommendations to ensure the best interest of the minor.

The outcome of the assessment shall be valid only for the agreed production and not valid for other future campaigns/promotions.

The outcome of the assessment and its recommendations are to be reported and communicated clearly to the commissioning entity, the minors and their guardians. The report shall clearly recommend or not if the minor should participate in the production.

5.6. Approval and Agreement

The commissioning entity, the minor and the guardians shall review the outcome of the assessment and agree on the terms and conditions of the production.

6. Production

6.1. General Requirements

The commissioning entity shall ensure that production takes place in accordance with terms and conditions agreed on with the minor(s) and their guardians.

6.2. Production Environment

The commissioning entity shall ensure that the production environment is

- safe,
- minor-friendly,
- and of acceptable standards.

The commissioning entity shall ensure that all provisions for health and safety are in place and in conformity with related national legislation. Such arrangements need to consider the well-being of the minors. This includes considerations on:

- Adequate breaks between the various production sessions

- Short working hours of filming that are commensurate with the national legislation concerning minors at workplaces
- No filming or shooting after a set time as per legal requirement
- First Aid precautions
- No dangerous stunts
- No psychologically disturbing situations

6.3. Production stage

During production the commissioning entity shall supervise the production activities taking place. In particular;

- Staging to conform with agreed story board.
- Any changes to the production plan shall be agreed with all parties
- The production crew shall behave ethically throughout the production
- Any concerns shown by the minor(s) are to be addressed by a competent responsible individual with immediate effect

6.4. Post Production Support

The commissioning entity shall verify that the production has been carried out as planned and as agreed with the participating minors and their guardians. The entity is to provide a written guarantee that only the agreed version of the production is disseminated.

7. Legal and other requirements

The commissioning entity shall comply with all Maltese and EU legislation during all stages of the production in which minors are involved.

8. Documented information and self-compliance

The commissioning entity shall maintain at least the following documented information to provide assurance that the production is in accordance with the requirements of this standard:

- Minor(s) profile(s)
- Production Contents (story board)
- Assessment Report (Including the recommendations)
- Contractual Agreement including a declaration to abide with child rights and related legislation
- Contract

The commission entity may insert the following text in the production to self-declare compliance with the requirements of this standard.

8.4 Code of Ethical Conduct (Local Elections, Canada)

The Code of Ethical Conduct sets out guiding principles and specific practices that establish the framework for ethical conduct expected of participants in the political process.

Purpose

The Shared Code of Ethical Conduct is founded on a deep and enduring respect for the democratic process and compliance with election laws that codify the rules for elections and campaigning. Ethical conduct in the political process embraces fundamental democratic principles including the right to vote, the secret ballot, accessibility to voting, the right to be a candidate, organization of political parties, the independent administration of elections, freedom from intimidation in the exercise of democratic rights, honesty and truthfulness in political campaigning, and transparent and accurate public disclosure of political finances.

All political participants accept the responsibility to act in such a manner as to maintain and enhance public confidence in the integrity of the political process. This Code will assist the public in assessing the ethical conduct of political participants.

Application

This Code applies to all political parties and independent candidates that have declared an intention to adhere to its guiding principles and rules of conduct. The Code applies to all elected representatives, candidates, persons seeking to become candidates, constituency associations, office-holders, staff, party members, volunteers associated with the political party, and principal vendors and suppliers (hereinafter referred to as "Members") whenever they are acting as participants in the electoral process.

Party leaders and candidates undertake to actively promote compliance with this Code and, to the extent that it is reasonable and practicable, party leaders and candidates are expected to exercise authority over other Members to ensure the spirit and letter of the Code are applied.

This Code is not intended in any way to replace or limit the ethical standards of conduct expected of Members by their own political parties, personal ethical standards held by individual members, or otherwise applicable legal or professional standards which are not specifically referred to in this document.

This Code may be modified by consensus of the political parties that have declared an intention to adhere to the Code.

Nothing in this document alters the responsibility of all political parties and Members to promptly report any illegal activities to the appropriate authority. Suspected violations of The Elections Act or The Election Financing Act are to be reported to the Chief Electoral Officer.

Guiding principles

All Members subscribe to the principles of free and fair elections, will respect electoral laws, strive to maintain public confidence in the electoral process, and will uphold the democratic rights of citizens.

Knowledge and Adherence

Political parties shall make the Code available to their Members.

Members shall respect and adhere to the principles and rules of conduct set out in this Code and actively promote adherence to the Code on the part of other Members.

Respect for the law

Members shall maintain and promote respect for the election laws. This involves complying with both the letter and spirit of the provisions of all election laws and regulations, including the administrative, regulatory and offence provisions of The Elections Act and The Election Financing Act.

Members shall maintain and assist in maintaining the fair and proper administration of the vote, and the secrecy of the vote.

Integrity

Members shall conduct themselves in a way that upholds the integrity of, and the public's respect for, the electoral system.

Members shall make every effort to ensure that their conduct is above reproach. This means that they should not engage in conduct which could be regarded as unfair or unacceptable by reasonable, fair-minded and informed persons.

Co-operation

Members shall co-operate with election officials who are charged with the responsibility to conduct elections and administer campaign finance laws, and shall not interfere with election officials in the performance of their duties.

Diligence

Members shall apply the Code with diligence, skill, and reasonable promptness.

Rules of conduct

Members shall conduct themselves in a manner that respects the rights and legitimate democratic interests of all citizens, voters, political parties and Members, including Members of other political parties, and shall avoid behaviour that is likely to bring the electoral system into disrepute.

Public statements

Members shall strive at all times to make public statements that are accurate and shall not make public statements that are defamatory with respect to another Member, leader, or any candidate of another political party, or another political party generally.

Members shall not make statements that they know to be untrue in their criticism of the platform, policy statements, positions, or otherwise of other political parties or the candidates of other political parties.

Members shall not knowingly make false statements about poll results, nor authorize interpretations of poll results that are inconsistent with the data available.

Advertising and Campaigning

Political parties and Members, in their advertising, campaigns and promotional material, shall strive at all times to make statements that are accurate and to avoid statements that are misleading or deceptive.

Members shall not sponsor advertising nor issue other promotional materials, such as pamphlets, brochures, handbills, newsletters, electronic messages, signs or posters, that make defamatory references to another Member, leader, or any candidate of another political party, or another political party generally.

Members shall not sponsor advertising or other promotional material containing language or other visual representation that promotes hatred toward any individual or group.

Members shall not obstruct campaigning nor deface, destroy, prevent or obstruct the distribution of advertising or other promotional material of other political parties and rival candidates, nor shall such conduct on the part of other Members be encouraged, condoned or permitted.

Fund raising Practices

Members shall not improperly pressure or corruptly induce prospective contributors to make contributions to any political party, candidate or constituency association by any direct or indirect threat or promise.

Public disclosure

Registered parties, candidates, constituency associations and Members required to publicly disclose political contributions and election spending shall do so according to The Election Financing Act and in a manner which fairly, honestly and transparently discloses all financial activities.

Political parties, candidates, constituency associations and Members shall not enter into transactions or engage in accounting practices whose purpose is to alter the actual amount of election expenses incurred, avoid disclosure of actual or original contributors, or to improperly obtain the benefits of publicly funded tax credits or election expense reimbursement for themselves or for other Members.

Improper influence of the vote

Members of one political party shall not offer or give anything of value, including but not limited to financial, organizational or administrative assistance, to another political party or candidate for a corrupt purpose.

Members shall not, directly or indirectly through another person, offer or give anything of value to a voter for the purpose of corruptly procuring the voter's support.

Implementing the Code

This Code of Conduct contains a set of expectations and commitments freely entered into by political parties. Political parties commit to the importance of designating a specific authority for receiving complaints and an internal process, including sanctions, for implementing the Code. The Code will be self-regulated with good common sense and in good faith.

Party review process

Each political party shall designate an authority to receive and review complaints made against the political party and its Members.

Each political party shall create and make known a process by which complaints may be brought before the designated authority and a process by which matters will be reviewed and decided.

Responsibility to report

All political parties and Members subscribe to the necessity and importance of reporting breaches of this Code and will do so in a prompt and diligent manner.

If the conduct of a political party or a Member would be likely to bring into question the integrity of the political party, or any of its Members, or the electoral process generally, it shall be reported to the designated authority within the political party.

Members will not make false, frivolous or vexatious complaints.

Sanctions

If it is determined by the designated authority within the political party that a complaint is well-founded, and the conduct in question is such that it would be likely to bring into disrepute the integrity of the political party, its Members or the electoral system in general, the political party shall repudiate the unethical conduct and may take any other action it feels is necessary.

If it is suspected by the designated authority that a breach of the law may have occurred, the matter shall be referred to the appropriate authority for investigation.

8.5 European Broadcast Union (EBU)

EBU principles for election coverage

An election process - whether at local or national level - throws public service media into the spotlight, reads the initial chapter of the EBU handbook on PSM and elections. Any susceptibility to bias, any influence by political parties, any unfair or selective coverage or any suppression of a minority voice will be clear for all to see. Good and timely deployed editorial judgment becomes more crucial than ever. At the heart of everything lies the integrity and robustness of journalists who refuse to be deterred from asking the right questions and communicating the true facts to the audience.

Although most of the EBU principles are derived from the universal professional standards of the good and responsible journalism, there are some elements specific to the election campaigns. The principles for election coverage are based on the following components:

❖ Impartiality and independency

The election coverage on the Public Service Media should be free from political or commercial interference, based on a clear and transparent editorial structures and processes, allowing for a balanced treatment of candidates.

Broadcasters should have clear and transparent editorial structures and processes during the electoral campaign for dealing with any coverage issues that may arise. They should have a set of specific election editorial guidelines (which would reflect the principles and the local law) and a formal editorial monitoring structure for the duration of the campaign. These guidelines would be an extension of the normal editorial guidelines, but would also deal with specific electoral issues such as party and candidate representation, opinion polls, audience participation, coverage in non-political programming, staff participation, etc. The editorial structure may vary from organisation to organisation, but it would be advisable to have a special editorial committee devoted to the election, chaired by a senior editor with representatives of key output areas. This committee should oversee all election issues related to programme planning, monitor the election coverage and deal with conflicts and external complaints.

A distinction should be made between:

- **Election campaign news and current affairs coverage** (including discussion programmes such as interviews and debates), as well as entertainment programmes involving candidates produced by the media themselves under their own editorial responsibility; and
- **Direct access spots** (free or paid political advertising), where candidates and parties are given airtime to deliver their electoral messages or campaign material under the responsibility and control of the competent national regulatory authority.

The principles of independence and impartiality are equally important for these two types of broadcast, but they apply in different ways.

With respect to news and current affairs programmes, the emphasis is on content and editorial judgment. With respect to direct access spots, the emphasis is on a balanced approach to the number and length of political spots granted to each party.

In certain countries (e.g. France, Italy), election campaign news and current affairs coverage are addressed and regulated by law, complemented by detailed regulations adopted by the national media regulatory authority. In other countries (e.g. the United Kingdom), there is a combination of regulation and self-regulation. In yet other countries (e.g. Denmark, Sweden, Norway, Switzerland), there are no formal rules on media election coverage at all, and it is left purely to broadcasters to determine the character of their election programmes, in terms of both form and content.

Most of the Public Service Media broadcasters in Europe are following the approach initially adopted by the BBC to mark "elections" as a separate section within the news bulletin. This means all items get equal treatment in that section of the bulletin, and also that the message to viewers is clear - everything in this section is connected to the political campaign in some way and it is left to the audience to decide what to believe in the context of an on-going election campaign.

❖ **Fairness and respectfulness**

Reporting during the election campaign should be neutral and objective, with a full respect for human dignity and privacy of candidates.

Citizens should be informed about the candidates, the programmes of the parties and the issues up for debate in a neutral way. Journalists should withhold any personal views and opinions. Journalists must clearly distinguish between their private postings on social media (blogs, tweets etc) and what they write in their professional capacity.

Human dignity and the presumption of innocence should be respected. Any discourse, speech, statement or comment that contains any incitement to hatred based on race, sex, religion or nationality should not be reported. Candidates' private lives should be respected and reporting in that area should be avoided, except when it is of public interest and essential for the understanding of an event or situation of public life. For example, substantiated evidence about corruption of a candidate would clearly be in the public interest. Also evidence that a candidate's private life is not in line with the "family values" that underpin their election campaign may be in the public interest.

❖ **Accuracy and relevancy**

Election reporting should be based on a strict verification and protection of sources of information.

Every element of information and news (event, date, place, quote, etc.) provided should be accurate. Sources should be assessed and verified. The confidentiality of sources should be protected. Mistakes should be corrected rapidly and the correction given the same prominence as the original information. Contributions from audiences or candidates (e.g. by social media, email or other interactive mechanism) must be clearly identified.

Campaign rules, as well as restrictions on reporting on opinion polls, surveys, projections of results or exit polls, before and during the elections, should be respected on all platforms. Surveys and opinions polls should be cited and treated carefully, and the audience provided with information on who commissioned, conducted and paid for the poll, on the methodology used, on the size of the sample and the margin of error, and on when the poll was taken. The election results should not be

broadcast before the results have been officially announced by the relevant competent authority or until all polling stations have closed.

❖ **Connectivity and accountability**

All media platforms, including online platforms and services, should be used to provide extra information and documents to supplement reporting and to enable audiences - in particular young people - to understand the election process and become engaged in it. However, audience participation may be particularly tricky to manage at election time as all political parties are motivated to interfere and possibly manipulate.

Greater editorial care is therefore required in particular for phone-in programmes or audience participation programmes where the nature of the programme does not absolve the broadcaster from impartiality and fairness requirements.

8.6 OFCOM Broadcasting Code (April 2017):

Section Five:

Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions

(Relevant legislation includes, in particular, sections 319(2)(c) and (d), 319(8) and section 320 of the Communications Act 2003, the BBC Charter and Agreement, and Article 10 of the European Convention on Human Rights.)

Principles

To ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality.

To ensure that the special impartiality requirements of the Act are complied with.

Rules

Due impartiality and due accuracy in news

5.1

News, in whatever form, must be reported with due accuracy and presented with due impartiality.

5.2

Significant mistakes in news should normally be acknowledged and corrected on air quickly (or, in the case of BBC ODPS, corrected quickly). Corrections should be appropriately scheduled (or, in the case of BBC ODPS, appropriately signaled to viewers).

5.3

No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience. Special impartiality requirements: news and other programmes

Matters of political or industrial controversy and matters relating to current public policy

Meaning of "matters of political or industrial controversy and matters relating to current public policy":

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions, etc.

The exclusion of views or opinions

(Rule 5.4 applies to television and radio services (except restricted services) and to BBC ODPS.)

5.4

Programmes in the services (listed above) must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

The preservation of due impartiality

(Rules 5.5 to 5.12 apply to television programme services, teletext services, national radio and national digital sound programme services, all BBC radio services and BBC ODPS.)

5.5

Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

Meaning of “series of programmes taken as a whole”:

This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a ‘cluster’ or ‘season’ of programmes on the same subject.

5.6

The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air

5.7

Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.

5.8

Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.

5.9

Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of “personal view” or “authored” programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that

compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views.

7. For BBC ODPS this should be made clear to the audience by appropriate signalling to the audience.

5.10

A personal view or authored programme or item must be clearly signalled to the audience at the outset. This is a minimum requirement and may not be sufficient in all circumstances. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear.)

Meaning of “personal view” and “authored”:

“Personal view” programmes are programmes presenting a particular view or perspective. Personal view programmes can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered “authored” opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream.

Matters of major political or industrial controversy and major matters relating to current public policy

5.11

In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.

Meaning of “matters of major political or industrial controversy and major matters relating to current public policy”:

These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area.

5.12

In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

The prevention of undue prominence of views and opinions on matters of political or industrial controversy and matters relating to current public policy

(Rule 5.13 applies to local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services. For the avoidance of doubt, it does not apply to any BBC services.)

5.13

Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service (listed above) taken as a whole.

Meaning of “undue prominence of views and opinions”:

Undue prominence is a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.

Meaning of “programmes included in any service...Taken as a whole”: Programmes included in any service taken as a whole means all programming on a service dealing with the same or related issues within an appropriate period.

Section Six:**Elections and Referendums**

(Relevant legislation includes, in particular, sections 319(2)(c) and 320 of the Communications Act 2003, the BBC Charter and Agreement, and Article 10 of the European Convention on Human Rights. Broadcasters should also have regard to relevant sections of the Representation of the People Act 1983 (as amended) (“RPA”)

– see in particular sections 66A, 92 and 93 (which is amended by section 144 of the Political Parties, Elections and Referendums Act 2000).

Rules made under section 333 of the Communications Act 2003 (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts) and the BBC Agreement, and referred to in paragraph 18 of Schedule 12 to the Communications Act 2003, are contained in Ofcom Rules on Party Political and Referendum Broadcasts on the Ofcom website. However, such broadcasts are also required to comply with the relevant provisions of this Code, for example the provisions regarding harm and offence – notwithstanding that the content is normally the responsibility of the relevant political parties.

Principle

To ensure that the special impartiality requirements in the Communications Act 2003 and other legislation relating to broadcasting on elections and referendums, are applied at the time of elections and referendums.

Rules**Programmes at the time of elections and referendums****6.1**

The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.

Programmes at the time of elections and referendums in the UK

The remainder of this section only applies during the actual election or referendum period which is defined below.

Meaning of “election”:

For the purpose of this section elections include a parliamentary general election, parliamentary by-election, local government election, mayoral election, Police and Crime Commissioner election, Scottish Parliament election, Welsh, Northern Ireland and London Assembly elections, and European parliamentary election.

Meaning of “referendum”:

For the purpose of this section a referendum is a statutory referendum (to which the Political Parties, Elections and Referendums Act 2000 (“PPERA”) applies or to which section 127 of PERA is applied) which includes a UK-wide, national or regional referendum held under the provisions of an Act of the UK Parliament or the Scottish Parliament, but does not extend to a local referendum.

6.2

Due weight must be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives.

Meaning of “election period”:

For a parliamentary general election, this period begins with the dissolution of Parliament. For a parliamentary by-election, this period begins with the issuing of a writ or on such earlier date as is notified in the London Gazette. For the Scottish Parliament elections and National Assembly for Wales elections, the period begins with the dissolution of the Scottish Parliament or the National Assembly for Wales as appropriate or, in the case of a by-election, with the date of the occurrence of a vacancy. For the Northern Ireland Assembly, the London Assembly and for local government elections, it is the last date for publication of notices of the election. For European parliamentary elections, it is the last date for publication of the notice of election, which is 25 days before the election. In all cases the period ends with the close of the poll.

Meaning of “candidate”:

Candidate has the meaning given to it in section 93 of the Representation of the People Act 1983 (as amended) and means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it.

6.3

Due weight must be given to designated organisations in coverage during the referendum period. Broadcasters must also consider giving appropriate coverage to other permitted participants with significant views and perspectives.

Meaning of “designated organisation” and “permitted participants”:

Designated organisations and permitted participants are those that are designated by the Electoral Commission.

Meaning of “referendum period”:

For referendums different periods may apply. A referendum held under the Northern Ireland Act 1998 (as amended) begins when the draft of an Order is laid before Parliament for approval by each House. In the case of a referendum held under other Acts, the time at which a referendum period commences is given in the individual Acts. In the case of an Order before Parliament, the time will be given in that Order. In all cases the period ends with the close of the poll.

6.4

Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.) BBC ODPS are not required to remove archive content for the period when the polls are open.

6.5

Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. (For European Parliamentary elections, this applies until all polls throughout the European Union have closed.)

6.6

Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period. BBC ODPS are not required to remove archive content for the election or referendum period.

6.7

Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period.

BBC ODPS are not required to remove archive content for the election or referendum period.

Constituency coverage and electoral area coverage in elections

Rules 6.8 to 6.12 will only apply to S4C and/or the BBC if the relevant broadcaster has adopted them under the RPA as its Code of Practice.)

6.8

Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Meaning of “electoral area”:

Electoral area (for example electoral division, borough ward or other area) is the local government equivalent to the parliamentary term “constituency”.

6.9

If a candidate takes part in an item about his/her particular constituency, or electoral area, then broadcasters must offer the opportunity to take part in such items to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates.

However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.

6.10

Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

6.11

Where a candidate is taking part in a programme on any matter, after the election has been called, s/he must not be given the opportunity to make constituency points, or electoral area points about

the constituency or electoral area in which s/he is standing, when no other candidates will be given a similar opportunity.

6.12

If coverage is given to wider election regions, for example in elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, London Assembly or European Parliament, then Rules 6.8 to 6.12 apply in offering participation to candidates. In these instances, all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However, any independent candidate who is not standing on a party list must be named. Where a report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above

8.7 BBC Election Guidelines

<http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/2017localelectionguidelines.pdf>

Introduction

1.1 The Election Period and when the Election Guidelines and Appendix (“the Guidelines”) come into effect

The Election Period, when these Guidelines come into effect, begins at 00.01 on Wednesday 3rd May (the dissolution of Parliament, 25 working days before polling day).

The Guidelines remain in effect until the close of polls at 22.00 on Thursday 8th June.

However, output for Great Britain is already in an election period for the local government elections in England, Scotland and Wales on 4th May and must also take into account the separate Election Guidelines for those elections; particular care will be needed in respect of polling day for the local elections.

Campaigning for a general election begins before the formal election period and content producers should take account of these guidelines in making judgements with regard to due impartiality in the period between now and then. Advice is available from the Chief Adviser, Politics.

There is no formal distinction, once the election has been called, between the periods before and after the close of nominations. It is all referred to as the “Election Period.”

Nominations close on 11th May.

1.2 Elections

The General Election will be contested on the basis of a first past the post system in the 650 Westminster constituencies across the whole of the UK.

1.3 The Guidelines

There is no area of broadcasting where the BBC’s commitment to due impartiality is more closely scrutinised than in reporting election campaigns.

These Guidelines are intended to offer a framework within which journalists:

- can operate in as free and creative an environment as possible.

- deliver to audiences impartial and independent reporting of the campaign, giving them fair coverage and rigorous scrutiny of the policies and campaigns of all parties.

The BBC is also legally obliged to adopt a Code of Practice with respect to “the participation of candidates at a parliamentary or local government election in items about the constituency or electoral area in question which are included in relevant services during the election period”. This obligation is fulfilled by Section 4 of these Guidelines.

The BBC is also required, under the terms of its Charter and Agreement to ensure that political issues are covered with due accuracy and impartiality. These Election Guidelines supplement the Editorial Guidelines (Chapter 4, “Impartiality and Diversity of Opinion” and Chapter 10, “Politics and Public Policy”).

They should, in particular, be read in conjunction with the sections in Chapter 10 on “Reporting UK Election and Referendum Campaigns” and “Broadcasting During Elections”, which say the BBC must ensure that:

- news judgements continue to drive editorial decision-making in news based programmes.
- news judgements at election time are made within a framework of democratic debate which ensures that due weight is given to hearing the views and examining and challenging the policies of all parties. Significant smaller parties should also receive some network coverage during the campaign.
- when producing UK-wide output, we are aware of the different political structures in the four nations of the United Kingdom and that they are reflected in the election coverage of each nation.

The Guidelines are publicly available and the BBC can expect to be held accountable for their implementation during the campaign.

BBC output with regard to the election period is also subject to Sections 5 and 6 of the Ofcom Code, which is consistent with adherence to these Guidelines.

1.4 Who the Guidelines apply to

It is the responsibility of each editor to ensure that their content producers are aware of how the Guidelines apply to their output.

Any programme which does not usually cover political subjects or normally invite politicians to participate must consult the Chief Adviser Politics before finalising any plans to do so.

The Appendix sets out specific information regarding levels of coverage across the UK and in each nation.

Each programme, strand, website or channel must bear in mind the location of its intended audience in applying these Guidelines.

These Guidelines apply to any programme or material intended for UK audiences, covering any aspect of the election.

2. Mandatory issues and referrals

2.1 During the Election Period:

- Any programme which does not usually cover political subjects or normally invite politicians to participate must consult the Chief Adviser Politics before finalising any plans to do so.*
- All bids for interviews with party leaders must be referred to the Chief Adviser Politics before parties are approached. Offers of such interviews should also be referred before being accepted.*
- Any proposal to use a contribution from a politician without an opportunity for comment or response from any other parties must be referred to a senior editorial figure and the Chief Adviser Politics (in relation to 3.5).
- The BBC will not commission voting intention polls
- Any proposal to commission an opinion poll on politics or any other matter of public policy for any BBC service must be referred to the Chief Adviser Politics.*

- There will be no online votes, social media or SMS/text votes attempting to quantify support for a party, a politician or a party political policy issue.
- Any proposal to conduct text voting on any political issue that could have a bearing on any of the elections must be discussed with the Chief Adviser, Politics, as well as being referred to the relevant departmental senior editorial figure and ITACU.
- The BBC will not broadcast or publish numbers of e-mails, texts or other communications received on either side of any issue connected to the campaign.
- referral is also mandatory outside election periods.

2.2 Polling day (00.30 – 22.00)

- No opinion poll on any issue relating to the election may be published.
- There will be no coverage of any issues directly pertinent to the election campaigns on any BBC outlet.

2.3 It is a criminal offence to publish anything about the way in which people have voted in that election.

3. Due Impartiality in coverage of parties and issues

3.1 Coverage of the Parties

To achieve due impartiality, each bulletin, programme or programme strand, as well as online and social media channels, must ensure that the parties are covered proportionately over an appropriate period and overall across the Election Period.

Determining appropriate levels of coverage should take into account levels of past and current electoral support, as consistent with the approach set out in Ofcom's Digest (see Appendix).

Electoral support in the most recent equivalent elections (that is, the 2015 and 2010 General Elections) is the starting point for making those judgements. However, other factors should be taken into account where appropriate, including evidence of variation in levels of support in other sorts of elections, changed political circumstances (e.g. new parties or party splits) as well as other evidence of current support. The number of candidates a party is standing may also be a factor.

3.2 Impartiality in Programmes and Online Content

Daily news magazine programmes should normally achieve proportional and appropriate coverage within the course of each week of the campaign.

This means that each strand (e.g. a drive time show on radio) is responsible for achieving impartiality itself within the week and cannot rely on other outlets at different times of day (e.g. the breakfast show) to do so for it. This does not preclude programmes, in specific circumstances, from co-operating to organise joint coverage, thereby achieving due impartiality across the station or channel. But such an arrangement needs clear sign-posting and should normally be referred to the Chief Adviser, Politics.

Programme strands should avoid individual editions getting too far out of kilter. There may be days when inevitably one party dominates the news agenda, e.g. when party manifestos are launched, but in that case care must be taken to ensure that appropriate coverage is given to other manifesto launches on the relevant days.

The News Channel and television and radio summaries will divide the 24 hour day into blocks and aim to achieve due impartiality across a week's output in each one.

Weekly programmes, or running series within daily sequence programmes, which focus on one party or another, should signpost both forward and backwards so that it is clear to the audience that due impartiality is built in over time. In these instances, due impartiality should be achieved over the course of the campaign.

The same guidelines as those for programmes will apply to BBC Editorial content on all bbc.co.uk sites. These will apply to audio and video content as well as text content, e.g. blogs, podcasts and downloads, as well as any social media channels that are associated with the BBC, including material that appears on sites operated by third parties (see 5.1 below).

Editorial Guidelines (4.4.14) say that programme-makers "...should not automatically assume that contributors from other organisations (such as academics, journalists, researchers and representatives of charities) are unbiased and we may need to make it clear to the audience when contributors are associated with a particular viewpoint..." In the context of the general election, content producers will need to take all reasonable steps to be sure that contributors are appropriately described, and that they have taken account, for instance, of comments on social media, how their organisations are funded and the nature of quoted research or polling. In reporting, in particular, on press coverage of the campaign and in newspaper reviews, they should also take account of any relevant subjective editorial stance.

Any programme or content giving coverage to any aspect of the election must achieve due impartiality overall among parties during the course of the whole campaign.

In all elections, the BBC must take care to prevent candidates being given an unfair advantage, for instance, where one candidate's name is featured through depicting posters or rosettes etc. Anyone who is in doubt as to how this applies to their own content should contact the Chief Adviser, Politics, for advice.

3.3 Coverage of other political issues, other Parliaments, Assemblies and Councils in the UK during the Election Period

The election does not happen in isolation and other elected bodies may well continue their normal activity during the campaign. However, a General Election is particularly dominant and content producers need to comply with the general requirement of due accuracy and due impartiality, aware of the possible influence of any other political coverage on the election campaign.

This applies to all Parliamentary reportage during the campaign, including from the Scottish Parliament, the Assemblies in Wales, Northern Ireland and London and the European Parliament, as well as local government throughout the UK. These should continue to be covered in the normal way, but issues relating to the General Election across the UK which are discussed in the parliaments, assemblies or councils must be reported with care to maintain due impartiality.

In the period up until 4th May, content regarding the general election campaign will also need to take account of the Election Period for the local government elections in England, Scotland and Wales, including Combined Local Authority Mayoral elections (see Election Guidelines for 4th May elections).

Particular care is needed on polling day for local elections (4th May) – specific advice is available from the Chief Adviser, Politics. All content producers need to bear in mind which issues are within

the remit of the different bodies and ensure it is clear to the audience when stories have a bearing on an election. Some members of other Parliaments and Assemblies may also be candidates in the General Election for the Westminster Parliament; care should be taken to ensure that unfair advantage in the election campaign is not derived from their other political roles.

Where there are other major news stories, special care is needed to ensure that any political element is covered comprehensively, but also reflects the fact that we are in an election period. How this is achieved will depend on the particular circumstances of each case. For example, where there are major stories which fall outside inter-party rivalry, due impartiality may be achieved by allowing more time to those politicians most closely involved, reporting fully statements giving the audience factual information and, on occasion, reflecting vigorous internal debates within parties.

3.4 Order of Parties

The order in which parties appear in packages or are introduced in discussions should normally be editorially driven. However, programme makers should take care to ensure they vary this order, where appropriate, so that no fixed pattern emerges in the course of the campaign. Fairness may sometimes be best achieved simply by, for instance, drawing straws.

3.5 Items which may not require contributions from other parties or candidates

In exceptional circumstances, comments from politicians can stand alone, without any other political contribution, where to use one might appear insensitive or risk the appearance of a media circus. This might include interviews about a personal tragedy, a public disaster, or where the politician concerned is an eye witness to a news incident. Any proposal to use a comment in this way must be referred to a senior editorial figure and the Chief Adviser, Politics.

4. Fairness to Candidates - Code of Practice

4.1 Reports on specific Electoral Areas (Constituencies)

The intention of these guidelines is to encourage vigorous debate and to give a higher profile to candidates in general, without giving unfair advantage to one candidate or party over another.

Candidates or parties declining to take part in constituency reports or debates cannot, by doing so, effectively exercise a veto over such coverage.

However, this does not weaken in any way the BBC's obligations of fairness in ensuring the audience is informed of all main strands of argument.

Reports or debates about a specific electoral area, (ie a Westminster constituency), should give due weight to candidates of parties which have demonstrated substantial electoral support in that area. This means that if any candidate takes part in an item about a specific electoral area, then these other candidates should also be offered the opportunity to take part, or be given a similar opportunity across a series of reports. Candidates or parties who have not demonstrated that they have substantial electoral support in that area must still be offered proportionate coverage.

Programmes may decide to use either candidates or party representatives. But if a candidate from one of the parties is invited to take part, the other participants should, where at all possible, also be candidates (see below 4.3 Welsh and Gaelic Language Services). In exceptional circumstances, if a candidate is genuinely unavailable, the opportunity may be offered instead to a suitable party representative from within the electoral area (e.g. party official or agent) but it should normally be made clear to the audience that the missing candidate was invited and why they were unable to take part. If a party declines to put forward a representative or nominates someone in a way which risks unfairness to other candidates, the item/programme may go ahead without them.

Reports and items which refer to any candidates should also refer – as a minimum – to an online list of all candidates and parties standing. (Please note: until such lists are available – after the close of nominations – each constituency report will require a list of known candidates so far to be compiled and either used in full with the report or specifically made available online). If such a report is being broadcast several times on the same channel in a day, the online list of candidates should be referred to on each occasion and at least once the list should feature visually or verbally. For longer items, especially where only some candidates are receiving significant coverage, such as debates, then – as a minimum - all the candidates should be listed, visually or verbally, during or immediately after the item.

Content producers must ensure generally that candidates are not given an unfair advantage; for instance, camera operators should take care where a candidate's name is featured prominently through depicting posters or rosettes etc.

Where candidates have other roles – political or non-political - care should be taken to ensure that they do not gain an unfair advantage in the election campaign over other candidates.

Before the close of nominations, content producers need to ensure due impartiality in regard to contributors who may have expressed an intention or who are expected to stand as a candidate.

Reports referring to the list of candidates before the close of nominations should make it clear that these are known candidates so far.

4.2 Use of Candidates in issue based packages and phone-ins

As well as debates or other items using candidates within constituencies, all types of content may use an appropriate range of candidates from different constituencies or electoral areas to discuss together election issues. There may also be circumstances in which it is appropriate to use both candidates and non-candidates (for instance, where a party spokesperson is not standing, or for debates between party leaders).

Reasonable references to local examples within a constituency, for instance, to local hospitals, schools, etc, are allowed, providing it does not result in any unfairness to a candidate who is not taking part.

In order to maintain due impartiality, the choice of parties represented should be appropriate to the item. The choice of candidate to represent a party will be made on editorial grounds, but care must be taken over the course of the campaign to ensure that one candidate is not unduly favoured at the expense of others or that a party spokesperson does not gain disproportionate coverage at the expense of candidates from other parties.

If a candidate is being interviewed as a national spokesperson, they should not be allowed to gain an unfair advantage over their local opponents by making repeated references to their own area. This can best be achieved by advising them in advance of the BBC's due impartiality obligations. If this fails, swift intervention by the presenter of a live programme, or editing before broadcast, will be necessary.

Candidates may be encouraged to take part in phone-ins about the election or election issues. However, callers must be checked to see if they are candidates and it must be clear to the audience that they are speaking not as ordinary members of the public but as contributors with a political agenda. Care must be taken that over time programmes are not giving undue prominence to one party or undue preference to one candidate over another. Care should also be taken – and advice

sought - with regard to any contribution from a candidate during a phone-in or similar programme which is not about the election or political issues more generally.

Further advice on use of candidates can be sought from the Chief Adviser, Politics.

4.3 Welsh and Gaelic Language Services

Some politicians in Wales are not Welsh language speakers. In the event that a party is unable to find a Welsh speaker, Radio Cymru and BBC Wales programmes for S4C may draw on both candidates and other party representatives.

Few politicians are Gaelic speakers. In the event that a party is unable to find a Gaelic speaking candidate, Radio nan Gaidheal and BBC Alba programmes may draw on both candidates and other party representatives.

5. Social Media and Audience Contributions

5.1 Use of Social Media

BBC editorial staff and anyone involved in producing election-related content must avoid compromising the BBC's impartiality or bringing the BBC into disrepute by their activities, such as by expressing their own views on political matters, either on personal websites or social media, eg personal Twitter accounts.

5.2 Audience contributions

Audience contributions offer immediacy and interactivity to the BBC's output both broadcast and on the web. These contributions are an expression of opinion and are not an indication of the weight of opinion on one side or another of a question. The range selected for inclusion must be chosen to achieve due impartiality, not just by the weight of audience activity. However, we must not seek to achieve what might be considered "artificial" balance by giving a misleading account of the weight of opinion.

Audience contributions may come by text, social media message or email, or some other interactivity mechanism, including "vox pop". They may be unsolicited, or they may arise from calls to action, in either broadcast output or online. However we receive them, content producers should be rigorous about establishing the origins of materials offered as audience contributions and take responsibility for their authenticity. It may be necessary to verify that a contribution apparently from an individual in the public eye is genuine. Where such contributions come from candidates that must be clearly identified.

All web pages prompting debate on the election will be actively hosted and properly moderated to encourage a wide range of views. Those parts of the BBC's online presence which do not normally engage in political issues must seek advice from the Chief Adviser, Politics, before doing so.

Unless specifically hosting election discussions, non-news sites should direct users who want to discuss the election in message boards or comments to appropriate areas of the news site such as political blogs or relevant news articles. All election-related discussion areas on bbc.co.uk must have appropriate moderation, filtering, hosting and escalation in place.

Journalists and moderators will have to make fine judgements between remarks that constitute robust debate and personal abuse. The general rule of thumb should be if we would not broadcast it

on radio or TV, it should not be online. Filters for harm and offence and personal abuse will operate as usual, but they should not be relied on as a substitute for effective moderation.

During the Election Period, we must not broadcast or publish numbers of contributions received on any campaign issue to estimate support for any side or party.

If contributions are edited for length, care should be taken to ensure that the contributor's opinions are fairly and accurately represented.

5.3 Vox Pops

The value of vox pops to programmes is to allow different sides of an issue in question to be expressed through the voices of the man and woman in the street. But the context should always make it clear that they are an expression of an argument, not an indication of the weight of opinion on either side. It follows that special care must be taken with vox pops during an election campaign, for instance, to give consideration to the location in which they are recorded and to edit them, when appropriate, in such a way as to ensure a range of views is reflected.

5.4 Audience Programmes

Any programme covering the election and planning to use a live audience should consult the Chief Adviser Politics to discuss the selection of the audience and how to achieve due impartiality. All such procedures must stand up to public scrutiny

5.5 Material from parties or candidates

BBC News Online will not normally link directly to election-related material on the websites either of political parties or individual candidates, unless there is an editorial justification (e.g. a row caused by a prominent figure publishing policy on his/her website contradicting the manifesto on the party's website) and then it will be promoted only for a limited period and mindful of any impartiality issues. BBC News Online will list links to all available party sites, provided that it does not give strong grounds for concern that this breaches the BBC Harm and Offence guidelines, the Ofcom Code Section 2, or the law e.g. defamation or incitement to racial hatred.

Any speeches or other material published or contributed by candidates or parties which are carried in full or in part must be selected on news value, while bearing in mind that due impartiality requires that an appropriate range of such material is carried.

Content producers should be particularly alert to organised campaigns or lobbying by parties, pressure groups, candidates or people acting on their behalf. If mass mailings or other organised lobbying is suspected during the Election Period, contributors may be asked to provide contact details for verification purposes. The bbc.co.uk escalation strategy must be activated immediately, and it may be necessary to, for example, put a message board into pre-moderation or read only mode.

6. Polls and other tests of opinion

Section 6 of the Election Guidelines should, where appropriate, be read in conjunction with Chapter 10 of Editorial Guidelines and the Editorial Policy Guidance "Opinion Polls, Surveys, Questionnaires, Votes, Straw Polls", available on the Editorial Policy website.

6.1 Reporting Polls

During the campaign our reporting of opinion polls should take into account three key factors:

- they are part of the story of the campaign and audiences should, where appropriate, be informed about them;
- context is essential, and we must ensure the accuracy and appropriateness of the language used in reporting them;
- polls can be wrong - there are real dangers in only reporting the most “newsworthy” polls – i.e. those which, on a one-off basis, show dramatic movement. For that reason, we should not normally base a news story on a single voting intention poll, unless its impact has caused a separately newsworthy story.

So, the general rules and guidance about reporting polls need to be scrupulously followed. They are:

- not to lead a news bulletin or programme simply with the results of a single voting intention poll;
- not to headline the results of a single voting intention poll unless it has prompted a story which itself deserves a headline and reference to the poll’s findings is necessary to make sense of it;
- not to rely on the interpretation given to a poll’s results by the organisation or publication which commissioned it, but to come to our own view by looking at the questions, the results and the trend;
- to report the findings of voting intentions polls in the context of trend. The trend may consist of the results of all major polls over a period or may be limited to the change in a single pollster’s findings. Poll results which defy trends without convincing explanation should be treated with particular scepticism and caution;
- not to use language which gives greater credibility to the polls than they deserve: polls “suggest” but never “prove” or even “show”;
- to report the expected margin of error if the gap between the contenders is within the margin. On television and online, graphics should *always* show the margin of error;
- to report the organisation which carried out the poll and the organisation or publication which commissioned it;

Particular care should be taken with newspaper reviews. Polls should not be the lead item in a newspaper review and should always be reported with a sentence of context (e.g: “that’s rather out of line with other polls this week”).

No opinion poll on any subject relating to politics or the election may be published on polling day until after the polls have closed.

6.2 Commissioning Polls

The BBC does not commission voting intention opinion polls during election periods. Editorial Guidelines say “any proposal to commission an opinion poll on politics or any other matter of public policy for any BBC service must be referred to the Chief Adviser Politics for approval”.

Care must be taken to ensure that any poll commissioned by the BBC is not used to suggest a BBC view on a particular policy or issue. A poll may be commissioned to help inform the audience’s understanding of a current controversy, but it should not be used to imply BBC intervention in a current controversy.

6.3 SMS/Online Voting

There will be no SMS/text or online votes attempting to quantify support for a party, politician or policy issue during the election period, nor should other quantitative methods, such as a count of the number of texts or social media contributions, be used to assess the level of support.

Producers must ensure that votes are not translated into anything that could be construed either as a representation of public opinion as a whole, or the perception of a BBC opinion. Any proposal to conduct text or online voting on any political issue that could have a bearing on any of the elections must be discussed with the Chief Adviser, Politics, as well as being referred to the relevant departmental senior editorial figure and ITACU.

7. Party Leader Interviews

With the exception of brief newsgathering interviews gathered on news value on the day, all bids for party leader interviews must be referred to the Chief Adviser Politics before parties are approached. Unsolicited offers should not be accepted without consultation with senior managers and a reference to the Chief Adviser Politics.

8. Polling Day

There will be no coverage of the election campaign on polling day, from 00.30 until polls close at 22.00 on TV, radio or bbc.co.uk. However, online sites will not have to remove archive reports. Coverage will be restricted to factual accounts with nothing which could be construed as influencing the ballots.

No opinion poll on any issue relating to politics or the election may be published until after the polls have closed.

As well as 8th June, polling day for local elections in Great Britain also takes place during the general election campaign, on 4th May, when particular care is needed.

Whilst the polls are open, it is a criminal offence to publish anything about the way in which people have voted in that election.

Complaints

Complaints will be handled at the appropriate level from programme editors upwards. The aim is to ensure that whether a complaint has come via BBC Audience Services, direct to a programme or to a correspondent or individual journalist, from a politician or member of the public (who may or may not be a political activist), from a senior party official or an individual candidate, the BBC's response is consistent, robust and swift.

For that reason, normally, on receiving a formal complaint, details should be taken and referred to the appropriate person before any initial response – other than acknowledgement and timescale – is given to the complainant.

Complaints regarding the election, including those involving impartiality and accuracy, may be subject to an expedited process which now culminates with Ofcom.