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POLICY REPORT ON MEDIA INDEPENDENCE AND
FREEDOM OF EXPRESSION IN MACEDONIA



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#LEGALIZING RESTRICTIONS OF THE FREEDOM OF THE PRESS

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Policy report on media independence and freedom of expression in Macedonia

Legalizing Restrictions of the Freedom of the Press

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Skopje, October 2014

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LIST OF ABBREVIATIONS

EU - European Union

ISSHS - Institute of Social Sciences and Humanities - Skopje

MTV - Macedonian Television

OSCE - Organization for Security and Co-operation in Europe

OSCE ODIHR - OSCE Office for Democratic Institutions and Human Rights

VMRO DPMNE - Vnatesna revolucionerna organizacija - Demokratska partija za makedonsko nacionalno edinstvo, or in English: Internal Macedonian Revolutionary Organization –Democratic Party for Macedonian National Unity

ZNM - Združenie na novinarite na Makedonija or in English: The Association of the Journalists of Macedonia



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"#popularization of an #idea or an activity for the #purposes of #accomplishing some other #goal"



1. Executive summary

The legal frame which permits sponsoring of the private media by the Government conditions the problem of editorial and journalistic censorship and self-censorship. The sponsoring at issue is not *de iure* “sponsoring” but rather excessive advertising campaigns which either promote the regular activities of the Government or “ideas” the Government and the ruling parties advocate as beneficial for the society as a whole. Whatever the object of promotion, the campaigns of the Government carried out in the media take the form of awareness raising campaigns. For almost a decade (8 years), such campaigns have been carried out in an endless succession and virtually without a single period of pause. The lavish media campaigns carried out by the Government through the private and potentially independent media have led to their financial dependence from the Government as the biggest media advertiser. What the government advertises are “ideas” - a particular type of awareness raising campaigns and government policies’ promotion - according to the formulation proposed by the new law on audiovisual and media services. For years, the Government and the ruling party have been running media campaigns which boil down to sheer promotion of demo-Christian values, upon which the doctrine of the ruling party VMRO DPMNE^{*} relies. In the recent years, and in particular in 2013, the campaigns at issue concerned cultural and national heritage preservation, propulsion of democratic-Christian values, patriotism, demographics, promotion of pro-life attitude with respect to the issue of abortion, “family values” and much more.¹

By the end of 2013 and the beginning 2014, one of the key issues of public and political interest concerning the freedom of the press in the country was the newly adopt-

^{*} VMRO DPMNE is abbreviation of “Vnatesna revolucionerna organizacija - Demokratska partija za makedonsko nacionalno edinstvo,” or in English “Internal Macedonian Revolutionary Organization –Democratic Party for Macedonian National Unity.”

ed law on audio and audiovisual and media services.”“The adoption of the new law was preceded by a major process of negotiations between the country’s most prominent journalists’ association, namely “The Association of the Journalists of Macedonia” [and the Government.”“ The negotiations started in 2011 with the aim of improving the condition of the media in the country.² In the course of 2013, they intensified focusing on several draft versions of the proposed law, with increased tensions presented as public confrontations between the leading interlocutors. The new law was introduced and the preceding negotiations took place and lasted for years in spite of the fact that “The Association of the Journalists of Macedonia” (ZNM) had been opposed to the idea of introducing a new law that would regulate media in the first place.³ For years, ZNM has been pointing out to the fact that most of the EU countries do not have such separate laws and function according to the general regulations provided by the EU directive, implemented in their existing legislation. ZNM has been consistently against the adoption of a law on media, insisting that the issue of the establishment of media should be self-regulated by the market, while maintaining criticism regarding the mode of transposition of the EU directive on audio and audiovisual services.

Legal overregulation leads to excessive state control of the media. That is why reservations related to the very need of a law on media had also been expressed by the OSCE (The Organization for Security and Co-operation in Europe). A review of the law drafts commissioned by OSCE argued that, instead of a law on media, the legislating body should introduce a law on audiovisual services following the provisions made by the EU Directive on audiovisual services adopted in 2010.⁴ The negotia-

**The title of the law is shortened in the text as Law on audiovisual services.

***In Macedonian (transliterated in Latin alphabet): “Zdruzenie na novinarite na Makedonija” which shall be abbreviated as ZNM.

tions between ZNM and the Government, at occasions facilitated by the OSCE, lead to a conditional agreement about a law that was adopted on 25 December 2013 titled “Law on Audiovisual Services.”⁵ The law on audiovisual services consisting of 156 articles is filled with abundance of details that would normally be part of secondary legal acts, marked by excessive restrictions of editorial independence. In short, it remains to be over-regulating. One of the conditions of acceptability of the law set by ZNM consisted in demanding the inclusion of articles that would restrict the influence of the government over the media primarily through financial means, i.e., through the government sponsored media campaigns. The law was adopted with the conditional agreement from ZNM, consisting in a trial period of 6 months given to the Government to revise the articles permitting financial control over the media. This condition has not yet been met.

The study at hand is an analysis of the new law on audiovisual services and the political context in which it has been adopted and ought to be implemented. We argue that the law is excessively restricting leaving practically no space for editorial independence. The law is marked by a high number of stipulations that constitute a virtually total technocratic exhaustion of programmatic possibilities for all audiovisual media in the country, leaving minimal margins for editorial decisions. At the same time, the law permits a lot of space for the regulating body to arbitrarily interpret editorial choices with the possibility of enforcing punishment through excessively high fines. The new law on audiovisual services legalizes practices that have been the kernel of the systemic suspension of editorial and journalistic freedom in the country, namely: the ceaseless media campaigning of the Government and the control of the state over the journalistic and editorial content (even format). In this way, the law enables and consolidates the practices of media dependence on finances provided by the government, of censorship and

self-censorship and of the precariousness of the journalists and editors in terms of their labor rights as well as human rights.

2. Intro into the state of affairs with regard to the freedom of the media: its political aspects and the general democratic climate in the country

It is since 2011 that the freedom of the press has become one of the major political issues in the country, affecting both internal aspects of democracy and the status of human rights. Consequently, it has affected international reputation of the country complicating the process of reforms towards the fulfillment of the so called Copenhagen [political] criteria for EU membership.⁶ The *State Department Report on Human Rights* in its country report on Macedonia for the year 2013 informs of the “state’s failure to fully respect the rule of law” which also includes “interfering in [the judiciary] and the media.”⁷ The problem of state’s interfering in the media is pointed out as one of the major forms of human rights violations in the country, prominently featuring in the introductory passage of the document’s executive summary. *The Freedom House Report* of the year 2014 assesses the country to be partly free in terms of political rights and civil liberties.⁸ As far as the freedom of the press is concerned, The Freedom House’s “Freedom of the Press Report for 2013” places Macedonia in the category of partly free countries with a ranking on the 120th position, which is at the bottom of the “partly free” section of the scale, bordering with “not free” (beginning with rank number 131). According to the same report, its regional ranking is lowest, being at the bottom of the ranking section of Southeast-European countries. Southeast-European countries in their entirety are placed right above the former soviet republics and below the Western and Central European countries.

In the early parliamentary elections and the simultaneous presidential elections that took place in April 2014, the OSCE-ODIHR report pointed out to the problem of financial control of and influence on editorial independence and responsibility of the media by the state and the ruling party on. Media have been participating in the blurring of the difference between state and party by reporting on state officials’ activities in a way which was indistinguishable from political campaigning.⁹

In the course of 2013, the OSCE and its special representative for the freedom of media, Ms. Dunja Mijatović, were actively involved in the public debate in the country on the status of the freedom of the press and its independence from state institutions. The case of the journalist Tomislav Kežarovski, who was sentenced draconically in a controversial court trial on 21st of October 2013 for an alleged revealing of the identity of a protected witness, was one which raised most concerns with the OSCE and the EU Delegation in Skopje.¹⁰ According to a number of statements for the press,¹¹ this was perceived by Ms. Mijatović as a key example of the lack of media freedom in the country. In the OSCE report on media freedom in 2013, the case of Mr. Kežarovski is singled out as the only example of detainment of a journalist in the region of Southeastern Europe.¹² Apart from being condemned by several prominent international and local organizations,¹³ including the Association of Journalists of Macedonia (here abbreviated as “ZNM”), this case was also an occasion for protests and civic pressure.¹⁴



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"popularization of an idea by the
[#government.](#)" is this [#propaganda](#)?



3. Institutional, political and financial conditions of the media freedom in Macedonia

The freedom of press in the country is affected by political pressure which is exacted through financial perks for those reporting favorably and financial punishment (exorbitant fines) for those who “go astray.” The financial incentives come either in direct form, through Government’s advertising in a medium or, indirectly, through encouraging companies close to the ruling party to advertise in a given medium. The punishment of media takes the route of either orchestrated discouragement of companies to advertise in a “problematic” medium,¹⁵ or, as previously said, in the form of fines.

3.1. The issue of financial (in)dependence of the media

Since 2011 there has been a trend of an increased influence of the governing party’s ideology and the Government’s policy agenda over media reporting. It is since the year of 2007, that the Government’s purchasing of services provided by the media has contributed to media regular “reporting on its successes.” The purchasing of services we are referring to consists in Government’s broadcasting a large number of expensive awareness raising campaigns consisting mainly in the promotion of Demo-Christian values, with an emphasis on anti-abortion and “family values” advocating. Nonetheless, the variety of values is indeed rich covering ranging from promoting reforms carried out by the Government to education of the masses in “European behavior.”¹⁶ Government’s advertising in the media has been introduced and gradually established as a permanent and normalized practice since 2007. In the legally regulated format of “advertising,” the Government has been continually reporting about its activities presented as a gesture of accountability and transparency. The other non-commercial legal entity that has been advertising its program and values and has been doing so outside the periods of election campaigning is the ruling party VMRO-DPMNE. Such prac-

tice of the party has been established since it came into power in 2006. According to a research study published by Sašo Ordanoski titled “Captivated Democracy,”¹⁷ since 2006 there has been a general increase in government and party funded commercials in the daily newspaper “Dnevnik,” part of Media Print Macedonia [to be abbreviated as MPM], at that time controlled by Srdžan Kerim. The close ties of Mr. Kerim with the ruling political party and its business elite are discussed below. To illustrate the point, let us note that in 2005 there were 82 government and 63 party one page commercials, while two years later, in 2008 there were 599 government and 114 party commercials a year.¹⁸ Currently, “Dnevnik” is the richest and most influential daily in the country. In 2011, after the shutting down of “A1,” the oldest independent TV station in Macedonia and by then the one with the highest ratings in the country, critical reporting has been gradually and systematically disappearing from the media public in Macedonian language. In 2014, except for one private national and one local TV station,¹⁹ all of the rest of the private national TV stations and the public TV broadcaster report virtually the same news, in virtually the same wording and utterly consonant with the rhetoric and the interests of the Macedonian ruling parties and the Government in power. The OSCE-ODIHR (OSCE-Office for Democratic Institutions and Human Rights) report on the early parliamentary elections and the regular presidential elections in 2014, has noted blurring of the state and the (ruling) party in the media reporting during the campaign, and that the result of this blurring had been partial media reporting in favor of the ruling party.²⁰ In order for this practice to be possible during an election period, previously and systematically established conditions for the normalization (in other words, making it seem normal and widely acceptable) of biased reporting must have been undertaken. Such conditions have been proffered not only by virtue of Government’s direct financing of the media through its campaigns but also by very structure of

media ownership: the private media, including the press, are owned by businessmen close to the ruling party and to the Government. The closeness at issue is essentially a financial one: they win most of the tenders organized by the Governments or run businesses which are associated with Government funded projects.²¹

3.2 The ownership of the pro-government media

3.2.1. Pro-government press

One of the most prominent pro-government media is the internet portal “Kurir.”²² The publisher of “Kurir” is “Em Media DOOEL” [Ем медиа ДООЕЛ] which is owned by Aco Misajlovski. The owner is the brother of the State Secretary of the Ministry of Foreign Affairs and a high ranking member of the ruling party VMRO-DPMNE, Vlado Misajlovski.²³ Another such online portal is “Netpress,”²⁴ which, according to the research conducted and published by “MediaPedia,”²⁵ is registered under the ownership of “Net pres kom DOOEL” [Нет прес ком ДООЕЛ], which is under the ownership of “FINZI DOOEL Skopje” [ФИНЗИ ДООЕЛ Скопје]. “FINZI” is under the ownership of the American “FINZI LLC” which is tied to business with Cyprus offshore companies. The networks of companies blur the line of ownership which cannot be tracked in the complicated scheme they establish. Another pro-government medium is “Telegraf MK,”²⁶ which is part of “Media Print Macedonia,” Macedonian media group that controls the biggest part of the press in Macedonia.²⁷ Among the newspapers that are published by the MPM are the popular: “Dnevnik” [Дневник], “Utrinski Vesnik” [Утрински весник], “Vest” [Вест] and “Tea Moderna” [Tea модерна]. MPM is owned by “Graficki Centar” which is owned by three other companies. One third is owned by Jordan Kamčev’s “Orka Holding AD Skopje” (Орка холдинг АД Скопје). Kamčev is a businessman who is famous of his close ties to the Government and the ruling party.²⁸ The

second third is owned by “Mireks Plus DOOEL Skopje” [Мирекс плус ДООЕЛ Скопје]. Among the owners of this company is Srdžan Kerim (Срѓан Керим) who formerly was the owner of MPM and also very close to the ruling elite.²⁹ The last third of “Grafički Centar” is owned by “Internet Grup DOO,” owned by Srećko Mijodragović who is connected with the Serbian tycoon Veselin Jevrosimović, owner of the “Komtrejd Grup” [Комтрејд груп], where Srećko Mijodragović holds an advisor position.³⁰ In 2009 “Komtrejd group” won a 11,7 million euro tender awarded by the Macedonian Ministry of Information Society and Administration for the supply of 55.000 computers for the Macedonian schools. Veselin Jevrosimović later bought the Macedonian national private television “Alfa TV.” Immediately after the transfer of ownership, the editorial policy of “Alfa TV” changed from being independent to pro-government.³¹ The MPM company, which owns most of the Macedonian press, donated 250.000 euro for the 2013 election campaign of the ruling coalition of VMRO-DPMNE, thus becoming the largest single donor of the ruling party’s campaign.³²

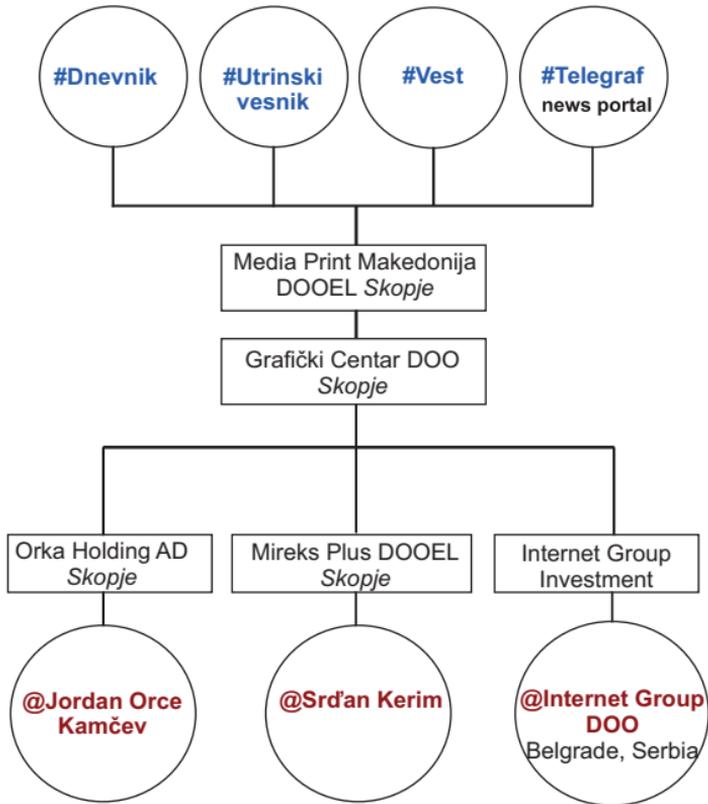


Chart 1: Ownership structure of MPM (Source)³³

The Government is currently the single biggest advertiser in the commercial media. Consequently, Government potentially influences editorial policies and contributes to self-censorship. The turning point in the public debate on the issue of media freedom occurred the as the result of an incident that took place on 24th of December 2012 when journalists were forcibly expelled from the Parliament, following the expelling of the MPs of the opposition by the Parliament security by use of physical force.³⁴

3.2.2. Pro-government televisions

TV Sitel

“TV Sitel” is the most popular television with pro-government editorial policy and close business and political ties of the ownership with the ruling party, which after the closure of A1 television toppled the ratings lists in the country. It is owned by Goran Ivanovski, the son of one of the Socialist party leader Ljubisav Ivanov-Dzingo who is part of the ruling coalition.³⁵ At the same time, Ljubislav Ivanov is one of the richest tycoons in the country. His company “Sileks” owns several factories, farming companies, tourists businesses, hotels, a chain of supermarkets, a bank and a private national television, namely “Sitel”.³⁶ The editor in chief of Sitel TV, Dragan Pavlovič-Latas, is also the editor in chief of the overtly pro-government newspaper “Večer.”

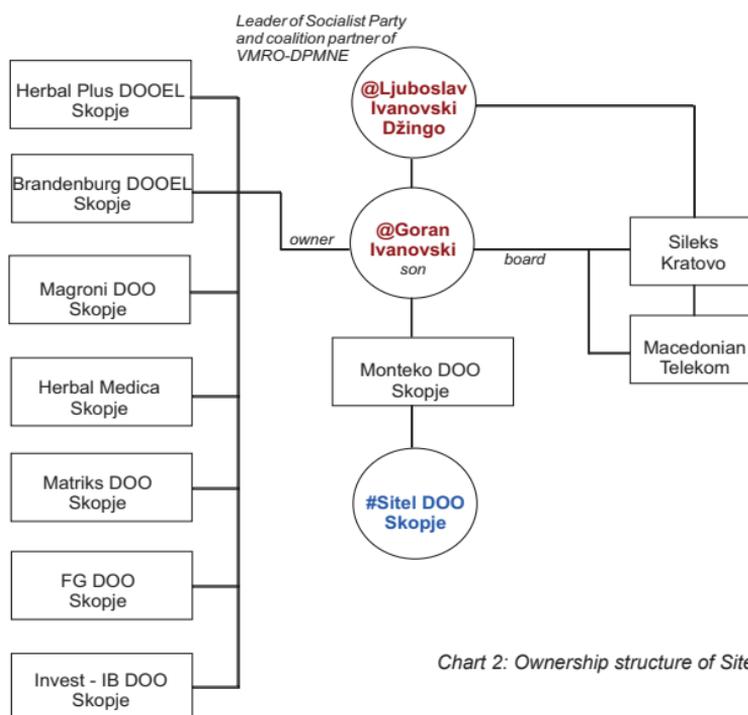


Chart 2: Ownership structure of Sitel³⁷

Kanal 5 Television

“Kanal 5 TV “is owned by the Stojmenov family.³⁸ Boris Stojmenov was the minister of finance in the VMRO-DPMNE led government in the period of 1998-2002. He split from the party, forming his own political party called VMRO-Vistinska [VMRO-The True One], which was later renamed into VMRO-Makedonska [VMRO-Macedonian]. In 2012 his party merged with the currently ruling VMRO-DPMNE. Stojmenov is a business tycoon with a large network of financial institutions.³⁹

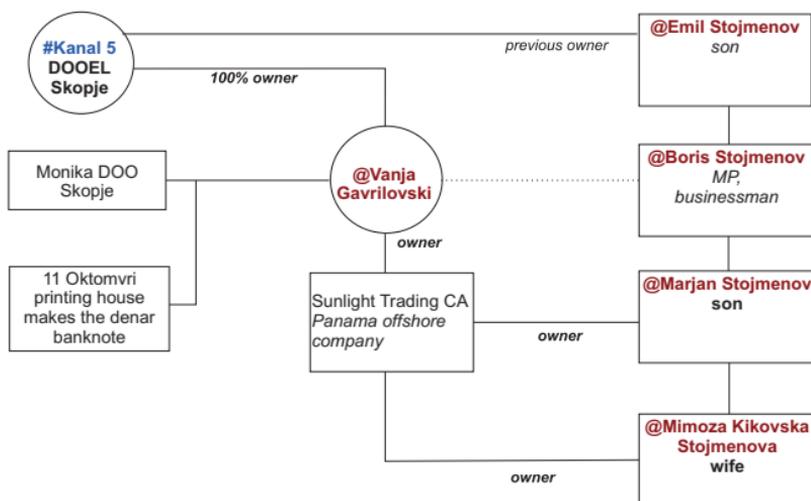


Chart 3: Ownership structure of Kanal 5⁴⁰

3.2.3 The unique case of A1 Television: the station which did not follow the example of all the others

One of the most controversial events concerning media freedom in the post-communist period in Macedonia was the shutting down of the perhaps most influential independent TV station, “A1,” which took place in July 2011, immediately after the elections. The shutting down of “A1” TV was preceded by months of ongoing investigation conducted by the Public Revenue Office and the financial police over suspicions about tax evasion of which the owner of the TV station, Mr. Velija Ramkovski, together with close members of his family and associates, had been accused and ultimately convicted. In 2010, “A1” TV started a very persistent ongoing critique of the VMRO-DPMNE led government. The main accusation from the government institutions was based on an alleged tax evasion committed by Ramkovski and his business companies. The investigation case was named “Pajažina” (“Spider Web”). After 66 court proceedings, accompanied with a lot of controversies implying irregularities, on 14th of March 2012 Velija Ramkovski was sentenced to 13 years in prison for money laundering, criminal association, abuse of official position and tax evasion.⁴¹ In spite of the consistent pressure from the finance police and public revenue officials, the TV station did not change its editorial policy and did not retreat from its harshly critical stance toward the Government. In July 2011, after the blocking of the accounts of “A1 TV” enacted by the Public Revenue Office upon the order of the Public Prosecutor, “A1 TV” stopped airing its programme. There was a short lived attempt on the side of the editorial board and the journalists of “A1” to transfer to “A2” television (another hardly channel owned by Ramkovski family, which until then was intended to be purely entertainment television). The attempt was undercut by the National Broadcasting Council (now the Agency for Audio and Audiovisual Media Services) which withdrew the license of A2. The newspapers “Vreme”, “Špic”, “Koha

e Re” (in Albanian) also owned by Velija Ramkovski were shut down as well.

4. Journalists' self-censorship

In addition to the financial ties with the Government, the partial reporting of the media in favor of the party in power can be associated with a tendency towards self-censorship instilled by the case of A1. As it was previously mentioned, the efforts of a group of journalists to run the station and continue its work had been systematically disabled and finally stifled.⁴²

Another method of instilling self-censorship is the practice of sustained and relentless lawsuits for defamation against journalists initiated and without an exception, won by Government officials. In 2012, a new law was adopted containing articles that regulate the issues of “slander and defamation” under the title of “Law on Civic Responsibility.”⁴³ As soon as the law at issue came in effect, 700 cases of lawsuits for defamation had been annulled out of which 320 were against journalists, in most of the cases submitted by Government officials or public figures close to the ruling party.⁴⁴ This has been a significant development in the improvement of journalists’ rights and their liberty to carry out professional and responsible reporting. Although the journalists are no longer persecuted by the criminal law, there are still lawsuits under the civic law to which the recently adopted law on civic responsibility belongs. In 2014 when the chief of the Secret Police, Mr. Sašo Mijalkov, filed a law suit against the editor in chief and a journalist of the weekly “Fokus” which is one of the handful of printed media which permits itself to be critical of the parties in Government.⁴⁵ Recently, Mr. Mijalkov won the case and the journalist and the editor of the weekly are punished by having to pay a retribution of 9000 euro for the “psychological harm” their writing had induced to Mr. Mijalkov.⁴⁶

Editorial self-censorship is nonetheless present due to the above mentioned forms of control but also through another more important mechanism: high fines for managerial, editorial or administrative flaws in the work of the

legal entity, that is, the medium. “Telma TV” has been fined three times for three different offences of not observing the strict programmatic format approved by the regulating Agency. “Telma TV,” along with “24 Vesti” was judged by the international observers OSCE/ODIHR as impartial, balanced and professional in their reporting about the recent early parliamentary elections and presidential elections.⁴⁷ Within a month after the elections, which were once again won by the ruling party, on May 21st 2014, the editor in chief had to protest against the latest fine of 20.000 euro for alleged unbalanced airing of national folk music and popular music. Mr. Risto Lazarov, the editor in chief at the time insisted that the monitoring conducted by the regulating body had been inaccurate and that the law regulating this issue had not been broken.⁴⁸



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#define "#propaganda": information, especially of a **#biased** or **#misleading** nature, used to **#promote** or **#publicize** a **#particular #political** cause or **#point** of view.



3



5. Current legal regulation of media, and its history of tensions and negotiations between the Association of the Journalists of Macedonia (ZNM) and the Government

The case of “Telma” does not only point out to the problem of systemic use of legal mechanisms to discipline the public opinion, but it also raises the question of overregulation by laws in general. Almost every law in the country, including the one on higher education which is also relevant for an informed and free public debate, overregulates details of management that could be and should be subject to regulation by secondary acts and internal management policies and regulating documents. The review of the draft law commissioned by OSCE’s special representative on freedom of the media also notes the problem of overregulation.⁴⁹ For all regulated details the legislator has determined fines which are considerably high taking into account the economic standard of living in the country which, by consequence, affects also the legal entities and not only the physical persons.⁵⁰ In this way the state pursues micromanagement which is not typical of an effectively free market oriented and democratic country in that it undermines programmatic and financial independence in the functioning of institutions, organizations and individuals.

5.1 The issue of legislation on media

5.1.1 The problem of programmatic overregulation

In spite of the fact that the EU directive is based on principles which allow as great as possible editorial independence of the audiovisual services enabled by simple and minimal legal regulation, the Macedonian law on audiovisual services adopted in December 2013 is marked by excessive regulation. The law restricts the program planning, its content and its structuring, to the extent of rendering the idea of their editorial independence void of meaning. Paradoxically, the legally overregulated functioning of the audiovisual media in the programmatic and also in the administrative sense is coupled by loose formulations that invite arbitrary assessment when it comes

to such issues as the very possibility of shutting down a TV or radio station.

The programmatic structure for each audiovisual medium is prescribed by the Agency for audiovisual and media services, founded and funded by the state (13/184, article 4 of the Law on audio and audiovisual services). The media can submit their programmatic concept to the Agency for its approval, using the form provided by the Agency (13/184, articles 32 and 67 of the Law on audio and audiovisual services). The law stipulates a fine of up to 20.000 euro the medium which will not abide to the programmatic structure and the concept approved by the Agency (13/184, articles 146 line 2 and article 147 lines 14 and 15). It is important to note that the same amount (20.000 euro) is provisioned as the fine for a much serious breach of the law, namely for having an undisclosed participant in ownership and decision making (article 147, line 2). On May 21st 2014 , “Telma TV,” which is, we would argue, the only editorially independent national TV station was fined 20.000 euro for a one (1) hour less airing of folk music than prescribed by the law (sic!) and thereby breaching the programmatic structure regulated and monitored by the Agency.⁵¹ As far as the legal stipulations regarding the relations between the Agency and the media are concerned, we conclude that the law regulates in detail what is termed “editorial responsibility” (13/184, 67, line 10). In spite of the restrictiveness of the law as far as editorial independence is concerned, the notion itself does appear in it as one of the general “principles” the law endorses (article 61). Such overregulation of the programmatic scheme of each medium and control over its editorial policies, coupled by draconic fining, undercuts the very basic or even minimal possibility for editorial independence.

The level of control that the law provides for the Agency for audio and audiovisual media services is one that can be

enacted only from an instance of virtually absolute power. The law permits the agency to issue a fine of 20.000 euro for a technical detail, for an almost symbolic “breach of law.” Nonetheless, the articles which can lead to withholding the permission to broadcast and, finally, shutting down a TV or radio station are vague inviting arbitrary judgment on the part of the agency. For example, a medium which failed to provide correct data to the Agency at the occasion of applying for a work permit, and if this data is deemed to be important for adopting a positive decision on the part of the Agency, can lose its work permit if such failure can be proven (article 82). It is unclear whether a mere typo in the data provided can be considered a fatal failure. Considering that the Agency can enact one of its most severe punishments over a debatable one hour of lack of an approved program contents (the one hour less folklore music “breach of law” in the case of “Telma TV”), it is not unimaginable that a typo or a mere omission that is no more than a technical mistake can result into shutting down a medium.

The law refers to the EU directive as the model it follows and states its intention for harmonization with the EU legislation. However, in spite of the fact that it duplicates many of the articles of the EU directive it also contains an abundance of provisions which are in utter contradiction with the fundamental principles of the Directive which come down to ensuring freedom of expression and editorial independence. The role accorded to the Agency is in blatant contradiction with some of the core provisions of the EU directive: by usurping the position which should belong, according to the Directive, to the media service provider, the Agency, viz. the State, violates the principle of “editorial independence.”

[...] ‘media service provider’ means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovi-

sual media service and determines the manner in which it is organized.⁵²

The version of the Law on audio, audiovisual and media services that was adopted on 25 December 2013, has been greeted by OSCE media representative Dunja Mijatović “as good on paper,” coupled by an expression of reservations with regards to the implementation of the law.⁵³ *Our claim here is that the law is not only not good on paper but that it further deepens the existing problems by legalizing some of the practices of government control over the media, namely through government advertising and to the strong and centralized control accorded to the Agency for audio, audiovisual and media services.* Furthermore, in his latest report on the situation in Macedonia, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank Larue, notes improvement of the law made through the latest amendments stating:

In 2013, the parliament had adopted the Law on Media and the Law on Audio and Audiovisual Media Services following a wide consultation process with all stakeholders. Continued dialogue with journalists had resulted in a number of amendments to the laws being passed in January 2014. The new amendments specifically promoted and encouraged freedom of expression and ensured that restrictions on media content complied with the case law of the European Court of Human Rights.⁵⁴

The amendment at issue is however purely declarative:

In article 6, under line 1, a new line is added stating “it stimulates the freedom of expression.”⁵⁵

In other words, if we exclude this article which does not

stipulate any concrete measures, the law continues to create material conditions that only limit freedom of expression and perpetuate state control over editorial policies.

5.1.2. The problem of advertising “ideas”

The media independence is also undermined through the fact that the Government is the biggest advertiser in all of the private national TV stations. In the period of 2012, 2013 and the first half of 2014, the Government has spent 7.2 million euro on advertising services provided by the media. This amount equals to the total spent by the four biggest commercial advertisers in the country, namely Procter and Gamble, Coca Cola and One. Considering that the purchasing of the advertising services is carried out by marketing agencies on behalf of the Government which normally manage to negotiate extremely low prices, one wonders whether there is economic logic in this processes. There certainly is financial gain for the media as cumulatively they do receive a massive amount of money for advertising. However, the fact that the biggest advertiser is Government raises the question of whether these processes are counter to the free market economy logic.⁵⁶

The very fact that the Government advertises its activities or broadcasts all sorts of campaigns in the format of commercials is itself problematic. Namely, the EU directive stipulates the principles and conditions for media advertising of *products* and *services*. The Macedonian law has included the same stipulations, but it has also *added the possibility* of “advertising an idea.” According to the Law on audio and audiovisual services, the definition of advertising or of providing “commercial services” refers to the following categories of commercial program: 1) “direct or indirect promotion of products, services or the image of natural or legal person carrying out an economic activity,” 2) “popularization of an idea or an activity for the purpos-

es of accomplishing some other goal” (article 3, line 5). In contrast to the latter provision, the EU directive’s article 1 stipulates that:

(h) audiovisual commercial communication’ means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;

(i) ‘television advertising’ means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;⁵⁷

One wonders if “commercial advertising of ideas” is in accordance with the basic principles of the EU directive which are aligned with the Union’s political fundamentals: market economy but also democracy. “Selling ideas” to media by a government is hardly a market oriented economy practice. It also seems to border with propaganda since there is no other competitor who can “commercially sell ideas.” Let us clarify that the “selling of ideas” and government campaigns at issue are not those run by a ruling party in periods of election campaigning. Rather, they are “awareness raising” campaigns broadcasted on daily basis which advertise, among other things, such

abstract and non-marketable concepts as “the beauty of the country” (advertised to its own citizens), a variety of humanitarian values (“be humane”, for example), the cultural heritage but also - and regularly so - the accomplishments of the Government.⁵⁸ We allow the possibility that the claim that commercial advertising of “ideas” borders with propaganda is debatable. However, we purport that the formulation “popularization of an idea for the purposes of accomplishing some goal” is fairly vague and, therefore, easily permits such possibility.

The EU Directive, which is supposed to be implemented in Macedonia through the law on audio and audiovisual services, does not operate with any other concept of advertising except from the one related to commercial products and services. In fact, paragraph 31 it explicitly formulates “commercial communication” as follows: A wide definition of audiovisual commercial communication should be laid down in this Directive, which should not however include public service announcements and charity appeals broadcast free of charge.⁵⁹ In the EU, the concept of “advertising ideas” promulgated by the Macedonian government, could be grasped only within the conceptual frame of categories such as “public service announcements” (PBA’s) or “charity appeals.” An awareness raising media campaign run by an NGO, according to EU standards, should be broadcasted free of charge as should be the one run by a government. Nonetheless, it remains debatable whether a government should run either awareness raising campaigns or charities simply because such practice seems to border with uncritical imposition of the value system of those in political and economic power. In other words, it can hardly be distinguished from political or ideological propaganda.

In the EU, public service announcements (PBA’s) are usually announcements concerning public safety, public health issues, and instructions for dealing with natu-

ral disasters and war. In the majority of the EU states, PBA's are regulated as a free broadcasting time granted to the public institutions. We will present the regulations concerning the public service announcements in three EU countries: France, Germany and United Kingdom. In France, public broadcasters are required to transmit messages of public interest (or PBS's) for ten minutes per week on "France 2" and for four minutes per week on "France 3."⁶⁰ They are also required to air other public messages of public interest from non-profit organizations. According to the French law,⁶¹ the media are obliged to grant free time to governmental announcements and messages at rare and celebratory occasions such as New Year and national holidays. The same law grants the opposition a reply the same duration and format as the governmental announcement. In Germany, the federal government and the governments of the regional states are granted free time for public media announcements (PMA's).⁶² These PMA's are without political content, such as announcements concerning natural disasters and catastrophes. There is an agreement for granting a response to the opposition in case of a political message. However, this is hardly applied anymore as political messages are systematically avoided. In the United Kingdom, the BBC is required to provide sufficient information about the proceedings in both Houses of Parliament,⁶³ as well as general education of the public about the functioning of the political system. The BBC is required to transmit the announcements of the government officials in case of exceptional circumstances, such as natural disasters and a decision to go to war. The Macedonian law on audio and audiovisual services and the previous practice dating since 2006, not only permits the possibility but also establishes a reality whereby the Government has become the biggest if not the only advertiser of "ideas," values, and marketing of what would normally fall under the category of "public broadcasting announcements."

5.1.3. Media as donors of political parties (through “free advertising of ideas”)

In their Guidelines on Political Party Regulation,⁶⁴ OSCE/ODIHR and the Venice Commission are proposing an instrument for development of a wide range of policies for the promotion of democratic values. According to the Guidelines, “[t]he regulation of political party funding is essential to guarantee parties independence from undue influence created by donors, to ensure parties the opportunity to compete in accordance with the principle of equal opportunity, and to provide for transparency in political financing.”⁶⁵ On the issue of private funding, the Guide states:

It is central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on contributions from state-owned/controlled companies and anonymous donors.⁶⁶

According to the Financial Report about the early parliamentary elections in 2014, 41 media, in particular TV stations and radio channels,⁶⁷ are among the greatest donors, all of them participating under the section “service”.



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**6. Field research conducted by ISSHS on
journalists' censorship and self-censorship**

The study at hand is also based on field research gathered evidence concerning the issue of social awareness of the citizens about the importance of media freedom. In five cities across Republic of Macedonia focus groups with representatives of media and NGOs were held. The focus groups enabled an opening a wider debate about the importance of media and journalistic freedom for the general progress of the society, which was the main objective of the research. The input received from focus groups boils down to the following realizations: investigative journalism and journalistic authorship are practically extinct, censorship and self-censorship govern journalistic expression and their basic workers' rights are threatened as there is no functional syndicate to defend them. (The "Independent syndicate of the journalists" operates more as an activist or advocacy group rather than a syndicate which could protect labor rights in front of the Government and the Judiciary.) Focus groups, which involved representatives of the media and NGO's, discussed how to improve their information sharing, in order to encourage investigative journalism. According to the participants, the investigative journalism in the country is reduced to bare minimum. The respondents pointed to numerous examples of censorship and self-censorship by the media and of the journalists, a style of reporting, which, according to our respondents, distorts "true picture" of the events. The current situation in Macedonian journalism was referred to desperate. As one journalist noted, "today it is easy to be an 'an excellent journalist' because no one asks questions but directly gets answers from one source." Albeit diversified by specific sub-focuses all focus groups discussed the issue of editorial independence, journalistic freedom of expression and the status of the profession, its standards and how they have been influenced by the state and the ruling party. All focus groups came to the conclusion that these freedoms are under serious threat and that key remedy to the problem is legislation that will counter the source of the problem.

**7. The postfestum of the newly adopted law
on audio and audiovisual services and the
role of ZNM in it**

Immediately after the adoption of the Law on audio and audiovisual services, in a joint press conference with Government representatives, the president of the ZNM, Mr. Selmani stated that they have agreed with the Government to find a solution for further improvement of the legislation with regard to the independence of the public service MTV in a period of six months. Namely, it was unacceptable for Selmani and ZNM that the law prescribes disproportionate fines for the media and journalists. He expressed his reservations with regard to the law related to the fact that it permits Government's financing of the media in an unofficial and non-transparent way, i.e., through campaigns and subventions for local production. By doing this, the government can buy the sympathies of the media and by that it affects editorial independence. He also warned that the fact that their remarks, which were at the same time remarks made by the experts of the Council of Europe and the OSCE, were not accepted by the Government would seriously undermine the freedom of expression and the freedom of the press.⁶⁸ Therefore, Selmani stated that their approval of the version of the laws adopted on 25 December 2014 was conditional and that the above remarks should be addressed by the legislators in a course of the upcoming 6 months (which expired on May 25th 2014).⁶⁹ Since May 2014, one has not noted any public insistence on the part of ZNM or Mr. Selmani that the problematic articles of the law are revised.



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of the Macedonian [#Law](#) on [#Audiovisual](#)
[Services](#)



8. Conclusions and recommendations

From the analysis provided above we can conclude that the major obstacles to the freedom of media in the country are direct result of the Government's practice of allocating considerable amounts of funds in the private media for purposes of advertising, i.e. media campaigning. Such practices enable the Government and the ruling party to influence the editorial policy of the media, which compete for those funds. Another problem that is revealed through the analysis is the issue of media ownership. Namely, through complex and hardly transparent networks media ownership is becoming increasingly linked with high ranking Government officials. This practice threatens the very possibility of media independence.

The key factor for the development of free media is the freedom of editorial policies. Editorial independence is undermined and almost fully disabled by the current law's overregulation and enacted through draconic and imbalanced fines. Programmatic control is centralized and linked to the Government by being placed mainly in the hands of the Agency for audio and audiovisual communications which is also endowed with the authority to not only fine, but also issue and withdraw work permits for the media.

In order to address the current practice of influencing the media, which the Government has ensured for itself by creating a legal basis through the newly adopted laws, in particular the one on audio and audiovisual services, we argue that *legal intervention must take place*. Therefore, in order to ensure legal and, as a consequence, social and political context for free, independent media, we propose the following:

- I. The line in section 5 of article 3 of the law allowing "popularization of an idea or an activity or for the purposes of accomplishing some other goal" should be completely removed.

Explication: Such legal provision is in utter contradiction with the EU directive which defines advertisers as entities pursuing economic activity only. In order to avoid the danger of using public funds to promote ideological convictions of a political party (in power), the Government should only have the right to broadcast public service announcements and charity appeals free of charge. Awareness raising campaigns should also be defined as free of charge broadcasting. The law should stipulate that awareness raising campaigns can be pursued also by non-governmental and non-economic entities, and that the editors in chief should be entitled to decide, upon their own professional judgment, which campaigns will be broadcasted. Every medium should reserve a certain number of minutes for such broadcasting. The number of minutes should depend on whether the medium is private or public, whereby the latter should be required to provide a greater number of minutes for free of charge broadcasting.

II. The provisions in the law for audio and audiovisual media services that regulate the programmatic content through the authority endowed to the Agency should be removed. Editorial boards of the media should be given the freedom to decide upon the content of their programs. The existing provisions infringe the free market self-regulation of the media, since they restrict their freedom to pursue the programmatic content they believe will best compete in the market. The fines determined by the law should be revised immediately by rendering them proportionate with the level of breach of law that a medium might commit. The current drastic fines allow for the Agency for audio and audiovisual communication to exert an overwhelming control over the media, influencing their very purpose of informing the public.

III. a) Urgent investigation on media ownership in the country to be initiated by the Public Prosecutor, coupled

by (b) setting up proper legal instruments for control as well as juridical prosecution for the violations.

Explication: The legal provisions under the heading “Protection of plurality and diversity of audio and audiovisual media services” of the Law on audio and audiovisual media services provide all the necessary restriction of ownership that might link different political and business interests and, as a consequence, influence media independence. As the analysis has shown, there is a practice of circumventing or blatantly breaching these legal provisions, enabled through various ownership networks that are closely tied to the Government.

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“on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive),” available at http://europa.eu/legislation_summaries/audiovisual_and_media/am0005_en.htm, accessed on 29 May 2014.

⁶⁰Irini Katsirea, *Public Broadcasting and European Law: A Comparative*

Examination of Public Service Obligations in Six Member States (Kluwer Law International, 2008), 25. Germany, Greece, Italy, the Netherlands, and the United Kingdom

⁶¹Law 86-1067 of September 1986, Art. 54, quoted in *Ibid.* Germany, Greece, Italy, the Netherlands, and the United Kingdom

⁶²BayRG, Art. 4(2) Nr. 5: WDR-G. §8., quoted in *Ibid.* Germany, Greece, Italy, the Netherlands, and the United Kingdom

⁶³Ofcom Code, s. 6.9, 6.10. as quoted in *Ibid.* Germany, Greece, Italy, the Netherlands, and the United Kingdom

⁶⁴Organization for Security and Cooperation in Europe et al., *Guidelines on Political Party Regulation: Adopted by the Venice Commission at Its 84th Plenary Session, Venice, 15-16 October 2010* (Warsaw/Strasbourg: OSCE /ODIHR, 2011).

⁶⁵*Ibid.*, 67.

⁶⁶*Ibid.*, 71.

⁶⁷See the Report of the VMRO-DPMNE party available at: http://www.dzr.gov.mk/Uploads/VMRO_DPMNE_KOREGIRAN_parlamentarni_vkupen.pdf

⁶⁸ZNM: „Ќе ја следиме примената на медиумските закони“ [“We will Follow the Implementation of the Laws on Media”], available at <http://www.telegraf.mk/aktuelno/makedonija/95535-znm-ke-ja-sledime-primenata-na-mediumskite-zakoni>, accessed on 13 June 2014.

⁶⁹*Ibid.*

