

## MASS MEDIA AND ELECTIONS

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Mr. Chairman, Dear Colleagues,

It is well known that mass media are one of the most important achievements of modern democracy. In Russia, as in all other democratic countries, media are one of the most important instruments in the struggle for political power, which strongly affects the formation of electoral preferences of voters. It sometimes happens that the media, an instrument of information of voters, become a tool used to manipulate them. This results in the violation of the rights of citizens, which the state is called upon to protect under Article 2 of the Constitution of the Russian Federation.

At present, we, in Russia, have run into these problems which, as we think, are common to most democracies of our time.

We believe that it is these problems, connected with the need for the state to protect the rights of citizens, that induced the drafters of the International Covenant on Civil and Political Rights of December 16, 1966 to establish (Article 19) that the exercise of the right to the freedom of self-expression carries with it special duties and responsibilities and may therefore be subject to certain restrictions which must be provided by law and are necessary for respect of the rights or reputation of others, for the protection of national security, public order or public morals.

Similar provisions are contained in Article 10 of the **European Convention on Human Rights and Fundamental Freedoms** of November 4, 1950.

Therefore, from the standpoint of international law the possibility and need to legislatively restrict the freedom of dissemination of information is conditioned by no less important need to protect the rights and freedoms of other persons, public morals and health, national security and other priority values.

In the Russian Federation, Article 29 of the Constitution guarantees the freedom of speech and mass information, the right freely to seek, obtain, produce and disseminate information by **any lawful** means. Similarly to the international documents the Constitution of the Russian Federation stipulates several conditions which have to be observed when the freedom of mass information is to be restricted. Thus, Part 3, Article 55 of the Constitution of the Russian Federation states: "human and civil rights and liberties may be restricted by federal law only to the extent that is necessary for protection of the foundations of the constitutional system, morality, health, **rights and lawful interests of other persons**, assurance of national defense and security."

It must be pointed out that the situation in Russia has a number of specific features.

It is well known that Great Britain, the United States and other countries with long-standing democratic traditions have a stable multi-party system. The media in these countries function in the conditions of a stable market economy, strong judiciary, effective self-regulation of the journalistic community based on the ethical principles. We think that in such conditions there is no need to regulate in detail the dissemination of information about elections through the media during the period of the election campaign.

The Russian experience of democratic development covers a period of slightly more than 10 years. During the establishment of a multi-party system and market economy

membership in the ruling elite, association with powerful business corporations have become factors in our country which determine clear resource superiority of some election campaign participants over other participants. In Russia, as in other countries, powerful financial-industrial groups and their alliances with power structures display an ever-increasing wish to patronize influential media.

Another feature of the Russian reality is that the main TV companies which broadcast countrywide are in one of another form controlled by the state.

We do not regard this situation as being optimal for the best assurance of the electoral rights of citizens and work out our positions with due consideration for the recommendations of the Council of Europe, which stress the importance of the presence of a plurality of autonomous independent information organs on the national, regional and local levels.<sup>1</sup>

We also take into consideration the opinions of authoritative international experts. Thus, according to the report of the **European Institute for the Media** on monitoring the media coverage of the 1999 parliamentary elections in Russia, the coverage of the parliamentary elections in the most important media sectors was biased. ORT and RTR, the state-run TV companies with the largest audience, which bear a special responsibility for provision of honest and impartial information about the political choice before the voters, failed in this task. Bias was noticeable in newscasts and in the criticism of political opponents in analytical programs. The coverage of the elections strongly biased in favor of the pro-government bloc "Unity" did not conform to the standards established by the Russian laws and international agreements. In the past year, mug-slinging campaigns became a distinctive feature of the activity of the Russian media.<sup>2</sup>

**We think that in the period of election campaigns the problem of the political neutrality of state-run media, of their equal accessibility to all candidates is highly topical.**

We, election officials, support the Russian legislators in their belief that **at the present stage** of the development of Russian democracy **the norms of law must equalize the information possibilities of candidates**. We have no doubt today that if the participation of state-run media in election campaigns is not regulated by law it will be impossible to prevent the use of the administrative resource. Consequently, we may and must do our best to ensure fair distribution of air time and space in print media for propaganda purposes between all candidates.

How is this done at the legal level?

First, equal amounts of free air time and free space are reserved for all registered candidates and political parties in state-run TV companies and print media. The time for airing and publication of propaganda materials of each candidate is determined by lot. The state-run media are not allowed to shirk this obligation. Exceptions are only made for the cases where propaganda materials can damage the honor, dignity or business reputation of other candidates and the media are unable to offer the latter a possibility to make public a denial before the end of the campaigning period (the right of response).

The obligation to allocate free air time and space to candidates for propaganda purposes is borne only by the **state-run** media. The law does impose such obligation on non-state-run media, which must only apply equal rates for the air time and space for all candidates and political parties and publish these rates in advance. They must also ensure equal conditions for the candidates so far as the airing time is concerned. Non-state-run print

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<sup>1</sup> Recommendation No. R(99) 1, Committee of Ministers, Council of Europe, "Measures to Promote Media Pluralism" (Adopted by the Committee of Ministers on January 19, 1999).

<sup>2</sup> Monitoring Media Coverage of the 1999 Parliamentary Elections in Russia. Concluding Report. March 2000. European Commission, Brussels, 2000

media may refuse to provide this service to any candidate or refuse to disseminate election propaganda at all.

**Of course, the media may have a certain commercial interest in elections. We believe, however, that in the period of an election campaign the wish to gain profit should be realized with due observance of the requirements of the election law.**

Now I want to mention some restrictions on the **coverage of the election activities**. These restrictions are connected with the same fundamental principle of electoral law - the equality of the rights of candidates, including their information possibilities.

Thus, reports about election activities of candidates in newscasts must not be accompanied by the commentary of journalists. The meaning of these restrictions is clear: none of candidates should be able to enjoy any preferences on the part of the media, to the detriment of other candidates. However, it is important to remember that the ban on commentary extends only to information programs, newscasts. In other programs- author's, analytical, thematic - and in other reports journalists may analyze and assess the course of the campaign. However, in doing so they must not use the advantages of their office or status for propaganda purposes because this would nullify the possibility to realize the principle of the equality of the candidates' rights.

Another important rule is that publication of all propaganda materials must be paid for only from the candidate's electoral fund. Payment for propaganda activities from other sources is not allowed.

In this connection there arises a problem of the responsibility of editors and journalists for violation of the rules established by federal laws.

In Russia, offences connected with the violation of the election propaganda rules are mainly punishable by administrative penalties - fines imposed by courts. These fines are not very large. However, we were often confronted by a situation where the sums of possible fines were included in the projected expenses for information services and the media readily carried out such orders disregarding protests of the public and court sanctions. In this manner those who violated election laws rendered it impossible for their political competitors with smaller financial means to prove the falsity of the charges and protect their rights. Meanwhile the state had no legal mechanism to stop such offences and protect the lawful rights of citizens from being encroached upon by so-called "TV killers."

Therefore the federal media law provides for more effective measures to be taken against the media which violate the norms of the election laws and do not respond to court sanctions.

Thus, a court may suspend the activity of a media outlet which has repeatedly violated the election laws and has already been brought to administrative responsibility for these violations. However, this can be done only before voting day and only upon application of the Russian Federation Ministry for the Affairs of the Press, TV and Radio Broadcasting and Mass Telecommunications.

So far as the election commission is concerned, it is obliged merely to record violations and make appropriate applications to the Press Ministry of Russia. We believe that such multi-stage arrangement makes it possible to avoid lawlessness and rules out adoption of ungrounded, unfair decisions..

**At the same time, if the editors or journalists are dissatisfied with the court decision, they may appeal this decision to a higher court.**

It can thus be concluded that a legal mechanism has been created in Russia, which agrees the principles of free dissemination of information and of the equality of the candidates' rights, as required for genuine realization and protection of the electoral rights of citizens. However, many problems still remain in the sphere of legal regulation of elections..

Is it possible to formulate the main features of a model of legal regulation of media participation in election campaigns in democratic states?

We believe that at a definite stage of democratic development this can and must be done. And we are working for the creation of a solid international-law basis on which certain standards relating to the role of the media in an electoral process can be laid down. Thus the "Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States" (ratified by Russia on July 2, 2003) states that equal conditions for access to the media and telecommunications must be assured for all candidates and political parties to conduct their election propaganda, including presentation of their election programs.

We believe it fundamentally important to formulate the rights of journalists, members of the press. The Convention mentioned above and the Russian laws provide, in particular, for the following rights:

- to attend the meetings of election commissions;
- to examine their documents;
- to be present at voting and vote count.

We attach great importance to inclusion of relevant provisions in the draft Convention on Election Standards, Electoral Rights and Freedoms (approved by the ACEEEO conference held in Moscow in September 2002), for instance, the provisions stating that the media established with the participation of the state or municipal bodies must provide a balanced information coverage of elections, election campaigns of candidates, political parties (coalitions), without any political, ideological and other kinds of bias or preferences.

The draft Convention provides that fair, equal and non-discriminatory legal conditions established by law for access to the media must be ensured for all candidates, political parties (coalitions) participating in elections for the conduct of their election campaigns, including presentation of their election programs.

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Of course, we do not think that the model of regulation of the media activity in the period of election campaigns described above is ideal. We keep analyzing and rethinking our experience and study the international electoral experience. Some legislative decisions are still shaping up. However, the vector of the change is clear: increasingly greater openness of the electoral process, further expansion of the rights of the media and journalistic community.