

Elections and the Media

Association of Central and Eastern European Election Officials

ELECTIONS AND THE MEDIA

Executive Summary

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The purpose of this comparative overview is to know more about the legal background and best practices concerning the media participation before and during the elections in the Members States. Why is it so important?

The media plays an important role in informing and mobilizing voters during an election campaign. The media helps to the voters to evaluate the parties and individual candidates by means of televised election debates, advertising and news coverage. The amount and type of information citizens receive is determined by two main factors. One of is the structure of the media system and the other one is the quality and quantity of the information.

Media system is changing very rapidly. In some countries still public broadcasters have monopoly, but in the majority of the countries public broadcasters are losing audiences and there is an increase in commercial broadcasters. Despite of this changes still more news and information available at public channels.

There was also a dramatic change in the newspaper market. The traditional, “political” newspapers have to compete with “tabloids”. We could see also a new trend: newspaper readership is declining in most countries.

Third element, which influences significantly the media sector, is the Internet. The Internet became the most popular information provider however, as you will see later, there is no real regulation on Internet.

As the quality and quantity of information is concerned, there are also different expectations. In one hand, public needs, as much as possible, reliable information. It is in line with the Human Rights Convention which states: everyone has the right to freedom of expression and to receive and impart information. But, on the other hand, there is a possibility to restrict the availability of certain information for national security, territorial integrity and public safety reasons.

In order to have a balanced, objective and neutral system the following key elements should be regulated:

- access to information,

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- flow of information,
- minimum standards on media coverage.

This overview focused on these main questions in order to know where we are at this moment, what we have to improve in the future in order to have more successful and fair elections. It is obvious that the increased news coverage generates a higher turnout and gives more legitimacy to the elected politicians. The exact and balanced rules on media coverage and correct regulation concerning access to information help to eliminate non-positive and unfavourable news coverage.

A questionnaire was forwarded in 18 countries of the region seeking an answer, inter alia, to questions such as how the freedom of speech and expression is asserted in the individual countries, how can data in the public interest be accessed, whether there are any special rules in relation to elections, such as with regard to the appearance of parties and candidates in the media, or the campaign, the mandatory silence during campaign and eventual legal remedy.

Of the 20 countries, 14 responded - Bulgaria, Armenia, Georgia and Serbia-Montenegro did not return the questionnaire - and the individual countries presented their own situation at rather different levels of detail. Some countries analysed the position of the media and the regulations related to the election procedure in brief studies.

Based on the responses received, it can be established that, overall, the freedom of expression is a fundamental freedom guaranteed by the constitution in every one of the states under study and in most countries access to data in the public interest, thus also information related to elections, is also guaranteed by law. In general, higher-level legislation provides for the equality of opportunity for parties and candidates and for the legal remedy available in the event of eventual breaches of the law.

This summary was drawn up with a view to inform only, as the representatives of the individual states will have an opportunity to give a detailed presentation of the situation of their countries at the conference.

The Legal Framework of Public Access: Constitutional and Legal Safeguards

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Based on the responses to the questionnaire, it can be established that the freedom of speech and of the flow of information is a basic constitutional freedom everywhere. The countries under study stated without exception that only law may restrict these fundamental freedoms in accordance with international requirements, for instance, in the Ukraine and in Russia only when that is warranted by the safety and territorial integrity of the state, the maintenance of law and order or the protection of the personal rights of others. The Moldavian experts stressed that restrictions violating the freedom of the press were abolished from most of their laws.

Almost every state in the region has a press law, with the only exception of Macedonia. The freedom of access to information is also guaranteed by law with the exception of four countries, Albania, Macedonia, Russia and Turkey; and generally there is a piece of legislation to provide for this. In the absence of an independent law, Albania tries to guarantee this right through other provisions, while in Russia the act on the media obligates the agencies of the state to inform the press of their activities, while in Azerbaijan such a legislation is under preparation (Law on Freedom of Information). In several countries— for instance, in Bosnia-Herzegovina and Hungary—the law on public access to data in the public interest requires that such data must be made accessible not only to the press but also to individuals.

Most countries have enacted their separate legislation to regulate the operation of the electronic media; only Azerbaijan, Belarus and Russia have no such law. In the former, the act on the press, in the latter, the act on the media can also be applied to radio and television broadcasting. As against this, none of these countries enacted independent regulation concerning the internet as a highly specific electronic medium, although certain generally applicable provisions also have an impact on the operation of the world wide net.

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Political advertising is unknown in Turkey; in Albania, the law prohibits the disclosure of paid advertisements, and no response was received from Slovakia on this point. The Belarusian response reveals that there the campaign is conducted exclusively out of state funds, and the law guarantees free and balanced appearance in the media for the candidates. In the other states, however, paid advertisement seems to be a usual instrument of political marketing, but the related regulations do show certain differences. For instance, in Lithuania

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only papers in state ownership are permitted to publish political advertisements, while such distinction does not apply to radio and television channels. In the Ukraine, the parties may use the state-owned radio and television channels to debit the state funds set aside for the elections, but they are also permitted to advertise in other media at their own cost.

The provisions concerning equality of opportunity are not uniform, nevertheless, the majority of the responses reveal an endeavour to guarantee such equality. The most frequent solution is that the media are placed under an obligation to publish all political advertisements at the same tariff during the election period. It is general practice that election expenditure is limited, but Azerbaijan and Latvia has not set an upper limit to the amounts that can be spent on election propaganda; no response was received from Bosnia-Herzegovina; in Lithuania, Hungary, Russia and a few other states such expenditure is curbed by putting a limit to the total amount that may be spent during an election campaign. The Macedonian response suggests that although a limit obtains there as well, compliance with it does constitute a problem.

According to the responses to the questionnaire it seems there are no problems in relation to the appearance of the parties in the media: virtually every response indicates that candidates and political organisations may have equal access to the public at the same conditions in the state-owned media; the information on them is balanced and independent of whether it concerns pro-government or opposition party players in the political scene. When that is not the case or a party or candidate makes a statements degrading or violating the honour of the other party, in most cases legal remedy is available and the election committees, the bodies supervising public media or eventually the courts may give satisfaction.

Azerbaijan, Bosnia-Herzegovina and the Ukraine at the same time indicated that they had no regulations for the case of ruling parties appearing with disproportionately large weight in the media; according to the Macedonian response, the broadcasting council “may constitute some kind of a guarantee”; as against this, in Latvia the professional rules and norms of ethics of journalism curb excesses, while in Hungary the National Radio and Television Board may levy sanctions even on commercial channels, although the current order of procedures is not really suitable for rapid decision-making in view of the length of the campaign period. The rules of distributing broadcasting time provided free of charge are fair everywhere: the parties and/or candidates get an opportunity to appear either on an equal footing or in accordance with the magnitude of the support that they have; the order of their appearance is determined by drawing lots. It is worthwhile to note that, in the Ukraine, at least ten minutes of

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broadcasting time must be provided in the local media covering the constituency of the candidates, while no upper limits are established.

Access to Information

In Macedonia and in Turkey, there are no sector-specific laws regulating the obligation of the government to inform the press, but the Macedonian laws specify rules for individual officials in relation to this. In the other countries, the acts on the press or the acts on information generally regulating access to data of public interest—in Hungary both laws—contain provisions in relation to this. Everywhere, information may be denied only on the basis of restrictions incorporated in law; in Macedonia, for instance, a law was enacted on the protection of data, in Hungary on the protection of state and service secrets but, in general, the information acts of the individual states provide for restrictions.

Terminology is not the same but the intention is: government agencies may deny access only to those data which constitute state or service secrets, whose publication would jeopardise the security of the state, would seriously violate public interest or the interests of the individual persons. When the press disagrees with the decision, it may generally turn to the courts. In Poland, it is the superior of the decision-maker who is competent to take action; in Bosnia the intervention of the media commissioner may be requested, while in Hungary the data protection ombudsman may also take action. The period open for conducting the procedure is fixed inter alia in Belarus, Bosnia-Herzegovina, Poland and Turkey, in most cases, however, the authorities or the courts are not tied by any deadline. Incidentally, virtually all of the respondents are satisfied with the relationship of their governments to the public, or else they did not give an answer. In relation to this, criticism was voiced only in Bosnia-Herzegovina but, in relation to meeting the information obligation, they saw problems even there only at “lower levels”.

Regulatory Bodies

Unfortunately, the question was not unambiguously formulated, hence the Turkish respondents referred to the organisation supervising the election procedure, which also has

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certain supervisory powers not specified in detail vis-à-vis the press and has the power to levy sanctions. The Hungarian respondents also provided relatively detailed information on the election organs, while the experts of the other countries gave an account of the operation of the institutions regulating the activities of the media.

In Albania, there is a national radio and television council, in Macedonia there is a broadcasting board, and there is a similar body also in Poland and Lithuania; the National Radio and Television Board presumably plays a similar role in Hungary. In the Ukraine, there is a state committee directing radio and television, while there is also a national council monitoring its operation, while some other countries—including Belarus and Russia—said that the minister for communications supervises communications. True, in the case of the latter solution, the minister is responsible first and foremost for the establishment of the legal framework for the operation of the electronic media, for licensing broadcasting and the registration of broadcasters.

In contrast, for instance, the members of the Latvian media board elected by parliament make sure that the operation of the electronic media be in compliance with the constitution, other laws regulating radio and television broadcasting, and that the freedom of speech and information be asserted. The national radio and television council of the Ukraine has similar tasks: to ensure the freedom of thought and speech and to protect the rights of the citizens. As against this, in Lithuania, there is an elected ethics commissioner to monitor the activities of the media and he investigates citizens' complaints and monitors whether the media meets the requirement of the accurate transfer of information, is in compliance with legal regulations and draws up a report on all this for the parliament every two years. In Azerbaijan the conditions of appointments and tasks of the members of the media monitoring body are decided by the Congress of the Journalists. In general, elected persons may be recalled when they are unable to meet their duties, or when they violate the law, while in the case of ministers, the rules of recall are, of course, less stringent.

These bodies participate in the development of the rules of the election campaign, inter alia, in Poland, Macedonia and Moldavia; for instance, in the case of Poland, the national radio and television council develops the rules together with the election committee, and supervises compliance with them together with that committee. In contrast, according to the Lithuanian response, information of the public is based on self-regulation and there is no institution to supervise the process of transmitting information. The code of ethics of the Lithuanian journalists contains every important requirement and, accordingly, "objectivity, honesty and

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fair treatment” are of prime importance. Some countries, for instance, Russia and Belarus, indicated that the rules related to elections were laid down in laws, hence there was no need for additional provisions concerning the campaign. Wherever there are media boards, they do exercise some supervision with regard to radio and television stations; in Russia, however, the minister may issue a reprimand to the medium in the event of a breach of the law, but may only request the court to levy a penalty.

Ethics

Views in the individual countries concerning whether or not they regard a code of ethics specifically for the period of the elections as necessary are exceedingly varied. According to the Hungarian position, such a document could be suitable to fill in gaps in the legal regulations in force but, in spite of initiatives to that end, a code of ethics applicable to the entire Hungarian press has never been adopted. Certain commercial television stations, regional channels and organisations, such as the Association of Internet Content Providers, did draw up such documents. There is such a document in Russia and Moldavia, even though not all journalists joined it, while in Lithuania the compilation of a new code of ethics is currently being studied. In contrast, it is believed in many countries that the general rules applicable to the conduct of journalists provides sufficient guidance also during election times. In Azerbaijan, for example, there is general code of ethics for press accepted by the Congress of Journalist, but the national election committee has the right to set up specific regulations. Incidentally, the respondents think that members of the press do attempt to abide by the codes of ethics or ethical rules also during election times, although some problems do appear every now and then.

Right to Correction

The opportunity to publish a correction of false or misleading statements published in the press is provided everywhere—even though no answer was given to this question from Albania and Bosnia-Herzegovina—more or less in accordance with similar rules. In general, the corrective statement must be published in the same place and at the same length as the

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original article, while electronic media must broadcast corrections at similar points in time and in similar length. Every state guarantees the possibility of turning to the courts, in some states, however, for instance, in Belarus, the election committees decide on corrections initiated in relation to the campaign and they determine, inter alia, when and under what condition the corrective statement must be published. Their decision is binding for the media.

In Lithuania, public service media broadcasts the correction on the basis of the decision of this body, while in the case of commercial radio and television stations, they may levy fines amounting to twice or three times the original broadcasting charges owing to statements made by a politician in a paid advertisement violating the honour of the opposed party. There are exceptional rules applicable to the election period in Belarus, Russia and the Ukraine prescribing, inter alia, that a possibility for publishing the correction prior to the end of the campaign must be provided, while in Azerbaijan there is only one month available for that purpose. When this requirement is breached, in Russia the head of the medium concerned may also be penalised. As against this, there are no provisions differing from the general provisions in Hungary, here, however, the period open for publishing the correction is very tight: the correction must be published within eight days from reporting the claim, in the case of a periodical in the next issue. If, however, they fail to meet this obligation and the case is referred to the courts, there are no guarantees that the correction is published during the campaign period.

Disclosure of the Results of Public Opinion Polls

The majority of the respondents reported that there were no special regulations concerning the disclosure of the data on public opinion polls in their countries. However in Azerbaijan it is an obligation to publish all details concerning public opinion polls, such as time-frame, company name, questions raised and number of citizens questioned. Only the Russian response indicated that there was some kind of a voluntary restriction based on ethical grounds concerning the handling of such surveys. At the same time, in the majority of the countries concerned, there is a time limit on the disclosure of the results of public opinion polls. Such data may not be published in the 15 days prior to the elections in the Ukraine, while this embargoed period is 14 days in Slovakia, eight days in Hungary, five days in Russia, Macedonia and Moldavia, three days in Bosnia-Herzegovina, thirty hours in Lithuania and 24

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hours in Albania and Poland. In contrast, in Latvia the data of the surveys may not be published only on election-day. We have not received any indication concerning sanctions for breaching the law from any of the countries. According to the Hungarian rules, the National Election Committee may establish that there was a breach of the law and may promulgate this in a resolution, but there are no other legal consequences.

The Campaign

Latvia does not have any rules at all expressly for the campaign period, this, however, counts as the exception. In several states, thus in Belarus, Poland, Russia and Hungary, the campaign begins when the day of the elections is set. Moldavia opted for a peculiar solution, where the beginning of the campaign period is made to measure in that it begins when a candidate is officially registered. In Bosnia-Herzegovina, the campaign begins sixty days prior to the day of the elections, while in Albania and in Lithuania, thirty days before that.

The concept of campaign prohibition is unknown in Latvia, but they are the only ones with this solution among the countries under study. In Belarus, hunting for votes is forbidden only on the day of voting, in Slovakia, the prohibition begins 48 hours prior to the beginning of voting, in Lithuania, this period is thirty hours, elsewhere 24 hours, for instance in Hungary and in the Ukraine, that is, from 0.00 hour on the day prior to voting.

The sanctions of an eventual breach of the campaign prohibition are also very varied. In Hungary, for instance, the election committee may set forth that there was a breach of the campaign prohibition in a resolution and, when it deems that that breach had a substantial influence on the outcome of the elections, it may even annihilate the result. In some countries, for instance, in Bosnia-Herzegovina, Poland, Macedonia, Russia and Turkey, the infringement is sanctioned by a fine, whose amount may reach as much as EUR5,000 in Bosnia-Herzegovina, moreover, the candidate may even be deleted from the list. In Belarus, the culprit may be sanctioned by a fine, or may be sentenced to corrective work concomitant with a cut in pay. However in Azerbaijan there is no consequence for such infringement.

Exit Polls

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This specific form of public opinion polls, that is, when voters are asked immediately after the election, is not yet widespread in the states of the region, although only the Turkish answer indicated prohibition, while the response received from Belarus stated that their national laws did not require that voters be asked after casting their votes. There are no regulations in relation to this in the other countries, they only refer to the generally applicable provision, according to which no poll data may be disclosed until the end of voting.

It seems, exit polls have only been regulated in Hungary to date. According to the act on the procedures of elections, pollsters may not enter the building where the voting is carried out and may only ask only those leaving the place about the parties they have chosen, but they may not harass voters. Polls must be strictly anonymous and voluntary and results may be disclosed only after the end of voting.

Complaints

Those concerned are enabled to assert their rights related to infringements experienced in relation to elections in every country. In general, there are two possible fora available for this, the election committees and the courts. In some countries, for instance in Bosnia-Herzegovina, Poland, Macedonia and Hungary, the media boards also serve as an additional forum for legal remedy. Perhaps Macedonia has the most radical sanction, where the office of telecommunications may even confiscate the equipment used to commit the infringement, while in Hungary the National Radio and Television Board—in Albania the national radio and television council—may levy a fine. It is possible to appeal to the courts against the decisions of the election committees or media boards; in the Ukraine, however, the decisions of the election committees must be executed and the way to a court appeal is open only in the case of decisions of state agencies dealing with the preparation and administration of the elections.