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REGULATORY IMPACT ASSESSMENT OF THE EFFECTS ON THE EDITORIAL FREEDOM CREATED BY THE EXISTING LEGISLATION ON AUDIO AND AUDIOVISUAL SERVICES

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THE AIM OF THIS EVALUATION

The aim of this evaluation is to figure out the legislative effects onto editorial/media freedom and creating conditions for the development of the media domain.

PROBLEM DESCRIPTION

The context analysis reveals that the decline in media freedom is a continuing evaluation in the past few years, and for a second year Macedonia is given the status “unfree” according to Freedom House’s Media Freedom Index.¹ The European Parliament’s 2016 Report on Macedonia’s progress and the 2017 Macedonia Senior Experts’ Group [SEG] recommendations² explain the phenomena deemed threat to media freedom: systematic political involvement and pressure on editorial policy, imbalanced reporting, extremely low self-regulation degree and lack of trust in the public broadcasting service.

The existing media freedom situation is the result of the “state capture” phenomenon whereby via excessive legal regulation the executive power is able to hold excessive control over the media, followed by sanctioning measures. Despite the formal independence of the Regulatory body, the fact that each and every detail in the work of the media has been previously envisaged and regulated by law (suggested by the executive branch) as well as administrative fine makes it possible for the executive powers to have almost full control

¹ Freedom of the Press 2017, Macedonia profile, available at: <https://freedomhouse.org/report/freedom-press/2017/macedonia>, accessed on 21 September 2017.
² European Commission, “The Former Yugoslav Republic of Macedonia 2016 Progress Report” (Brussels, 9 November 2016), but also “The former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts’ Group on systemic Rule of Law issues 2017” (Brussels, 14 September 2017).

over the work processes. The elaborateness in regulating program standards of work, which includes the matter of duration of program contents on a daily basis, “chronological schedule” of broadcasting and the like is such that no approximate European legislative measure can be set for comparison. The disrespecting of such legislative articles is punished by fines. Thus, the excessive regulation of technical issues related to programming broadcasting represents an indirect control on program contents, accompanied by the continued air of threat. The previously defined technical details of this kind curtail also the autonomy of the Regulator which is reduced to a routine box-ticking of breaching norms, which should not be part of legislative norms.

In its essence, such legislation has the aim to control and discipline by using measures of strict and elaborate rules and excessive number of punishments inscribed in the material law.³

In this way a system is set up which represents a threat to the freedom of expression and which makes possible self-censorship and censorship in the media, i.e., it influences the determining and the choice of program contents in media.

The peculiarity of the Macedonian “state capture” case consists in the almost absolute subjugation of the legislative (and judicial) branch by the executive one, as, indeed, the SEG led by Reinhard Priebe states in its second Macedonia report.⁴

The Law on Audio and Audiovisual Media Services regulates in details the program structure and program contents (genres and types of

³ Ana Blazheva et al, *Freedom of expression, association and entrepreneurship in a captured state: Macedonia in 2015* [Слобода на изразување, здружување и претприемништво во заробена држава: Македонија во 2015], Institute of Social Sciences and Humanities – Skopje (Skopje, 2015).
⁴ “The former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts’ Group on systemic Rule of Law issues 2017” (Brussels, 14 September 2017), p. 5.

program) which broadcasters have to produce and broadcast in the regulated time with regulated duration. The elected regulatory body, the Agency for audio and audiovisual media services, regulates in an even more detailed manner the rules for carrying out program standards, and sanctions the exceptions. The comparative desk research analysis of the overall legislation and the relevant media policy documents from EU member states, as well as strategic documents of regulatory bodies and monitoring reports carried out by elected agencies, i.e., regulatory bodies, shows that such a degree of control on the side of the central authorities does not exist in the slightest in any of the EU member states.

The European directive (article 4) imposes an obligation for self-regulation and/or co-regulation on the national level in the areas it encompasses and to the degree to which the national legislation allows it in each member state.⁵ All the more, it is indicated that such systems of self-regulation and/or co-regulation have to be widely accepted by the main agents affected, and to make possible its effective carrying out. In order to make possible media autonomy and for it to be effective, the program principles and philosophy, as well as procedures, have to be acquired by the media themselves as by-laws (rulebooks, guidelines, work schedules and the like) or another type of documents laying out the policies of work, the in-house standards and professional values. In this direction self-regulation does not imply the inexistence of rules for functioning, but on the contrary, their creation and implementation has to aim making possible the freedom in the media's workings and the development of the media sphere.

⁵ "Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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)" (Articles 4, 9).

The regulatory body has to create the framework and the rules which make possible the freedom and development of media by tracking and analyzing the conditions, and by implementing policies targeting development, not control. As Priebe and the SEG mention in their second Macedonia report, the "capture" in the Macedonian state consists primarily in the "captured Parliament" on the side of the executive power, and with it the rest of society.⁶ The Law, which in too much detail regulates means control on the side of the executive power, especially if punishing measures are also regulated in detail by virtue of the very same material law.

DESCRIPTION OF LEGISLATIVE MEASURES

This evaluation is carried in several areas from the Law on Audio and Audiovisual Media Services which influence editorial freedom – program standards, program principles and obligations, punishing measures, protection of pluralism and the public broadcasting service. As the bearer of a legislative obligation for the implementation of the Law, what is overseen is the setting up and the functioning of the elected body, the Agency for audio and audiovisual media services.

The evaluation of the effects of applying the law relates to several aspects:

- standards and principles;
- target groups (level of information, understanding, feasibility, use/damage);
- financial return – for the regulatory body, for the target group;

⁶ "The Former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017" (14 September 2017), available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf, accessed on 21 September 2017.

- what is not covered by the law but could contribute to making possible the freedom of expression.

DESCRIPTION OF THE PRESENT STUDY

In the period June-August 2017, field research was carried out by way of interviews, focus groups and electronic questionnaires with representatives of local, regional and national audio and audiovisual media, as well as employees in the regulatory body. The interviews with fifteen editors from national/cable tv and radio stations, as well as five directors of various sectors in the Agency for audio and audiovisual media services, provided in-depth data on the implementation and the effects of the now existing Law on audio and audiovisual media services. The focus groups provided a chance for 30 representatives of local and regional media from five different Macedonian towns to describe insights and experiences from the application of the existing regulations.

In the table below, we will summarize the results from the field research and will illustrate the general conclusions from the interviews and the focus groups.

This research is carried out with the support of the European delegation in Macedonia in the framework of the IPA program for the support of civil society (2015 Civil Society Facility Programme) and in cooperation with our project partners, the Union of Journalists in Macedonia (UJM).

ANALYSIS OF THE EFFECTS OF APPLYING THE LAW ON AUDIO AND AUDIOVISUAL MEDIA SERVICES ON EDITORIAL/MEDIA FREEDOM

INDEPENDENCE AND IMPARTIALITY OF THE REGULATORY BODY

INDICATORS	EVALUATION AND ELABORATION	DESK AND FIELD RESEARCH DATA SUPPORTING THE EVALUATION
<p>The Assembly appoints Council members</p>	<p>In practice, it turns out the effect of this decision does not reflect the aim’s purpose – that the highest democratic and law-giving institution should guarantee institutional independence.</p> <p>Instead of guaranteeing independence, within the present socio-political context the Assembly is the guarantee of politicization and partization.</p> <p>The Council elects the director of the regulatory body and in this way the partization and politicization effect in managing the regulator is being continued.</p>	<p>Analyses reveal that the Assembly is a “voting machine” of the executive branch. Such weakness of the Assembly is among the mechanisms of the captured state and, with this, the Council’s grip of partization becomes unavoidable.</p> <p>The Agency’s Council and its politicization and partization is noted by analyses and reports by civic organizations.⁷ Field research data show that professionals from the public domain (interviews and focus groups with professional representatives of the public domain) do recognize the partization of Council members.</p> <p>„They made such a selection that for the majority sitting on the Council, for them it’s important that 4 out of 7 members will always make the decisions. The biggest absurd is that the majority are directly activists of VMRO-DPMNE and DUI.”</p> <p>Desk and field research data confirms that the Agency’s present director was previously chair of a municipal Council as a party member.</p>

⁷ Indices for the degree of media freedom and journalists’ security – Macedonia, UJM (2016), available at: <http://znm.org.mk/wp-content/uploads/2016/03/Извештај-Показатели-за-степенот-на-слобода-на-медиумите-и-безбедноста-на-новинарите-МК-декември-2016.pdf>, accessed on 25 September 2017.

Obligations of the regulatory body's authorities

The law foresees the biggest power there is for the director in terms of implementing program standards-related monitoring and adjudicating measures. This represents concentration of power in one person and deepens the misuse opportunities.

Interview-gathered data with Council members and Agency representatives indicate that there is a bigger opportunity for impartiality in decision-making in as much as decisions on adjudicating measures are carried out by the Council. Even though according to Agency representatives the efficacy of adjudicating measures by the regulator is greater when the director is the deciding one, the concentration of power and the misuse opportunities are the larger threat for the regulator's independence and democratic character. Finally, the efficacy should not consist primarily in punishing, and the program standards should not be merely formal but also substantial, i.e., to pertain to the quality of the broadcasted program.

Independence and impartiality in the work of the professional service

The professional service consists of qualified cadre and the work evaluated based on the products made available on the Agency's web page shows qualification and impartiality. One can only notice as a weakness the lack of sufficient "publicity" in indicating negative trends in view of freedom of expression.

According to data from the implemented program monitoring in the period 2014-2016, no partiality in the work of the service is noted.

The field research provides data in view of impartiality, but also indicates the lack of criticism towards the work of the public service and lack of political pluralism in the media, illustrated by the following quotations:

„The Agency should be more creative, it should carry out more analyses. Earlier there were analyses as to how much Macedonian National TV meets the public interest. Now they say this is not the Agency's work, that this is MNT's Program Council's work.”

„For example, the regulator has never dealt with the way the media report certain issues even though in broadcasters' rationales it is clearly stated that the media should be professional and impartial. Although the regulator has no obligation to punish about this, it's simply that it has to know how the media report.”

OBLIGATIONS OF THE REGULATORY BODY RELATED TO MEDIA FREEDOMS

INDICATORS RELATED TO THE AGENCY'S OBLIGATIONS	EVALUATION AND ELABORATION	DESK AND FIELD RESEARCH DATA SUPPORTING THE EVALUATION
<p>The regulator promotes freedom of expression</p>	<p>The period 2014-2016 is marked by the biggest decline in international evaluations in freedom of expression.</p> <p>The Agency carries out its obligation to promote freedom of expression via publishing press releases.</p> <p>The biggest limitation in applying professional standards and freedom of expression of affected parties is located in self-censorship and institutional representatives' insufficient openness to the public.</p>	<p>Evaluations of degree of freedom of expression by international reports are low and continually worsening since 2014.⁸</p> <p>The Agency publishes press releases for events representing threats for the freedom of expression: recrimination of threats and violence against news reporters and news teams, calls that make possible the unobstructed carrying out of professional activities and defense of reporters. The associations of journalists consider that the regulatory body's activities relating to protecting the freedom of expression were not sufficient in the period 2013-2016.</p> <p>According to data gathered with 40 journalists in interviews and focus groups, more than half of them claimed that sometimes they censor themselves. This phenomenon is especially pronounced in local media journalists: <i>„Ugh, truth to be told, I've censored myself several times. Several times about such and such companies...“</i> <i>„They just need journalists to let go to do their job, to not pressure them as until now because we were exposed to serious pressure and this is the biggest problem. On this account the biggest part was played by self-censorship. I can say that in my case it influenced me a little by that fear they managed to instill in us, however, we survived.“</i></p>

⁸“Macedonia: Freedom of the Press 2016”, Freedom House, available at: <https://freedomhouse.org/report/freedom-press/2016/macedonia>, accessed on 25 September 2017.

The regulator takes care for the protection and development of pluralism – various, independent and individual audio and audiovisual media services

The effect of such measures makes possible to maintain too large a number of media in a small media market, and this influences negatively on the media's own market value and thus on editorial policies' independence.

The conclusion that can be drawn from the field research is that respondents (notwithstanding if they are editors, reporters or managers) think that in Macedonia there are too many private media and that their sustainability is not sufficiently marketable. As an illustration:
„Considering its number of citizens and territory, Macedonia has a huge number of media. Absolutely! If this is compared with the marketing candy of the media market, it is entirely disproportionate. And this makes the media economically dependent from the get-go.” (journalist and former council member)

The implication based on the existing conditions and prices for specialized concessions is the existing of only large tv stations with a general format, and too big a number of them for their market sustainability at that.

The representative of the only tv station which in the meantime has changed its license to a tv station of general format concludes that:
„We have the problem that we don't have specialized formats. 24 Vesti was information outlet, and then became general format. It's the same price, actually the specialized ones are more expensive, the coefficient is more expensive. If the former pays 50.000 euro for national concession of general format, the latter, the specialized ones, maybe some 60-70.000 euro. Here lies the problem, those specialized outlets have to be stimulated.”

In the period 2014-2016 there are no analyses on political pluralism.

This period sees the biggest decline in freedom of expression in the media, but the regulator does not carry analyses on political pluralism which it had been doing before. In this way it does not make use of its capability for an argued evaluation of and advocating the public interest.
„I think that in this period the regulator had to constantly come out and say, even if there is no fine in the law, but to nevertheless issue a signal, so then we can see what is to be done... We have pluralism according to number of media, but do we have a real media

pluralism?"

The affected parties report on the problem of access to information of public character. This indicates two givens: the capture of institutions and rejecting transparency and accountability as issues of public interest, as well as control on the media.

The field research reveals that lack of political pluralism in the media is the result of political (party) control on the media, self-censorship and lack of transparency in the institutions. The 30 interviewed journalists and editors of local/regional media have big problems with access to information of public character which has its consequences:
„Unfortunately, there are still relapses from the past. Holders of public trust who say: ‘you can’t film me’ or ‘don’t ask me for a statement.’ Here we have a huge problem. We have local programs dealing with political issues, with daily information topics, for which you have to find a speaker who is relevant in providing information, i.e., to question him/her where do some issues stand. Unfortunately, there are still functioneers who do not want to come to a broadcast, do not want to give statement in front of the camera, although by definition and virtue of their position, which is public and in the public interest, they are obliged to be accountable in front of the citizens.”

The regulator confirms prohibited media concentration

The Agency diligently follows its obligations related to legislative measures against prohibited media concentration.

According to documents from meetings and the voted decisions, the Agency confirms legally prohibited concentration according to the legislative measures.

The regulator carries out analyses indicating political and business confluence in the media.

Field research data and opinions by the professional public domain indicate the need for a different approach and analysis towards political influences in the media and media concentration and that:
„... in Macedonia so far the media property is not questioned properly. This is the point. This means that we, when it comes to the real ownership of media – and this without documented proofs, or there are some, but are not thorough – on the basis of investigative

journalistic stories, we know who are they and through what machination, a spider-like machination of companies, they are owners. Formally, they are hidden. Some owner pops up as the physical person but who is behind it is not questioned.”

PROGRAMATIC ASPECTS - PROGRAM STANDARDS AND PRINCIPLES

INDICATORS	EVALUATION AND ELABORATION	DESK AND FIELD RESEARCH DATA SUPPORTING THE EVALUATION
<p>Law-regulated program standards</p>	<p>The law-given existing program standards are reduced to purely formal and detailed guidelines unconcerned with quality. The degree of elaboration and detail indicates excessive regulation typical of bureaucracy in an illiberal hybrid regime. The law goes into issues such as the order of broadcasted programs, duration of types of programs foreseen on a daily basis and similar details, the minor breach of which is followed by draconian measures.</p> <p>The excessive regulation in the law is problematic in the aspects: legal and socio-political context.</p>	<p>Analysis of capturing the state via excessive regulation is explained in the context analysis: <i>„The excessive regulaton means bringing in details in the laws through which financial and political control becomes possible, and the laws make possible the legality of possible undemocratic, i.e., authoritarian acts or administrative behavior.”⁹</i></p> <p>Legal analysis indicates that detailed rules should not be part of the contents of material laws. Field research data shows that most editors think such details should be defined by by-laws, not in the text of a law.</p>

⁹ Katerina Kolozova, *The uses and abuses of neoliberalism and technocracy in the post-totalitarian regimes in Eastern Europe: the case of Macedonia*, Institute of Social Sciences and Humanities – Skopje (Skopje, 2015).

For the affected parties the excessive regulation means obligations which are regulated and which directly affect the decision-making freedom for the creation of programs and resource planning.

According to focus group and interview data with 45 editors and journalists, most of them think that it is difficult to fulfil the targeted quotas. This opinion is especially prevalent in cable, local and regional media:

„We are obliged to broadcast 50% domestic production. This is extremely difficult, in my contacts with other TVs, contacts with the Agency for media, I have info that this is difficult even for national media to be implemented as an obligation, although they have ten times more employees than us. To broadcast own production every day for 11 hours, since out of 24 hours few are deducted from own promotion and news, it means that all being calculated, 11 hours own production should be broadcasted. No local media, I claim, no local TV can, with their number of employees, achieve this aim, since we know that the difference between radios and TVs is huge.”

„The biggest problem in this question is that those obliged to do this, those realizing the program are reduced to people who have to work on a calculator. It is very difficult to calculate how much you should broadcast folk or pop music, because in some programs we add videos with folk or pop music and all of this has to be calculated. That is, the music included in programs is not the only one calculated but also the one outside the (music) program.”

Implementation of legislative measures for program standards

Affected parties indicate negative effects from applying the standards on the program's quality.

The field research confirmed that if the norms are detailed and if bureaucratization gets to the detail, the result is counter-productive: empty quotas are fulfilled, and new ideas about contents are missing. This is the result of too much insisting on the form in the law, so that due to pressure this empty form is kept, the editor is reduced to administrator of the formal criteria set by the law and the regulatory body, nor does he have space for new ideas and creativity in program planning.

„Generally you can create the program, but considering the strict legislative requirements which regulate percentages of music,

documentaries, I think this slightly leads to non-quality because if you look at TVs and what are considered documentary broadcasts, what is own production, it is all reduced to Macedonian folk tales. So there is no some well set up documentary program.... This thing with the music, how much should be played, 30 or 40%, triggered a somewhat bad effect cause it's not played when it has to, it is played in the nights, 1am, so the effect of the law is: you play the music you have to at 2am and you meet the quota of 6-7 hours, and during the day you go after politics... Probably all that is done forcibly, and is not investigated by everyone affected in the domain, you cannot have quality in any program. This is why you will end up with: old Macedonian folk tales, Macedonian folk tales, tales this, tales that... because it's the cheapest."

"The problem begins with private TVs when they are pressured to make series, a certain percentage of documentary program, original one, and all that in theory is very problematic since the market is what it is, and the national TV participates in this media market at that and starts making problems why this or that... Documentaries meet the level they have to, series try to because, you see, TVs are pressured by marketing agencies to be watched, so a certain pressure will be made but documentaries and all the rest are broadcasted in time zones that are not very crucial or is arranged to avoid prime zones. Now we are in a situation – we send a journalist and he will shoot all summer and will produce material and this all will be broadcasted. What is the level and how one person can shoot 20 documentaries – not the point! I mean this whole law is missing the point since it does not overlap with the gains and with the rationales and the way TVs function."

Financial implications for
broadcasters due to
implementing program
standards measures

The biggest burden for broadcasters is the high quotas which imply big financial investments and are not based on a carried out feasibility study, not presupposing the existing of a relevant business plan. While it is logical for the public broadcaster, which is funded by public money, to have obligations to certain production quotas, the quota for private broadcasters should be based on the market logic.

Field research data shows that all broadcasters experience the obligation to produce programs as a big financial burden which is not always market-sustainable. If the private part of this sector is a sort of industry, according to data from the field research, the law intervenes in the market logic and threatens the main values of free market. In their attempt to still meet obligations they broadcast programs created, they use production companies' services and their own production is reduced to the minimum and satisfy the format, in this way improvising and making compromises which reflect on the quality of the produced program.

„Music and documentary products are a blessing for every TV, however in principle it's rarely proven that they have some commercial benefit, and they cost a lot and this is why in principle in Macedonia we all know this happens through production companies. The TV itself rarely produces such type of products. This question better be posed to production companies because they are like fish in the pond when it comes to all these projects. Mainstream TVs rarely get engaged in producing those because most of all this needs a big team. The obligation, even though one of the media, there is no media that will get engaged to produce this. Even MNTV, we all know, of what they play as documentary program, 99% of it is production companies material.”

Implementing the quotas has an especially negative effect for the local media in view of their market unsustainability.

The research shows that local TVs have the smallest share in the media market and meeting the quotas makes it impossible for them to create a programme of interest and to thus secure conditions for market work.

„We (the local TVs) on the other hand have to secure through market competition money to pay those journalists and crew dealing with those problems of general and public character... The biggest problem comes from the loudest ones, those who are most

powerful to pay for quality advertisement. They do not see us at all, we are not in their target at all, because they demand ratings, a thing like that more or less accessible only for national TVs.”

The majority of interviewees from the private TVs agreed that there has to be a different approach to posing and regulating program standards for private broadcasters and the public service. Such opinion is illustrated through the following quotations from interviews with professionals.

„You cannot have the Agency/the law telling them what type of music, what type of production they have to do as a media. The responsibility of the state is to make a good public service and there they have to prove what production. Not to instruct the private ones. If you have a good and stable public broadcasting service, it will illuminate with influence on the private ones. In the private ones you have light regulation and you will leave the market to decide. The state cannot mess around here.”

„Nowhere in the world, I claim this most responsibly, in normal countries, a broadcaster is funded this way. There are examples how to fund print media, local media, regional media, minority media, however, the most influential media being funded with subventions – you don’t have this anywhere!”

„Unfortunately the law does not foresee any compensation for the work in local TVs, even when they produce program of public interest, i.e., being meaningful for the state. Most often local TVs deal with local problems and unfortunately our law does not know a TV of public interest on local or regional level.”

Obligatons for program standards do not reflect the different needs and capabilities of broadcasters and the public service.

Program standards regulated for various broadcasters and the public service

Local media do not have the right to funding for producing documentary programs, but have the obligation to produce their own program of 50% which puts them in unequal position to other media.

Inter-sectoral commission allocating compensation for the production of documentary program.

The inter-sectoral commission, in the way it is organized and in the socio-political context it is created and acts, is a mechanism of media capture and direct influence on contents.

Most journalists' perception who have followed the inter-sectoral commission's work is that the commission's statement is problematic due to the inclusion of more central authority institution, i.e., indicating its partization at the expense of professionalism which would create quality. Also, the products we are watching in the media as the result of projects supported by that mechanism indicate the tendency in choosing contents, i.e., lack of important social questions. In this way one can conclude that it directly influenced the contents.

In addition, some media use this mechanism as an opportunity to calculate the threat of fines due to not meeting program quotas.

"How to directly affect contents? The fine, if you don't meet the quota of hours, you know, is 100.000 euro. You see, our directors are sparing, they generally want to pass with the least expenses. The government can fund a project with about up to 50% - 100.000 the most. So if a project costs 200.000 euro, if someone pays you 100.000 and if you don't pay 100.000 fine, it's like someone has paid your project, and besides you've implemented the program."

„Well, now, for example you go there with a project, to make a series of few episodes, the problem with young people's emigration, why they leave the country. They will look at you and say – I want a project for Alexander the Great or Todor Alexandrov, it would be more adequate, has more chances to stand, or about Skenderbeg... This is direct influence of program contents... to defend your political interests."

Specialization and independence of the inter-sectoral commission is questioned by the professional public domain.

„The composition is very interesting. Seven members. A member from the Agency for audio and audiovisual media services, one from the Agency for cinema, one from Ministry of culture. We could say this part of the membership is specialized to evaluate some production-made projects. The rest: one from Ministry of finance,

Unit for public revenues, Ministry of information society and administration and one from the Prime minister's cabinet.

PROGRAM MONITORING AND SANCTIONS

INDICATORS	EVALUATION AND ELABORATION	DESK AND FIELD RESEARCH DATA SUPPORTING THE EVALUATION
<p>Breach of program standards confirmed by program monitoring</p>	<p>The diligent implementation of the law means greater sanctions for the media which have breached program standards.</p> <p>Implementing program standards for broadcasters is a sort of exposure to the continued threat and bureaucratic pressure, which suffocated the creative aspect of the editorial work.</p>	<p>In the last two years the biggest number of adjudicated measures are connected to breaching article 92. According to reports by the Agency for the implemented measures the most often used measure is warning and the biggest number of warnings are due to breaching article 92. A smaller part of the measures for a sanction end up with settlement.</p> <p>The field research data show that most of the editors have problems in implementing all of the regulated program standards. They are overwhelmed with calculating every program because "you can be fined for only one second."</p>

The amounts of fines foreseen for breaching article 92 which regulates program standards

The amounts of fines indicates strong pressure by the legislator for disciplining and sanctioning broadcasters in view of producing the program.

The biggest fines in the law are foreseen for breaching article 92. This means that fines serve to control the program although this is not directly connected to the program's contents.

The pressure is counter-productive for the advancement of media freedoms.

The last amendments in the law halved the punishments, but field data shows that the amounts are still high for all the media, national or local notwithstanding:
„Even now the fines are high although they are halved, 50.000 is still a big number for our market. It is big also for the big media, not to mention some local media which will meet the same measure.”

Fines for breaching program standards are disproportional

The effect of such measure is a disproportionate burden onto broadcasters which differ in volume and ambit, which means quitting operation for smaller media.

Interview data with managers from the agency, as well as with editors, show that the negative effect of disproportionality in the fines is much larger when it comes to smaller media:
„There is an example how a radio from Valandovo was closed, they had a fine of 1.500-2000 euro, which they could not pay and had to be shut down.”
„As an example, the best radio, Antena 5, has an income of 400.000 euro, and for example Sitel TV had 7.5 million euro. Also when they pay compensation. For example Antena 5 or Radio 77 pay 10.000 euro, and Sitel pays 55.000 for license. So the fines should be like that too.”

Fines affect editorial freedom through the set up of rigid rules for implementing program standards

Affected parties experience the fine as a way that could influence the editorial policy, as a mechanism of intimidation.

Interview data with editors shows that most of them, especially local media, are limited in editing the program for fear of being fined or sued:

„The fine is the same, they are not interested if it is due to technical reasons or tendencies or whatever. It absolutely affects the program’s quality, but also editorial policy, the independence of reporting. We are reduced to not dealing with big topics, but dealing with whether someone will sue us, since every case, every larger fine means shutting down a local media outlet.”

One can notice insufficient level of information among journalists when it comes to self-regulation and the role of regulation in managing program standards.

In addition, the fines, their basis notwithstanding, are experienced as a threat to freedom of expression, no matter if they are about other regulatory aspects: the pressure to meet the format instead of establishing true quality discourages editorial creativity, also due to fear that the editor will not foresee all dangers and will breach at least one among many technical rules of program standards.

„They slow us down in our expression because it is exactly those fines and their amounts that create a lot of limitations for the freedom of speech and freedom of investigation, access to information of public character, etc.”

Focus group data shows that journalists are not sufficiently informed about the notion of self-regulation and see the regulator’s role as something they have to continually oversee, to take care and intervene when professional work standards are breached. Journalists and editors transfer the responsibility over quality in the hands of the regulatory body, and thus in some way infantilize their own position. They justify part of the punishment from this angle, but not punishment due to breaching program standards, which is illustrated by the following quotation from a discussion with a focus group of journalists:

„As I said there have to be rules and to know what follows if you are

not following them and to know what will the mechanism be for not respecting the rules. We are aware what this brought about lately, and a big part of the media were put as a function of certain interest groups and how they advocate their interests and what they are ready for, without being sanctioned at all.”

**PUBLIC BROADCASTING SERVICE
INDEPENDENCE AND SELF-REGULATION OF THE PUBLIC BROADCASTING SERVICE**

INDICATOR	ELABORATION	RESULTS
<p>Independence of the program council</p>	<p>The independence of the program council is problematized on the basis of analysis of conflict of interests.</p>	<p>The Law on Audio and Audiovisual Media Services regulates MRT’s conflict of interests through article 119. According to available data, at least three members from the council have conflicts of interests. Two council members at the moment of their election in the Assembly did not meet the condition – to have not have held public office in the last five years. One of the members is a former PM, while the other is a former ambassador. The third council member who does not meet the criteria is presently a municipality speaker.</p>
<p>The Council’s obligation to decide on the rules for program and professional standards at Macedonian Radio and Television</p>	<p>There is lack of rules for program standards as well as professional standards. To some extent with the professional standards are connected also the ethical principles of work for which there is a code which is the subject of public criticism and is not acceptable for the largest journalistic union.</p>	<p>Besides the legislative obligations relating to program aspects, there are no internal acts of the public service relating to establishing program standards. The Code of ethics is criticized by journalistic unions because besides the ethical standards it includes issues that are related to work ethics, it is quite general and is thus indecisive and with that – subject of arbitrary interpretation.</p>

<p>Transparency of the Program council's work</p>	<p>The data indicates partial transparency of the Council's work.</p>	<p>According to data from hitherto made analyses, the council's meetings are not open to the public. The public service's web page lacks data on the council's work.¹⁰</p>
<p>Implementing standards and principles (article 111)</p>	<p>Implementing the legislative obligation of the public service to protect professional rationales and standards is partial.</p>	<p>The hitherto existing analyses and reports by the Council of Europe on Macedonia's progress confirm lack of political independence and lack of balanced reporting in the public service.</p>

¹⁰ Monitoring on the work of Agency for audio and audiovisual services and MRT, Center for media development (July 2017), available at: <http://mdc.org.mk/wp-content/uploads/2017/07/Prv-monitoring-izvestaj-za-2017.pdf>, accessed on 23 September 2017.

RECOMMENDATIONS

- The regulator's independence should guarantee the professionalism and integrity of the Council's members, which, in turn, will be secured only if the "captured state" does not decide on nominating Council members, especially the Assembly, which is completely subjugated by the executive branch (as the SEG noted in its second report); this is why we suggest that Council members should be nominated by the UJM and other professional associations whose work relates to media-broadcasted contents (film, music, education), that is, they represent affected parties in the domain of program management, and it is in this way that the nominated ones should be then voted by the Parliament. The mechanism of an independent body deciding makes possible a greater guarantee for media freedoms. This is why it is very important to create conditions for sanctions against the Council, instead of ones directed at the director of the regulatory body (as is the case presently).
- The professionalism of the specialized service of the regulatory body should be directed towards analyses, creating values through a participatory process, and implementing policies for the development of the media spheres and freedoms as central aspect of the work, as opposed to less monitoring and sanctioning which should be a secondary priority.
- Program standards regulation in the legislative domain should be directed towards making possible free and independent media, protecting the citizens, the public interest and making possible pluralism, and the language of recommendations, directions and council should replace the language of punishment and threat.
- The detailed rules for program standards should be the subject of in-house acts by the broadcasters with the status of by-laws, as well as work schedules, strategic program documents, work policy documents, etc. What has a binding status and could be followed by sanctions should relate only to questions pertaining to realizing the services paid by users and/or tax payers, as well as respecting their conditions. The remaining issues should not be accompanied by administrative fines. Creating policies which will make possible media pluralism when it comes to the variety of media supply in accordance to the conditions and capabilities of the media market. In other words, the law should contain itself from the overly high degree of control and intervention in view of "the standards" – which in the existing legislation are reduced to form, but not substance, to minute-length matters but not value standards – which is in contradiction with the logic of the free market and self-sustainability in its frameworks.
- Creating policies which will make possible the protection from political influences on the media through in-depth analyses and adaptation of the enacted stipulations for media concentration.

- Strengthening self-regulation through a higher participation of professional associations in promoting and protecting professional media standards and values.
- The media should create their own framework for program self-regulation which is in line with the laws, the Constitution and international professional standards and principles of the European directive provenance (2010 and 2016).
- The public broadcasting service's independence should stem from keeping the highest professional criteria and integrity of the program council's members and other management functions, which will be secured in a similar way, as in the case of members of the council of the regulatory body.
- The public broadcasting service should aim at the highest professional standards and values transposed into by-laws of another type of internal acts of self-regulation, as well as other categories of policy documents.
- In-house editorial policy documents which are not necessarily binding in front of the law and nevertheless represent an obligation to the public, i.e., the users of audiovisual services, but also in-house documents of self-regulation have to be secured by private broadcasters too, and this according to the best practices and models in Europe.
- The public broadcasting service should provide the maximum transparency, participation and accountability in creating the policy of its own development and program-making. Public annual financial reports and timely financial checks are a necessary part of responsible work and use of citizen-provided means for the needs of the public service, which should be secured by a stable and independent source of public funding.