This publication is funded by the European Union. The contents of this publication are the sole responsibility of the Institute of social sciences and humanities - Skopje and can in no way be taken to reflect the views of the European Union.

INSTITUTE OF SOCIAL SCIENCES
AND HUMANITIES
SKOPJE

ЗДРУЖЕНИЕ
НА НОВИНАРИТЕ
НА МАКЕДОНИЈА

POLICY DOCUMENT CONCERNING THE PUBLIC POLICY ON THE EFFECTS OF EXISTING REGULATION OF EDITORIAL/MEDIA FREEDOM

POLICY DOCUMENT CONCERNING THE PUBLIC POLICY ON THE EFFECTS OF EXISTING REGULATION OF EDITORIAL/MEDIA FREEDOM

Skopje, 2018

POLICY DOCUMENT CONCERNING THE PUBLIC POLICY ON THE EFFECTS OF EXISTING REGULATION OF EDITORIAL/MEDIA FREEDOM

Authors:
Ana Blazeva, Ph.D.
Ana Mukoska, Ph.D.

Peer Reviewers:
Katerina Kolozova, Ph.D.
Naser Selmani
Ljubomir Danailov Frčkoski, Ph.D.

Abouth the publisher:
Institute of Social Sciences and Humanities - Skopje
20 Oktomvri nr.8/2nd floor, 1000 Скопје
Tel/fax: +389 (0)2 3 113 059
Email: info@isshs.edu.mk
www.isshs.edu.mk

From the Authors:
Tremendous gratitude for the complete research team of the Institute of Social Sciences and Humanities - Skopje, whose research conducted within the project throughout the year has provided the foundation for the current policy document.

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

316.774:340.13(497.7)

BLAZEVA, Ana
Policy document concerning public policy on the effects of existing regulation of editorial/media freedom / [authors Ana Blazeva, Ana Mukoska]. - Skopje : Institute of social sciences and humanities, 2018. - 30 стр. ; 21 см

Фусноти кон текстот

ISBN 978-608-4755-16-6
1. Mukoska, Ana [автор]
а) Медиуми - Законско регулирање - Ефекти - Македонија
COBISS.MK-ID 106718474

This publication is funded by the European Union. The contents of this publication are the sole responsibility of the Institute of social sciences and humanities - Skopje and can in no way be taken to reflect the views of the European Union.

~CONTENTS~

1. EXPLAINING THE PROBLEM

In the last few years the Institute of Social Sciences and Humanities – Skopje has been researching the phenomenon of "state capture" and the way this phenomenon influences the condition of media freedoms.[1] One of the main capture mechanisms takes place via increased legislative regulation and makes it possible for the executive power to control the media. Such control is being carried out via legislative regulation of programme aspects and via the right to sanction. The peculiarity of the Macedonian case of "state capture" is in the almost absolute subjugation of legislative (and judiciary) powers by the executive one, as, inter alia, has been concluded by the Priebe-led Senior Experts Group and their Second Report on Macedonia.

The establishing of legislative regulation that limits, disciplines and sanctions - aiming less in regulation than in control - can be explained through legal interpretation and forensic discourse analysis.

There is the legal interpretation, in line with which in law-making the technique or technology of the so-called "authoritarian proceduralism" is used, which entails excessive regulation of the domain as an attempt to instill control by the executive power in a sector which should be maximally independent.[2] Authoritarian proceduralism uses yet another mechanism for regulation-making, which is the inscribing of a network of self-contradicting decisions within the same law or in a series of laws affecting the domain. Such tendency results in the effective technique of controlling the legal subject, determining its transparency, prudence and the knowability of its legal position within the system.

The central position of such technology of governance is the negation of the legal presupposition of the lawful state and the rule of law in liberal democracies – the position of an "honest citizen." As opposed to this, our laws are written from the position of the executive power's control, serving the executive power and not the citizen/s. The power is in the hands of an authoritarian administration in a process of "mercy-giving" and day-to-day interpretation, which creates a corruption network and leads to the citizen's subjugation by the system.[3]

This tendency is exposed by forensic discursive analysis through language used in the law's contents.[4] The analysis reveals a high frequency of self-referential expressions, i.e., the focus of the law is the law itself. In this sense the over-regulation of contents too is reflected in focusing on the importance of the regulatory instrument as opposed to the domain being regulated, as is in other European

[1] Kalina Lechevska and Jordan Shishovski, *Technology of State Capture: Overregulation in Macedonian Media and Academia* (Skopje: Institute of Social Sciences and Humanities – Skopje, 2015), available at www.isshs.edu.mk/technology-of-state-capture-overregulation-in-macedonian-media-and-academia, accessed on 30.11.2017; 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] (Skopje: Institute of Social Sciences and Humanities – Skopje, 2015), available at www.isshs.edu.mk/freedom-of-expression-association-and-entrepreneurship-in-a-captured-state-macedonia-in-2015-2, accessed on 30.11.2017; "Vizualization: Fines in Macedonian Legislation Over the Years 1995-2014," available at www.isshs.edu.mk/fines-in-macedonian-legislation-over-the-years-1995-2014, accessed on 30.11.2017; Webpage: www.zarobenadrzava.net, accessed on 30.11.2017.

2 Ljubomir Frchkovski, "Review of Policy Document 'Media Policies and Editorial (Un)Freedom'" [„Медиумските политики и уредувачката (не)слобода"] (Skopje: Institute of Social Sciences and Humanities – Skopje, 2017).

[3] Ibid.

[4] "Policy Brief: Discursive Forensics of the Macedonian Law on Audio and Audiovisual Services" (Skopje: Institute of Social Sciences and Humanities – Skopje, 2017), available at www.isshs.edu.mk/discursive-forensics-of-the-macedonian-law-on-audio-and-audio-visual-services, accessed on 29.11.2017.

laws used here for comparative analysis. In these laws the larger focus is put on the programme, services and broadcasting. Further, the language analysis reveals that the existing law's focus is on the regulatory body as opposed to the regulated practices and their participants, as is in democratic European laws. I.e., the focus of the Macedonian law pertains to "what should [the law] be like" and "who oversees and controls the practice" (Agency of Audio and Audiovisual Media Services) instead of the practices (programmes, services, broadcasting), and who implements (the media), as is in those European laws used here for comparative analysis.

2. A COMPARATIVE ANALYSIS OF THE EXISTING LAW AND EUROPEAN LEGISLATION AND PRACTICES

The Law on audio and audiovisual media services minutely regulates the programme structure and contents (genres and types of programmes) which the broadcasters should produce and broadcast on a daily basis in the regulated time and with a regulated length, and there are severe administrative fines imposed for not realizing those. Our comparative desk analysis of editorial freedom-related rules regulating the details, namely, Articles 91 and 92, in comparison with post-2004 EU countries and member states, thus serving as comparative models, reveals that such a degree of interventionism and penalization related to non-programme contents does not exist in any of the EU countries.

2.1. ARTICLE 91 DEFINES THE PROGRAMME STANDARDS

Line 1 of Article 91 enforces that TV broadcasters who broadcast programmes statewide should guarantee that at least 51% of the total broadcasted programmes during one calendar year be European audiovisual products. Line 2 of the same Article 91 demands that state-wide broadcasters should have at least 10% independent producers' European audiovisual products. With its Article 147, the Law foresees a fine for breaching the regulated quotas, i.e., for breaching the obligation to broadcast European productions and those of independent producers.[5] But still more problematic than this is that for offences regulated on the basis of Article 147 the Law foresees sanctions with Article 150 directed at the legal person, who, along with the fine, can be charged with a criminal offence. For this violation, Article 150 foresees prohibiting the exercise of the profession, activity or office from three months to one year for the responsible person (the editor) behind the programme within the legal person.

Our desk analysis shows that the "old" democracies, i.e., pre-2004 EU member states, are divided on legislatively specifying European productions quotas. So for example: Denmark, Germany, UK, Ireland and Belgium have no quotas whatsoever for broadcasting European productions. Unlike them, such quotas exist in: Austria, Finland, Netherlands, Sweden, Portugal, and Spain. There are quotas also in Italy and Greece, however, they are not law-regulated but are arranged via legislative decree (Italy) or presidential decree (Greece). Despite differences in regulating European productions quotas, what is common for those older EU member states is that in none of them there are rules for punishment if quotas are not met. What is common for the established democracies is that it is unthinkable to issue on such basis violation sanction for the media or the editor, as this is foreseen by the current Law on audio and audiovisual media services in Macedonia.

What is discussed here are rules that attempt to consolidate national legislation and EU Directives for audiovisual media service (AVMSD). But the punishing and

[5] "Article 147:
(1) A fine ammounting to 5.000 EUR in MKD equivalency will be imposed to the legal person for an offence if:
14) the person does not implement at least 80% of the programme concept for which a license is issued in the course of one week (Article 67 line (6));
15) the person changes or supplements the programme concept of the broadcasters on the basis of which the broadcaster has received a license for TV or radio broadcasting with more than 10%, without a prior agreement from the Agency (Article 67 line (7));
18) the person does not respect the obligations for broadcasting European productions and productions by independent producers regulated in Article 91 of this law."

hyper-regulative tendency within the existing law is entirely contradictive to the intention of the Directive for supporting the European audiovisual market as an important part of the European economy.

2.2. ARTICLE 92 OF THE LAW DEFINES BROADCASTERS' RESPONSIBILITIES

Article 92 of the Law defines the broadcasters' obligations to broadcast music and original Macedonian language-made programmes or ones in Macedonia's official languages. Line 1 of Article 92 imposes a daily obligation for broadcasters to broadcast at least 50% programme originally produced in Macedonia in Macedonian language or in the non-majority communities' languages in Macedonia. For breaching the daily obligation to meet the forced quotas the Law foresees fines by way of Article 146.[6] As in the previous example, for violations on the basis of Article 146 the Law foresees sanctions with Article 150 for the legal person, who, along with the fine, can be subject to a violation sanction. For this violation, Article 150 foresees prohibiting the exercise of the profession, activity or office from three months to one year for the responsible person (the editor) behind the programme within the legal person.

Our comparative analysis reveals that, save for Netherlands and France, the laws on audiovisual media services in the older EU member states have no quotas for national languages programmes or minority languages programmes. The Dutch law makes it obligatory that at least 40% of the TV programme be original Dutch or Friesian production. In France, the Law for broadcasting French songs is supplemented by the Law for the freedom of communications. The European Commission notes that the French law limits the freedom of services in the European Union.[7] Even in those two cases in Netherlands and France, the broadcasters are not quota-bound on a daily basis, as is the case with the current Law on audio and audiovisual media services in Macedonia. More importantly, in the case of their non-implementation, the material law foresees no violation sanction for the media or the editor, as this is the case in our current law.

Lines 4 and 5 of Article 92 suggest strict temporal frameworks and quotas for broadcasting Macedonian music and minority languages music, and over more impose strictly defined programme genres of music (instrumental, vocal-instrumental, entertaining, folk). For the non-implementation of rules defined for daily basis implementation, the Law foresees a fine by way of Article 146.[8] As in the previous case for Article 146-based offences, the Law foresees sanctions for the legal person by way of Article 150, whose violation can be sanctioned along with the fine. In this case too, the most problematic thing is that for this violation, Article 150 foresees prohibiting the exercise of the profession, activity or office from three

[6] "Article 146:
(1) A fine ammounting to 10.000 EUR in MKD equivalency will be imposed to the legal person for an offence should the person not respect the obligations in Article 92 Lines (4), (5), (6) and (13) of this law.
(2) A fine ammounting to 500 EUR in MKD equivalency will be imposed also to the responsible person in the programme in the legal person for an offence done according to line (1) of this article."

[7] European Parliament, "Parliamentary Questions, 11 December 1998, E-3223/1998, Answer Given by Mr. Monti on Behalf of the Commission," available at www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-1998-3223&language=EN, accessed on 29.11.2017.

[8] Ibid.

months to one year for the responsible person (the editor) behind the programme within the legal person.

Save for the abovementioned example of France, i.e., the Law on French songs, none of the pre-2004 EU member states has such a detailed elaboration of genres. Also, none of those countries, including France, does not regulate that on a weekly basis. In the case of France, the implementation of the Law for French songs is done on an annual basis and in trimesters. From this aspect too, what is common for the older EU member states is that it is unthinkable to issue on such basis a violation sanction for the media or the editor, as this is foreseen by the current Law on audio and audiovisual media services in Macedonia. The exception is France, which foresees fines for non-implemenation of quotas, but the monitoring is based on an annual level and makes possible a greater flexibility.[9]

Lines 8 and 9 of Article 92 from the Law impose temporal frameworks for broadcasting domestic documentary programmes (Line 8) and domestic feature programmes (Line 9). For the non-implementation of those rules the Law foresees a fine by way of Article 145.[10] As in the previous cases for Article 145-based offences, the Law foresees sanctions by way of Article 150 for the legal person whose violation can be sanctioned along with the fine. And in this case too, the most problematic thing is that for this violation, Article 150 foresees prohibiting the exercise of the profession, activity or office from three months to one year for the responsible person (the editor) behind the programme within the legal person.

Our desk analysis reveals that in the material laws of pre-2004 EU member states there is no such detailed elaboration of genres and temporal frameworks. Therefore, for the "older" European democracies it is unthinkable to issue on such basis a violation sanction for the media or the editor, as this is foreseen by the current Law on audio and audiovisual media services in Macedonia.

The Law on audio and audiovisual media services and its voting on 26.12.2013 has seen five changes and revisits, of which the last was made on 01.08.2016 and it has to do with downsizing the fines. The last change has been generated as a result of the Pržino Agreement. Despite halving the fines' amounts, the charges remain disproportional, i.e., they are equally the same for all media, their financial capacity and their number notwithstanding, which remain unchanged. Thus, the smaller media can be shut down by one fine only, as opposed to the financially stronger media which can survive the charges, even though the question is to what extent and till when even the slightest Kafkaesque mistake is being charged by the law as if it was meant as premeditated criminality.

Despite the mentioned changes, there does remain the evaluation that we are dealing with a legislation that in its essence aims to control and discipline by way

[9] "Comparative Analysis of European Legislative for Media Audiovisual Services" [„Споредбен преглед на европското законодавство во поглед на медиумските аудиовизуелни услуги"], available at www.isshs.edu.mk/споредбен-преглед-на-европското-зако-2/?lang=mk, accessed on 23.11.2017.

[10] "Article 145:
(1) A fine ammounting to 50.000 EUR in MKD equivalency will be imposed to the managing person for an offence should the person not respect the obligations from Article 92 Lines (8) and (9) of this law.
(2) A fine ammounting to 1.500 EUR in MKD equivalency will be imposed also to the responsible person in the programme for an offence done according to line (1) of this Article."

of using measures for strict and detailed rules and overly numerous fines inscribed in the material law. In this way a system is being established, which can be used as a threat to practicing editorial freedom in view of conceptualizing and choosing programme contents in the media.

Our comparative desk analysis of the laws for audiovisual media services of EU member states reveals that the mentioned law hyper-regulates programme contents on a daily basis and simultaneously foresees strict sanctions to such a degree that it cannot be compared to those of EU member states, especially the older member state countries.[11] The law has been enacted in an attempt to synchronize the national legislation with the AVMSD. But its penalizing and hyper-regulative variation of the Directive, when distilled in a law, is exactly the opposite of the AVMSD's intention as an important segment of a European vibrant and free economy.

[11] "Vizualization: Programme Related Fines," available at www.isshs.edu.mk/fines-in-macedonian-legislation-over-the-years-1995-2014, accessed on 30.11.2017.

3. ANALYSIS OF DATA FROM THE REGULATORY IMPACT ASSESSMENT OF THE EFFECTS OF EXISTING LEGISLATION ON EDITORIAL FREEDOM

In the Macedonian Law on audio and audiovisual media services, a central place is given to the regulatory body, the Agency for audio and audiovisual media services. According to the discursive forensic analysis, as was already mentioned, the position and roles of the Agency are a central concern, and the focus on regulation, control, oversight and punishment dominates in the Law's text. The role and characteristics of the regulatory body are part of the evaluation carried out on the effect of applying the existing regulations.[12]

The evaluation reveals that in the specific social-political context, the formally declared independence that the law makes possible is put under question due to the regulated way of choosing the two governing organs of the Agency: the Council and the Director. Namely, instead of the law's intention, i.e., guaranteeing the Council's independence through the highest democratic and law-giving station's decision, paradoxically, in the existing social-political context the way of deciding guarantees its politicization and partization. The Council is chosen by the regulatory body's Director and in this way the effect of partization and politicization in managing the regulator is continued.

A supplementary concentration of power through the law is made possible by assigning the highest power to the Director, especially in relation to implementing the oversight and adjudicating programme standards-related measures. In this way the opportunities for the misuse of power are increased, but so is the personalization of the institution's power in a single person, which is another way of licensing authoritarian proceduralism as a tool for governance.

The excessive regulation in the law is problematic in two aspects: legal and social-political. The legal analysis indicates that the detailed rules, procedures and elaboration of steps towards applying the principles of law should not be part of the law's contents but be part of bylaws. Additionally, each of the law's minutely developed procedures are paralleled by an article sanctioning its non-implementation. Such a degree of penalization is not characteristic for material laws in the European legal tradition according to which penalization is the domain of the criminal code. Also, via this mechanism what is secured is a basis for the existence of the above mentioned "authoritarian proceduralism," while the degree of detail indicates excessive regulation typical of the bureaucracy of an illiberal hybrid regime.

The state capture in an illiberal democracy by way of excessive regulation is explained in the analysis by the Institute of Social Sciences and Humanities – Skopje: „Excessive regulation suggests inscribing details into the laws, which make possible financial and political control, and the laws make possible the legality of possible non-democratic, i.e., authoritarian acts or behavior by the administration."[13]

The law's existing programme standards are reduced to purely formal detailed rules divorced from quality. The law goes into issues such as the broadcasted programmes' ordering, length of types of programmes foreseen on a daily basis and similar details. In this way, indirectly, via formal-technical issues having to do with programme contents and editorial freedom, the editorial freedom is being influ-

[12] "Comparative Analysis of European Legislative for Media Audiovisual Services."

[13] Ana Blazheva et al., *Freedom of Expression.*

enced. Namely, since the editor is burdened with a number of fine-bound formal obligations, the editorial freedom is suffocated via a pressure triggered by the fear from bureaucratic mistake. The editor becomes a bureaucrat competing with time so as not to miss some obligation of the "programmatic concept" which s/he is "obliged to implement" and which is being literally measured by the second, instead of him/her being a creative strategist of his/her own programme offering. This conclusion of ours is confirmed by the field research, but also by the desk analysis which both reveled that it is namely on the basis of Article 92 regulating "programme standards" that the biggest number of fines imposed within the last three years were caused.[14]

Institute of Social Sciences and Humanities – Skopje carried out research on evaluating the effects of the existing regulations for audio and audiovisual services on editorial freedom.[15] The evaluation covers several domains from the Law on audio and audiovisual media services that influence editorial freedom – programme standrads, programme principles and obligations, penal charges, protection of pluralism, as well as obligations and the work of the public broadcasting service and the regulatory body. The evaluation was based on field research through: interviews, focus groups and e-questionnaire with representatives of the local, regional and national audio and audiovisual media, as well as employees of the regulatory body, in June-August 2017.

According to the data from the field research, the interested parties indicate negative effects in implementing programme standards on the programme's quality. Let us emphasize that it is exactly their implementation which causes negative effect on the editorial creative freedom.[16] In other words, as is often the case in illiberal democracies, some laws are better off not implemented till the end, as their full implementation would produce the ultimate inhibition of the domain. The field research too confirmed that if the law specifies the norms to the degree of a rulebook, and even a sort of guidebook, and if it is bureaucratized to an extent that even the slightest digression is treated as a criminal offence, the result is counter-productive: substance-emptied quotas are implemented (for example, it is important that the programme is documentary, not what its quality is), and new ideas for contents and quality of programmes are missing. This is the result of excessive emphasis on the form of the law and that, in its bureaucratic domain, so that due to pressure the bureaucratic expectation is kept, the editor is reduced to an administrator and technical criterion (length and order) set by the law. The editor has neither the space for new ideas and creativity, nor the opportunity to decide about a good deal of the programme planning. For example, in the biggest

[14] Cleared text of Law on Audio and Audiovisual Media Services (*Official Gazette of Republic of Macedonia* No. 184/2013); Law for Amendments and Changes of the Law on Audio and Audiovisual Media Services (*Official Gazette of Republic of Macedonia* No. 13/2014); Law for Amendments and Changes of the Law on Audio and Audiovisual Media Services (*Official Gazette of Republic of Macedonia* No. 44/2014); Law for Amendments and Changes of the Law on Audio and Audiovisual Media Services (*Official Gazette of Republic of Macedonia* No. 101/2014); Law for Amendments and Changes of the Law on Audio and Audiovisual Media Services (*Official Gazette of Republic of Macedonia* No. 132/2014).

[15] "Regulatory Impact Assessment of the Effects on the Editorial Freedom Created by the Existing Legislation on Audio and Audio-Visual Services" [„Проценка на ефектите на постоечката регулатива за аудио и аудиовизуелни услуги врз уредничката слобода"] (Skopje: Institute of Social Sciences and Humanities – Skopje, 2017), available at www.isshs.edu.mk/regulatory-impact-assessment-of-the-effects-on-the-editorial-freedom-created-by-the-existing-legislation-on-audio-and-audiovisual-services, accessed on 29.11.2017.

[16] Ibid., 12.

part of European countries, within their own format the editors have the full freedom to play with the programmes' order and length, and even with the types of programmes. What the regulator is cautious about being respected is the threshold of, say, 70% of the contents on an annual basis, that it is not seriously above or below that percentage. The Law-maker enforces their own documentary production even for private broadcasters but not, for example, for shows of the culture domain (and here we are thinking of art productions or art-themed production, and not culture in the sense of national or ethnic identity and heritage). That is, the editor can afford to oblige in genre production, and non-implementation of the enforced quota is penalized. This can represent a serious threat to the free TV market as a type of industry.

The field research showed that what the excessive regulation means for concerned parties is obligations regulated and directly reflected upon freedom of decision-making for programming and resource planning. Most editors consider that such details should be defined by bylaws and not in the law's text. Also, most of them consider that it is difficult to meet the prescribed quotas, according to data from focus groups and interviews with 45 editors and journalists.[17]

High quotas entail big financial investments, and at the same time are not based on research on the media's opportunities and needs and in what way these would make possible the development of the media industry, not the produced programme's quality. This is confirmed by the field data which reveals that all broadcasters experience the obligation for programme production as a big financial burden which is not always market-sustainable. In the same direction, if the private segment of this sector is a type of industry, according to evidences from the field research, the law intervenes in the market logic and threatens the main values of the free market. However, in the attempt to meet the obligations, the media hire production companies. Their own production is reduced to minimum so that they can satisfy the form, improvising and making compromises that influence the produced programme's quality at that. These insights are based mostly on evidences gathered from the field research.

Implementing quotas has a particularly negative effect for the local media in view of their market sustainability. The research shows that the local TVs have the smallest part in the media market and meeting the quotas makes impossible a programming that is watchable and, with that, securing conditions for marketable work. The local media do not enjoy the right to subsidiary compensations for documentary programme production but are obliged to produce 50% original programme, which puts them in economically unequal position compared to the others.

On the other hand, the public service which is funded by public money should logically be responsibilized with certain production quotas, unlike the private broadcasters. The evaluation of regulatory effects is that this law intervenes in the media's market logic and hinders the economic freedom and, with that, the media's programmatic individuality.

[17] Ibid., 12-13.

3.1 BREACHING THE LAW'S MINUTELY ELABORATED PROGRAMME STANDARDS IS SUBJECT TO FINES

The detailed implementation of the law means an increased sanctioning of the media that have broken programme standards. Especially problematic is the fines' amounts being regulated for infringing programme standards. Namely, the biggest fines in the law stem from infringing Article 92 which regulates exactly "the programme standards" (although, as said above, these are less standards than bureaucratic rules for programme realization). This means that the fines serve to control the programme although they do not relate directly to its contents.

The pressure onto programme contents can be seen also in the number of foreseen measures. Data shows that in the last two years the biggest number of measures are related to infringing Article 92, i.e., the programme standards. The most often used measure is a warning. A smaller number of measures are enforced sanctions, and they in turn end up with extrajudicial agreement.

Interviewees experience the fines as a way that can influence editorial policy, i.e., as an intimidation mechanism. Data from interviews with editors reveal that most of them, especially in local media, are limited in editing the programme fearing fines and charges. Such intimidation can in reality be seen in overburdening the media with calculating each programme contents unit because, as they themselves mention, "you can be drastically charged for one second only." Therefore, one can see that fines represent a strong pressure by the legislator onto the media, and especially on private ones, for disciplining and controlling broadcasters, in view of matters related to realized and produced programmes.[18]

When it comes to the regulated fines, an additional problem is the disproportionality of the fines' amounts. The effect of such regulation is the disproportionate burden over broadcasters differing in size and ambit, which for the smaller media can mean their being shut down. The data from interviews with the Agency's managing staff, as well as with the editors, reveal that the negative effect of disproportionality in fines is much larger in smaller media.

The pre-defined technical details of this kind curtail the regulator's autonomy which is reduced to a routine norm-breaching box-ticking that should not be covered by the laws.

In this way, a system is established that represents a threat to the freedom of expression and makes possible self-censorship and censorship in the media, i.e., influences the conceptualizing and the choice of media programme contents.

[18] Ibid., 14-15.

4. SELF-REGULATION

The European Directive (Article 4) imposes the obligation of self-regulation and/or co-regulation on the national level in the areas covered and to the extent permitted by the national legislation in each of the member countries.[19] Overmore, it is indicated that such systems of self-regulation and/or co-regulation must be further accepted by the main actors considered and to make possible the effective realization.

The media self-regulation is based on journalistic ethical codes, standards for editorial independence, as well as the very media organizations' internal rulebooks.[20] Those codes are focused on certain principles such as "respect for the truth and the right of the public to truth, the right to fair commentary and critique, fact-based objective reporting, use of fair methods of data collection, corrections of mistakes, respecting the source and its privacy."[21]

However, the practices of effective self-regulation are not reduced only to codes, notwithstanding if those are professional or ethical. It is needed to establish functional self-regulation bodies whose decision-making would be legally recognized and would be implemented by the courts.[22] When it comes to the media self-regulation bodies and instruments, the classical practice is that the media would have its own ombudsman or commission for the public's complaints that are being developed as their own instruments of accountability towards the audience. In this direction the most successful example on both European and global level are the Nordic countries: Sweden, Norway and Denmark. They have a long tradition of self-regulation and effective bodies for implementation in the form of press councils. This concerns bodies that are funded exclusively with media-secured funds and are in this sense independent from state influence. From the aspect of the current conditions in Macedonia, we have to take into account that such successful and positive practice could be expensive and unsustainable for the Macedonian media industry, which operates on a small, poor and ethnically fragmented market.

The priority in Macedonian media self-regulation should be directed toward voting quality bylaws of the media themselves, which have to draw the thin red line where the state intervention will be disallowed. In order to make possible Macedonian media and editors' effective autonomy, the programme principles and philosophy, as well as procedures, should be accepted by the very media in the form of bylaws (rulebooks, guides, work schedules, etc.) or other type of documents outlining the work policies, their own standards and professional values. By arranging the bylaws, the Macedonian media should gain the ground of editorial freedom, since so far media self-regulation is the most effective mechanism for the protection of editorial independence.[23]

The situation in the Macedonian context could, on a deeper level, be supplemented through the focus groups data which reveal that part of the journalists are not suf-

[19] "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.
[20] Andrew Puddephatt, "The Importance of Self-regulation of the Media in Upholding Freedom of Expression," (UNESCO, CI Debates: February 2011), 11, available at unesdoc.unesco.org/images/0019/001916/191624e.pdf, accessed on 29.11.2017.
[21] Ibid.
[22] Ibid., 40.
[23] Ibid., 10.

ficiently informed about the notion of self-regulation. They see the regulator's role as something that should continually oversee, take care of and intervene when the professional work standards are breached. Journalists and editors outsource the responsibility regarding quality in the hands of the regulatory body, and thus in some way infantilize their own position. From this aspect penalization is partially being justified, but not the punishing due to breaching programme standards. On the other hand, part of the focus groups clearly expressed the need for self-regulation through codes of professional ethics, rulebooks for standards and quality and other internal documents for their own planning and program realization.

PUBLIC BROADCASTING SERVICE

The hitherto analyses and reports of the European Commission on Macedonia's progress confirm lack of political independence and lack of balanced reporting in the public service. "There remains the serious concern for the balance in reporting from the public broadcasting service. According to OSCE/ODIHR's electoral monitoring mission, the media monitoring notes that the news feature limited information on political events and fail to secure a more comprehensive analysis on a daily basis. In several cases, the journalists mixed facts with their own political opinions when providing news coverage."[24]

The Programme Council is the body obliged to protect the public's interests.[25] However, the independence of the Programme Council is problematized on the basis of the previously made analyses on conflicts of interests.[26] According to the available data, at least three members of the council have conflict of interest.

Two members of the programme council, by the time of their appointment in the Parliament, did not meet the criterion that they should have not been working in public office in the last five years. One member is an earlier MP, while the other was an earlier ambassador. The third Council member who does not meet the law's criteria is a current municipality speaker.

The council is obliged to decide on the rules for programme and professional standards of the public service, but our research and desk analysis findings revealed that such rules are lacking.[27] To some extent the professional standards are connected to the ethical principles of work for which there is a code in place. However, the existing code is the subject of public criticism and is not acceptable for the biggest association of journalists. The code is critiqued by the journalistic associations because along with the ethical standards it includes questions unrelated to the work ethic, i.e., that it is too general and disorganized and with this is

[24] European Commission, "Report on the Republic of Macedonia for 2016," Attached to the Communication from the Commission to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions, a Communication on the EU Enlargement Policy for 2016, available at www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/izveshtaj_na_evropskata_komisija_za_republika_makedonija_2016_godina-mk2-raboten_prevod.pdf, accessed on 29.11.2017.

[25] Law on Audio and Audiovisual Media Services, Article 116.

[26] "Depolitization of MRTV's Programme Council – A Precondition for the Public Service's Independence. Comparative Analysis of Public Broadcasting Services' Programme Councils in Macedonia, Croatia and Slovenia" [„Деполитизација на Програмскиот совет на Македонската Радио Телевизија - предуслов за независност на јавниот сервис. Компаративна анализа на програмските совети на јавните радиодифузни сервиси на Македонија, Хрватска и Словенија"] (Skopje: Macedonian Institute for Media, 2017), available at mim.org.mk/attachments/article/1052/Analiza_programski_soveti_FINAL_WEB.pdf, accessed on 29.11.2017.

[27] "Regulatory Impact Assessment."

subject of arbitrary interpretation.[28] What the analysis revealed and is of essential importance for the focus of this study, is that the public service has no internal acts relating to establishing programme standards. By using this notion we are not thinking only of length of minutes and broadcast order schedule but criteria and values of the profession in the sense of communication (and not only journalistic one). The public service should excel in producing quality service with articulate artistic, scientific, specialized and journalistic standards, as should any other public service. Unfortunately, there are no acts in place that will oblige and tie MRTV with production and quality. It is exactly one of the products of this project that will be the model rulebook for MRTV's programme work.

Furthermore, the data indicates non-comprehensive transparency of the public service's programme council and its work.[29] According to data from previous analyses and reports, the council's meetings were not open for the public. Moreover, the council did not consider it is obliged to be accountable and give statements and communications to the public and interested parties. In addition, our desk analysis revealed that the public service's web page contains no data on the Council's work, meeting reports and voted resolutions.

The Council of Europe indicates that a strong and independent broadcasting service is an indicator of a strong democracy, i.e., that the countries having popular, well-funded and accountable public broadcasting services face much less corruption.[30] Also, this indicates the need that the public broadcasters be transformed from state broadcasters with strong ties to the government and low accountability to the citizens to independent and accountable services with editorial freedom from the state.[31]

In the direction of a transition from state to independent and accountable public service, we can point out several factors of vital importance:

- supervisory bodies, agencies, teams acting as shields against state influence or commercial influence onto the public service;

- funding by the public service;

- administrative and legal rules, i.e., internal (bylaws) documents of the public service;

- audience inclusivity.

[28] "AJM: MRTV Wants to Quickly Adopt the Code of Ethics to Play False Activism before Hahn's Arrival" [„ЗНМ: МРТ сака на брзинка да усвои Етички кодекс за да глуми лажен активизам пред доаѓањето на Хан"], *MKD.mk* (14.09.2015), available at www.mkd.mk/makedonija/politika/znm-mrt-saka-nabrzinka-da-usvoi-etichki-kodeks-za-da-glumi-lazhen-aktivizam-pred, accessed on 29.11.2017.

[29] "Monitoring the Work of AVMU and MRTV" [„Мониторинг на работата на АВМУ И МРТ"], (Skopje: Center for Media Development, 2017), available at mdc.org.mk/wp-content/uploads/2017/07/Prv-monitoring-izvestaj-za-2017.pdf, accessed on 29.11.2017.

[30] Council of Europe, "Public Service Broadcasting under Threat in Europe," Strasbourg (02.05.2017), available at: https://www.coe.int/bg/web/commissioner/-/public-service-broadcasting-under-threat-in-europe, accessed on 29.11.2017.

[31] "Recommendation CM/Rec (2012)1 of the Committee of Ministers to Member States on Public Service Media Governance (Adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies)," available at
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4, accessed on 29.11.2017.

Sweden can be treated as a successful example for the separation of the public service from the state. The Swedish public broadcasting service (SVT) is the property of a specially designed independent foundation protecting it from state influence but also from commercial influence. The independence of supervising agencies is strengthened in different ways, such as dispersed power of appointing board members and including representatives of various social groups as board members. Also, a significant measure for strengthening the independence is that the members' mandates as directors does not expire in the same year. This indicates that the entire board is not appointed simultaneously but during the four years its composition is being changed. Interestingly, instead of insisting on thorough exclusion of party influence, the Swedish model (similarly to the Danish one) allows the parliamentary represented political parties to recommend their board members who are expected to have the expertise in the areas of: media, culture, law and economy.

4.1. FUNDING MODELS IN EU COUNTRIES:

- pre-payment based funding (Sweden, Finland);

- pre-payment and commercial revenues-based mixed funding (Denmark, Germany, France);

- tax incomes and commercial revenues-based mixed funding (Netherlands).

In 2000, the Netherlands transitioned to pre-payment-based funding toward mixed funding through tax and commercial revenues. The only outcome of the change is that there is a gradual decrease in the funding each subsequent year. Generally, such type of funding contains the risk of misuse on the government side which can use the funding distribution as a mechanism for public service pressure. The commercial revenues from advertising makes possible independence from the state, but there exists the risk of a heightened commercial pressure. This is why the pre-payment is considered a guarantee for the public service's autonomy, but is also its obligation for accountability towards citizens and the audience.

4.2. ADMINISTRATIVE AND LEGAL RULES OF THE PUBLIC SERVICE

The administrative and legal rules, i.e., internal (bylaws) documents of the public service, is one of the most significant tools for avoiding governmental, political party influence onto editorial policies and generally the public service's independence, as well as a guarantee for the programme's quality. The rules establish and protect the mission of the public broadcasting service by specifying their civic obligations and limiting the government's and the state's influence.[32] Overmore, it has to be considred, that is to say to avoid, the problem of administrative and legal rules' dubiousness, which means weak mandates and too general and generic language which subjects public services to governmental interventions. The rules of the Norwegian, Swedish and British public services could be taken as positive

[32] Rodney Benson, Matthew Powers and Timothy Neff, "Public Media Autonomy and Accountability: Best and Worst Policy Practices in 12 Leading Democracies," *International Journal of Communication* 11 (2017), 1–22 1932–8036/20170005, available at http://ijoc.org/index.php/ijoc/article/viewFile/4779/1884, accessed on 29.11.2017.

examples of rules that avoided this pitfall and make possible a higher level of autonomy. In some countries, for example Germany, the rules of the public services establish technical criteria that define the funding. What is more, the administrative and legal rules of the public service can contain resolutions that place the civic aims as an offer for educational contents, support for cultural programmes, and covering various social opinions.

4.3. AUDIENCE INCLUSIVITY

The composition of the public's Council, as well as researching the public opinion could be treated as the regular mechanism for strengthening accountability between the public service and its relations to the public. In the realization of this aim for audience inclusivity it has to be considered that the public service's success is by a large stroke dependent also on how much investment there is in new technologies and in developing social media strategies. In this aspect we can treat as successful examples the Nordic countries' public services: Sweden, Denmark, Norway.

Denmark is perhaps the best example for inclusivity and for making possible not only a wide consensus – and not only when it comes to the public service' work and programme but also in defining the media policy in general. Every four years Denmark decides on a new media policy based on so called political media contracts. Those are contracts decided about on the basis of thoroughgoing, long term debates with the widest public possible and all concerned patties, and is decided about by way of consensus of the parliamentary represented political parties. These contracts define the four year long framework according to which all audiovisual services (public and private) function. Currently in Denmark there are negotiations going on for the new contracts, which should be ready for 2018/19. The process started in 2017 with a wide five month-long discussion organized by the Ministry of Culture which included the citizens. Data was collected through them for the programme contents that is of interest, as well as for the platform through which the citizens would like to receive these contents (TV, radio and internet). After that the debate was widened with the representatives of the media industry. In finishing with this phase, the government announces a draft document for the new contracts and negotiations begin in the parliament, which is expected to accept it with a wide consensus.

5. PROPOSED POLICIES

The following proposed policies imply changes of the existing presuppositions in creating policies that are based on a vision of society which is excessively directed towards control, treating the citizens and the institution as incompetent of their own judgement, decision capacity and responsibility. Our approach promotes pluralism-based policies as a social and economic principle and aims to surpass the authoritarian approach which makes possible the institutions' "capture," i.e., in this specific case, the media domain. The policies we are offering stem from the idea of regulating a certain domain according to principles of democratic governance and the rule of law in European democracies, which stem from the presupposing of an "honest citizen" and regulating his/her practices and behaviors, and the approach is treated as an exception and anomaly – the aim of the law is make the work in a certain domain more lucid, more accountable and fairer, and not to presume continually that every citizen is a potential criminal intending on breaking the rules. The rules should be clear and simple and, with that, make the work easier, instead of bureaucratically complicating it.

Such accommodation of the starting point in building policies in the media domain will have several effecs: making possible conditions for the development of media products' quality according to the market legitimacy and its logic, strengthening the public services' product's quality which does not take as its own criterion the market but rather judgement of the professional, journalistic, cultural and academic community, strengthening the self-regulation and better conditions for media independence from political influences. Such effects are achieved through taking away the state burden of defining, arranging and controlling to the slightest detail all the aspects of media's functioning, and opens the possibility for the media to take responsibility in relation to the publicity and the public, in view of the professional and qualitative realization of the activity, in sync with their own principles.

Changing the policies begins with changing the functioning and the obligations of the regulatory body. The first policy that we propose concerns the professionalization of the Agency's advisory body. The advisory body's members should be nominated by the relevant professional associations working in the media domain (journalism, cinema, music, production etc.) and that, by their integrity, could advocate various concerned parties in the regulatory body and in the processes of creating and realizing media policies. Except the composition, we propose that the Council's status is changed and that it is the highest executive body instead of the Director, as is until now. This proposal is in tune with the best European practices.

In order to make possible efficacy in creating and realizing the policies, the Council should use knowledge and analyses of the regulatory body's specialized service which, by way of the analyses carried out, reveals its specialism and impartiality in its own workings. The specialized service's harnessing of the advisory body, which has the highest obligations in decision-making, is significant, since it makes possible the founding on principles of decision-making in creating policies and their realization based on data describing the condition of the media domain in various affected parties and aspects – the needs and opportunities of the media market, the public interest and the audience's needs, as well as professional standards for the workings.

In this regard, it is needed to direct the work of the specialized service toward analyses, creating participative processes and carrying out developmental policies in the media domain as a central aspect of the work, instead of focusing on monitoring and sanctioning which should be among the secondary priorities.

Hence, it is necessary to change the law with respect to the programme standards that will be directed towards making possible free and independent media, citizens' protection, the public interest and making pluralism possible. Such programme standards should be based on existing analyses and data by the regulatory body and the civic sector and on take into account all aspects of the development of the media domain. Also, the programme standards should be regulated in such a way that they direct, recommend and advise. Programme standards should be sufficiently general so that they allow the media for they themselves to create internal documents that will operationalize programme standards of the individual media and will thus base their own media-binding framework in front of the publicity and the audience. In this way they are setting up their own programme policy, exposing themselves to the judgement of the audience and the critical publicity, and not the judgement of the Agency and the Courts. (Courts exist for trespassing criminal laws and not for breaching programme standards.)

Strengthening media's self-regulation via their own law-applying framework, distilled in bylaws, is crucial, in tune with the laws, the Constitution, and international professional standards and principles stemming from the European Directive (2010 and 2016), but also their own programmatic philosophy. When it comes to strengthening self-regulation it is necessary to have a wider inclusivity of professional associations promoting and protecting the standards of quality and cultural and civilizational values circulating in the media.

Those rules for programme standards in the law that can be obligatory, following the example of European practice and examples, could be issues concerning on-demand services that are additionally paid by the costumers.

We propose that media pluralism be developed toward a diversity of demand in tune with existing conditions and opportunities of the media market. In this direction it is necessary to create criteria following the public's needs, the public interest, and analysis of the market. According to those parameters there should be criteria in place for the Agency's issuing/re-issuing of media licenses and, again, on the basis of their own bylaws (instead of the law being burdened with detail).

When it comes to guaranteeing better conditions for media independence from political influences what is necessary is the carrying out of in-depth analyses and adaptation of the existing rules for media concentration.

When it comes to protecting the public interest, what is necessary are mechanisms for securing the public broadcasting service's independence. The public service's independence should stem from keeping up with the highest professional criteria and integrity of the Programme Council's members and the other managing functions, which should be guaranteed in a way similar to the case of members of the regulatory body's Council, i.e., for them to be nominated in the Parliament by the

relevant professional associations and for them to have a reputable status in view of their own professional integrity.

Then, in order to guarantee the highest professional standards and values, the public broadcasting service should create bylaws or other types of internal documents for self-regulation in view of programme and professional standards.

Transparency, participation, and accountability in creating the policies for developing and creating programmes should be guaranteed by the public broadcasting service by way of a participative process in creating the annual programmes and through publicity of the managing organs and its decisions, the annual financial reports and temporary financial revisions as a necessary part of the responsible work, and using the funds secured by the citizens for the needs of the public service.