



# Handbook

## On Media Monitoring for Election Observation Missions

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# **Handbook**

## On Media Monitoring for Election Observation Missions



# TABLE OF CONTENTS

<b>Foreword</b>	<b>7</b>
<b>1. Introduction</b>	<b>9</b>
<b>2. The Media in the Electoral Process</b>	<b>13</b>
<i>A. The rights of voters</i>	13
<i>B. The rights of candidates and parties</i>	14
<i>C. The freedom of the media</i>	14
<b>2.1 Types of Media and Election Coverage</b>	<b>14</b>
<i>A. The electronic media</i>	15
<i>B. The print media</i>	16
<i>C. The Internet and other new media: a general perspective</i>	17
<b>3. Media Monitoring within Election Observation Missions: An Overview</b>	<b>19</b>
<b>3.1 Tasks of the Media Analyst</b>	<b>19</b>
<b>3.2 The Role of the Media Analyst in an Election Observation Mission</b>	<b>19</b>
<b>3.3 Media Analysis: What Are We Trying to Determine?</b>	<b>21</b>
<b>4. Guidelines for Media Monitoring: Sensitive Issues, Benchmarks and Good Practices</b>	<b>25</b>
<b>4.1 The Legal Framework, Election Regulations, Election Administration and Media Regulatory Bodies</b>	<b>26</b>
<b>4.2 Media Landscape and the Role of the Authorities</b>	<b>28</b>
<b>4.3 Media Coverage</b>	<b>28</b>
<i>A. Pluralism and regulation</i>	28
<i>B. The advantage of incumbency</i>	28
<b>4.4 The Regulation of Media Coverage during Elections</b>	<b>29</b>
<b>5. Conducting Media Monitoring</b>	<b>35</b>
<b>5.1 Assessing the Role and Performance of the Media during an Election</b>	<b>35</b>
<b>6. Processing and Analysing Data</b>	<b>47</b>
<b>6.1 Units of Context</b>	<b>47</b>
<b>6.2 Recording Units</b>	<b>47</b>
<b>6.3 Coding</b>	<b>48</b>
<b>6.4 Measurement System</b>	<b>49</b>

6.5 Quality of Coverage	49
6.6 Weighting Cases	50
6.7 Interpreting Data	51
<b>ANNEX: A Compilation of Standards and Principles on Freedom of Expression during Elections</b>	<b>53</b>

# FOREWORD

Freedom of expression and freedom of the media are essential to any democratic process, and the assessment of media coverage of election campaigns is a fundamental part of election observation methodology. This publication provides a succinct explanation of the media-monitoring methodology used by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in its election observation activities.

This handbook includes a set of guidelines for coverage of election campaigns by public and private media outlets, particularly broadcast and print but also touching upon those related to the Internet and other new media. The aim is not to provide a detailed catalogue of these issues but to highlight certain common principles that are important for international observers when assessing an electoral process from the point of view of the media.

The final part of this publication includes some basic information on technical aspects of media monitoring, explaining the specific role of the media analyst in election observation missions (EOM). It is not intended, however, as a technical manual detailing every aspect of that work.





# Introduction

When reading this handbook, two important and related points should be understood from the outset. The first is that OSCE participating States have mandated ODIHR to conduct long-term observation of all aspects of the election process, from the registration of voters and candidates, through election day and up to the instalment of elected officials. This mandate includes specific reference to the need to assess the functioning of the media, which leads to the second point: Media play a vital role during any election. It follows, therefore, that any observation effort should pay significant attention to the activities of the media and their coverage of elections.

At the 1994 OSCE Summit in Budapest, the participating States recognized the importance of media explicitly, and mandated ODIHR to “play an enhanced role in election monitoring before, during and after elections. In this context, the ODIHR should assess the conditions for the free and independent functioning of the media.”

During any election, the media provide an invaluable channel of information between the contestants and the public. By providing an arena for public debate and informing citizens of the policies and platforms of candidates and parties, the media enable voters to make an informed decision when they cast their ballots. The importance of this last point cannot be overstated, as the ability of voters to make an informed choice is one of the key aspects of a democratic election.

Numerous steps have been taken to ensure that the media operate in a fair, objective and balanced manner when performing their proper function in any democratic society. These include the adoption of numerous inter-governmental agreements on freedom of the media and expression; recommendations by international and regional organizations; national laws on the functioning of the media; the creation of public-service broadcasters; the establishment of national regulatory bodies for the media; and the introduction of self-regulatory measures by media organizations.

Many of the states that make up the OSCE are subject to commitments undertaken within the framework of other institutions, and all, of course, are guided by their own national legislation. All OSCE states have also agreed to a number of specific OSCE commitments that deal with relevant issues, such as freedom of expression, freedom of the media and the conduct of democratic elections.

The main provisions of these commitments can be summarized as follows:

- ✎ Media freedom is one of the basic conditions for a pluralistic and democratic society;
- ✎ The right to freedom of expression is a fundamental human right and a necessary condition in a democratic system. Therefore, autonomous and pluralistic media are essential to a free and open society and for providing information necessary to holding those in power to account;
- ✎ Independent and free media are of particular importance in safeguarding human rights and fundamental freedoms;
- ✎ The implementation of OSCE commitments regarding the media should be strengthened to ensure a genuinely open sphere of information;
- ✎ Freedom of expression, including the right to communication and the right of media to collect and disseminate information and opinions, is a fundamental human right;
- ✎ The public should enjoy the freedom to receive and impart information and ideas, including through foreign publications and foreign broadcasts, without interference by public authorities;
- ✎ Media should enjoy unrestricted access to foreign news and information services;
- ✎ Any restrictions on the right to freedom of expression must be prescribed in accordance with international standards. Any limitations on freedom of expression must respect three main principles:
  - ◆ **Legality:** Any restriction on the freedom of expression must be defined by law;
  - ◆ **Legitimacy:** Legitimate purposes for such limitations include securing respect for the rights and freedoms of others, preventing disorder or crime, and protecting national security and public order, as well as protecting public health or morals;
  - ◆ **Proportionality:** Any provisions implying restrictions of the right to freedom of expression must be proportionate to the aims that such restrictions pursue;
- ✎ Attacks on or harassment of journalists must be condemned, and those responsible must be held accountable;
- ✎ Measures should be taken to protect journalists engaged in dangerous professional activities;

- ✎ The participatory rights of individuals and groups include their right to unimpeded access to media on a non-discriminatory basis; and
- ✎ No legal or administrative obstacles should obstruct access to the media within the electoral process.

Election periods are particularly demanding times for media professionals. The OSCE Representative on Freedom of the Media follows relevant media developments in participating States and promotes full compliance with OSCE commitments regarding freedom of expression and free media. The following points have been emphasized regularly in statements by the Representative:

- ✎ Free media and an independent, effective judiciary play mutually reinforcing roles in a democracy;
- ✎ It is the responsibility of the owners of media outlets, including cases where the owner is the state, to respect the right to freedom of expression and, in particular, the editorial independence of journalists;
- ✎ The use of criminal defamation laws, including their abuse by politicians and other public figures, is a violation of international standards. Criminal defamation laws should be repealed and replaced with appropriate civil defamation laws;
- ✎ The use of public resources by governments and public institutions for the purpose of influencing the content of the media is unacceptable;
- ✎ There should be a clear separation of political activities from the media interests of those politicians who own media outlets. Such ownership should be made known to the public.
- ✎ Journalists' investigative rights should be protected; they should not be held criminally liable for breach of secrecy when classified information is published and there should be advocacy for the right to protect the anonymity of sources;
- ✎ Undue concentration of media ownership should be prevented through appropriate measures, such as conflict-of-interest and anti-trust provisions;
- ✎ Broadcast regulators and governing bodies must be protected against political and commercial interference;
- ✎ The role of public-service broadcasters should be strengthened;
- ✎ Good governance on the Internet should be promoted and undue governmental control and overregulation of this medium prevented;
- ✎ Continuous efforts should be made to prevent the misuse of hate-speech laws and attempts to label offending or critical views as punishable extremism;
- ✎ Media self-regulation should be promoted as the best way to address/correct journalists' professional mistakes; and

- ✎ The promotion of diversity, including gender equality and equal opportunity for all sections of society to access the airwaves, should be a primary goal of broadcast regulations.

# The Media in the Electoral Process

The media have an important role to play during any election period. In addition to reporting on the performance of incumbents, providing a platform for debates among candidates, allowing candidates to communicate their message to the electorate, and reporting on campaign developments, the media should inform voters on how to exercise their rights, monitor the electoral process, including election-day proceedings, and report the results to the public.

When observing how the media function during an election, it is important to consider their degree of autonomy, i.e., their freedom from political or other interference, as well as the degree of media diversity.<sup>1</sup> Within this framework, three sets of inter-related rights and duties are to be considered: those of the voters, those of the parties and candidates, and those of the media themselves.

## A. The rights of voters

Voters need to be provided with all the information they need to exercise their right to vote. The right of voters to make an informed choice implies that the media should inform them in an objective and accurate manner regarding the platforms and views of different candidates and parties and of events in the electoral campaign and the electoral process, including the vote count and the announcement of election results. The media should also assist in explaining to voters how to exercise their right to political participation, particularly the process of voting.

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<sup>1</sup> For more on this subject, see D.C. Hallin and P. Mancini, *Comparing Media Systems: Three Models of Media and Politics* (Cambridge: Cambridge University Press, 2004).

## **B. The rights of candidates and parties**

Candidates and parties have the right to communicate their platforms and their views freely. Politicians should have access to the media to inform the electorate about their policies and opinions on matters of public interest. The media also provide an arena in which candidates can debate. Candidates can be covered in a variety of formats and can have access to the media in a number of ways; what is crucial is that they should have an equal opportunity to inform voters about their policies and not face discrimination in getting media access. Candidates have the right of reply to statements or reports in the media that are inaccurate or offensive and to do so in a timely manner during the entire electoral process.

While candidates and political parties enjoy the right of access to the media, this should not be abused. Politicians' right of access to the media should not limit or be detrimental to journalists' freedom of expression. Candidates and parties ought also to comply with certain fundamental duties in order to respect the freedom of the media. They should not interfere in the editorial policy of media outlets by way of any direct or indirect means of pressure and should respect laws regulating the campaign and the media, including those provisions related to media-silence periods.

## **C. The freedom of the media**

The media should have the freedom to inform the public about an election campaign and to express opinions. One of the functions of the media is to cover political issues in a professional manner. The media should also have the freedom to cover all relevant election-related issues, including the work of the election administration, alternative policies and platforms, the activities of candidates and parties, problems and incidents that occur during the election campaign, election-day procedures and the announcement of election results. In addition, the media need to have the freedom to take an active role in the process of informing voters by offering them a diverse range of views, including those of journalists and political analysts. The media should have the freedom to provide critical views of politicians' platforms or their public records. A number of factors determine to what extent the media succeed in informing the public in a correct, accurate, transparent and balanced manner. Above all, media managers and owners should accept the principles of journalistic independence and objectivity. They should demand that their employees act in strict conformity with these principles and that they do not favour a particular candidate or party.

### **2.1 Types of Media and Election Coverage**

While media can be classified according to a variety of criteria, the most important for the purposes of this handbook are the type of medium — electronic or print — and the kind of ownership.

## A. Electronic media

Electronic media are often subject to a higher degree of regulatory control by public authorities than print media. There are two main arguments usually used to justify this:

- ✎ The need to guarantee the fair allocation of limited public resources (airwaves and frequencies); and
- ✎ The need to impose a certain level of public obligation on broadcasters. Broadcast media (particularly television) are considered more than simple tools of communication, as they are essential instruments for promoting social, cultural and political objectives. It is, therefore, important that any regulatory framework for the media — whether statutory regulation or self-regulation — ensures the fulfilment of this goal.

The main distinction between electronic media outlets is between those that are publicly owned and those that are owned privately. This distinction has consequences for the degree of obligation, regulation, and control imposed on them by public institutions. Nevertheless, it is widely recognized that the coverage of election campaigns by public and private broadcasters ought to be fair, balanced and impartial.

### *State/public broadcasters<sup>2</sup>*

The underlying idea of public-service broadcasting is that the private sector alone cannot ensure pluralism in the broadcast sphere. Public-service broadcasters tend to be held to higher standards of responsibility with respect to principles of universality, diversity, independence, accountability and distinctiveness from other broadcasters. The stricter regulation imposed on these broadcasters is justified by the need to protect them from undue interference or control by the government, thus enabling journalists to operate freely according to their obligation to the public.

While all electronic media are expected to offer balanced, responsible, impartial and fair coverage, it is particularly incumbent upon state/public media to uphold rigorous standards, since they belong to all citizens. Using state/public media to promote a certain political party or candidate is, therefore, an illegitimate manipulation of the public and an abuse of public resources. State-owned media are more vulnerable to such pressure from the authorities, especially in those countries where they have not yet been transformed into truly independent public-service broadcasters.

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<sup>2</sup> Public broadcasters are financed with public money, offer a universal service (for the entire public) and are accountable to the nation as a whole. They should not back or favour any party or the government. State broadcasters are also financed with public money, but they are owned by the state or the government and are under the direct control of their owners. What is important is the fact that, whatever their ownership, these broadcasters, being mainly financed with taxpayers' money, whether in the form of an allocation from the state budget or as a fee paid by citizens, have more mandatory public-service obligations than private broadcasters with regard to production and coverage.

In their coverage of an election, publicly funded broadcasters should provide a complete, balanced, fair, accurate and objective picture of the entire political spectrum, given that they are mandated to serve the public and offer a diverse, pluralistic and wide range of views.

### *Private broadcasters*

Although private broadcasters are commercial enterprises, they are often asked to meet certain obligations (particularly during election campaigns). The licence they are provided with, which is assigned on a periodic basis by a public authority, may include certain requirements in relation to news, information and current-affairs programming, as well as voter education.

The relevance of private broadcasters as sources of information in an election campaign depends partly on the importance — in terms of penetration, coverage and audience — of public broadcasters. For instance, where state/public media are alone in covering the entire national territory while private broadcasters cover only limited geographical areas, the importance of the latter is more limited. In contrast, in states with a weak tradition of public broadcasting, private broadcasters are likely to be the main source of election information for voters. Private broadcasters often supplement state/public media outlets (especially those under strict state control) by offering a more diverse or alternative range of views.

Private broadcasters should abide by the highest journalistic professional standards. It is widely accepted that they are also to respect the principle of impartiality in their news and current-affairs programmes.

## **B. Print media**

When print media outlets are owned by public authorities they should be subject to similar obligations of fairness, balance and impartiality as public outlets. They should avoid any kind of discrimination or political bias in favour of or against particular candidates or political parties.

Private print media are generally entitled to a larger degree of partisanship than the publicly financed press or broadcast media. It is generally accepted, therefore, that the press may explicitly express a political opinion. Also, the general practice of self-regulation adopted by the print media (through internal codes of conduct and press councils) shows that the press does not need to be bound by rules set by external bodies and that media outlets can be responsible for their own editorial choices. Therefore, even during an election period, private print media have fewer obligations to be balanced with regard to candidates and political parties; they are subject to less stringent regulation than electronic media, if any at all.



The argument used to justify this position is that the print media do not benefit from a public and limited commodity such as the airwaves. Their public obligation to impartiality and balance, therefore, is commensurately less than that for the electronic media.

### C. The Internet and other new media: a general perspective

As a result of the emergence of new media and communication technologies, a new phase of political communication has radically changed relations among contestants and voters.

New media offer candidates and political parties opportunities to diversify their campaigns to reach different target audiences in a very simple and effective way. A “netcast” model, as opposed to the traditional broadcast model, facilitates the dissemination of specific messages to particular segments of the population. There is similar potential in the use of text messages to mobile telephones, a technique that political campaigners have begun to use in some countries.

The Internet has undoubtedly increased the possibility of providing information to a larger section of the population by creating more opportunities for ordinary voters to generate political news and opinions. On the technical side, election authorities are already using the Internet to disseminate information about the electoral process, including voter lists, complaints received, vote tabulation and the announcement of results.

Although their potential is enormous, the impact of new technologies is still limited by social inequalities. The digital divide — unequal access to new technologies — is an undeniable obstacle to regular use of the Internet. The same applies to a lesser degree to the use of mobile telephones in political communication. Mobile telephones are used more widely in poorer countries and in lower-income segments of populations, often because of the limited availability of landlines (which, in turn, is one of the factors that limits Internet access).

The role of the Internet in the electoral process and what regulations, if any, should and can be imposed on websites are all controversial issues, particularly with regard to traditional silence periods and opinion polls. This is part of a wider debate about the degree of freedom the Internet should enjoy and the extent to which regulations can realistically be applied to this medium. In general, any limitation to the freedom of Internet users and publishers has been widely frowned upon. The World Wide Web is a pluralistic and unlimited marketplace of ideas, in principle accessible to everyone. It remains largely unregulated, and many argue that it is neither possible nor desirable to regulate it.

Evidence of the potential influence of the Internet can be found in the frequent attempts by certain states or governments to control access to the World Wide Web through a variety of mechanisms, including direct state ownership of Internet providers, control of providers’ archives, or efforts to obstruct access to “politically subversive” websites.

Content providers can also be subject to the same pressures as journalists in traditional media.

# Media Monitoring within Election Observation Missions: An Overview

## 3.1 Tasks of the Media Analyst

In essence, a media analyst's task is to gather sufficient, reliable information to analyze and draw conclusions regarding the performance of the media during an election period (be that the pre-election period — defined as the period between the announcement of an election and the start of the campaign period — the campaign period, or the period after the election campaign until the election results are announced or the EOM has left the country), with a view to offering recommendations on how to improve this part of the electoral process. The media analyst can employ a variety of methods in gathering the necessary information. S/he does so as part of a team that includes a dedicated media-monitoring unit and a number of EOM core team analysts, who analyze other parts of the electoral process for the mission.

The rest of this chapter will deal with issues and specific questions related to the role of the media analyst, beginning with an overview of the media analyst's position in the core team and the functions of the media-monitoring unit.

## 3.2 The Role of the Media Analyst in an EOM

The media analyst's work involves specific interaction with the different members of the EOM:

- ✎ **Head of mission:** The media analyst provides advice to the head of mission on media-related issues, including on media coverage of the EOM. The media analyst also regularly updates the head of mission on the media monitoring

findings. In addition, the media analyst may become the focal point for the media in relation to the EOM.

- ✎ **Legal analyst:** The media analyst will have to work closely with the legal analyst when studying the legal framework regulating the media. Co-operation is also important when media-related complaints are brought to electoral commissions, regulatory bodies or courts. Any follow-up of such complaints should be monitored in co-operation with the legal analyst;
- ✎ **Election analyst:** The election analyst provides the media analyst with a list of candidates and instructions or decisions from the election commission related to the media. The media analyst provides the election analyst with information about voter-education campaigns in the media and about news related to the election administration;
- ✎ **Political analyst:** The political analyst provides the media analyst with information on the political landscape and media-related complaints filed by candidates and parties. Information about financing and limits on campaign expenditures of individual candidates and parties can also be relevant when paid political advertisements are allowed by national law. The media analyst provides the political analyst with information regarding media coverage and analysis of the election programmes and platforms of political parties and candidates;
- ✎ **LTO co-ordinator and LTOs:** The long-term observer (LTO) co-ordinator can ask LTOs to gather information about local media and possible limitations on freedom of the media faced by journalists. In some cases, LTOs may be asked to collect recorded or print material for the media-monitoring unit;
- ✎ **Gender analyst:** the gender analyst should ask the media analyst for information on how the other gender is covered by media: media coverage percentages compared to percentage of candidates, for example; and
- ✎ **National minorities analyst:** the national minorities analyst should ask the media analyst for information on how any national minorities are covered by media, particularly candidates or parties from these groups.

### 3.2.1 The Media Unit

An EOM media-monitoring unit is usually made up of a number of media monitors from the country in which the election is being held. The national support staff provides essential assistance to the media analyst performance of her/his tasks, including the translation, interpretation and monitoring of media content.

When hiring national support staff, the media analyst looks for monitors who are familiar with the political context and the media situation in the country. Local monitors with a background in media studies and/or experience in sociological research are preferable. These monitors should not work as journalists, as their involvement in the media

sector could create a conflict of interest. In addition, media monitors must not be members of political parties or movements, so as to avoid speculation or allegations concerning their impartiality.

Once a team has been chosen, the media analyst will have to provide them with the necessary training to perform their duties properly. This training can be divided into two phases:

1. In the first phase, the analyst explains the purpose of media analysis, the methodology to be applied and the kind of output expected. The methodology is provided in writing, along with examples and case studies for discussion. This phase should last for about three days.
2. In the second phase, lasting about four days, the media analyst works closely with each member of the team to determine what the member has learned and whether s/he is ready to carry out the required tasks.

Media monitors are also provided with the laws and regulations regulating media coverage during an election campaign, ODIHR's *Election Observation Handbook*, the ODIHR code of conduct for election observers, and any other documents necessary to provide them with a complete understanding of the goals of their activities and the overall aims of the EOM.

To eliminate any elements of subjectivity or deviation from the methodology, the media analyst implements controlling mechanisms, which include reliability tests conducted among media monitors, ongoing consistency checks on data collected, and scrutiny of monitors' daily reports.

### *Code of conduct*

It is essential that all members of an EOM, including national support staff, perform their duties in a manner that conforms to the ODIHR's code of conduct for election observers. EOM members may have their own private political opinions, but they cannot let them interfere with their work.

### **3.3 Media Analysis: What Are We Trying to Determine?**

Although the media analyst is concerned with the conduct of individual media organizations and journalists, that interest is within the context of the media system as a whole. When carrying out analysis of the media during an election period, the media analyst determines how autonomous the media system is from the political system, as well as the level of diversity within that system.

In doing this, the media analyst takes into account the basic rights of each of the three actors mentioned in Chapter 2:

- ✎ Voters' rights to receive information;
- ✎ Candidates' rights to impart information; and
- ✎ The media's right to freedom of expression.

### *Voters' rights to receive information*

In order to determine whether voters have been given due access to information in the course of the election campaign, the media analyst should examine the following issues:

- ✎ Did voters receive sufficiently diverse and balanced information to enable them to potentially make informed choices?
- ✎ Did the media provide voters with sufficient information on the administration of the election and on voting procedures? Were adequate voter-education programmes transmitted to effectively and accurately inform the electorate about the voting process?
- ✎ Did state/public media comply with their obligations to inform the public on relevant issues regarding the electoral process?
- ✎ Were state/public media free to play an impartial, fair and objective role in covering all candidates and political parties, or was there a selective approach to providing information on events? Were topics chosen for their informational value or to portray a particular party in a positive or negative light?
- ✎ Was there any special treatment — positive or negative — given to any particular candidate or political party?
- ✎ Were the provisions set out in the national legal framework, including those related to opinion polls and the silence period, respected by the media and political parties?
- ✎ Was there any prejudice in reporting based on ethnic, religious, gender or social issues?

### *Candidates' rights to impart information*

The media analyst should focus on a number of issues to determine whether candidates had the necessary opportunity to communicate their information to voters:

- ✎ Were election contestants and political parties given equal opportunity to present their campaigns and platforms to the electorate through the media?

- ✎ Did election contestants and political parties have equal or equitable access<sup>3</sup> on a non-discriminatory basis to public/state media?
- ✎ Did election contestants have unimpeded access to the media? Were there legal or administrative obstacles?
- ✎ Were election contestants and political parties treated fairly by state-controlled or public media outlets?
- ✎ Were election contestants and political parties subject to the same conditions (rates, time, etc.) for paid advertising?
- ✎ Were the different kinds of relevant television programmes, such as news programmes and debates, unbiased?

### *The media's freedom of expression*

A number of questions should also be answered by the media analyst to determine whether media's freedom of expression has been respected:

- ✎ Did the media face any kind of censorship or obstruction by the authorities?
- ✎ Were journalists forced to adjust their comments or criticisms to what is considered acceptable by the authorities? Did journalists engage in self-censorship?
- ✎ Were any media outlets or individual journalists penalized or harassed in any way solely for broadcasting programmes or publishing articles critical of the government or other authorities and/or their policies?
- ✎ Did media outlets face any kind of interference in their editorial policies from the authorities, political parties, or media owners?
- ✎ Did journalists adopt a certain point of view in return for financial or other benefits?

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<sup>3</sup> Equality means that each party or candidate receives the same amount of time or space in the media. Equity entails that election contestants receive a proportional access based on clear and uniformly applied criteria (e.g., number of seats in parliament or number of candidates).





# Guidelines for Media Monitoring: Sensitive Issues, Benchmarks and Good Practices

When assessing the role and performance of the media in the electoral process, the media analyst should take into account a number of elements. Media analysis is much more than simply monitoring the content of media coverage of an election campaign. This coverage depends on the legal framework for elections and the context in which the elections are taking place. To provide an adequate assessment of the role of the media during an election campaign, the media analyst will need to focus on three main areas:

- ✎ The legal framework for the media;
- ✎ The media landscape and the relationship between the media and the relevant stakeholders, including state authorities, political parties and media owners; and
- ✎ Monitoring of media coverage of the election campaign.

The overall assessment should be based primarily on compliance with OSCE commitments, other applicable international standards, and national legislation. Here, the fundamental question is: were the rights and freedoms of voters, candidates, parties and the media respected during the electoral process? In addition compliance with national legislation which, in turn, should be in accordance with international standards should be evaluated. The central determination to be made is whether the legal framework complied with the political and legal commitments undertaken by the country and, if so, whether the national legal provisions were respected.

#### 4.1 The Legal Framework, Election Regulations, Election Administration and Media Regulatory Bodies

The most important aspect for media regulation during elections is finding the right balance between the respect for editorial independence and the need for rules to guarantee that media coverage is balanced. Voluntary measures adopted by media professionals themselves, in particular in the form of codes of conduct or internal guidelines on responsible and fair coverage of electoral campaigns, are useful complements or alternatives to national legislation or regulation.

Legal and electoral frameworks are the result of a variety of specific national traditions and practices, and no universal model would produce the same results in different contexts. There are, however, some basic principles underlying the rules, practices and behaviour set out in legal frameworks and election regulations.

##### Guidelines

Consistency of the Legal Framework	The legal framework regulating the media and campaigning during the election process should be consistent with the principles set out in international law in the field of freedom of expression. If there is inconsistency, the legal framework should be reviewed and brought into line with OSCE commitments and other applicable international standards.
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Media Regulation	The norms regulating the media during an election campaign should be stated clearly and leave no room for manipulation or misinterpretation. Regulation should be aimed primarily at protecting voters' and candidates' rights to freedom of expression. Any limitations on media coverage should be imposed only for this purpose and should be proportional to the objectives sought.
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Areas of regulation may include elements that can unduly affect voters, such as the dissemination of opinion polls, silence periods, hate speech, unequal access and unfair treatment.

Regulations should not be overly restrictive and should not unnecessarily impede the editorial independence of media outlets. During the drafting process, it is recommended that representatives of political parties and the media be consulted in order to produce a set of rules based on a consensus among all of the actors involved.

Also, a system of self-regulation might be an effective option if conditions exist that facilitates responsible and independent journalistic coverage.

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**Supervisory Body** The body regulating media coverage during elections should be independent, credible and deemed legitimate by all competing political forces. In general, regulatory bodies should not interpret campaign provisions in a restrictive manner. The appointment of members of such bodies should not be under the exclusive control of the government and should comply with the principles regulating the appointment and activities of the overall election administration. These principles include:

- Members should be suitably qualified and impartial;
- Appointment procedures should be transparent;
- Members should behave independently and objectively ;
- The public (including domestic and international observers) should have access to relevant documentation; and
- Members should be protected against arbitrary removal.

The body responsible for supervising media coverage might be:

- A permanent media regulatory body. This body can work autonomously or jointly with the election administration;
- The main election administration body, (e.g., central election commission);
- A self-regulatory body, such as the voluntary press councils that exist in many states; or
- A body specifically created for the election period, tasked with regulating and supervising media coverage only during the election campaign;
- The implementing body should have the experience, resources, know-how and mandate to monitor respect of the rules, to investigate alleged violations, and to impose effective and timely remedies when violations take place. Systematic media monitoring during an election campaign period would assist the body in these tasks.

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**Complaints** The implementing body should act in response to complaints from candidates and parties or whenever it identifies a breach of the regulations, regardless of whether a complaint has been filed.

Procedures should be established to receive, investigate, hear and resolve complaints from candidates, political parties or others about unfair or unlawful media coverage. These procedures should be timely, clear and accessible, in order to provide complainants with prompt remedy.

Sanctions imposed by the supervisory body should be commensurate with the gravity of the offence committed. These should not include imprisonment or any measure that could prevent the media from carrying out their activities or encourage self-censorship among journalists.

Extreme sanctions — such as temporary suspension of broadcasts or a license — should be adopted only for the most serious and repeated violations and should be subject to right of judicial appeal.

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**Appeals** Media outlets or complainants should have the right to contest decisions by the implementing body through a timely, accessible and prompt judicial appeal mechanism.

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## 4.2 Media Landscape and the Role of the Authorities

The state and the government, in particular, have a dual responsibility within the electoral process:

- ✎ To not unduly interfere in the activities of the media or impede journalists in their functions; and
- ✎ To guarantee pluralism and uphold the right to freedom of the media.

## 4.3 Media Coverage

### A. Pluralism and regulation

A persistent dilemma is to what degree the media should be regulated in their coverage of candidates and parties during an election campaign. Media coverage of elections involves diverse and complex issues that can be handled by regulation or self-regulation, or even left unregulated.

One issue that needs to be addressed is whether external regulation or self-regulation is required. Journalists do not usually favour any kind of external restrictions on their editorial freedom. However, the media sector may not be sufficiently autonomous to be able to safeguard journalists and editors from pressure, the influence of the authorities or other political actors. In such cases, external regulation may guarantee the rights of voters and candidates to receive and deliver information, respectively.

### B. The advantage of incumbency

Being part of government means attracting more attention from the media, because of the need to cover the activities of the executive branch, including official events, meetings and the implementation of policies. Events can be genuine and relevant (such as national celebrations, anniversaries, the signature of international treaties, etc.), genuine but marginal (such as the opening of public buildings), and pseudo-events (occasions created or managed by the government with the aim of garnering more extensive positive media coverage). The government is also the main policymaker and coverage is necessary to keep the public informed. While incumbents generally receive more media exposure than challengers, the media should cover the activities of authorities in a balanced and critical fashion by focusing on results, successes and failures. The media should provide a platform for independent and critical opinions, offering the public informed views on the authorities' performance in office.

Members of a country's executive branch should act in the interest of the whole country, but they also often represent a political party. The potential conflict between these two activities becomes particularly problematic during an election campaign in relation to two rights:

- ✎ The right of equal opportunity to media access for candidates, which has to be balanced against the freedom and obligation of the media to cover government activities; and
- ✎ The right to equal treatment for candidates.

#### 4.4 The Regulation of Media Coverage during Elections

A further problem concerns the objectives of regulating media coverage. What kind of programmes need to be regulated? According to which criteria? The main areas of concern are news and current-affairs programmes, candidate debates, free airtime, paid political advertising and voter education.

The following are basic guidelines that need to be considered when observing media coverage of an election campaign.

##### General obligations

State/ Public Media (electronic and print) should:	<ul style="list-style-type: none"> <li>• provide candidates and parties in elections with equal or equitable opportunity to access and fair treatment;</li> <li>• provide coverage that meets the criteria of balanced, pluralistic and impartial reporting;</li> <li>• comply with the provisions for election coverage, as set out in national legislation;</li> <li>• ensure pluralistic reporting, as they are public “property”; and</li> <li>• adhere to journalistic ethics and professional standards</li> </ul>
Private Electronic Media should:	<ul style="list-style-type: none"> <li>• comply with the provisions for election coverage as set out in national legislation; and</li> <li>• adhere to journalistic ethics and professional standards</li> </ul>
Private Print Media should:	<ul style="list-style-type: none"> <li>• comply with the provisions for election coverage as set out in national legislation, as well as with journalistic ethics and professional standards; and</li> <li>• be free from regulatory interference that would impact on their editorial independence or right to express a political preference.</li> </ul>

##### News coverage

Paragraph 7.8 of the 1990 OSCE Copenhagen Document provides that no legal or administrative obstacle stands in the way of unimpeded access to the media for all political groupings and individuals wishing to participate in the electoral process on a non-discriminatory basis. Therefore, OSCE participating States should provide contestants with an adequate opportunity to inform the public about their candidacies and platforms in a non-discriminatory and unbiased manner.

Given that many people get their information about politics from the news, it is particularly important that media adopt a balanced and impartial approach in their campaign

news reporting, without any kind of discrimination for or against any particular candidate or political party.

## News Coverage

### High Level of Editorial Control of the Media

State/ Public Media (electronic and print media)	<ul style="list-style-type: none"> <li>• State/public media have an obligation to produce fair, objective and balanced coverage of current events and election-related news. This obligation may be achieved either by self-regulation or by law;</li> <li>• The right to report is a fundamental aspect of journalism. With respect to news, the main issue is whether coverage by public media should be strictly regulated, regulated only in relation to election coverage, or not regulated at all. In countries with a tradition of freedom of expression, political actors usually trust the system, and where there is a well-established practice of self-regulation, no other external provision may be necessary. In countries where there is a lack of confidence among political parties, journalists and institutions, stricter regulation may be necessary in order to protect public media from undue interference;</li> <li>• Many approaches can be used to ensure a diversity of voices: the opinions of the government or the majority party need to be counterbalanced by opposing, independent and alternative views; coverage of public events or statements made by the ruling parties on issues of public interest should be counterbalanced by coverage of the views of the opposition, independent experts and others. Comments — either reported by the presenter of a programme or made by external experts — should be clearly distinguished from facts, and they should reflect a variety of views.</li> </ul>
Private Electronic Media	<ul style="list-style-type: none"> <li>• The main issue with respect to private broadcasters is related to the balance between their nature as commercial enterprises and their use of public airwaves, which creates certain obligations in terms of providing a public service. In a number of countries the allocation of a licence carries a certain level of public obligation;</li> <li>• From a theoretical point of view, the private media as a whole need to guarantee pluralism of information, views, ideas and opinions. Therefore, several independent media, with diversified editorial lines, can serve the purpose of producing a pluralistic system of information and access (external pluralism);</li> <li>• Whatever degree of editorial freedom private broadcasters enjoy, journalists should adhere to professional standards of coverage, as well as to professional ethics.</li> </ul>
Private Print Media	<ul style="list-style-type: none"> <li>• Private print media are not bound to specific election regulations concerning the allocation of space among political forces. Journalists should, however, adhere to professional standards of coverage, as well as to professional ethics.</li> </ul>

### *Current-affairs and political-information programmes*

Political talk shows, discussions, and debates between candidates and their representatives supplement electoral news coverage and are important since they enable the public to make direct comparisons between candidates in an interactive format. Various political, economic and social issues can be raised during these programmes, and candidates have to explain how they would tackle these problems if elected.

These types of programmes should be organized in a manner that presents different points of view. Participants representing various political options should be treated fairly and be able to present their views and platforms freely. However, the decision on how to best achieve such fairness (for instance, deciding the format, the number of participants, the length, etc.) may be regulated in law or left to the initiative of the broadcasting organization itself. It is important that rules are not changed in the course of the game. Media should not be liable for unlawful statements made by candidates or party representatives and broadcast during an election campaign. Only the individuals who made such statements should be held solely responsible for them.<sup>4</sup>

### *Free airtime/space*

It is a common practice in many countries for public-service broadcasters to offer free airtime for candidates or parties to communicate their messages to the electorate. It is considered to be a direct form of communication between politicians and voters, without any intermediary role played by the media. One of the main advantages of providing free airtime is to allow smaller parties or minor candidates to have the opportunity to deliver their electoral messages, as they would not receive significant media coverage otherwise. Free airtime is usually regulated by law or other regulations issued by a central election commission or other relevant body.

While free airtime may take different forms, such broadcasts have three common features:

- ✎ There is no journalistic mediation or editorial control on the message presented by candidates and parties;
- ✎ The main objective is to convey the candidates' messages to voters, to provide information about political alternatives available to citizens, and to discuss issues related to the electoral process; and
- ✎ They are provided to parties and candidates free-of-charge and their costs are usually covered by the state.

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<sup>4</sup> Holding media outlets liable for candidate's speech requires editors to pre-screen all broadcasts and to act as censors.

In this respect, the nature of these broadcasts differs from those of other types of programmes covering elections, such as debates and roundtables, where journalistic mediation is necessary and under the editorial control of the media outlet.

### Free Airtime/Space

State/Public Media	<ul style="list-style-type: none"> <li>Parties and candidates could be provided with direct access to the public media free of charge. If so, no registered contesting parties or candidates should be excluded from receiving free airtime. The amount of time allotted ought to be sufficient to allow candidates to effectively communicate and elucidate their platforms to the public;</li> <li>The allocation of free airtime can be made on an equal or a proportional basis. When the number of contesting parties is limited, strict equality may be applied;</li> <li>When the number of contesting parties and candidates is high, a proportional formula may be adopted. The criteria for defining proportions can be based on a number of yardsticks, including: votes obtained by parties in previous elections of the same kind, the number of seats each party holds in parliament, or a threshold based on the number of candidacies filed in a minimum number of constituencies;</li> <li>Direct access should ideally be provided when it is likely to reach the widest possible audience. Direct access also has to be made available on a non-discriminatory basis. Therefore, it is not acceptable to broadcast the messages of some candidates only late at night or early in the morning, while other candidates are provided slots during prime time;</li> <li>The process for the allocation of free airtime needs to be fair and transparent. The order of appearance and dates should guarantee non-discrimination against any of the contestants and could be determined using a lottery system;</li> <li>An independent body that is able to effectively and promptly remedy any violations should monitor compliance with provisions regulating the allocation of free airtime.</li> </ul>
Private Electronic Media	<ul style="list-style-type: none"> <li>Private electronic media outlets are not usually obliged to allot free airtime to election contestants. However, when they decide to offer airtime or are obliged by law to do so, they should comply with the same principles as those regulating public broadcasters.</li> </ul>

### *Paid advertising*

Paid political advertising provides another opportunity for all political parties or candidates to disseminate their messages through the media. While voters undoubtedly need as much information about contestants as possible to make an informed choice, paid advertising may give an unfair advantage to those parties or candidates who can afford to purchase more airtime or advertising space. Although paid political advertising is widely accepted in print media, some states do not allow it in broadcast media (be that private, public or both).



## Paid Advertising

- Public/State Media
- Private Electronic Media
- If paid advertising is permitted, it should comply with some basic rules:
- It should be guaranteed on an equal basis to all contestants by offering consistent and equivalent rates;
  - Rates for paid campaign-related airtime and advertising space should not exceed comparable rates for commercial advertisement; and
  - Media should identify paid airtime or party-sponsored slots in a clear manner, in order to allow voters to be aware of the nature of the programme.

Limits may be imposed on the amount of paid advertising parties are entitled to purchase and/or on the amount of paid airtime media outlets are allowed to broadcast daily. Another way to regulate paid political advertising is to impose limits on the campaign expenditures of political parties and candidates. In some cases, in order to consolidate the principle of equal opportunity, the state may allow paid advertising and decide to partially finance it.

- Private Print Media
- The issue of paid advertising is not so problematic for print media. Nevertheless, the press should follow the principle of equal opportunity: Paid advertising must be guaranteed on an equal basis to all contestants by offering consistent and equivalent rates. Print media should identify material that has been paid for in a clear manner. Limits may be imposed on the quantity of paid advertising parties are entitled to purchase, as may limits on the number of paid pages any one media outlet can publish daily.

### *Voter education*

Voter-education programmes, whether commissioned by an election commission, public broadcaster or some other organization, should always be impartial and accurate in informing voters about the elections. These programmes should always be clearly separated from partisan political messages.

### *Opinion polls*

It is difficult to measure the actual impact of opinion polls on the results of an election. In order to avoid undue influence on voters, however, the media should offer the public adequate information to make a judgement on the value of opinion polls: the name of the party or organization that commissioned the poll, the name of the pollster and methodology employed, the sample size and margin of error, and the date on which the poll was conducted. To avoid possible manipulation and to allow for some period of reflection, some countries have provisions forbidding the dissemination of opinion polls during a certain period before election day, or that of exit or opinion polls during the hours voting is taking place.

### *The silence period*

The silence period, or so-called day of reflection, is a short period of time (usually one day) preceding election day to allow voters to absorb and digest all the information received during the electoral campaign and to make a choice without campaign pressure. The dissemination of any partisan electoral messages during this short period is usually prohibited.

# Conducting Media Monitoring

This chapter provides an overview of the methodology commonly employed by media analysts during EOMs. It should not be seen as providing exhaustive coverage dealing with every aspect of setting up and running a media-monitoring operation; rather, it provides an explanation of the most important aspects of that methodology for those readers who are interested in this aspect of an election mission's work.

## **5.1 Assessing the Role and Performance of the Media during an Election**

In order to produce a reliable and accurate assessment of the performance of the media during an election, the media analyst will have to answer many of the questions outlined earlier in Chapter 3. To do that, the work of the media analyst can be divided into four main tasks:

- ✎ Studying the legal framework in close co-operation with the legal analyst;
- ✎ Observing the media landscape;
- ✎ Monitoring media coverage of the election campaign; and
- ✎ Monitoring media-related complaints and violations of freedom of expression, in close co-operation with the legal analyst.

### **5.1.1 Studying the Legal Framework**

In order to understand the legal framework, the media analyst, in close co-operation with the legal analyst, studies the following documents:

- ✎ The constitution;
- ✎ The electoral law or code;

- ✎ Media laws;
- ✎ Other laws and provisions in the civil and criminal codes related to the media;
- ✎ Rules and regulations on media coverage issued by the election administration;
- ✎ Rules and regulations issued by media regulatory bodies; and
- ✎ Self-regulation instructions issued by associations of journalists or similar organizations.

The legal analysis is guided by two objectives:

- ✎ To determine the degree to which the legislative framework is in compliance with OSCE commitments and other applicable international standards; and
- ✎ To determine how far the overall body of laws and regulations on the media are coherent and internally consistent.

In conjunction with the legal analyst, the media analyst produces a general assessment of the legal framework regulating the media. Whenever EOM experts identify legal inconsistencies, they develop a set of recommendations to encourage improvements. These recommendations are part of the final report, published some eight weeks after elections.

While a fundamental law, such as a constitution, should embody international commitments on freedom of expression, subsidiary rules and regulations may vary from country to country. Each country has the right to decide the degree of regulation it wants to impose on the media. However, the rules defining the obligations of the media, both during an election campaign and during the non-election period, should be consistent with the principles of freedom of the media and should not limit the media in their editorial independence. The media analyst has to evaluate such provisions and determine how well they have been respected.

A close familiarity with the norms relating to the media and elections in a country is also necessary to assess whether media outlets and political actors respect these provisions. The overall process of observation should facilitate the gathering of evidence of any infringements of the law. The media analyst should keep records of all complaints filed by the media or by political actors in relation to freedom of expression and access to the media. Any cases that arise should be investigated.

### **5.1.2 Observing the Media Landscape**

In order to assess the relationship between the media and the political system during an election campaign, the media analyst must analyse the media landscape. To prevent misinterpretations of events and conditions, the media analyst should take a number of steps to understand the historical, political, social and cultural environment of the country where the observation is being undertaken.

The media analyst could acquire a deeper knowledge of the media landscape and its context through meetings with:

- ✎ Institutional actors, including representatives of the ministry that has media in its portfolio, the ministry of telecommunications, broadcasting councils and other important media regulatory bodies, bodies in charge of media-related issues within the election commission, etc.;
- ✎ Representatives and associations of print and electronic media, e.g., directors, editors, journalists, representatives of news agencies, publishing and printing houses, unions of journalists, etc.; and/or
- ✎ National and international organizations (governmental or non-governmental) operating in the media sector, including all active groups permanently or temporarily based in the host country.

The media analyst also takes into account contextual data, such as the following:

- ✎ The number of electronic and print media outlets operating in the country;
- ✎ The types of the public/state media outlets, either electronic or print;
- ✎ The number of licences issued by the state at the national and local levels;
- ✎ The number of unlicensed stations, if any, operating in the country;
- ✎ The geographic coverage of existing media;
- ✎ The audience and readership ratings of the media, where institutional or professional surveys are available;
- ✎ Hours of broadcasting or frequencies of publication for every media outlet;
- ✎ The size of media companies;
- ✎ The kind of media, targeted audiences, and their potential impact on the public;
- ✎ The number of media outlets dedicated to specific ethnic/linguistic minorities living in the country;
- ✎ Economic conditions for the media, the general media and advertising market, and the existence of specific subsidies or tax breaks;
- ✎ The structure and transparency of media ownership (concentration versus diversity);
- ✎ Number and ownership of news agencies and printing houses;
- ✎ Structure and control of the distribution system for print media;
- ✎ Licensing requirements for broadcast media;
- ✎ The number of media outlets, if any, owned or controlled by political actors; and
- ✎ The extent of new media and Internet access in the country.

Some of this information can be obtained by reviewing official documents and reports on the media environment produced by international organizations, including the OSCE Representative on the Freedom of the Media, local OSCE presence (if any), local or international NGOs, universities, associations of journalists, or other actors in the field. Meetings with representatives of the media and other experts can provide additional information.

Interviews with journalists and other media professionals should also focus on topics related to the campaign, such as the following:

- ✎ Journalists' opinions on the regulations, if any, concerning media coverage during the election;
- ✎ Whether journalists have received specific training in election coverage;
- ✎ How journalists are planning to cover election events;
- ✎ If journalists face any obstacles in their work, including self-censorship;
- ✎ The kind of programmes electronic media plan to broadcast to cover the elections;
- ✎ When rules allow it, the basis on which the electronic media decide to provide airtime to candidates;
- ✎ What the rules regulating paid advertising are and what rates are applied;
- ✎ Whether the media have issued any internal codes of conduct or instructions for journalists to cover election events; and
- ✎ Whether the media have received any complaints from political parties or candidates related to the way they are covering the campaign.

Field research and meetings with journalists, media experts, national and international organizations working on media issues and others allow the media analyst to make a general assessment of the level of professionalism and autonomy among journalists. If shortcomings in terms of professional capacity emerge during the observation period, the media analyst recommends improvements in the framework of the final report, published some eight weeks after the completion of the election process.

### **5.1.3 Monitoring Media Coverage of the Election Campaign**

#### *Sampling*

Whenever possible, the entire campaign period should be monitored in order to observe the implementation of the rules regulating access and coverage of candidates and parties throughout the whole electoral process.

Decisions have to be made as to which television channels and radio stations will be monitored, which newspapers, and which period of time for the electronic media (just

prime time, 24 hours, etc.). While these decisions will be affected by resources available, the sample should provide reliable information on the general trends in media coverage.

The media analyst studies the media environment before choosing the outlets that will be monitored. This will include looking at:

- ✎ The number and variety of media outlets operating in the country;
- ✎ Ownership (public/state or private) of media outlets;
- ✎ Geographical range (national or local level) of media outlets;
- ✎ Audience/readership ratings of media outlets;
- ✎ Hours of broadcasting or frequency of publication of media outlets;
- ✎ Kind of media, targeted audiences, and their estimated impact on the public and the political elite; and
- ✎ Number of media outlets specifically targeting ethnic/linguistic minorities living in the country.

This information will allow the media analyst to make a suggestion regarding:

- ✎ **The number of media outlets to be monitored:** the media analyst will recommend to the head of mission how many channels and newspapers are to be observed and explain the rationale for the choice. In order to have comparable data, once the sample has been set, it is important to adhere to it and not to modify it during the course of the observation period;
- ✎ **The time band of observation of the electronic media:** The basic period to be monitored for television and radio stations is during prime time (normally 18:00-24:00 for television stations and 6:00-12:00 for radio), when audiences are normally largest. The selection of the time slots to be monitored may vary from country to country, according to the specific programme schedules and the rules regulating the campaign in the media. Whatever time band is chosen, however, the observation should not be limited to news programmes but should include other programmes broadcast in that time band. Debates, information programmes, free airtime and entertainment shows may play a role in shaping the opinions of the electorate about candidates and parties. Therefore, it is important to monitor how time is allocated even among contestants in these kinds of programmes; and
- ✎ **The type of media outlets that will be monitored:** Criteria for choosing media outlets need to take into account their ownership. Publicly owned media have stronger obligations than private ones, as they are financed with public funds and, therefore, should not be partisan in their coverage. Therefore, observing state or public media is a priority. The media analyst should also include in the sample the main private electronic media outlets, which should be chosen on the basis of their geographical range, audience and potential impact on voters. With regard to print media, all of the most

important national dailies should be monitored, chosen on the basis of their geographical range, readership and potential impact on voters. In those areas where there are significant minority populations, it may be advisable to monitor minor media outlets that might have an impact on minority groups. This might also be the case for newspapers that have small print runs but target political or social elites, making them influential in the broader media community.

### *Quantitative analysis*

Monitoring media coverage of an election campaign requires the collection of a number of quantifiable elements of media output, such as:

- ✎ The amount of time devoted to particular candidates and other key public officials;<sup>5</sup>
- ✎ The length of parties' election broadcasts;
- ✎ The number of times a particular word is used to describe a particular politician;
- ✎ The number of women candidates quoted; and
- ✎ The number of times a particular campaign issue was reported.

Other aspects of the media campaign coverage can also be usefully measured:

- ✎ The number of mentions of each political actor (such as a candidate or other politician);
- ✎ The length of time or amount of space given to each political actor;
- ✎ Positive, negative, or neutral references to each actor;
- ✎ The time or space given to direct speech by or interviews with each political actor;
- ✎ References to different topics;
- ✎ The order of placement of news items on different candidates, parties or topics; and
- ✎ Gender balance of media coverage of candidates.

It is important to remember that this quantitative data serves a larger purpose; these elements are not counted simply because they can be counted, but because an analysis of the data, within the context of the media landscape and the political situation surrounding a particular campaign, can help the media analyst answer many of the questions set out in Chapter 3 about the role of the media in the electoral process. It also gives the

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<sup>5</sup> In case of a public office holder who is also a candidate, the media analyst tries to distinguish between official duties and campaign activities of such candidates which is not easy as official events may be marginal though widely covered in the media in order to get additional media exposure.



media analyst the information needed to assess the media's performance during the campaign.

But this analysis has its limits. There may be a valid explanation why one candidate is given more time than another. The quantitative measure is objective, but may not on its own be wholly indicative of bias.

Equally, measuring the allocation of time does not tell us how that time was used. Coverage may be positive, negative or neutral in tone. For example, the activities of incumbents might be covered mostly in a positive light, often pointing out achievements and successes, with government ministers appearing at ceremonial events such as the opening of new roads or factories. By comparison, the coverage of opposition candidates might be mostly negative.

In addition to these findings, there are many other important aspects of media coverage of elections that should be monitored but cannot be analysed quantitatively. Here are some examples:

- ✎ **Accuracy:** The quantitative measure of tone will show whether references to a party or candidate are positive, negative or neutral. But this, in itself, will not show whether the media are reporting accurately. Persistently inaccurate reporting is one of the most serious deficiencies in campaign coverage and can only be identified through qualitative analysis. The media analyst can use a number of methods to do this. It will be particularly important to compare media coverage with the observations made by the rest of the EOM. This is a way of testing the accuracy of media reporting of events that observers may themselves have attended. Another important method is to compare coverage of the same events in different media. This will not in itself show which media are reporting inaccurately, but the existence of discrepancies will be a good indication of issues that need further investigation;
- ✎ **Omissions:** Distorted reporting often consists of a failure to cover important stories and issues. The media analyst will use similar methods to identify stories that have not been covered as used to assess accuracy: comparison between different media outlets and reference to the rest of the EOM;
- ✎ **Hate speech:** Monitors will scrutinize how the media report inflammatory language in the election campaign. This requires the making of a fine judgement with reference to the actual words spoken, the context, and national law and ethical standards;
- ✎ **Misleading headlines and graphics:** Measuring the content of items will not always succeed in identifying one of the most common ways of misrepresenting parties or candidates in an election campaign. Headlines that are sensationalist or do not accurately reflect the content of a story can be far more influential than the story itself, however accurate it may be. Likewise, the juxtaposition of a story with unrelated visual material — photographs or

video footage — can also be influential, either positively or negatively. Even ostensibly neutral images can be sensitive; and

- ✎ **Ethical issues:** All of the above issues are, to some extent, related to professional or ethical standards of journalism. Other issues may also arise that require comment from the mission. For example, there may appear to be a relationship between favourable campaign coverage and the placing of large amounts of advertising by a particular party or candidate. Or there may be a blurring of the distinction between fact and comment. Opinion-poll findings may be reported unprofessionally or at a time when they are prohibited by law. These, too, are qualitative issues that quantitative analysis will not detect.

### *Qualitative analysis*

This kind of analysis aims to describe situations and phenomena for which quantitative analysis is either unnecessary or ineffective, but which are relevant for assessing the overall quality of the media coverage of the campaign. Qualitative analysis of media coverage of the electoral process can involve different topics, the most common of which are:

- ✎ **Journalistic style:** Do journalists tend to mix opinions and facts when reporting? Do journalists try to provide the public with in-depth analysis and accurate information, or do they tend to report in a superficial and incomplete way?
- ✎ **Professional conduct of journalists:** Are journalists responsible for any clearly biased information or coverage, instances of defamation, partisan declarations or untruthful news?
- ✎ **The advantage of incumbency:** Are government officials benefiting from an excessive advantage due to extensive coverage of their official functions? Do media cover their activities uncritically, highlighting only successes achieved but ignoring the failures?
- ✎ **The agenda of media outlets:** What topics and stories are being covered by the main television news programmes? Is the public broadcaster covering stories favouring a specific party? Are private broadcasters setting an agenda favourable to a specific party?
- ✎ **Electoral silence:** Do media outlets respect the provisions for the silence period (if set forth by a national regulation)? If not, what are the major violations? Who should be considered responsible for breaches of the law?
- ✎ **News omissions:** Was any relevant piece of news omitted by the media outlet observed?
- ✎ **Analysis of the formats used to cover the elections and content:** Are there any examples of innovative election coverage? Have satirical programmes or articles been produced? Have the media produced any programme or article in the language(s) of national minorities? Are they dealing with

national-minorities issues? Have the media produced any programme or article dealing with gender issues?

- ✎ **Campaigning through new media:** websites, e-mail list servers, text messages to mobile telephones, etc.
- ✎ **Incidents of inflammatory language:** Is any media outlet disseminating hate speech? Who are the targets?
- ✎ **Violations:** Have any of the provisions regulating media during the electoral period been violated?
- ✎ **Coverage of election administration:** Are the activities of the election commission being covered? Are sensitive issues related to the administration of the election being covered? Is the coverage promoting confidence in the institutions and the electoral process, or is it undermining their legitimacy?
- ✎ **Voter education:** Is there any specific voter-education campaign? If so, does it provide voters with correct and clear information on their right to vote and voting procedures? Does it target different audiences, particularly the disadvantaged or groups that are traditionally discriminated against? Is the campaign focused on particular aspects or problems widespread in a specific country?
- ✎ **Coverage of opinion polls:** Is the coverage produced according to national provisions regulating the public dissemination of opinion polls? Are the samples used representative of the entire population? Are the questions formulated in an appropriate manner? and
- ✎ **Coverage of exit polls in those countries where voting takes place in different time zones:** Is coverage of exit polls provided before polling stations are closed in all time zones?

Based on the analysis of the media situation in a given country as described in this section and taking into account the specific context where elections take place, the media analyst drafts a form to be distributed to all the media monitors and to be filled out by them on a regular basis. The data gathered on the forms are then regularly stored in a specifically designed database. Ensuring the accuracy of data input is a fundamental part of the monitoring process. Therefore, routine and daily data checks in the course of the monitoring are included in the activity of the media analyst.

When forms have been completed by all of the monitors, it is important to go through their observations and discuss their findings with them. This is another way to avoid basing findings on mere impressions; the comparison of observations and discussion, among monitors and with the media analyst, serve as an indicator of the reliability of the survey and the consistency of results. Such discussions should be held on a regular basis and should focus on the main findings to ensure that they are consistent, credible and justified. In this regard, regular de-briefings with media monitors may be conducted according to a schedule established by the media analyst.

#### 5.1.4 Monitoring Media-Related Complaints and Violations of Freedom of Expression

The media analyst keeps records and documentation of all relevant events affecting freedom of expression, including the following:

- ✎ Whether there are any impediments to media activities;
- ✎ Whether the media face any kind of direct or indirect censorship;
- ✎ Whether the media are under direct or indirect pressure from governing officials or political parties;
- ✎ Whether public/state media outlets are under pressure from management regarding their editorial choices;
- ✎ Whether private media outlets are under pressure from owners regarding their editorial choices;
- ✎ Whether journalists are being or have been intimidated, and whether the purpose of that intimidation is to interfere in their professional activities;
- ✎ Whether journalists have been killed, detained or imprisoned;
- ✎ Whether lawsuits against media outlets and journalists have a sound legal basis;
- ✎ Whether media outlets have been closed down during or prior the campaign period;
- ✎ Whether media have been refused the issue or renewal of licenses; and
- ✎ Whether any media outlets receive hidden payments for favouring a party or candidate.

In the course of the electoral process, candidates, political parties and media professionals who are the target of discrimination or violations of their rights might file complaints in order to receive redress. Keeping records of these complaints allows the media analyst to verify how many alleged violations were reported, how many of them were resolved, to what extent they received a prompt response, what were the decisions of the adjudicating body in each case and, more generally how overall the complaints and appeal process functioned.

The media analyst should not, however, interfere in this process. When complaints are addressed to the EOM, for example, instead of to the competent body, the media analyst should limit himself/herself to recording the complaint, without intervening in the dispute, while also reminding the complainant of the officially established channels in these instances. While remaining impartial, the media analyst should, nonetheless, gather as much information about a complaint as possible upon learning of a complaint. To obtain a comprehensive overview of the object of the dispute, the media analyst should meet all sides involved. The media analyst works in close co-operation with the legal analyst, as well as with the election analyst.

Media-related complaints should be gathered in written form and archived. They should also be classified in a specially designed form (in hard copy or electronic version), verified, and followed up. The form should include relevant information such as:

- ✎ The date the complaint was filed;
- ✎ The name of the complainant;
- ✎ The name of the body or the person against whom the complaint was filed;
- ✎ The name of the body to which the complaint was filed;
- ✎ The location of the body to which the complaint was filed;
- ✎ The place the alleged wrongdoing occurred;
- ✎ The object of the complaint;
- ✎ The legal ground on which the complaint was filed;
- ✎ A short comment on the complaint on behalf of the media analyst or the observer(s) reporting it; and
- ✎ The date on which the competent body will hear the complaint.



# Processing and Analysing Data

## 6.1 Units of Context

Monitors work with particular sub-sections of the media they are monitoring, known as “units of context”. A unit of context is any uninterrupted portion of a broadcast or published material dealing with the same content. Units of context can be long (for example, an entire television or radio programme, like a talk show or current-affairs programme) or very short (such as a single news story as part of a news bulletin).

In practice, it is relatively easy to recognize the beginning and end of each unit of context. This will be marked either by the beginning or end of a programme or by a less formal, but equally recognizable, division between news items within a bulletin. Units of context in the print media will almost always be separate, individual articles. By convention, advertisements should not interrupt units of context. An exception to this, however, is in cases where advertisements include a relevant actor, i.e., a politician or candidate. These should be regarded as units of context in themselves and analysed separately.

Units of context are subdivided into recording units for the purpose of measuring a number of variables. These are the elements observed in the media-monitoring exercise, such as time of coverage, actors involved and the tone of the coverage.

## 6.2 Recording Units

A recording unit is the segment of a message that is devoted to one — and only one — relevant actor. Within one unit of context (a talk show, for instance), there will be as many recording units as the number of segments of communication devoted to individual relevant actors. So, for example, each time a political candidate speaks during a talk

show, this will be defined as a separate recording unit. In a print news item each separate occasion on which the candidate is referred to or quoted represents an individual recording. The advantage of using small segments of text as recording units is the level of accuracy it allows during the analysis phase. Every recording unit will be logged separately and coded according to the variables tracked in the media monitoring exercise.

### 6.3 Coding

The coding for variables is crucial, and the codes assigned should be clear and unambiguous. The following variables are particularly important:

- ✎ **Definition of the relevant actors:** The concepts of “politicians” and “candidates” are clear. However, the media analyst should provide the media monitors with very clear instructions on how and when these instances should be registered under the relevant actor variable. The determination of which individuals or grouping should be classified as relevant actors may depend on the type of election. Relevant actors may include:
  - ◆ All members of parliament;
  - ◆ All members of the government (ministers and deputy ministers);
  - ◆ All candidates running for election (based on the official list approved and released by election authorities);
  - ◆ All institutional actors (president, parliamentary speaker, etc.);
  - ◆ All members of local administrations (mayors and representatives of local assemblies);
  - ◆ Members of political parties clearly defined as active politicians (for example, the leader of a registered party that is not running for election, who is not a member of the government or other official institution and is not a member of a local administration); and
  - ◆ All registered political parties.

Before beginning to collect data, it is important to obtain a list of political parties and/or of candidates, with their party affiliations, from the national election administration, as well as the list of members of the current government.

- ✎ **Definition of the variables used to describe relevant actors:** The media analyst should decide how many variables are to be used to describe relevant actors. In order to record the number of occurrences and produce the necessary statistics, three characteristics will always be considered in describing relevant actors: political affiliation, candidacy and gender. These variables allow the monitoring team to determine the distribution of coverage among political parties or individual candidates running for election, as well as to produce data related to gender balance. Other variables may also be



included. It may be of interest, for example, to know how frequently candidates from minority groups are reported on or cited.

One important decision that has to be made is how to classify members of the government. Government representatives usually have a dual identity of sorts, in that they are often both members of a party and representatives of the executive power. In cases where members of the executive branch are also candidates, the media analyst may choose to record instances in which they are covered in their official executive capacity separately from those in which they are covered in election-related activities. Careful consideration should, therefore, be given to the monitoring of this aspect, as it is important to be able to produce data on the coverage received by the incumbent government to assess whether it might have enjoyed a disproportionate advantage.

#### 6.4 Measurement System

The best units of measurement, in terms of precision, are seconds and square centimetres. If the monitoring team simply counts how many times a unit of context or coverage of a relevant actor occurs, without calculating the length of time of each instance or, in the case of print media, of the square centimetres devoted, this can generate misleading results. The need to provide a precise picture of the distribution of coverage among parties and politicians means that time allocated should be measured for the electronic media and the space allocated in print instances.

The measures used to quantify the amount of coverage devoted to political actors by the media are generally time of attention or space of attention, where:

- ✎ Total time is the measurement of the coverage on television or radio of a relevant actor;
- ✎ Total space is the measurement of the overall column-space of coverage by print media of a relevant actor;
- ✎ Total time is calculated with the aid of a stopwatch or the timer on the video/digital recorder and reported in seconds in the time column of the analysis form for TV/radio. Total space is calculated in square centimetres and reported in the space column of the analysis form for the press; and
- ✎ The indicators *direct-speech time* and *interview space* aid in the measurement of the direct access (in interviews, statements, advertising, etc.) provided to political actors by the media. Direct-speech time is that where the relevant actor is directly quoted on television and radio. Interview space is the space in which the relevant actor is directly quoted in the press.

#### 6.5 Quality of Coverage

Gathering information on the quantity of coverage devoted to different political actors does not provide a comprehensive picture of the level of pluralism displayed by media

outlets. The public image of political parties, candidates and leaders is shaped not only by the amount of time or space they are allotted, but also by the way they are portrayed. For this reason, accurate media monitoring requires the use of a general index of the quality of the coverage. An immediate difficulty that arises is minimizing the subjectivity of the judgements by monitors when assessing the tone of coverage, a characteristic that is rather subjective by nature. Training of national media monitors is important in order to give them clear instructions as to what elements should be taken into account when assessing tone and how to record this variable. Rules for codifying tone must be set out clearly, and cases that are unclear should be discussed carefully.

The measurement of the quality of coverage involves a number of characteristics that can be translated into variables, including:

- ✎ Explicit judgements made by the journalist about the relevant actor;
- ✎ The framing of the coverage of the relevant actor. Framing involves the value of the news story within which the actor is covered, i.e., the context in which the report on the relevant actor occurs. Framing is not, therefore, related to the truth or falsehood of the context but on the light this context casts on the actor. The constant coverage of a political actor in problematic contexts (episodes of violence, corruption trials, etc.) during an election campaign may represent an attempt to provide the public with a negative portrayal of that actor;
- ✎ The manipulative use of films, pictures and sounds in an attempt to influence voter opinion (sleeping parliamentary deputies, shooting angles that suggest larger crowds, subliminal advertising);
- ✎ The choice of words when covering political actors or reporting the news; and
- ✎ Respect for basic professional standards of journalism, such as the distinction between news and comments, and the correction of inaccurate information, when covering a news story.

The tone is usually measured using a scale that includes five values (very negative, negative, neutral, positive, very positive) or three (positive, neutral, negative).

## 6.6 Weighting Cases

The media analyst is interested not only in checking how many times relevant actors appear or are mentioned, but also in observing how long they are the focus of a report's attention. The media analyst needs to be able to say how much time or space was devoted to a party rather than simply saying how many times it has been mentioned (frequency).

The frequency of mention needs to be weighted according to the time or space devoted. It can be particularly useful to calculate the relative percentage of coverage time or

space received, as the frequency in absolute values does not immediately allow for a comparison of the level of coverage received by relevant actors.

The calculation of percentage values allows the media analyst to compare the distribution of time/space among the different relevant actors.

### *Example*

Political Affiliation	Time	% Time
Party 1	631	46.2%
Government	317	23.2%
Party 3	286	20.9%
Institutional	133	9.7%
Total	1,367	100%

This approach allows the media analyst to report that Party 1 received the largest share of coverage — more than twice as much time as received by Party 3.

## **6.7 Interpreting Data**

The interpretation of numerical data needs to be done carefully, taking into account not only what the statistics show but also possible reasons behind these values. The media analyst needs not only to describe a phenomenon — media coverage and tone, in this case — but also to attempt to explain it. There is no general model for interpreting data, but the following approaches can help improve the reading and analysis of data:

- 📌 When analyzing data, it is important to read both absolute and relative values, as they each provide important information. Using only relative values, such as percentages, can sometimes be misleading. Take, for instance, a case where there are three parties: Party A received five seconds of coverage, Party B received two hours, and Party C four hours. If we report only that 70 percent of the time devoted to Party A was negative, without considering that the total amount of time devoted was very small compared with that to other parties, we risk overestimating the importance of the data;
- 📌 If media-analysis activities generate data or values that appear odd or inaccurate, the media analyst should attempt to determine the cause(s). Inaccuracies might be produced by mistakes in the input or data-recording phases of monitoring. The data might however, be accurate, in which case the media analyst should be able to explain the apparent anomaly;
- 📌 Use data sets that are large enough to be significant. The basic reporting period is the entire campaign, so the media analyst should avoid drawing conclusions from data covering short periods of time;

- ✎ Analysis should only compare cases that are alike, and not “mix apples with oranges”. For example, a comparison of the output of a daily publication with that of a weekly will likely generate unusual and misleading results. The weekly will generally carry far fewer items and these items may also be very different in nature from those published in a daily. A long feature story, for example, may contain many more sources than a short news item. This does not necessarily make it a better story. The analyst should take care not to make misleading comparisons;
- ✎ It is important to take contextual information into account when evaluating data. The legal norms regulating media conduct during an election — both national laws and international standards — provide a fundamental framework for interpreting findings. The party system, the political context, and the relative importance and status of the media outlets monitored constitute other elements that have to be considered when drafting conclusions;
- ✎ Remember that the figures in the worksheet or database are descriptive, not inferential, i.e., they describe only the items monitored. It is not possible to use them to infer what might have been contained in other media or media outlets that were not monitored. The media analyst should always take care not to make claims for statistical findings that are not warranted;
- ✎ Qualitative findings provide useful explanations for statistical data. The factors underlying a certain trend, a specific value found or a meaningful variation of data can often be identified using the structured qualitative analysis performed during monitoring;
- ✎ Quantitative data should always be analysed with reference to what was happening in the campaign at the time. The media analyst should constantly keep in mind events and factors in the outside world that may explain the data, especially if some of the results are surprising. Over shorter periods, one major event or news story can significantly skew the data; and
- ✎ Media-monitoring findings do not tell you what happened; they only tell you what was covered by the media. The data can be used to compare the output of different media outlets but, on their own, not whether the media reporting was accurate. To make a determination as to the accuracy of coverage, the media analyst will have to compare data in the media with data about the incidents being reported. These might include statistics on political violence, numbers of rallies for different parties, etc.

# ANNEX

## A Compilation of Standards and Principles on Freedom of Expression during Elections

### *List of abbreviations*

CIS:	Commonwealth of Independent States	OHCHR:	Office of the United Nations High Commissioner for Human Rights
CoE:	Council of Europe	OSCE:	Organization for Security and Cooperation in Europe
ECHR:	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)	PACE:	Parliamentary Assembly of the Council of Europe
ECtHR:	European Court of Human Rights	UDHR:	Universal Declaration on Human Rights
EU:	European Union	UN:	United Nations
FCPNM:	Framework Convention for the Protection of National Minorities	VC:	European Commission for Democracy through Law (Venice Commission)
GC:	General Comment		
ICCPR:	International Covenant on Civil and Political Rights		

This annex contains documents of different geographical scope and nature, and that differ in the degree to which they are binding, but which all deal primarily with freedom of expression and freedom of the media in the context of elections and political life. Other documents related to the broader role of the media within social and political life have not been included.

Some of these documents have been adopted by the UN, giving them a universal dimension and a large degree of state support. Others have a regional dimension, as they have been compiled and adopted by regional organizations. The annex primarily presents UN, OSCE, CIS, CoE and EU standards, as these are the main principles applicable to all or some OSCE participating States.

These documents also differ in the degree and nature in which they are binding; some are legally binding on governments that have ratified them, while others are politically binding on governments that have committed to uphold them. The ICCPR, for example, is legally binding, while OSCE commitments are politically binding. Others are resolutions or recommendations from inter-governmental organizations that are indicative of emerging trends in international law and good state practices. Finally, this annex also includes general comments issued by human rights treaty-monitoring bodies detailing their interpretations of different provisions of pertinent treaties and principles enunciated by the ECtHR.

## Treaty Standards

### Universal

#### ◆ ICCPR (1966)

##### *Article 19*

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

### Regional

#### ◆ Convention of the CIS on Human Rights and Fundamental Freedoms (1995)

##### *Article 11*

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas by any legal means without interference by a public authority and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions and restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, public safety or public order or for the protection of the rights and freedoms of others.

#### ◆ Convention of the CIS on Human Rights and Fundamental Freedoms (1995)

##### *Article 11*

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas by any legal means without interference by a public authority and regardless of frontiers.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions and restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, public safety or public order or for the protection of the rights and freedoms of others.

◆ **Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the CIS (2002)**

***Article 7 Open and Public Elections***

(...)

4. Within the period established by the election laws the election body shall officially publish the information about the voting returns and elected persons, in its organ or other media outlets.

***Article 9 Genuine Elections***

(...)

3. In genuine elections voters shall have free access to the information about candidates, lists of candidates, political parties (coalitions) electoral process, and candidates, political parties (coalitions) — to the mass information and telecommunications media.

***Article 10 Fair Elections***

1. Observance of the principle of fair elections must ensure equal legal conditions to all participants in the electoral process.

2. Fair elections shall guarantee:

(...)

(b) equal possibilities for participation of each candidate or each political party (coalition) in an election campaign, including access to the mass information and telecommunications media;

***Article 13 Informational Support of Elections and Election Campaigning by the State***

1. The Parties shall ensure the freedom of the search for, collection, dissemination of information about elections, candidates and impartial information coverage of elections in the mass information and telecommunications media.

2. The mass information and telecommunications media are called upon to keep the population informed about elections, nomination of candidates (list of candidates), their election programs (platforms), the progress of an election campaign, voting returns and election results operating within the framework of the constitution, laws, international obligations of the state.

3. In accordance with law members of the press representing mass information and telecommunications media may:

- (a) attend meetings of election bodies to ensure publicity and openness of their activity;
- (b) examine documents and materials of election bodies relating to voting returns or election results, make copies of such documents and materials or receive such copies from the election body, pass them on to the mass information and telecommunications media for publication;
- (c) attend public campaigning events and cover them in the mass media;
- (d) be present at voting, vote counting, establishment of voting returns and election results.

4. Citizens, candidates, political parties (coalitions), which nominated a candidate and/or a list of candidates, other public associations, public organizations shall be guaranteed freedom of campaigning carried out in all forms allowed by law and by lawful methods, in the procedure and within periods established by laws, in the conditions of pluralism of opinions and absence of censorship.

5. In accordance with the constitution, laws all candidates, political parties (coalitions) participating in elections, shall have an equal opportunity of access to the mass information and telecommunications media, including such access for presenting their election program (platform).

6. In the course of election campaigning no abuse of the freedom of speech and freedom of mass information shall be allowed, including calls for a violent seizure of power, violent change of the constitutional system and violation of the territorial integrity of a state, warmongering, calls for terrorist or other violent acts inciting social, racial, national, ethnic, religious hatred and enmity.

7. The mass information and telecommunication media of any one member state of this Convention shall not be used for participation in the campaigning when elections are held in the territory of another state.

8. The list of violations of the conditions and procedure for campaigning carried out by candidates, political parties (coalitions) and infractions in the coverage of an election campaign by the mass media, which constitute grounds for bringing the violators to responsibility, shall be established by laws.

### ***Article 19 Obligations of Member States of the Convention***

(...)

2. The Parties undertake:

(...)

(g) to facilitate formation of political parties and their free legitimate activity; legislatively regulate funding of political parties and the electoral process; ensure that the law and



the national policy should provide for separation of party and state and that election campaigns should be conducted in the atmosphere of freedom and honesty allowing parties and candidates freely to present their political views and opinions, their election programs (platforms) and allowing voters to get acquainted with and discuss them and vote “for” or “against” freely, without any fear of punishment or any kind of persecution;

(h) to adopt measures guaranteeing impartial coverage of the election campaign by the mass media, including in the Internet, and making it impossible to erect legal and administrative barriers preventing political parties and candidates from gaining access to the mass media on a non-discriminatory basis (...);

(i) to adopt national programs of civic education and participate in drafting and adoption of similar international programs; make arrangements for acquainting citizens and other election participants with, and educating them in, electoral procedures and rules, for raising their legal culture and for improving professional qualifications of election officials;

#### ◆ CoE: ECHR (1950)

##### *Article 10*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ◆ CoE: FCPNM (1995)

##### *Article 9*

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems that persons belonging to a national minority are not discriminated against in their access to the media.

## Political Commitments

### Universal

#### ◆ UDHR Article 19 (1948)

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### Regional

#### ◆ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (1990)

##### *Paragraph 7*

(...)

(7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

##### *Paragraph 9*

(9) The participating States reaffirm that

(9.1) everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;(...)

##### *Paragraph 10*

(10.1) respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

◆ **OSCE: Charter of Paris for a New Europe (1990)**

*Human Rights, Democracy and Rule of Law*

(...)

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

◆ **Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE (1991)**

*Paragraph 26*

The participating States reaffirm the right to freedom of expression, including the right to communication and the right of the media to collect report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.

(26.1) They consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.

(26.2) The participating States will not discriminate against independent media with respect to affording access to information, material and facilities.

◆ **OSCE: Istanbul Summit Declaration (1999)**

*Charter for European Security*

26. We reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.

### ◆ **Istanbul Summit Declaration**

27. We commit ourselves to ensuring the freedom of the media as a basic condition for pluralistic and democratic societies. We are deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media. We underline the need to secure freedom of expression, which is an essential element of political discourse in any democracy. We support the Office of the Representative on Freedom of the Media in its efforts to promote free and independent media.

## **General Comments**

### ◆ **OHCHR: General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (1996)**

#### *Paragraph 12*

Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.

### ◆ **OHCHR: General Comment 10: Freedom of expression (1983)**

1. Paragraph 1 requires protection of the “right to hold opinions without interference”. This is a right to which the Covenant permits no exception or restriction. (...)

2. Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to “impart information and ideas of all kinds”, but also freedom to “seek” and “receive” them “regardless of frontiers” and in whatever medium, “either orally, in writing or in print, in the form of art, or through any other media of his choice”. Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.

3. Many State reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of

expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.

4. Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State party for one of those purposes.

## Others

### Universal

#### ◆ **UN General Assembly Resolution A/RES/55/96 (2001) – Promoting and Consolidating Democracy (2001)**

(iv) Ensuring, through legislation, institutions and mechanisms, the freedom to form democratic political parties that can participate in elections, as well as the transparency and fairness of the electoral process, including through appropriate access under the law to funds and free, independent and pluralistic media;<sup>6</sup>

#### ◆ **UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Reports (1999-2009)**

- The right to freedom of opinion and expression, and the related rights of freedom of association and assembly, are fundamental human rights with far-reaching consequences for the enjoyment of all other rights. When freedom of opinion and expression is respected, Governments are held accountable, public policies are designed more effectively and people's voices are heard.
- Under no circumstances should criticism of the nation, its symbols, the Government, its members and their action be seen as an offence. Elected officials and authorities should accept the fact that because of their prominent and public role, they will attract a disproportionate amount of scrutiny from the press.

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<sup>6</sup> This section presents the main principles emerging from the annual reports for the years 1999 through 2009.

- The monopoly or excessive concentration of ownership of media in the hands of a few is to be avoided in the interest of developing a plurality of viewpoints and voices;
- State-owned media have a responsibility to report on all aspects of national life and to provide access to a diversity of viewpoints; state-owned media must not be used as a communication or propaganda organ for one political party or as an advocate for the government to the exclusion of all other parties and groups;
- In pre-election periods, and in the interest of ensuring the most fully informed electorate possible, the state must ensure that media are given the widest possible latitude. This can be best achieved when, *inter alia*: media informing the public about the political parties, candidates, campaign issues and voting processes; government media being balanced and impartial in election reporting, not discriminating against any political party or candidate in granting access to airtime, and ensuring that news, interviews and information programmes are not biased in favour of, or against, any party or candidate;
- Censorship of any election programme is not allowed, and the media are encouraged to broadcast and/or publish election-related programmes and are not penalized for programmes critical of the government, its policies or the ruling party;
- The media are exempt from legal liability for provocative statements by candidates or party representatives; the right of reply is provided, as well as correction or retraction, in cases where defamation is alleged; the manner and extent of remedy is determined by an independent body;
- There is a clear distinction between news and press conferences related to functions of office and activities by members of the government, particularly if the member concerned is seeking election;
- Airtime for direct-access programmes is granted on a fair and non-discriminatory basis; the time allocated to parties or candidates is sufficient for them to communicate their messages and for voters to inform themselves about the issues, party positions, qualifications and character of the candidates;
- Programmes provide an effective opportunity for journalists, current-affairs experts and/or the general public to put questions to party leaders and other candidates, and for the candidates to debate;
- Media, and especially government media, engage in voter education, including by providing information on how to use the voting process, when and where to vote, how to register to vote and verify proper registration, the secrecy of the ballot, the importance of voting, the functions of the offices under contention and other matters; and
- Print and broadcast media make available reports and programmes that will reach the largest number of voters possible, including in minority languages and for those who may have been traditionally excluded from the political process, such as ethnic or religious minorities, women and indigenous groups.

- Any regulatory mechanism and body, whether for electronic or print media, should be independent from political parties and autonomous of government.

◆ **Joint Declaration (2002) - UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression**

- Free media and an independent, effective judiciary play mutually reinforcing roles in a democracy;
- The use of criminal defamation laws, including their abuse by politicians and other public figures, is intolerable. Criminal defamation laws should be repealed and replaced with appropriate civil defamation laws;
- The abuse of public finances by governments and public institutions with the purpose of influencing the content of media is unacceptable;
- It is the responsibility of media owners to respect the right to freedom of expression and, in particular, the editorial independence of journalists;
- Promotion of diversity, including gender equality and equal opportunity for all sections of society to access the airwaves, is a primary goal of broadcast regulations;
- Broadcast regulators and governing bodies must be protected against political and commercial interference;
- Undue concentration of media ownership should be prevented through appropriate measures;
- There should be a separation of political activities from the media interests of those politicians and members of government who own a media outlet.

◆ **Joint Statement on the Media and Elections (2009) - UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information**

(...) adopt the following Statement on the Media and Elections:

***Overall Environment for Media and Elections***

- States should put in place a range of measures, including those highlighted in our Joint Declaration of 12 December 2007, to create an environment in which a pluralistic media sector can flourish. These should include, among others, obligations of transparency of media ownership, licensing of different types of broadcasters to promote diversity, rules to prevent undue concentration of media ownership and measures to promote content diversity among and within media outlets.

- Laws that unduly restrict freedom of expression contrary to international and constitutional guarantees should be repealed. Where such laws are still in place during election campaigns, the authorities should apply the constitutional or international guarantees that protect freedom of expression.
- States should put in place effective systems for preventing threats and attacks against the media and others exercising their right to freedom of expression, and for investigating such attacks when they do occur, bringing those responsible to justice and compensating victims. This obligation takes on particular significance during election periods.
- The media should be free to report on election-related matters. They should also be exempted from liability for disseminating unlawful statements made directly by parties or candidates — whether in the context of live broadcasting or advertising — unless the statements have been ruled unlawful by a court or the statements constitute direct incitement to violence and the media outlet had an opportunity to prevent their dissemination.
- The obligation of political figures, including candidates, to tolerate a greater degree of criticism than ordinary persons should be clearly reaffirmed during elections.
- A party or candidate which has been illegally defamed or suffered another illegal injury by a statement in the media during an election period should be entitled to a rapid correction of that statement or have the right to seek redress in a court of law.
- It should be illegal for the media to discriminate, on the basis of political opinion or other recognised grounds, in the allocation of and charging for paid political advertisements, where these are permitted by law.
- Oversight of any rules relating to the media and elections should be vested in an independent administrative body which should address any complaints promptly. The decisions of this body should be subject to judicial review.

### ***Public Media***

All publicly-owned media, including public service broadcasters, should be under the following obligations during an election period:

- To ensure that the electorate are informed about election matters, including the role of elections in a democracy, how to exercise one's right to vote, the key electoral issues, and the policy positions of the various parties and candidates contesting the election. This should normally include reporting that involves questions being put to party leaders and candidates, as well as debates between candidates.
- To respect strict rules of impartiality and balance, particularly when reporting on the governing party(ies) and on government decisions and actions during an election period. This implies that equal coverage should be given to arguments in favour of both sides in any referendum.



- To grant all parties and candidates equitable access to the media to communicate their messages directly with the public, either for free or at subsidised rates. Equitable access means fair and non-discriminatory access allocated according to objective criteria for measuring overall levels of support, and includes factors such as timing of access and any fees.
- To ensure that any reporting of opinion polls and election projections is accompanied by sufficient information to allow the electorate to understand properly their significance.

## Regional

### ♦ CoE: Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (2007)

#### *Principles*

##### I. General provisions

##### 1. Non-interference by public authorities

Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections.

##### 2. Protection against attacks, intimidation or other types of unlawful pressure on the media

Public authorities should take appropriate steps for the effective protection of journalists and other media personnel and their premises, as this assumes a greater significance during elections. At the same time, this protection should not obstruct the media in carrying out their work.

##### 3. Editorial independence

Regulatory frameworks on media coverage of elections should respect the editorial independence of the media. Member states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence.

##### 4. Ownership by public authorities

Member states should adopt measures whereby the media which are owned by public authorities, when covering election campaigns, should do so in a fair, balanced and impartial manner, without discriminating against or supporting a specific political party or candidate. If such media outlets accept paid political advertising in their publications, they should ensure that all political contenders and parties that request the purchase of advertising space are treated in an equal and non-discriminatory manner.

## 5. Professional and ethical standards of the media

All media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including, inter alia, respect for the principles of human dignity and non-discrimination. These standards should reflect their particular roles and responsibilities in democratic processes.

## 6. Transparency of, and access to, the media

If the media accept paid political advertising, regulatory or self-regulatory frameworks should ensure that such advertising is readily recognisable as such. Where media is owned by political parties or politicians, member states should ensure that this is made transparent to the public.

## 7. The right of reply or equivalent remedies

Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.

## 8. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves. Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

## 9. "Day of reflection"

Member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction.

## ***II. Measures concerning broadcast media***

### **1. General framework**

During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media. With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for

the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service media and private broadcasters in their relevant transmission areas. Member states may derogate from these measures with respect to those broadcast media services exclusively devoted to, and clearly identified as, the self-promotion of a political party or candidate.

### **2. News and current affairs programmes**

Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates. No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures. In this connection, member states might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.

### **3. Non-linear audiovisual services of public service media**

Member states should apply the principles contained in points 1 and 2 above or similar provisions to non-linear audiovisual media services of public service media.

**4. Free airtime and equivalent presence for political parties/candidates on public service media** Member states may examine the advisability of including in their regulatory frameworks provisions whereby public service media may make available free airtime on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period. Wherever such airtime and/or equivalent presence is granted, this should be done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.

### **5. Paid political advertising**

In member states where political parties and candidates are permitted to buy advertising space for election purposes, regulatory frameworks should ensure that all contending parties have the possibility of buying advertising space on and according to equal conditions and rates of payment. Member states may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space and time which a given party or candidate can purchase. Regular presenters of news and current affairs programmes should not take part in paid political advertising.

◆ **PACE: Resolution 1636 (2008) Indicators for media in a democracy**

1. The Parliamentary Assembly recalls the importance of media freedom. Freedom of expression and information in the media is an essential requirement of democracy. Public participation in the democratic decision-making process requires that the public is well informed and has the possibility of freely discussing different opinions.

(...)

7. The Assembly considers it necessary for a number of principles concerning media freedom to be respected in a democratic society. A list of such principles would facilitate analyses of national media environments in respect of media freedom, which could identify problematic issues and potential shortcomings. This will enable member states to discuss, at European level, possible actions to address those problems.

8. The Assembly invites national parliaments to analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles:

8.1. the right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice;

8.2. state officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;

8.3. penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed;

8.4. journalists must not be subjected to undue requirements by the state before they can work;

8.5. political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns;

(...)

8.9. exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information;

8.10. privacy and state secrecy laws must not unduly restrict information;

(...)

8.13. media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to

ensure that media owners do not interfere in daily editorial work or compromise impartial journalism;

8.14. journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked;

(...)

8.18. media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism;

8.19. if media receive direct or indirect subsidies, states must treat those media fairly and with neutrality;

8.20. public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations;

8.21. public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides;

8.22. "private" media should not be run or held by the state or state-controlled companies;

8.23. members of government should not pursue professional media activities while in office;

8.24. government, parliament and the courts must be open to the media in a fair and equal way;

8.25. there should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts;

8.26. journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism; (...)

◆ **CoE: Declaration on freedom of political debate in the media by the Committee of Ministers (2004)**

***I. Freedom of expression and information through the media***

Pluralist democracy and freedom of political debate require that the public is informed about matters of public concern, which includes the right of the media to disseminate negative information and critical opinions concerning political figures and public officials, as well as the right of the public to receive them.

***II. Freedom to criticise the state or public institutions***

The state, the government or any other institution of the executive, legislative or judicial branch may be subject to criticism in the media. Because of their dominant position, these institutions as such should not be protected by criminal law against defamatory or insulting statements. Where, however, these institutions enjoy such a protection, this protection should be applied in a restrictive manner, avoiding in any circumstances its use to restrict freedom to criticise. Individuals representing these institutions remain furthermore protected as individuals.

***III. Public debate and scrutiny over political figures***

Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.

***IV. Public scrutiny over public officials***

Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions.

***V. Freedom of satire***

The humorous and satirical genre, as protected by Article 10 of the Convention, allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about facts.

***VI. Reputation of political figures and public officials***

Political figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures. This principle also applies to public officials; derogations should only be permissible where they are strictly necessary to enable public officials to exercise their functions in a proper manner.

### ***VII. Privacy of political figures and public officials***

The private life and family life of political figures and public officials should be protected against media reporting under Article 8 of the Convention. Nevertheless, information about their private life may be disseminated where it is of direct public concern to the way in which they have carried out or carry out their functions, while taking into account the need to avoid unnecessary harm to third parties. Where political figures and public officials draw public attention to parts of their private life, the media have the right to subject those parts to scrutiny.

### ***VIII. Remedies against violations by the media***

Political figures and public officials should only have access to those legal remedies against the media which private individuals have in case of violations of their rights by the media. Damages and fines for defamation or insult must bear a reasonable relationship of proportionality to the violation of the rights or reputation of others, taking into consideration any possible effective and adequate voluntary remedies that have been granted by the media and accepted by the persons concerned. Defamation or insult by the media should not lead to imprisonment, unless the seriousness of the violation of the rights or reputation of others makes it a strictly necessary and proportionate penalty, especially where other fundamental rights have been seriously violated through defamatory or insulting statements in the media, such as hate speech.

### **◆ Venice Commission: Code of Good Practice in Electoral Matters (2002)**

#### ***Clause 2.3. Equality of opportunity***

a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;
- iii. public funding of parties and campaigns.

b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.

c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

d. Political party, candidates and election campaign funding must be transparent.

e. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

### **Clause 3 Free suffrage**

#### 3.1. Freedom of voters to form an opinion

a. State authorities must observe their duty of neutrality. In particular, this concerns:

i. media;

(...)

## **Principles enunciated by the ECtHR**

### **◆ Main principles<sup>7</sup>**

- Prior censorship constitutes an unacceptable limitation of the right to freedom of expression and the law should authorize limitations to this right only in exceptional circumstances.<sup>8</sup>
- Freedom of the media constitutes a fundamental prerequisite to freedom of expression. The press, and by extension the electronic media, have a dual obligation “to impart information and ideas on matters of public interest. Not only do they have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of public watchdog.”<sup>9</sup>
- The right to freedom of expression includes freedom of political debate, the existence of which is “at the very core of the concept of a democratic society”.<sup>10</sup>
- The limits of criticism of politicians and representatives of the government are wider than those with respect to private citizens.<sup>11</sup>

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7 This section presents the main principles emerging from ECtHR jurisprudence. Corresponding case-law references are listed in the respective footnotes.

8 The European Court of Human Rights has stated that “the Contracting States enjoy a certain margin of appreciation in assessing the need for an interference, but this margin goes hand in hand with European supervision, whose extent will vary according to the case. Where there has been an interference with the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10, the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be convincingly established.” *Autronic AG v. Switzerland*, judgment of 22 May 1990.

9 *Lingens v. Austria*, judgment of 8 July 1986. *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992.

10 *Castells v. Spain*, judgment of 23 April 1992.

11 *Lingens v. Austria*, op. cit., note 9. “The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.”



- There should be enhanced protection for political opinions, the truth of which, unlike facts, cannot be proved or disproved.<sup>12</sup>
- The media have the duty to publish opposition views while respecting the criteria of balance and non-discrimination.<sup>13</sup>
- The time available for political broadcasts is not unlimited and criteria must be applied for the fair allocation of air time. The application of these criteria must not show see any arbitrariness or discrimination.<sup>14</sup>

#### ◆ Main principles<sup>15</sup>

- The time available for political broadcasts is not unlimited and criteria must be applied for the fair allocation of air time. The application of these criteria must not show see any arbitrariness or discrimination.<sup>16</sup>
- Freedom of expression is one of the ‘conditions’ necessary to ensure the free expression of the opinion of the people in the choice of the legislature. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.<sup>17</sup>
- Prohibition of political advertising, applied only to certain media (i.e. broadcasting but not the press), does not appear to be always a necessary restriction. However, the Court did not exclude that a prohibition of “political advertising” may be compatible with the requirements of art. 10 in certain situations. Nevertheless, the interference in the freedom of expression must be justified in a “relevant and sufficient manner”.<sup>18</sup>
- A ban on political advertising itself does not constitute a violation of Article 10, since its target are to avoid large parties with large funding from achieving more

12 Ibid. “The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof.”

13 X and the Association of Z v. the United Kingdom, Admissibility Decision of 12 July 1971, 38 Collected Decisions 86 (1971). “... the freedom to impart information and ideas, included in the right to freedom of expression guaranteed by Article 10, cannot be taken to include a general and unfettered right for any private citizen organisation to have access to broadcasting time on radio or television in order to express their point of view. It has indicated, however, that the denial of broadcasting time to one or more specific groups of persons may, in particular circumstances, raise a problem under Article 10 (considered in isolation or in conjunction with Article 14 prohibiting discrimination). Such a problem may, in principle, arise if, at election time for instance, one political party were excluded from broadcasting facilities while other parties were given broadcasting time. This broadcasting time may be subject nevertheless to certain criteria which are determined by the broadcasting company in the framework of its editorial policy.”

14 Huggett v. United Kingdom (1995) 82A DR 98, application to the ECtHR Commission.

15 This section presents the main principles emerging from the ECtHR’s jurisprudence. Corresponding case-law reference are listed in the respective footnotes.

16 Huggett v. United Kingdom, op. cit., note 14.

17 Bowman v. UK, judgment of 19 February 1998.

18 GT Verein gegen Tierfabriken v. Switzerland, judgment of 28 June 2001.

airtime than other parties who lacked funds. However, small parties with minor media coverage, which do not receive any relevant airtime during the election coverage, may be allowed to broadcast advertisement if no other measure is in place to ensure their access to audiovisual media.<sup>19</sup>

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<sup>19</sup> TV Vest As & Rogaland Pensjonistparti v. Norway, judgement of 11 March 2009.



