

**Reply to the complaint of the Association of Journalists of Macedonia:
“Amendments to the Electoral Code threaten the work and the freedom of the media”**

(Posted on the Platform on 9 August 2018)

In May 2018, the Government of the Republic of Macedonia, i.e. the Ministry of Justice started a process of amending the Electoral Code, which in light of the number of provisions to be amended could be transformed into an overhaul of the Electoral Code, i.e. into drafting a completely new Electoral Code, which will take into consideration the OSCE/ODIHR reports and recommendations and those of the CoE Venice Commission regarding previous election cycles in the Republic of Macedonia.

The goal is to design a modern electoral legislation that will help overcome all hitherto remarks of the international community following monitoring of election cycles, i.e. the goal is to draft a contemporary law, which will rely on a transparent and inclusive process with a view to guaranteeing that elections are democratic, free and fair.

With this goal in mind, an inter-ministerial working group has been established, composed of representatives of all in-line ministries and institutions, as well as representatives of NGOs and citizens' associations. Furthermore, this process involves and is supported by the international community (the EC, the USA, the UK, Switzerland, OSCE/ODIHR, ISAF), that provides technical assistance and offers expert opinions at debates concerning problematic issues detected under the hitherto monitoring of election cycles in the country.

The Working Group is focused on six areas: **Election Administration, Voters' List, Election Campaigns and the Media, Electoral System, Financing of Election Campaigns, Submitting Lists of Candidates and Protection of Voting Rights.**

The last amendments and supplements to the Electoral Code (Official Gazette No. 108/18, dated 30 July 2018) amended 7 articles of the Electoral Code. Hence, Article 4 of the said amendments changed Article 76-c of the Electoral Code:

The amended Article 76-c now reads as follows:

“(1) The Agency for Audio and Audiovisual Media Services shall monitor election media presentation and the program services of broadcasters, while the State Election Commission shall monitor electronic media (internet portals) in the Republic of Macedonia as of the day of scheduling elections until the completion of voting on election day.

(2) As of the day of scheduling elections, the Agency for Audio and Audiovisual Media Services shall submit weekly reports to the State Election Commission, while during the election campaign it shall submit daily reports, which shall be posted on the Agency's website.

(3) As of the day of scheduling elections, the State Election Commission shall prepare weekly reports about electronic media (internet portals), which fulfil conditions stipulated under this Code regarding paid political advertising, while during the election campaign it shall prepare daily reports, which shall be published on the Commission's website.

(4) Within 48 hours after the Agency for Audio and Audiovisual Media Services has established violations of the provisions of this Code, it shall institute misdemeanour proceedings before the competent court against broadcasters that have violated relevant provisions.

(5) Within 48 hours after the State Election Commission has found grounds for violations of the provisions of this Code, it shall institute misdemeanour proceedings before the competent court against electronic media outlets (internet portals) that have violated relevant provisions.

(6) The competent court shall adopt a ruling on the request for institution of misdemeanour proceedings, referred to in paragraph (4) of this Article, within 48 hours from the day of receipt of the request.

(7) The ruling of the competent court may be appealed against within 24 hours from the date of its receipt.

(8) The second instance court shall decide upon the appeal within 48 hours after the receipt of the appeal.

(9) In case the Agency for Audio and Audiovisual Media Services has found grounds for violations of the provisions governing balanced media coverage of elections perpetrated by the Public Broadcaster, it shall submit a proposal for institution of proceedings for the dismissal of the Director of the Public Broadcaster.

(10) Within 60 days from the date of adoption of this Code, the Agency for Audio and Audiovisual Media Services shall adopt a Methodology for monitoring election media presentation on radio and television program services, and within 60 days from the date of adoption of this Code, the State Election Commission shall adopt a Methodology for monitoring the media presentation via electronic media (internet portals) in the course of election processes. Both the Agency and the Commission shall post their Methodologies on their respective websites.”

As stipulated by relevant amendments to the Electoral Code, the State Election Commission is tasked with registering internet portals (that will apply for election media presentation) and with monitoring the work of internet portals only during political campaigning in the course of elections. Furthermore, the State Election Commission has the legal possibility to institute misdemeanour proceedings against internet portals that have violated the provisions governing election media presentation as of the day of scheduling elections until the closing of voting on election day. More precisely, misdemeanour proceedings may be instituted only in cases in which there are reasonable suspicions that professional journalistic reporting standards have been violated only by electronic media outlets (internet portals) that have been registered to provide the service of paid political advertising. The registering is done by the State Election Commission, the State Audit Office and the State Commission for Fight against Corruption.

The Parliament of the Republic of Macedonia adopted the latest amendments to the Electoral Code upon the proposal of a group of MP's, following a political agreement reached by the four largest political parties having Members in the Parliament of the Republic of Macedonia (SDSM, VMRO-DPMNE, DUI and BESA). The amendments are aimed at more precisely defining certain issues relating to the election campaign, then at completing the provisions of the Law on Paid Political Advertising, as well as at precisely regulating the issue of funds allocated under the Budget of the Republic of Macedonia and the issue of payment of expenditures for published political advertising.

These legislative amendments do not change in any way the misdemeanour policy stipulated under the Code, as introduced under the amendments of January 2014 (Official Gazette No. 14/14) and the amendments adopted by the end of 2015 (Official Gazette No. 196/2015). The legal solutions envisage the right of media outlets to lodge with the second instance court an appeal against the first

instance ruling adopted by the competent misdemeanour court. The rulings of the second instance court are enforceable.

In light of the fact that the Republic of Macedonia prepares for a process of sweeping revision of the election legislation, it is greatly probable that the claims stated in the complaint of Macedonian journalists will be taken into consideration when drafting the new Electoral Code, by which issues raised in the complaint will be overcome.