

# Political Communication on Television

## Matters for debate

(EPRA/2000/02)

### 1. Introduction

Media play a significant role in the political process and in shaping public opinion as expressed most importantly in elections. The regulation of political communication on television is therefore an important issue, as television has taken the place of the public meeting in providing voters with political information and impressions<sup>1</sup>.

Political Communication is a very broad topic as it encompasses three main aspects: general principles of pluralism, the specific rules around and during election campaigns and the rules outside election campaigns. For this reason, this discussion paper will not attempt any minute description of the various national regulations regarding political communication, but identify a number of key issues in each of the three aspects to be used as a starting point for the discussion of the Plenary.

### 2. Issues of debate

#### ◆ **Paid political advertising: discriminatory practice or integral part of the right to freedom of expression and information ?**

Paid political advertising is when a political party pays the broadcasting company to purchase advertising time. Such advertising is usually in the form of short broadcasts of the same type as the party election broadcasts. This common practice in the US is statutorily forbidden in most of the European countries (e.g. Germany<sup>2</sup>, Bosnia Herzegovina<sup>3</sup>, France<sup>4</sup>, Ireland<sup>5</sup>, and UK etc.). The traditional justification for this prohibition is that otherwise rich or well-established parties would be able to afford significantly more advertising time than new or minority parties. Some countries, however, argue that the right to political advertising is an integral part of the right to freedom of expression and information. The possibility to buy air time may enable new candidates to obtain recognition and a profile<sup>6</sup>. In addition, the countries which allow paid political advertising have the possibility to impose limits on duration and frequency and on the charges for such ads<sup>7</sup> (e.g. the price can be set at a rate which makes it affordable to the majority of political parties) so that this practice is not necessarily always discriminatory.

#### Examples of paid political advertising:

In Macedonia, the broadcasting law allows paid political advertising under certain conditions. It has to be clearly stated whether it is a paid advertisement. One specific issue which caused

---

<sup>1</sup> Barendt, Broadcasting Law, p. 168

<sup>2</sup> § 7(8) of RStV

<sup>3</sup> Art. 3 of the IMC Code on Media Rules for Elections.

<sup>4</sup> Art. 14, Loi du 30 septembre 1986.

<sup>5</sup> Section 10 (3) of the Radio and TV Act of 1988.

<sup>6</sup> Media and Elections, a handbook, Ed. By Yasha lange and Andrew Palmer, EIM, 1995.

<sup>7</sup> See the Council of Europe Recommendation No. (99) 15 on measures concerning media coverage of election campaigns.

many uncertainties during the 1998 parliamentary elections was the question of whether paid political advertising had to be included in the calculation of the total advertising time<sup>8</sup>.

In Hungary, paid political advertising is allowed under certain conditions. As an example, advertisements promoting candidates or parties may be published exclusively with the designation "paid election advertisement".

In Poland, in addition to free electoral broadcasts, election committees have the option of purchasing strictly defined amounts of extra air time for additional paid broadcasts.

#### ◆ Free access: Equal vs. proportional access ?

Public service broadcasters are usually required to make free time available to the parties and candidates on television and radio during election campaigns. However, this does not always entail any right to absolute equality of access to the airwaves between parties and candidates. While Western European countries usually have chosen a system of proportional access, many Eastern and Central European countries have adopted a system of equal representation in their distribution of free air time. Sweden seems to be an exception as no election broadcast are permitted. Only one hour interviews with the leaders of parties represented in Parliament are broadcast, together with phone-in programmes and debates.

The reasoning behind the system of proportional access is that the political parties capable of forming a government should be given more opportunity than the others to present themselves on radio or TV. The aim of proportional access is to strike a balance between the demands of fairness and equality of opportunity on the one hand and a sensible appreciation of the functions of elections on the other<sup>9</sup>. As a consequence, criteria such as the respective strengths of the political parties are taken into account in allocating broadcasting opportunities. As an example, in Germany, the strength of parties at the previous election, length and continuity of the parties' existence, membership, the extent and strength of their organisation and their representation in Parliament and government<sup>10</sup> are taken into account. However, smaller parties should not be totally excluded from access. Similarly, in Malta, the Broadcasting Authority organises schemes of political broadcasts during electoral campaigns and grants access to these schemes to all political parties and independent candidates contesting the general elections. A judgement of the Constitutional Court of the 31 July 1996 has held that this provision would be incompatible with the Constitution if it were to be interpreted in a manner that completely excludes access to these political broadcasts to parties not represented in Parliament. A 1971 Court of Appeal decision affirmed that in apportioning participation in such schemes of electoral broadcasts between political parties the Broadcasting Authority had an obligation to take account of the size of the parties.

Indeed, the recurring issue here is the question of enforceable rights of access for minority parties - and especially parties which are not represented in parliament.

On this specific point, it is interesting to note that the European Commission of Human Rights has stated that Article 10 of the Convention cannot be taken to include a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio and television in order to forward its opinion, save under exceptional circumstances, for

---

<sup>8</sup> Bulletin of the Broadcasting Council of the Republic of Macedonia, Vol.3, 1999, p.17.

<sup>9</sup> Barendt, E. op.cit.

<sup>10</sup> BVerG 121 (1962).

instance if one political party is excluded from broadcasting facilities at election time while other parties are given broadcasting time<sup>11</sup>.

For their part, Central and Eastern European countries have experienced the emergence of a range of new parties and have therefore lacked the criteria upon which to base reasonable proportional access. That is why most of them have decided for an equal system of free air time allocation. As an example, during the Czech Parliamentary elections of 1998, public TV and radio provided a total of 14 hours of free access time equally distributed between the 14 parties running in the elections. It has been emphasised that one drawback of this system is the possible saturation of air-time with party material and the resulting saturation of the electorate. During Romanian's 1990 elections, over 80 parties were given air-time which some commentators observed became rather boring<sup>12</sup>.

#### ◆ Should principles of pluralism differ for public and private broadcasting and how ?

As mentioned previously, public service broadcasters are required to make free time available to the parties and candidates for electoral broadcasts in most European countries. In general, private broadcasters do not have this obligation (e.g. in France, Poland) but they have a professional and ethical responsibility for fair reporting. In Italy, the private sector was unregulated in this context until very recently. Further to the law n. 28 of February 2000, the AGC has issued a ruling addressed to private broadcasters according to which all political parties involved in the elections should be granted equal treatment in the access to free or paid air time. In the UK, free access for candidates and parties must be provided not only by the BBC but also by private terrestrial broadcasters<sup>13</sup>.

This issue of the respective extent of the obligations for public and private broadcasters does not only apply to the provision of free air-time for electoral broadcasts but also to editorial programmes in general. Should fairness and impartiality be applied equally to public and private broadcasting ? Should it, on the contrary, be considered exclusively as the task of public service broadcasters ? In Germany, private broadcasters are not subject to the obligations which lie upon the public channels to provide a wide variety and range of programmes. However, private broadcasters should reflect the plurality of opinion in society and meet acknowledged standards of journalism.

Similarly, should the requirement for fairness and impartiality apply to every channel taken individually or should rather the 'general picture' be taken into account ? In Malta, the Broadcasting Authority interprets the Constitutional obligation of impartiality "as a definite requirement applicable to each broadcasting service. However, the Authority concedes that in Malta's widened spectrum of radio broadcasting activity it would be possible to allow for some slant for any particularly oriented service. This permissible slant will have to be within an overall programme framework of balance and impartiality<sup>14</sup>".

---

<sup>11</sup> No. 25060/94, Haider v. Austria, Decision of 18 October 1995, D.R. 83, p. 77.

<sup>12</sup> Darbishire, H., Media and the electoral process, in Media and Democracy, Council of Europe publishing, 1998.

<sup>13</sup> Sections 36 and 107 of the 1990 Broadcasting Act.

<sup>14</sup> Art. 2(3), Guidelines on Current Affairs Programming.

### ◆ **How to ensure quick and effective remedies in case of violations ?**

Quick and effective remedies are particularly important in the context of elections because of the brevity of election campaigns. In Malta, provision is made for a 'leapfrog' procedure for dealing with complaints against broadcasting stations during election time by providing for the lodging of such complaints directly to the Authority itself rather than requiring that the aggrieved party should complain in the first place to the broadcasting station as is normally the case.

As regards air time allocation decisions (in the countries which have adopted the system of proportional access), it has been remarked that the main obstacle to any legal challenge is of determining what fairness and balance require during election time. The courts are usually careful, and usually prefer the formulation of broad principles, rather than the formulation of enforceable access rights<sup>15</sup>.

In the UK, the ITC and the BBC (which regulates itself) are the two regulatory bodies in charge of controlling the application of the rules respectively for private and public broadcasters. Parties have to address complaints about unfair treatment to the BBC or the ITC. The ITC has the possibility to oblige broadcasters to allocate broadcasting time to the complaining party before the election. At the 1997 general election, the Scottish National Party complained to the ITC that it was not allocated any party election broadcast on Channel 4 and Channel 5. The complaint was upheld by the ITC. Channel 4 and 5 had to broadcast party election broadcasts for the Scottish national Party. In France, the CSA monitors the application of the regulations. If the CSA notices that the access is unfair, it cannot oblige broadcasters to invite a specific candidate. It can impose a sanction to a violation of the pluralism principle, but cannot grant broadcasting time for candidates which were treated unfairly<sup>16</sup>. A candidate which claims to be treated unfairly can file a complaint before the courts.

As regards other broadcasts, such as editorial broadcasts, one common remedy in continental legal systems is to provide individuals and organisations with rights of reply to incorrect allegations in the broadcast media.

### ◆ **Opinion polls: informative tools or manipulation of the audience ?**

The specific issue of opinion polls is worth mentioning because of its potential influence on the election results. Opinion polls are a useful tool to inform the audience of the voting intentions. However, they can also be used as a tool of manipulation of the electorate - especially if they are published on the last days before an election. As a consequence, most European countries have introduced specific rules dealing with opinion polls - the most usual being the determination of a cut off time for reporting of opinion poll results. The length of this cut-off time varies from one day to one week according to the different countries. In France, no opinion polls can be published in the week preceding the election. This cut off time may be statutorily determined as in France<sup>17</sup> or be the result of a voluntary abstention of the broadcasters as in the UK. One question is how effective bans of polls will be given the emergence of new means of communication. In France, during the 1997 legislative elections,

---

<sup>15</sup> Barendt, op.cit, p.

<sup>16</sup> Mauboussin, E., *le CSA et les élections : entre loi et jurisprudence, une compétence sous haute surveillance*, in *Légipresse* n°143, August 1997.

<sup>17</sup> Art. 11 of the law of 11 July 1977.

election poll results were made available on the Internet through the website of the Tribune de Genève in Switzerland.

#### ◆ **Editorial broadcasts: how far should regulation go ?**

The main issue here is the balance to be struck between the autonomy of broadcasters and the necessity to ensure a fair treatment of political parties and candidates. The extent of the rules applicable to editorial broadcasts as well as their origin (regulation vs. self-regulation) vary in the different European countries.

In Germany, there are no specific rules regarding editorial programmes during election time. It is up to each broadcasting company to choose their subjects and to select the participants of a discussion for example. Their decisions have to conform to the basic rules of objectivity, fairness and impartiality. In France, provisions regarding editorial programmes during election time are set by recommendations of the CSA and are addressed to each broadcaster. Editorial programmes which are directly connected to the elections have to obey the principle of equity. This principle is interpreted in a very flexible way and it does not mean that each candidate should enjoy the same access to editorial programmes. Elements such as the representation of the party in parliament are relevant. Editorial programmes which are not directly connected to the elections have to respect a balance between the speaking time of the government, the majority in parliament and the opposition. It has recently been decided that a fourth category: political parties not represented in parliament should also be taken into account. However, the repartition of speaking time should surely not be done on the basis of pure arithmetic<sup>18</sup>.

In the UK, the ITC Programme Code contains a set of provisions regarding programmes not relating to the election (such as news, current affairs, and discussion programmes) and programmes about the elections (such as constituency discussion programmes) to ensure that the requirement of fairness and impartiality are observed. The BBC's Producers' Guidelines also contains detailed rules about editorial broadcasts shown on the BBC.

Several countries have seen some far-reaching changes in political communication on television in the recent years. These changes are characterised by an explosion of the number of editorial programmes, the increasing role of spin doctors (i.e. PR specialists in charge of presenting political platforms to the media and the electorate) and a general trend towards an 'Americanisation' of politics<sup>19</sup>, (i.e. politics are increasingly staged, emotions play a role on the presentation of political debates). One specific issue which has gained importance lately is the question of the **participation of politicians during non political broadcasts**. Political party candidates seem to take increasing advantage of a range of non political programmes to appear before the electorate as guests in quiz shows, cookery programmes etc. The problem is that these programmes may provide a candidate with media exposure not available to their opponents. During the 1998 Bundestag elections in Germany, Gerhard Schröder participated in the RTL soap 'Gute Zeiten - schlechte Zeiten' during the election campaign. Some regulatory authorities have decided to take action against this trend. In 1998, the National Council of the Slovak Republic issued a Recommendation for conduct and behaviour of electronic media which stated that broadcasters should avoid bringing any coverage of politicians at sports events, entertainment shows, quiz programmes and talk shows. The ITC Programme Code states that "appearances by candidates as actors, musicians singers or other

---

<sup>18</sup> Garantir encore mieux l'expression démocratique, La Lettre du CSA, March 2000, p.1.

<sup>19</sup> See for instance Müller A., von der Parteiendemokratie zur Mediendemokratie, Beobachtungen zum Bundestagswahlkampf 1998 im Spiegel früherer Erfahrungen, 1999.

entertainers, that were planned or scheduled before the election became pending, may continue, but no new appearances should be arranged during the election period. The same applies to appearances in programmes in a subsidiary capacity, e.g. as non-starring compere or sports commentator or as one of a number of participants in a programme outside the field of political or industrial controversy and not relating to current public policy. All other appearances should cease; this includes principal participation by a candidate in any type of non-fictional programme<sup>20</sup>.

### 3. Summary and practical issues for discussion

- ◆ Political advertising is statutorily forbidden in most European countries. Is there any current debate about its introduction ? What are the practical experiences of the countries which allow this practice ? How do the regulatory authorities which allow this practice keep it non discriminatory ?
- ◆ Most Western European countries have chosen a system of proportional access in their distribution of free air time. Is there any current debate about the criteria taken into account in allocating broadcasting opportunities ? What about minority parties ?
- ◆ Many Eastern and Central European countries have adopted a system of equal representation. What are the practical experiences of regulatory authorities with the system of equal representation ? Is it likely to be replaced by a system of proportional access in the next years?
- ◆ Public service broadcasters are usually required to make free time available to the parties and candidates. In general, private broadcasters do not have this obligation but they have a professional and ethical responsibility for fair reporting. Is there any current debate on the respective obligations of public and private broadcasters ? Should the requirement for fairness and impartiality apply to every single channel given the explosion of the number of existing channels ?
- ◆ Are remedies in case of violations sufficiently quick and effective ? Are there any practical problems ?
- ◆ Most European countries have introduced a cut off time for reporting of opinion poll results. Is this cut off time respected in practice ? Is this provision still applicable in practice given the emergence of the Internet ?
- ◆ How to strike a balance between the autonomy of broadcasters and the necessity to ensure a fair treatment of political parties and candidates in editorial programmes ? Is self-regulation effective in practice ?
- ◆ Several countries have witnessed some far-reaching changes in political communication on television in the recent years (e.g. role of spin doctors, trend towards an 'Americanisation' of politics, etc.). Should/can regulatory authorities do something about this ?

---

<sup>20</sup> Appendix 3 of the ITC Programme code, 8 ii.