



COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS

### EXPLANATORY MEMORANDUM

**to Recommendation No. R (99) 15  
of the Committee of Ministers to member states  
on measures concerning media coverage of election campaigns**

*(Adopted by the Committee of Ministers on 9 September 1999*

*at the 678th meeting of the Ministers' Deputies)*

#### Introduction

It is a fact that the media play an important role in modern society as a vehicle for the dissemination of information. This role acquires a special dimension at the time of elections given the fact that, by carrying out their activities in a fair manner, the media contribute to free and democratic elections.

Free and fair elections are one of the basic foundations of democratic States. The Council of Europe's commitment to all matters related to human rights and democracy led to the examination of the question of media and elections by the intergovernmental Group of specialists on media in a pan-European perspective (MM-S-EP).

The broad terms of reference of the MM-S-EP, under which the present Recommendation has been prepared, were to identify and study themes which could help promote the integration of new member States in the media field. The Group's assignment was therefore to work on media law and policy questions of relevance to both the new democracies and the older member States of the Council of Europe.

In 1996, when discussing its future work programme, the MM-S-EP decided to develop the topic of media and elections since it fell well within its terms of reference and had a pan-European dimension of relevance to Central, East and West European countries.

The first action taken by the MM-S-EP, with the aim of acquiring a comprehensive view on the subject, was to hold a contact meeting with relevant professionals, which included representatives from broadcasting regulatory authorities, non-governmental freedom of expression organisations, research institutes, journalists and political consultants with practical experience in covering elections.

During this meeting it became apparent that the issue of media coverage of elections is a complex one, which can be handled by regulatory intervention or self-regulation, or is even left unregulated in certain member States. Therefore, a diversity of approaches exists on this issue.

Regulatory frameworks with provisions on equal treatment of political parties by the media exist in many countries. Nevertheless, in practice there are generally shortcomings and some frameworks are insufficient. This is one of the reasons which led the MM-S-EP to decide on the preparation of a Recommendation on media coverage of elections.

It was considered that a number of general principles on this matter, in the form of a Committee of Ministers Recommendation, could be useful to preserve freedom of expression at election time, and serve as guidance to journalists, politicians and courts participating in the electoral process. In addition, it was underlined that such an instrument could also be useful in protecting journalists from political pressures during campaigns.

The need to have a clear regulatory framework on the performance of the media during elections is particularly felt in some of the new democracies. It is considered that such frameworks are necessary to ensure a minimum of democratic election standards.

Another advantage of sound regulation in this field is that it can contribute to the shaping of standards among professionals covering elections.

When preparing the Recommendation, the MM-S-EP took a broad perspective to encompass the different national situations, and was extremely vigilant to avoid any type of interference with the editorial independence of the media. In addition, the value of self-regulatory measures by media professionals themselves, for example, codes of conduct, is acknowledged throughout the Recommendation.

In the above context the Recommendation concerning media coverage of election campaigns was prepared by the MM-S-EP. The work was carried out in five meetings under the chairmanship of Ms Carolyn Morrison (United Kingdom). The Group of specialists on media in a pan-European perspective completed its work in March 1999 and following its approval by the Steering Committee on the Mass Media (CDMM), the text was adopted by the Committee of Ministers on...as Recommendation No. R (99)...

#### Comments on the provisions of the Recommendation

##### *Preamble*

The preamble sets out the main goals and principles of the Recommendation. Most of the ideas which appear in the preamble are developed in more detail in the operative part of the Recommendation.

The preamble refers to the need to strike the right balance between respect for the editorial independence of the media and the need for certain rules to ensure fairness by the media at election time. Ensuring this balance is one of

the main underlying concerns throughout the whole Recommendation.

The value of self-regulation to ensure fairness by the media during elections is also underlined in the preamble. It is acknowledged that voluntary measures adopted by media professionals themselves, in particular in the form of campaign codes of conduct or internal guidelines on good practice for responsible and fair coverage of electoral campaigns, are useful and necessary complements to State legislation or rules in this area.

Given the perceived importance of broadcasting and its influence on voters, most of the principles in the Recommendation refer to the broadcast media. The preamble points out that due consideration should be given to the significant differences between the print and the broadcast media.

The preamble also recalls the fundamental principle of fair, balanced and impartial coverage of elections by the media. Other matters such as the allocation of free airtime to political parties, the recourse to paid advertising by political parties or the use of opinion polls by the media during campaigns are also mentioned in the preamble.

#### *Recommendation*

As concerns the wording of the actual Recommendation, it was considered that member States should be requested to examine ways of ensuring respect for the principles of fair, balanced and impartial coverage of election campaigns by the media, and consider the adoption of measures to implement these principles in their domestic law or practice where appropriate and in accordance with constitutional law. This last reference was considered necessary as a safeguard, given the differences among member States in this area.

#### **Scope of the Recommendation**

In principle, all types of media, print and broadcast, public or private, are covered to some extent by the Recommendation. This being said, most of the provisions concern the broadcast media, both public and private. The Recommendation specifies each time the type of media which the principle or provision refers to.

As regards the type of elections covered by the Recommendation, in principle, all political elections taking place in member States are included, that is, presidential, legislative (including elections to the European Parliament), regional and local elections as well as political referenda. Nevertheless, it is acknowledged that certain provisions will not be directly applicable to all of these elections since, for instance, some of the principles could be difficult to implement at the level of local elections.

It is considered that, where relevant, the principles of fairness, balance and impartiality should also apply to the coverage of elections taking place in a country other than that where the media outlet is established.

Although it is natural and legitimate that domestic broadcasting services (that is, services which are not addressing citizens of the country where the election is taking place) will cover foreign elections from a national perspective, they should do so in a balanced manner, especially if they can be received by a significant proportion of the population of the country where the election is taking place.

On the other hand, broadcasting services which are addressing citizens of the country where the election is taking place should respect the principles of fairness, balance and impartiality to a greater extent. This principally covers two cases: (a) where a broadcasting service is addressing the audience in the country where the election is taking place, and (b) where a broadcasting service is addressing members of an expatriate community (for example, migrant workers) who have the right to vote in the country where the election is taking place.

#### **Measures concerning the print media**

In general, there are no special regulations for the press on the reporting or editorial coverage of elections in Council of Europe member States. On the basis of tradition and due to the different nature of the print and the broadcast media, the press is free to have a distinct political leaning. The way the public has access to and is influenced by the press differs significantly compared to the broadcast media.

Despite the above, there is one situation where a regulatory framework for the print media at election time is justified: when a public authority owns the print media outlet. Since such media are controlled by public authorities, it seems logical that they should be under the obligation of offering a broad perspective representing the whole range of political views. This does not include official State gazettes, which only publish legislation, statistics or other factual information.

Paid advertising in the print media is a common practice in Europe, and as a result newspaper owners are in principle free to accept or refuse advertising requests from political parties, subject to the application of relevant general rules, in particular concerning competition. The Recommendation nevertheless considers that when a public authority owns a newspaper, equal treatment and non-discriminatory tariffs should be applied to all political parties that request the purchase of advertising space. Again, the rationale behind this exception is that such outlets should fulfil a "public service mission" and treat the different political parties on an equal footing as regards paid advertising.

#### **Measures concerning the broadcast media**

##### *General framework*

If pluralism considerations are taken into account by broadcasters, this will contribute to fair elections. This is the reason why it is recommended that regulatory frameworks should *encourage and facilitate the pluralistic expression of opinions* in the broadcast media. It is considered that if broadcasters adopt a pluralistic approach and reflect the different views of the political spectrum they can contribute to the information of voters and their free forming of opinions and thus to free and fair elections.

While the press have freedom in their reporting of elections, broadcasters generally have to follow a number of obligations at election time. The Recommendation therefore formulates, as a general prescription, that broadcasters should cover elections in a fair, balanced and impartial manner. This does not mean, of course, that each broadcasting channel (e.g. a thematic sports channel) is obliged to offer coverage of election campaigns; however, where coverage is provided, either voluntarily or under an obligation, it should be done in a fair, balanced and impartial manner. Giving equitable treatment to all parties involved in the election does not necessarily mean devoting equal time to all of them, but rather means ensuring that all significant viewpoints and political parties are heard from. It means upholding a democratic debate in the broadcast media. Political impartiality in broadcasting is considered essential to give a true and accurate picture of the progress and conduct of elections.

As a result of the above, the Recommendation indicates that frameworks in member States should include the principle of fair, balanced and impartial treatment of political parties by the broadcast media. Such type of principle already exists in the constitutions or legislation of a number of countries.

Despite the existence of legislation incorporating such a principle, it is nevertheless also recognised that the internal rules of broadcasters and professional codes of conduct, that is, all types of self-regulatory practices, will be the factors that largely determine how the election is actually covered.

The Recommendation underlines that the obligation to report elections in a fair, balanced and impartial manner should apply to both *public service and private broadcasters*. There is unanimity that publicly funded broadcasters should provide a complete and impartial picture of the political spectrum in the coverage of an election, given the remit of such broadcasters, which is to serve the public interest and offer a diverse, pluralistic and wide range of views at all times, especially during election periods.

As regards private broadcasters, it is considered that such broadcasters should also abide by impartiality principles given that they also play a significant role in influencing public opinion at the time of elections. Therefore, all private broadcasters, irrespective of their audience share, coverage area or whether they operate thematic or pay-channels, should be under impartiality obligations when they deal with elections. Nevertheless, it is acknowledged that this principle may in the future have to be reviewed, and exceptions to be considered, in case the multiplication of channels and changes in the role of the broadcast media would lead to a situation close to that which currently exists in the print media sector.

One final aspect that should be taken into account when speaking of the obligation of broadcasters to be fair, balanced and impartial is that such a principle should be tested over the whole programme service of a broadcaster, over a period of time, and not necessarily in every individual programme. It is during the overall campaign period that broadcasters must be balanced and represent the different political viewpoints.

In countries where the notion of pre-electoral time exists, this period is normally considered to comprise the time between the official announcement of the campaign (or the convocation of the elections which is published in the official gazette) and the actual opening of the electoral campaign. A significant number of countries do not, however, make a formal distinction between the pre-electoral period and the official campaign period.

It is not always easy to differentiate between electioneering and 'normal' political activity, and parties may try to convey their message to the public at all times, including during pre-electoral time. Therefore, it is sometimes considered that impartiality and non-discrimination by the broadcast media should similarly extend to such a period. A provision in this sense is included in the Recommendation with the goal of ensuring that these media are fair and balanced in their coverage of 'normal' news stories during the pre-electoral time, since such stories may result in electoral activity.

#### *News and current affairs programmes*

It is considered that observance of fairness and impartiality is of particular importance in news, current affairs or discussion programmes given that some people form their voting intentions, to some extent, on the basis of such programmes.

Discussion programmes, like interviews or debates, act as supplements to the normal news coverage of elections and are important because they enable the public to make direct comparisons between candidates. These types of programmes should also be organised in a fair manner. However, the decision on how such fairness should be achieved (for instance, deciding on the format, the number of participants, the length, etc.) should be left to the initiative of the broadcasting organisation itself.

A problem that sometimes arises related to the news coverage of a campaign is that incumbent government officials, that is, candidates already occupying official positions, may attempt to gain undue advantage through additional news coverage of their official functions. The Recommendation therefore stresses that *no privileged treatment should be given to public authorities* during such programmes.

Avoiding privileged treatment should be the primary objective. Should such treatment nevertheless occur, counterbalancing measures should be taken in favour of the affected parties/candidates. It is considered that redress should be found in a self-regulatory process. It would be desirable if the internal guidelines of broadcasting organisations highlighted the obligation to prevent or otherwise counterbalance excessive and privileged coverage of an incumbent politician. Another possible option to deal with such situations which is mentioned in the Recommendation, would be to entrust the relevant authority monitoring the coverage of the election (broadcasting regulatory body, electoral commission or other) with powers to intervene and compensate the prejudiced candidates.

#### *Other programmes*

Certain types of programmes that are not directly linked to the campaign coverage, such as talk-shows, political parodies with puppets or "politically-motivated" feature films should also be given attention because they might have an influence on voting intentions. Such programmes can sometimes give a candidate or a political party an unfair advantage.

This is again an area that primarily has to be addressed by broadcasters themselves via internal guidelines. The Recommendation therefore only suggests that special care should be taken with entertainment programmes that may have an influence on voters, so that certain parties or contenders do not obtain an unfair advantage.

#### *Free airtime on public broadcast media*

It is a practice in many countries for political parties to access, at no cost, the public service broadcast media to deliver their electoral messages. This is what is generally called "free airtime" or "free political advertising". It is a direct form of communication between politicians and voters, without any intermediary role by the media. One of the main advantages of giving free airtime to political parties is that it can compensate the risk of unfair and biased coverage of the campaign by certain media. In addition, unlike paid political advertising, the lack of financial strength of a party is not an obstacle to access the airwaves. The Recommendation acknowledges the positive aspects of free political advertising and therefore requests member States to *examine the advisability of introducing provisions granting free airtime* to political parties/candidates on public broadcasting services. Nevertheless, it is also recognised that there are some disadvantages with the practice of free airtime. For example, giving access to extremist views might help the propagation of ideas which are harmful to democracy.

The way of dividing free political advertising space among parties, that is, deciding which parties qualify for airtime and in what amounts is a difficult and sensitive question, the solution to which differs from one country to another. Sometimes the division of airtime is based on the past performance of a political party or the number of seats it holds in parliament (proportional access). In other countries, such as the new democracies, there is a tendency to divide airtime equally among all the contending parties (equal access). Another possible way of dividing airtime is to allocate a minimum amount to all contenders and add supplementary time on a proportional or other basis (mixed access). Given the variety of possible options to allocate airtime, the Recommendation does not give preference to one practice over

another. It does, however, recommend that when airtime is made available to parties it should be granted in a *fair and non-discriminatory manner and on the basis of transparent and objective criteria*.

During election times there is a large production of political messages and programmes, which can lead to the saturation of the electorate. Therefore, to avoid excessive election-related broadcasting, the setting of limits to the total amount of airtime may be examined.

As regards responsibility for the content of free airtime spots, it is accepted that, in principle, such responsibility should lie with the political party that has prepared the material. However, this issue is not addressed in the Recommendation because it is considered that the precise delimitation of responsibilities between broadcasters and political parties should be decided at the national level.

Where a member State subjects a broadcaster to the obligation of granting free airtime to political parties during election campaigns, it should be ensured that this is not detrimental to the financial equilibrium of such a broadcaster.

#### *Paid political advertising*

Paid political advertising in the broadcast media has traditionally been prohibited in many Council of Europe member States, whilst it has been accepted in others. One of its major advantages is the opportunity which it provides for all political forces to widely disseminate their messages/programmes. On the other hand, it may give an unfair advantage to those parties or candidates who can purchase important amounts of airtime.

In view of the different positions on this matter, the Recommendation does not take a stance on whether this practice should be accepted or not, and simply limits itself to saying that *if paid advertising is allowed it should be subject to some minimum rules*: one, that equal treatment (in terms of access and rates) is given to all parties requesting airtime, and two, that the public is aware that the message has been paid for.

It may also be considered important to set limits on the amount of paid advertising that can be purchased by a single party. Nevertheless, the Recommendation does not specify whether it is desirable to do so nor does it set any precise limits on the amount of paid advertising, as it is considered that the decision on this matter should be taken at the national level.

### **Measures concerning both the print and the broadcast media**

#### *Day of reflection*

As regards the so-called 'day of reflection', normally understood to be the day preceding voting, the Recommendation provides that member States may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on this day, since it is considered that voters should have time to 'digest' all the information received during the campaign and thus take a decision on their vote without pressures.

Given the fact that material other than partisan electoral messages may have an implicit political message or content, it is important that self-regulatory practices by the media also address this problem.

#### *Opinion polls*

Despite the fact that it is difficult to show the extent to which opinion polls have an impact on the actual results of an election, it is nevertheless generally assumed that opinion polls *do or can have* a certain degree of influence on the outcome of elections.

In order therefore to ensure fairness and avoid undue influence on the electorate, it is considered that the media, when reporting the results of opinion polls, should provide the public with *sufficient information to make a judgement on the value of the polls*. In this respect, the Recommendation suggests a number of elements which could be provided by the media at the time of releasing the poll results: the name of the party or organisation that commissioned the poll, the name and methodology employed by the pollster, the sample and margin of error and the date the poll was conducted. It is acknowledged that this is a topic that should mainly be addressed via self-regulation and that it is internal media guidelines which should specify how opinion polls should be reported.

Some countries have regulations restricting the dissemination of poll results on the day or the immediate days preceding the election. As with the general prohibition of electoral activity on 'reflection day', the reasoning behind such rules is to enable the public to take a decision on their vote without external influences, such as the predicted results which opinion polls indicate. However, other Council of Europe member States have no rules in this area and the media may report poll results right up to the election.

The Recommendation leaves space for different national practices regarding the publication of opinion polls, but mentions that if member states choose to forbid the publication of opinion polls a certain period of days before the election, such a restriction *should comply with Article 10 of the European Convention of Human Rights*. In line with the general approach developed by the European Court of Human Rights, three criteria will have to be met for any limitation on the publication of opinion polls to be valid: the prohibition to publish opinion polls should be set down in a law, be necessary in a democratic society and be proportionate to the aim of protecting another interest.

The effectiveness of silence rules for opinion polls is sometimes questioned, given that the public may obtain poll results, not necessarily from the media to which restrictions apply, but by other means, such as by accessing Internet or from foreign newspapers or broadcasters. Given this fact, it is considered that restrictive rules in this area should be avoided, and that the duration of the prohibition to publish opinion polls should not be excessive.

As regards exit polls, which are conducted outside polling stations on voting day and assess what people have actually voted, it is suggested that member States consider the possibility of prohibiting the dissemination of such poll results until all polling stations have closed, given that they could have an influence on the outcome of the elections.

#### *The right of reply*

The right of reply is ensured in most countries by press, broadcasting or other legislation as well as by professional codes of practice. The Recommendation stresses that if a candidate or political party is entitled to the right of reply under national laws or systems, it should be ensured that this right can be exercised during the campaign period, including on reflection day if the right of reply can not otherwise be exercised.

A specific procedure to guarantee a rapid/urgent right of reply is not mentioned in the Recommendation since it is considered that member States should choose the mechanism which is best adapted to their national context. On some occasions this may be a summary court proceeding, whilst at other times it may be the press or broadcasting self-regulatory body or even an electoral commission which are entrusted with powers to resolve cases involving the granting of the right to a rapid reply.

**Measures to protect the media at election time**

Whilst acknowledging that the main focus of this Recommendation is ensuring fair performance by the media during elections, it is considered that the problem of interference and attacks on the media at election time should also be addressed in the scope of this instrument, given that any attack or pressure on a media outlet would constitute a serious violation of democratic standards and practice.

Obstacles to the free coverage of an election campaign may come from different sources: the government/public bodies, political parties, interest groups or other entities. The Recommendation is concerned with interference from the government or its agencies and therefore stresses that *public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections*. Fortunately, cases of intimidation, threat, closures or pressure on the media by public authorities are rare in Council of Europe member States, but it is nevertheless considered important to recall this matter and to formulate a general provision with a warning along the above lines.

In order to ensure the free editorial coverage of elections, the Recommendation also says that member States should *take appropriate steps for the effective protection of journalists and other media personnel and their premises*. In this respect, member States could, if it proved necessary, put their police forces at the disposal of threatened media outlets to guarantee the protection of the journalists and their premises.


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**External links**

- [http://cm.coe.int/ta/rec/1999/fExpRec\(99\)15.htm](http://cm.coe.int/ta/rec/1999/fExpRec(99)15.htm)

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