

**23rd EPRA Meeting,
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**Background paper – Plenary
Political advertising: case studies and monitoring
EPRA Secretariat**

Generalities

The issue of political communication - including the question of paid political advertising - was dealt with on two occasions at EPRA meetings in Paris in 2000 and in Ljubljana in 2002. It is therefore worth dwelling on it again; particularly as new developments or interesting cases have taken place in several countries in the meantime.

In order to gather up-to-date information on the most relevant issues, the EPRA Secretariat sent a brief questionnaire to members. This paper is prepared on the basis on the answers received from the authorities from 31 countries, i.e. Austria, Belgium (x2), Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Isle of Man, Israel (x2), Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland (x2).

Additional insight into the issue of political communication was given through the answers to a wide-reaching questionnaire sent by the Hungarian regulator ORTT via the EPRA Secretariat in May 2005.

The Secretariat would like to express its sincere gratitude for the numerous answers received in the brief span of time. Members' organizations which did not send their answers are invited to do so at a later date so that a revised version of the paper can be made available.

This paper aims at providing background information on the main aspects of political advertising and at raising questions for the debate which will follow the four practical presentations, which will be made by the Ofcom from the UK, the Norwegian Media Authority, the Latvian Broadcasting Council and the Italian AGCOM.

1. Matters of Definition

Does your national legislation or regulations define political advertising?

The term political advertising is widely used in practice and in various publications. However, it is not always clear what is meant by this term.

First of all, election and political broadcasts that are broadcast free of charge by broadcasters must be distinguished from paid-for political advertising. This distinction is not purely theoretical as their legal status is often different.

Another important issue is whether political advertising can be considered as television advertising in the strict sense and thus whether advertising provisions are applicable (especially quantitative limits), or should rather be considered as "political propaganda".

However, the answers to the questionnaire unfortunately do not enlighten us further as regards terminological issues.

Basically, three main situations can be distinguished:

- **Countries with no statutory or legal definition**

In the majority of cases, there is no statutory or legal definition of political advertising as such. This is the case in Austria, Bosnia and Herzegovina, Belgium (both French and Flemish speaking Communities), Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Ireland, Luxembourg, Malta, Norway, Netherlands, Poland, Spain, and Switzerland.

- **Countries with statutory or legal definition**

However, there are a number of exceptions, notably in Cyprus, Hungary, the Isle of Man, Lithuania and Sweden where the legislator deemed it necessary to define the notion of political advertising.

In the absence of a statutory definition, regulatory authorities have sometimes coined their own definition. This is the case for instance in Romania where the Audiovisual Council has introduced a definition of political advertising in its Regulatory Audiovisual Code adopted in March 2006.

The definitions reflect the diversity of the audiovisual landscapes. They usually do not distinguish between free or paid political advertising (Hungary, Isle of Man, Sweden). However, in Macedonia a clear distinction is made between "paid political advertising" and "free of charge Presentation" and both terms are defined.

In Cyprus, Political advertising is always in the form of paid advertising as the law requires that a political advertisement is broadcast "in return of payment or a corresponding consideration"(...).

- **Countries using other terms**

In a third category of countries, the legislator has chosen to define other terms, some of them close to the notion of political advertising, some of them rather inventive (see the annex for the definitions):

- "*Elections advertising*" (Portugal)
- "*Political clip*" (Bosnia and Herzegovina)
- "*Pre-election campaign*" (Bulgaria)
- "*Pre-election agitation*" (Latvia)
- "*Self-managed space*" (Italy).

Analysis & Comments:

- The lack of explicit definitions and the great diversity of national traditions are likely to create confusion between European counterparts when referring to political advertising. Any attempt at a comparative overview should therefore be especially cautious on that point.
- The Council of Europe's Recommendation No. R (99) 15 on Measures concerning Media Coverage of Election Campaigns¹ makes the distinction between "paid political advertising" and "free airtime" also called "free political advertising" but does not give any definitions either.
- For the purpose of this paper, political advertising will refer to paid political advertising while the term free airtime will be used for free political advertising, such as party political broadcasts.
- Generally, the term "advertising" as in political advertising is used in the broadest sense as political propaganda. As a rule, national advertising provisions are not applicable as they require payment or similar consideration (e.g. France). In some countries such as Poland and Cyprus, political advertising is subject to the general legal provisions on advertising. However, usually, it is not included in the calculation of the total advertising time (e.g. Poland, Italy) allowed to the broadcaster.
- It seems doubtful whether political advertising could be considered as advertising in the meaning of Article 1(c) of TVWF Directive or Article 2 f. of ECTT.

2. Legal Status

Is paid political advertising in broadcasting prohibited in your country?

• Countries with a ban on paid political advertising

Paid political advertising is statutorily forbidden in the vast majority of Western European countries such as Belgium, Denmark, France, Germany, Ireland, Malta, Norway, Portugal, Sweden, Switzerland, and the UK. Several countries from central and Eastern Europe such as the Czech Republic and Romania, also have a prohibition of paid political advertising.

The most traditional justification for this prohibition is that rich or well-established parties would be able to afford significantly more advertising time than new or minority parties – thus amounting to a discriminatory practice. Another rationale invoked for the restriction or the ban is that it may lead to divisiveness in society and give rise to public concern. It has also been suggested, albeit less frequently, that a prohibition would preserve the quality of political debate².

• Countries allowing paid political advertising

Paid political advertising is allowed in many central and Eastern countries such as Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Macedonia, Poland, and the

¹http://www.coe.int/t/e/human_rights/media/4_documentary_resources/CM/Rec%281999%29015&ExpM_en_en.asp#TopOfPage

² Political Debate and the Role of the Media, The Fragility of Free Speech, Iris Special, European Audiovisual Observatory, 2004.

Baltic States: Estonia, Latvia and Lithuania. In a few countries such as in Bosnia-Herzegovina (60 days prior to Election Day), and Croatia, political advertising is only permitted during the election period.

It is often overlooked that several countries in Western Europe, such as in Austria, Finland, Luxembourg (for the moment, this will change shortly) and the Netherlands also allow paid political advertising.

In Italy, until 2003 paid political advertising, i.e. self-managed spaces, was allowed also for national broadcasters, provided that they also transmitted "political communications spaces" (spazi di comunicazione politica), i.e. discussion programmes with the participation of political representatives; now it is allowed only for local broadcasters and has to cost no more than 70% of the price applied to commercial advertisements, whereas national broadcasters may only broadcast them for free.

In Greece, while there is a permanent and wide-ranging ban on the political advertisement of persons, paid political advertising of political parties is not prohibited.

In Spain, while the ban of political advertising applies permanently for television broadcasters, the Spanish Electoral Code permits paid electoral advertising on commercial radio stations, only during the election period.

The main rationale for paid political advertising is that it may enable new candidates to obtain recognition and a profile³. It is also often argued that the right to political advertising is an integral part of the right to freedom of expression and information.

2. 1. Scope of the ban of political advertising

As a rule, political advertising does not exclusively relate to election time, or political parties or candidates. Advertising on other issues, which reflect important societal debates, such as animal rights, environmental issues, abortion etc. (often referred to as political propaganda or issue advertising) may be considered to pursue a political end or to be political in nature and may therefore be construed as political advertising.

- **Countries with a wide-reaching ban**

This is for instance the case in France, Ireland, the Isle of Man, Israel, Malta, Spain and the UK. In Ireland, the ban is applied to all advertising which can be said to be political in nature and to all groups which are political by design. In this sense it is applied in the broadest sense and not limited to election campaigns or voting for referenda exclusively. In Israel, the ban applies permanently and to political parties as well as other interest and societal groups.

On the Isle of Man, the term "political" is used in a wider sense than "party political". The prohibition precludes, for example, issue campaigning for the purposes of influencing legislation or executive action by government or by local authorities.

In France, the ban applies to political parties and candidates, but also to any organization whose advertising messages would be directed towards a political end. Associations (most interests and societal groups are constituted as such) are not allowed to broadcast advertising spots. Associations with charitable aims may

³ Media and Elections, a handbook, Ed. By Yasha Lange and Andrew Palmer, EIM, 1995.

broadcast so-called "messages d'intérêt general" which should not include any political message.

In Spain, the ban applies permanently and does not specify the groups.

In Malta, the ban applies permanently except for such approved schemes of political broadcasts. Paragraph 1(f) of the Third Schedule bans advertising of a political nature and this has always been taken to apply in its strict interpretation to the political parties. However, the Authority has also taken a wider interpretation and applied such a ban on advertising to other organisations such as trade unions etc. which pursue aims which could be qualified as political in the broad sense.

- **Countries with a more restricted scope of the ban**

In Switzerland, as a consequence of the decision by the European Court of Human Rights in the Case of "Verein gegen Tierfabriken"⁴, where the Court stated (inter alia) that a prohibition of political advertising must be justified in a "relevant and sufficient manner" to be compatible with Article 10 ECHR, certain forms of "political" advertising are now allowed. NGOs or societal groups may place advertising with a certain political content, but not before elections or in campaigns before plebiscites. However, the prohibition on advertising by political parties and candidates remains.

Similarly, in Denmark - as a consequence to the above-mentioned ruling - the permanent ban on political advertising on television concerns advertising for political parties, political movements and political candidates as well as advertising for trade unions and religious movements. The ban is not considered to include political movements in a broader sense such as environmental and societal groups except when such groups are nominated for political bodies or assemblies.

In addition, Danish legislation does not allow advertisements with political messages to be broadcast during the time of election campaigns where a total ban is considered necessary to protect voters from inappropriate influencing and to ensure equal democratic rights of candidates regardless of economic means or funding. Political advertising and campaigning is not prohibited in other media such as radio broadcasting.

In Norway, the ban applies permanently and to all groups and parties that promote political ends. However, the ban will be interpreted in the light of Article 10 of The European Convention on Human Rights and the case law from The European Court of Human Rights derived from said article.

In Sweden, only broadcasts which are subject to conditions of impartiality cannot include political advertising. DTT-licences, for the commercial channels, have as a rule not included such a condition and have therefore been free to broadcast political advertising. Until 1 March 2006 this did however not apply to TV4 DTT-licences for their niche channels. The new licences for TV4's niche channels however, do not include a condition of impartiality, which means that they can broadcast political advertising.

In Italy, the term "political" is used in a very narrow sense; other interest groups would fall under what are called "social" messages. All broadcasters may transmit messages with a social utility content (this is not defined) and can also be paid for, provided that the price does not exceed the 50% of the cost of commercial

⁴ Press release:

<http://www.echr.coe.int/Eng/Press/2001/June/VgtVereinGegenTierfabriken2001judepress.htm>

For the judgement, see <http://hudoc.echr.coe.int/>, (no direct link to the case)

advertisements. These messages (paid for or not) are not considered for the calculation of the hourly/daily time limits and cannot, altogether, last for more than 4 minutes per day.

In some countries, the focus of the ban is on election and election time (e.g. Czech Republic) or political parties and candidates (e.g. Belgium - Flemish speaking Community). Issue advertising is not mentioned.

2.2 Regulations/restrictions on paid political advertising

• **Countries with restrictions on paid political advertising**

Most of the countries which allow political advertising also foresee certain legal restrictions to avoid the discriminatory character of the practice. This includes limits on the duration and frequency (e.g. Macedonia, Bosnia and Herzegovina), scheduling (e.g. Macedonia: not during news, children programmes) limits on the charges for such ads (e.g. Bosnia and Herzegovina where the price lists must be submitted to the regulator for review 15 days prior to the elections period), or on maximum election expenditure that is permitted by the law (Greece, Latvia where during Saeima (Parliament) and European Parliament elections, a party may spend no more than 0,20 LVL (0,284 EUR) x the number of voters in the previous elections), labelling/identification requirements (e.g. Cyprus, Macedonia: paid political advertising should be properly and visibly labelled, from the commencement to the end of the programme, as "paid political advertising"). In Hungary, broadcasters must provide all parties with equal conditions (same price, same programme period etc.) but there are no specific restrictions concerning the amount of political advertising.

Worth noting is that in several countries, such as in Macedonia, public service broadcasting is not allowed to broadcast paid political advertising, only private broadcasters may do so.

• **Countries with no restrictions on paid political advertising**

This is the case for instance in Austria, Estonia, Finland and Poland. In Poland, the issue of restrictions to political advertising is regulated by each broadcaster by means of internal advertising codes.

Analysis & Comments:

- The often mentioned East-West divide with regard to the ban of political advertising, even if it reflects a real trend, may be somewhat misleading. The West-European Countries which allow this practice are often forgotten in comparative overviews.
- In view of the different positions on this matter, the Council of Europe does not take a stance on whether paid political advertising should be accepted or not, and simply limits itself to stating in its Recommendation⁵ "*that if paid advertising is allowed it should be subject to some minimum rules (...)*".
- Most countries which allow paid political advertising have introduced some limits so that this practice is not necessarily always discriminatory. All parties

⁵ Council of Europe's Recommendation No. (99)15 on measures concerning media coverage of election campaigns.

may be offered the same opportunities. However, this “equality of opportunity” is only real when all parties have the necessary funds at their disposal to buy the same amount of time.

- Rather surprisingly, a few countries do not impose any restrictions on paid political advertising. However, it does not seem to raise any specific problem or to cause any concern.

3. Provision of free airtime during elections for political parties

3.1. Are political parties allocated any free airtime during elections campaigns?

3.2. If so, what are the main provisions applicable?

The provision of free airtime for political parties and candidates within the specific framework of election or party political broadcasts (e.g. UK) or “official campaigns” (e.g. France) is generally not considered as political advertising. A brief overview is nevertheless interesting as the issues at stake are closely entwined.

- **Countries allocating free airtime for political parties and/or candidates**

In the vast majority of countries, such as Belgium (French Speaking Community), Czech Republic, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, parties are usually granted free airtime to present their programmes, sometimes in the format of short advertising spots. The broadcasters are usually reimbursed for their technical costs either by the State or directly by the parties.

In most cases (e.g. Czech Republic, Estonia, France, Latvia, Luxembourg), only public service broadcasters are required to make free time available to the parties and candidates.

In general, private broadcasters do not have this obligation but they are obliged to provide equal opportunities to other parties and have a professional and ethical responsibility for fair reporting.

In Germany, private broadcasters are also obliged to offer timeslots to political parties during elections. Political parties are, however, obliged to reimburse commercial broadcasters for the transmission costs of political advertising spots (so-called “Selbstkosten” – self-costs).

In Italy, political parties are entitled to “political communication spaces” on all broadcasters, both public and private if subject to the obligation to broadcast information programming (in practice, only teleshopping broadcasters are excluded).

- **Countries with no system of allocation of free airtime.**

Several countries have no specific provisions concerning free airtime for political parties. In a few countries, such as Belgium (Flemish speaking Community), Bulgaria, Norway, Sweden, parties are not granted any free airtime to present their programmes. In other countries such as Switzerland, Finland or Cyprus, this is a matter left to the broadcasters, who sometimes allow this practice on a voluntary basis.

In Denmark, Danish legislation does not contain any specific provisions concerning free airtime for political parties or allocation of such during election campaigns. Allocation of airtime to political parties during elections is, however, considered to be

an integral part of the general obligation of certain television broadcasting systems to provide “public service” television.

- **Basic criteria and principles guiding the allocation of free airtime**

Most Western European countries, such as Germany, Ireland, the Netherlands, Spain, have chosen a system of proportional access in their distribution of free air time. This means that criteria such as the latest results of the political parties are taken into account in allocating broadcasting opportunities.

As an example, in Greece, allocation of free airtime is made on the basis of the principle of “analogic equality” that is in analogy with their performance at the previous elections also taking into account the need for all political parties to inform the public about their political programmes and ideas.

Many Eastern and Central European countries have adopted a system of equal representation where parties/candidates should be allocated the same amount of airtime (e.g. Latvia, Lithuania).

In Denmark, the criteria for which the airtime is allocated are not set out in specific legislation but the Danish Supreme Court has ruled that the allocation of airtime during elections must be subject “to the general principle of equal treatment in administrative law.” This means that political parties eligible for election cannot be excluded from airtime in general debates without valid reason.

As a rule, the main principles applicable are impartial and fair access to airtime (e.g. Malta, Italy) and equal conditions in the exposition of the opinions (Italy).

In some countries, such as France and the Netherlands for instance, the regulator has a crucial role to play in overseeing and organising the allocation of free airtime for party political or election broadcasts. In other countries (e.g. Portugal), other bodies such as the electoral commission, play a central role.

Analysis & Comments

- In the vast majority of countries, parties and/or candidates are usually granted free airtime, often but not exclusively on public service broadcasters to present their programmes. It is interesting to note that such a system does not exist in a few countries, where there is no official electoral campaign scheme on television. It would be interesting to hear about the motivation behind such a system and to see whether citizens consider that they are being properly informed.
- It is sometimes argued⁶ that if candidates and parties have fair access to free airtime during election campaigns, there is less (or no) need for paid political advertising. This cannot be systematically verified in practice as the existence of a scheme for allocating free airtime does not prevent some countries from allowing paid political advertising (e.g. Latvia, Lithuania).

4. Current developments

⁶ Political Debate and the Role of the Media, The Fragility of Free Speech, Iris Special, European Audiovisual Observatory, 2004

Recent/pending decisions or court cases

- **Denmark:** The Danish Radio and Television Board made a decision on 20 January 2005 regarding a television commercial for a biography of the Danish Prime Minister, Anders Fogh Rasmussen. The question was if the commercial was in accordance with the ban of political advertising and the ban of political messages before an election. The Board considered that the commercial only concerned the book (biography), and was not about a political party or about Anders Fogh Rasmussen as a political candidate. Furthermore the publisher has had the full editorial freedom without any influence from Anders Fogh Rasmussen and his political party. The Board also considered that the commercial did not contain political messages and decided that it was in accordance with the law.
- **France:** In 2002, a message emanating from Reporters without Borders, about restrictions of the freedom of the press in certain States was considered by the CSA as political advertising prohibited under French law.
- **Germany:** One issue, currently being discussed is the question whether spots by a trade/labour union broadcast before the elections of the works committee are admissible or not. The Landesmedienanstalten are trying to reach a consensus on the qualification of these kinds of spots - as (admissible) social or (inadmissible) political advertising.
- **Israel:** The Supreme Court is reviewing the question of what constitutes "matters of dispute of a political nature" (advertising for which is forbidden at all times). It is not known when the Court will deliver its ruling.
- **Italy:** During the recent electoral campaign for the renewal of the Italian Parliament, there have been several cases of violations in the allocation of free airtime during political communication programmes or information programmes (such as news or in-depth programmes) leading to sanctions issued by AGCOM (both of a balancing nature, that is allowing compensation time to the damaged party, and economic sanctions (up to 250 000 EUR) but there were no cases concerning political advertising.
- **Malta:** The Maltese law prohibits advertising "of a political nature". The Broadcasting Authority has a case pending against it brought by a trade union whose advertisement was banned by the Authority because of its political content. The case VgT Verein has been referred to by both parties.
- **Norway:** In a case from 2004, the Norwegian Supreme Court found that a local TV-station's airing of advertisements for a political party before an election for regional and local assemblies in 2003 was in violation of the prohibition against political advertising in broadcasting. The TV-station had challenged a decision from the Media Authority imposing a financial penalty for the violation of the ban. In emphasizing the VgT-case, the TV-station claimed that this was an interference with its freedom of expression under the European Convention on Human Rights Article 10. The Supreme Court held that the general prohibition against political advertising in broadcasting in Norway is not in violation of Article 10. However, the Court stated that it could not exclude that a wide interpretation of the ban could be in conflict with Article 10. The Court did not elaborate on this, emphasizing instead that airing the particular advertisements before an election

went to the core of the prohibition. In such periods it is of compelling interest to the government to secure a fair debate climate, and the ban was accordingly justified. The TV-station has made a complaint to the European Court of Human Rights.

In 2005, the Media Authority decided that a TV-station's transmission of an advertisement containing a political message for an anti-terrorism group was not in violation of the ban. In this case, the authority distinguished the facts of the case from the 2004 Supreme Court judgment and emphasized instead the European Court of Human Rights' ruling in the VgT-case as they considered this case to be more similar. The decision was not challenged.

- **Spain:** In 2003, TVE (Spanish public TV) refused to broadcast an institutional campaign of the autonomous community of Aragón, on the grounds that, according to their own view, this campaign had political content. The autonomous community presented a request to the judicial court (...). The Court made an interpretation of what they considered as advertising, which content is "essentially or primordially political". (...) For the Court, what mattered is how the campaign is presented to the audience rather than its finality. When the political finality prevails on how the campaign is presented, it is when, for the Court, the advertising has essentially or primordially political content. The Court ruled that it was not political advertising and ordered the public broadcaster to pay damages to the autonomous community (...). The public broadcaster appealed this decision, but in 2004, the Court of Appeal confirmed all the terms of the first judicial decision.
- **Switzerland:** The UBI/AIEP made a recent ruling on two spots advocating for "the end of advertising prohibitions" and for "a more human migration policy". The authority considered that statements on political questions emanating from organizations which are not political parties do not fall under the prohibition of political advertising; such advertising spots would only cause a problem during the particularly sensitive period immediately before a referendum. The Federal Court confirmed this practice in a judgement in 2005.

Recent and pending legislative and regulatory developments

Trend towards strengthening of rules:

- **Bosnia and Herzegovina:** There have been some activities to change and amend the Election Law that will most probably refer to the length of election period, the length of paid political advertising and maybe a possibility for private broadcasters to exclude themselves from the election period coverage. But up until now there is no further information on this.
- **Latvia:** A bill to amend the current law on pre-election agitation (Saeima and European Parliament) passed its first reading banning all political advertising in the electronic media from 90 days before Election Day. After great protest from the media, the bill was amended to reduce the time limit to 30 days before Election Day and it now awaits its 3rd and final reading.
- **Lithuania:** currently permits political advertising under its electoral law. This is under constant discussion. In fact, the relevant law itself requires draft legislation

to be prepared by 1 January 2005 prohibiting political advertising altogether, although apparently this has not yet been done.

- **Luxembourg:** New regulation, which will prohibit political advertising, should be introduced soon.

Trend towards relaxation of rules:

- **Denmark:** In 2003, there was a wish among the vast majority of the members of the Danish parliament to introduce further limitations on political advertising. However, the Danish Ministry of Justice found that a total ban on political advertising would not be in conformity with the European Court of Human Rights decision in the *VgT Verein Gegen Tierfabriken v. Switzerland*. The current provisions on regulation of political advertising were introduced in 2004 as a result of these legal considerations.
- **Norway:** Last summer, the government circulated for public hearing a proposal to revise the regulation on political advertising in broadcasting. The proposal is to allow political and religious advertising in broadcasting in general, except from a period of four weeks before elections. Meantime, there has been a change of government to an alliance of social democratic parties and it is not yet clear whether the new government wants to introduce this relaxation.
- **Switzerland:** has revised its future federal law to reflect the ECHR judgement in *VgT*. The scope of the term "political" has been narrowed. This will retain the prohibition on advertising by political parties and candidates, but allow political propaganda except during an election period.

Reported Issues of Concern

- **Macedonia:** The election campaign in the Republic of Macedonia usually starts approximately a year before the official period for campaign, so there are frequent pressures from the political parties for paid political advertising: longer shots from their congresses and meetings. As a consequence, some media are forced to air these footages in their information programmes. The Broadcasting Council believes that the Broadcasting Law should immediately regulate this question: a permanent ban of paid political advertising outside election period, or provision for PPP only in the limits for advertising in general.
- **Greece:** the problem of measuring the time of political presentation prescribed by the law during the election period.

5. Summary and Practical Issues for Discussion

The lack of explicit definitions and the great diversity of national traditions are likely to create confusion between European counterparts when referring to political advertising. Generally, the term "advertising" as in political advertising is used in the broadest sense as political propaganda. As a rule, national advertising provisions are not applicable as they require payment or similar consideration. However, in some countries, political advertising is subject to the general legal provisions on advertising.

Can political advertising be considered as advertising in the meaning of Article 1(c) of TVWF Directive or Article 2 f. of ECTT?

Rather surprisingly, a few countries do not impose any restrictions at all on paid political advertising. However, it does not seem to raise any specific problem or to cause any concern.

What about the experience made in countries such as Finland, Austria or Estonia in which political advertising (or even political communication for that matter) seems to be completely unregulated?

In the vast majority of countries, parties and/or candidates are usually granted free airtime, often but not exclusively on public service broadcasters to present their programmes. It is interesting to note that such a system does not exist in a few countries, where there is no official electoral campaign scheme on television.

What are the motivations behind a system with no official electoral campaign scheme on television? Do citizens consider themselves to be properly informed on political issues?

It is sometimes argued that if candidates and parties have fair access to free airtime during election campaigns, there is less (or no) need for paid political advertising. This cannot be systematically verified in practice as the existence of a scheme for allocating a free airtime does not prevent some countries to allow paid political advertising.

Do the countries allowing both systems feel that the need for paid political advertising has therefore been reduced? What are the real advantages of paid political advertising? Do the parties/candidates make use of the possibility of making paid political advertising?

In many (Western) European countries, the most burning topic at present seems to be "issue advertising", i.e. messages with a political end emanating from organizations which are not political parties, such as interest or societal groups. Further to the ECHR ruling, a few countries have restricted the scope of the ban of political advertising and now allow such spots - outside election periods.

Are the current total bans (including issue advertising) justified in a "relevant and sufficient manner" so that they would survive scrutiny under the ECHR? Do they constitute a disproportionate restriction on the freedom of expression?

6. Presentations

In order to illustrate the issues mentioned in this paper, four presentations will be made by EPRA members.

Ofcom - UK

Tim suter will report on the UK situation, with a special focus on the recent Ofcom decision on the “Make Poverty History” campaign dealing with “Issue advertising”⁷.

Norwegian Media Authority - NO

Ingvil Conradi Andersen will report about the Norwegian situation⁸; the Supreme Court case and the several issues that it focused on, especially concerning the case law from the European Court of Human Rights (ECHR), and how the Media Authority has interpreted the Supreme Court case later on in their overseeing of the prohibition.

Broadcasting Council – LT

Andris Mellakauls, member of the Broadcasting Council, will present an update on the current situation in Latvia.

AGCOM – IT

Sebastiano Sortino, Commissioner of the AGCOM will report on political advertising & communication during this past electoral campaign in Italy.

⁷ For more information on the case, see the Ofcom’s website:

http://www.ofcom.org.uk/tv/obb/prog_cb/pcb52/issue43a.pdf#xml=http://search.atomz.com/search/pdf/helper.tk?sp-o=3,100000,0

⁸ For more information, see the EPRA press release:

http://www.epra.org/comasystem/view/presse/view_presse.pl?datensatz=preRR6EbyjVXEIAQgkTOAdJKws2QPVRPsNtk8AOFaolax09v2JPyc1116832989

Annex 1: Some definitions of Political Advertising:

Bosnia-Herzegovina: There is no strict definition of "political advertising" in general, there are definitions of a **political clip**, contained in the Election Commission's Rules: "Political clip" is a short, earlier recorded political advertisement that enables political subject to communicate directly with public, through its words and/or visual image;

Bulgaria: The Law regulates the political advertisement as a form of "a pre-election campaign" of political parties and formations, independent candidates who take part in the election process.

Cyprus: Section 2 of the Radio and Television Stations law of 7(I)/1998 states that *a political advertisement means an announcement or message of any form which is broadcast in return of payment or a corresponding consideration by a candidate in Presidential elections (the law and regulations are currently revised with a view to include parliamentary elections as well). Political advertising is always in the form of paid advertising.*

Italy: "It is called "Self-managed space" (messaggio autogestito) and is subject to special rules. It must allow a motivated exposition of the political programme of the interested party and respect a duration limit between 1 and 3 minutes: it cannot be inserted during a commercial advertising break and may not interrupt any programme, but has to be included in a specific slot together with other messages. It is not calculated within the daily/hourly time allowance for advertising.

Isle of Man: " ... any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature, any advertisement which is directed towards any political end, or an advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by or on behalf of the Council of Ministers, a Department or a Statutory Board) ... "

Macedonia: "By paid political advertising we shall understand the airing of political - propaganda messages such as: announcements, releases, political election video spots and other short forms of political advertising.(...)" "By free-of-charge media presentation we shall mean the airtime provided for direct communication of the organizers of election campaign and the candidates with their constituents. The organizers of election campaign or the candidates shall promote their programs and positions freely."(...)

Latvia: "Pre-election agitation is advertising by a political organization, an association of political organizations or a candidate, in the mass media or otherwise, if it contains a direct or indirect invitation to vote for or against a political organization, an association of political organizations or a candidate". No difference is made between paid and free political advertising.

Portugal: Election advertising is defined as all the activities directly or indirectly aiming at promoting candidatures, concerning either the candidates, the political parties, the heads of their bodies or their agents or any other people, particularly with the publication of texts or images that express or reproduce the content of this activity.

Romania: The Regulatory Audiovisual Code adopted in March 2006 stipulates that political advertising can be defined as advertising spots that promote a political party, a politician or a political message.

Sweden: Information broadcast on behalf of a third party and which are designed to win support for political or religious views, or views relating to special interests in the labour market sphere. Such information is to be regarded as advertising. "Advertising is defined as commercial advertising as well as broadcasts which are commissioned by a third party but are not commercial advertising.

ANNEX 2 Brief Summary of the ECHR case VgT Verein gegen Tierfabriken v. Switzerland⁹

The case deals with a Swiss association (VgT) dedicated to the protection of animals. VgT produced a television commercial concerning animal welfare and intended to have it broadcast on television. One scene showed a noisy hall with pigs in small pens and compared the conditions to those in concentration camps. The commercial ended with the words "eat less meat, for the sake of your health, the animals, and the environment".

On 10 January 1994 the Commercial Television Company, responsible for television advertising, informed the association that it would not broadcast the commercial in view of its "clear political character" as political advertising was banned on television in Switzerland. The applicant association filed several complaints and an administrative law appeal, which was dismissed by the Federal Court.

On 26 June 2001, the Court of Human Rights held that the refusal to broadcast the commercial had been a violation of Article 10 of the European Convention of Human Rights (right of freedom of expression), as the measure in issue could not be considered "necessary in a democratic society".

This judgement is particularly interesting for several reasons:

Concept of political advertising: The Court observed that the commercial could be regarded as "political", as it reflected controversial opinions pertaining to modern society in general, lying at the heart of various political debates - rather than inciting the public to purchase a particular product.

Impact of the different regulatory treatment of political advertising for broadcasting and the press

Further to Art. 10 (2), the exercise of the right to freedom of expression may be subject to restrictions if several conditions are met. In particular, the interference to the rights must be prescribed by law and *necessary in a democratic society*. This implies that the existence of a "pressing social need" is necessary to refuse to broadcast the commercial. The Court found that a prohibition of political advertising, which applied only to certain media (i.e. broadcasting but not the press), did not appear to be a particularly pressing need.

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"

In the Court's opinion, the domestic authorities had not justified the interference in VgT's freedom of expression in a "relevant and sufficient" manner. It had not been argued that VgT itself constituted a powerful financial group which, with its proposed commercial, sought to endanger the independence of the broadcaster, to unduly influence public opinion, or to endanger the equality of opportunity between the different forces of society. The Court considered that, rather than abusing a competitive advantage, the association intended only to participate in an ongoing general debate on animal protection.

⁹ Press release:

<http://www.echr.coe.int/Eng/Press/2001/June/VgtVereinGegenTierfabriken2001judepress.htm>

For the judgement, see <http://hudoc.echr.coe.int/>, (no direct link to the case)