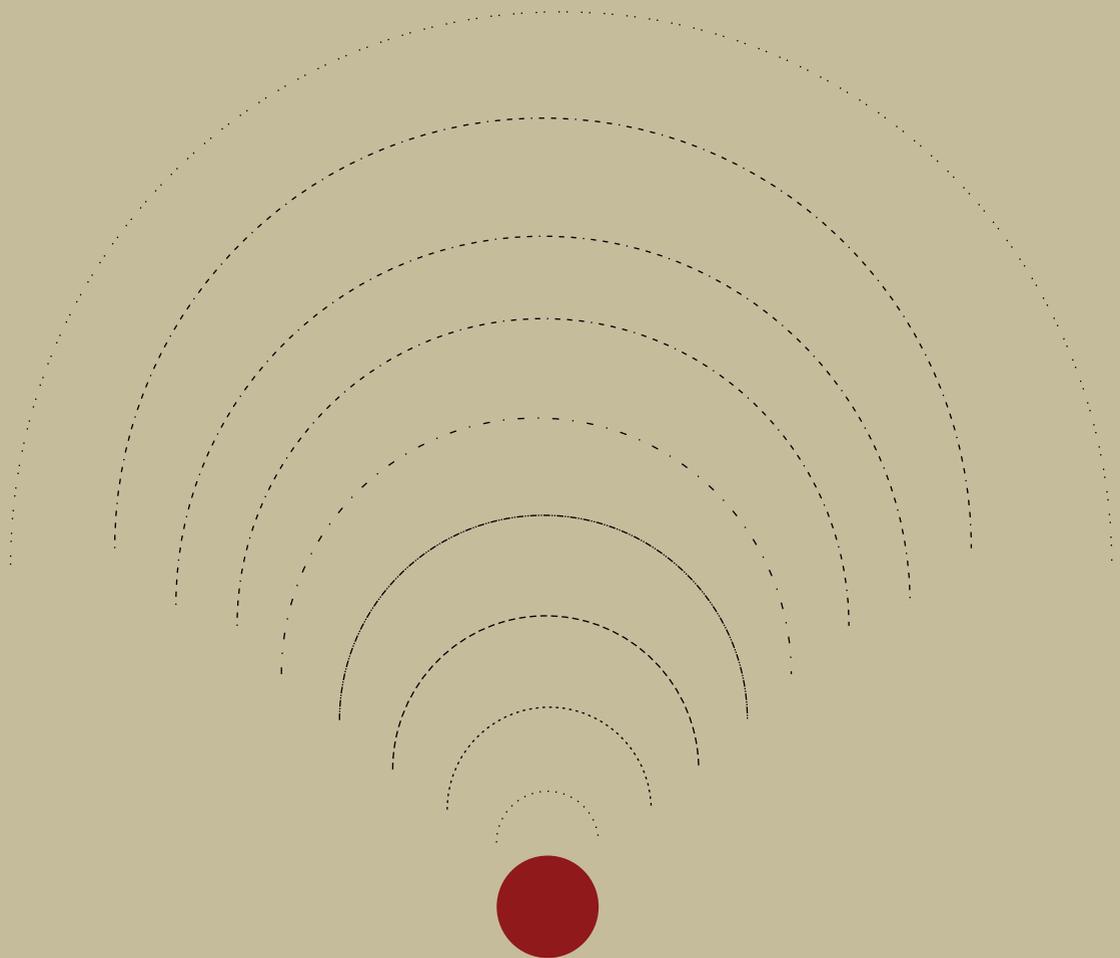




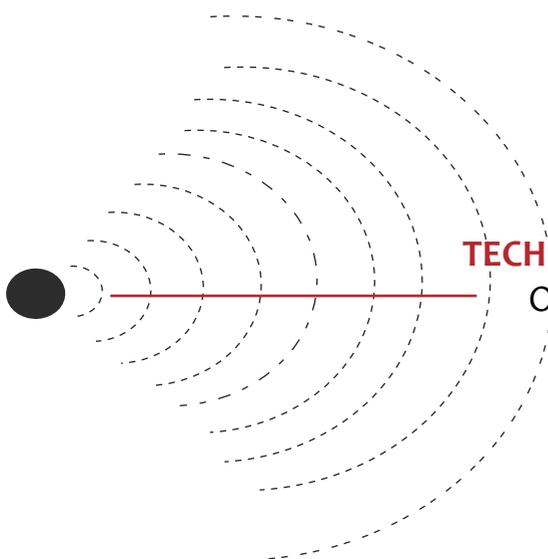
INSTITUTE OF SOCIAL SCIENCES
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SKOPJE



TECHNOLOGY OF STATE CAPTURE

Overregulation
in Macedonian Media and Academia

A POLICY PAPER



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Media and Academia

Skopje, August 2015*

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nr. 8, second floor

1000 Skopje, Macedonia

phone/fax +389 (0)2 3 113 059

email info@isshs.edu.mk

www.isshs.edu.mk

Authors:

Jordan Shishovski, Ph.D.,

Kalina Lechevska, Ph.D.

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EXECUTIVE SUMMARY

The Institute of Social Sciences and Humanities – Skopje analyzed the executive branch’s use of administrative fines under laws covering the media and the educational system from 1995 to 2014. The analysis found that existing regulations allow the government through its ministries and regulatory bodies to impose excessive sanctions that exert pressure on the media and the educational system. The exceptionally detailed regulations that the executive branch is empowered to enforce, result in suspension of media and academic freedom in ways that are empirically measurable. Through excessive administrative fining the executive branch can establish total control over the media and education, and even decide on their existence within a legal, but not legitimate, framework.

The empowerment of the executive to frequently impose high administrative penalties, which in terms of highly overregulated legislature makes strict attendance to the law impossible, exalts that branch above the legislative and judicial branches, eroding the separation of powers. The executive’s ability to directly impose fines allows for a degree of absolute power such that the judicial branch is reduced to mere decoration. With its absolute rule, in most cases the executive branch does not even have to corrupt the judiciary because it has its own autonomous power to punish. This undemocratic reality is a “legalized societal illegal construction.” Namely, what a democratic country should not allow itself either by law or by professional ethics has been legitimized through “legalization” in the form of the law and institutions. Self-censorship would be a logical consequence in a country in which, as acknowledged by the EU Progress Report, OSCE-ODIHR, the Senior Experts Group Report, just to mention a few, the distinction between state institutions and the ruling party has been blurred.

The Institute of Social Sciences and Humanities – Skopje makes the following recommendations:

TO THE PARLIAMENT AND THE LEGISLATIVE COMMITTEE:

- To conduct a legal review of the existing legislation in order to prepare a recommendation to the parliament and proposers to (a) overcome the problem of overregulation by transferring more of the regulations to secondary legislation and other documents adopted by institutions (such as the guides of institutions, statutes etc.), (b) to reduce administrative fining to the bare minimum in order to restore the sovereign domain of the judiciary within the separation of powers.
- To prepare a legal document that stipulates clearly and unambiguously which category of questions are subject to legal control, and which are subject to secondary legislation adopted by institutions in their respective domains.
- Submit its legislation to an in-depth systemic review by an independent EU legal expert group which shall determine the instances of breach of the right to autonomous business and policy decisions of the institutions, companies and other legal entities inscribed in the laws adopted by the Parliament in the past five years and propose solutions.

TO THE NON-GOVERNMENTAL SECTOR IN THE REPUBLIC OF MACEDONIA:

- To stress publicly to the techniques of overregulation and fining as mechanisms of absolute control by the executive branch and as an indirect partial suspension of the sovereign jurisdiction of the judiciary.

TO THE EUROPEAN COMMISSION AND OTHER INTERNATIONAL ACTORS ENGAGED IN THE MACEDONIAN EUROPEAN UNION INTEGRATION PROCESS:

- To include overregulation and excessive fining as

one of main factors that might influence the level of Macedonia's compliance with the Copenhagen criteria and the separation of powers.

INTRODUCTION

In the past few years there is a worrying trend of re-introducing elements of authoritarian style of governing in many post-socialist and other countries in Europe and elsewhere.¹ Yet a transition to full dictatorship is impossible due to the global interconnection of the societies. Instead of an open dictatorship, the more frequent occurrence is that which in academic circles is called “illiberal democracy,” also known as “new authoritarianism” and “competitive authoritarianism.” The main features of the competitive authoritarianism are the existence of all formal democratic institutions and procedures, yet gradually rendered meaningless through a series of authoritarian practices, such as various forms of pressure on freedoms of the media and of association, concentration of power, control over education, etc.² This policy brief focuses on the current situation of freedom of the media and education in the Republic of Macedonia with special focus on legal overregulation and administrative penalties (fines), and provides recommendations for improvements in this area.

¹ Ian Traynor, “Eastern European Autocrats Pose New Test to Democracy,” *The Guardian* (13 August 2013), available at <http://www.theguardian.com/world/2013/aug/13/eastern-europe-autocrats-return-test-democracy>, accessed on 20 July 2015

² For more on this topic see: Jordan Šišovski and Katerina Kolozova, “Macedonia: The Authoritarian Challenge to Europe,” *OpenDemocracy*, June 23, 2015, available at: <https://www.opendemocracy.net/can-europe-make-it/jordan-%C5%A1i%C5%A1ovski-katerina-kolozova/macedonia-authoritarian-challenge-to-europe>, accessed on 25 August 2015.

CONTEXT AND IMPORTANCE OF THE ISSUE

In 2014, Macedonia held parliamentary and presidential elections that demonstrated the weaknesses and shortcomings of a young democracy that is moving more and more towards “competitive authoritarianism”³ where the formal democratic institutions are retained.

This study examines the following tools of Macedonian competitive authoritarianism: legal overregulation assigning disproportionate power to the executive branch and excessive and draconic fining. While regulation in a functioning democracy is intended to ensure quality public services for citizens, we claim that the unprecedented level of excessive regulation and fining in recent years in Macedonia serves to broaden authoritarian tendencies. To illustrate the point, a comparative review of the laws in higher education shows an extremely high level extent of administrative fining provisions in Macedonian legislation compared to that of EU member countries. The French Law on Higher Education (HE) does not envisage administrative or regulatory fines except in cases of an institution’s refusal to subject itself to inspections or as reciprocation to criminal charges concerning a breach in the fundamental legality of functioning as and acting in the capacity of a HE institution.⁴ In the German Law on Higher Education, not a single administrative fine is prescribed.⁵ The Austrian Law on Higher Education has only two fines.⁶ The Bulgarian one has no penalties.⁷

³ “In competitive authoritarian regimes, formal democratic institutions are widely viewed as the principal means of obtaining and exercising political authority. Incumbents violate those rules so often and to such an extent, however, that the regime fails to meet conventional minimum standards for democracy. . . . Although elections are regularly held and are generally free of massive fraud, incumbents routinely abuse state resources, deny the opposition adequate media coverage, harass opposition candidates and their supporters, and in some cases manipulate electoral results. Journalists, opposition politicians, and other government critics may be spied on, threatened, harassed, or arrested. Members of the opposition may be jailed, exiled, or—less frequently—even assaulted or murdered. Regimes characterized by such abuses cannot be called democratic.” Levitsky and Way, “The Rise of Competitive Authoritarianism,” *Journal Of Democracy* (2002): 52–53.

⁴ LOI n° 2013-660 du 22 juillet 2013 relative à l’enseignement supérieur et à la recherche (1), nor: ESRJ1304228L Version consolidée au 25 février 2015 [French Law on Higher Education and Research], available at: http://www.legifrance.gouv.fr/affichTexte.dojsessionid=3452B807A1FoB55FCCBE41CE5ED2F4A5.tpdjo09v_3?cidTexte=JORFTEXT000027735009&categorieLien=id, accessed on 25 February 2015.

⁵ Hochschulrahmengesetz Ausfertigungsdatum: 26.01.1976. Vollzitat: “Hochschulrahmengesetz in der Fassung der Bekanntmachung vom 19. Januar 1999 (BGBl. I S. 18), das zuletzt durch Artikel 2 des Gesetzes vom 12. April 2007 (BGBl. I S. 506) geändert worden ist,” available at <http://www.gesetze-im-internet.de/hrg/>, accessed on 18 August 2015.

⁶ Gesamte Rechtsvorschrift für Universitätsgesetz 2002, Fassung vom 09.08.2015: Bundesgesetz über die Organisation der Universitäten und ihre Studien (Universitätsgesetz 2002 – UG) StF: BGBl. I Nr. 120/2002 (NR: GP XXI RV 1134 AB 1224 S. 111. BR: 6697 AB 6717 S. 690.), Bundesrecht Consolidiert, available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002128>, accessed on 19 August 2015.

⁷ ЗАКОН ЗА ВИСШЕТО ОБРАЗОВАНИЕ, изм.ДВ.бр.61 От 9 Август 2011р, available at: http://mail.nacid.bg/newdesign/qual/att_files/bg/LAW_HIGHER_EDUCATION.pdf, accessed on 21 August 2015.

The main features of the issues of overregulation and control through administrative fining are the following:

- 1) there is a tendency towards excessive legal regulation by the government in areas that should be regulated by secondary acts of institutions, thus undermining institutions' autonomy and independence;
- 2) such overregulation makes the compliance to the laws almost impossible, thus opening the way for selective punishment by the government;
- 3) the increase in the number and amount of fines makes the pressure for some institutions and persons involved unbearable;
- 4) all this amounts to a trend of circumventing the judiciary and the criminal law, thus allowing the government to have direct control over the institutions.

Legal overregulation has enabled the government to punish with a high number of large fines the critical media for violations of legislation that prescribes in minute detail the programs of each outlet in the country. The impact on the editorial policies of most media has contributed to strengthening authoritarian tendencies.

While control over the media aids the present functioning of competitive authoritarianism, exercising control over the educational system serves the purpose of securing authoritarian power for the long term. This is accomplished through the social reproduction of a desired model of citizenship, institutions, businesses, and political party functioning, and establishing a desired ideological cultural hegemony. To achieve these goals, the government in a competitive authoritarian model must establish control over the educational process in the country. This research examines legal overregulation as one of the main methods of control over education. The government

has presented fining as a more liberal approach to lighter forms of criminal offenses with the Law on Misdemeanors of 2006 and has turned to fining as its main approach.⁸

For the purposes of this policy brief, a comparative analysis of the laws covering the media and education in the last 19 years, from 1995 to 2014, has been made to explain the impact of the existing regulations on freedom of expression and education.

⁸ "The Law on Misdemeanors," Official Gazette of the Republic of Macedonia N° 62 from 22.05.2006.

MEDIA

Freedom of the media has been a prominent issue in Macedonia since 2011, when several reports noted a decline in freedom of the media, thus affecting the country's Euro-Atlantic aspirations.⁹ In 2013 two media-related laws – the Law on Media and the Law on Audiovisual Services – were adopted in a quick and nontransparent way.¹⁰ Media professionals, experts, and media associations argued that the laws imposed excessive regulation on the media, thus affecting editorial freedom.¹¹

The Law on Audio and Audiovisual Media Services was passed at the end of 2013 with amendments added at the beginning of 2014, replacing the previous Law on Broadcasting.¹² The Association of Independent Journalists (AJM) sought to reduce the negative impact of the law, but was unsuccessful in changing the controversial elements in the law. The OSCE's representative on media freedom criticized the law, saying it “micro manages media in some cases or contains detail that should be better included in secondary legal acts” and that the law “should be drafted so that what is not prohibited is self-evidently permitted.”¹³ In line with this is also the EU Progress Report for Macedonia 2014 that says this in its intro: “The country maintains a high level of alignment with the acquis relative to where it is in the accession process. The EU agenda remains the country's strategic priority. However, over the past year, there have been serious concerns about increasing politicisation of state institutions and government control over media, including in the context of elections [emphasis added].” Further on page 2 it goes on saying: “Government influence on media output is exercised through, inter alia, state-financed advertising. There is a scarcity of truly independent reporting and lack of accurate and objective information being made available through mainstream media to the public, and a lack

⁹ For example, in the ratings on the World Press Freedom Index by the Reporters Without Borders for 2014 Macedonia is ranked in 123rd place, seven places down from the previous year (available at: <http://rfsf.org/index2014/en-eu.php>, accessed 24 August 2015)

¹⁰ Gordana Duvnjak, “Медиумските закони донесени, измените допрва” [The media laws adopted, their changes will follow in the future], *UtrinskiVesnik*, 26 December 2013, available at: <http://www.utrinski.mk/?itemID=1503E65F7D508047A90B2710C324BBB1>, accessed 19 August 2015.

¹¹ Association of Journalists of Macedonia, Article19: statement for the Media Law(s) (Skopje: Association of Journalists of Macedonia, 23 August 2013), available at: <http://www.znm.org.mk/drupal-7.7/en/node/671>, accessed on 19 August 2015.

¹² “The Law on Audio and Audiovisual Media Services,” Official Gazette of the Republic of Macedonia N° 184 from 26.12.2013.

¹³ DunjaMijatović, The Representative on Freedom of the Media Regular Report to the Permanent Council (OSCE, 28 November 2013), p. 31.

of informed public debate [emphasis added].”¹⁴

The law specifies a number of regulations affecting editorial independence that should be part of secondary legal documents (statutes, regulations, etc.). Most of the countries in the EU do not have laws on media whereas the laws on audio and audiovisual services are limited to issues such as: intellectual property, technical and technological requirements, product placement, etc. In contrast to this, The Macedonian law on media prescribes every single programmatic detail coupling it with a draconic fine. The only similar law in Europe is that of Hungary.¹⁵ The law contains 156 articles, providing for 73 different kinds of fines ranging from 1,000 to 100,000 euros. The greatest penalty that can be charged to a media outlet is 100,000 euros.¹⁶ The law also renamed the main regulatory body from the Broadcasting Council to the Agency for Audio and Audiovisual Media Services. The Agency is responsible for monitoring of the media programs under the new legislation and it imposes the administrative fines. Although technically an autonomous and independent regulatory body, however, the income from the fines goes straight into the government treasury and the execution of control and penalization is de facto the same as that carried out by the ministries.

Considering the parliament is reduced to a “voting machine” of the party in office, one can deduce that the Agency does not answer to the parliament but in fact to the government. The same goes for the government: although it should be controlled by the parliament, it is the other way around. As the EU Progress Report for 2014 states:

[...] the functioning of parliament continued to be hindered by the lack of constructive political dialogue and the ongoing deep divisions between the political parties. The absence of

¹⁴ The European Commission: “The Former Yugoslav Republic of Macedonia 2014 Progress Report, SWD (2014) 303 final” (Brussels: 8 October 2014), available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf, accessed on 24 August 2015, p. 1,2.

¹⁵ Kalina Lečevska, Artan Sadiku, Jordan Šišovski, *Legalizing Restrictions of the Freedom of the Press*, (Skopje, ISSHS, 2014), available at: <http://isshs.edu.mk/documents/Legalizing-Restrictions-of-the-Freedom-of-the-Press.pdf>, accessed on 17 September 2015.

¹⁶ This article provides fine of 100.000 euro for breaching the article 92, lines 8 and 9 of the same law which stipulate that the national television providers are obliged to produce home documentary programme at least 10 hours per year (line 8) and 20 hours per year of feature programme (line 9), see: “The Law on Audio and Audiovisual Media Services,” Official Gazette of the Republic of Macedonia N°184 from 26.12.2013, p 23.

most opposition MPs from parliament hampered its work on adopting new reforms, and its ability to provide the necessary checks and balances on the activities of government.¹⁷

Thus, turning the Republic into one party (one coalition) system. The following data illustrates our claim: - 10.05.2014-31.12.2014: 96,8% of the adopted laws have been proposed by the Government whereas only 3,2% by MP's. All of the laws proposed by the Government have been adopted without a single exception. However, even the several adopted laws proposed by the MP's are proposed by the two main MP's from the ruling VMRO-DPMNE/DUI coalition Ilija Dimovski and Talat Xhaferi as well, plus several other MP's.

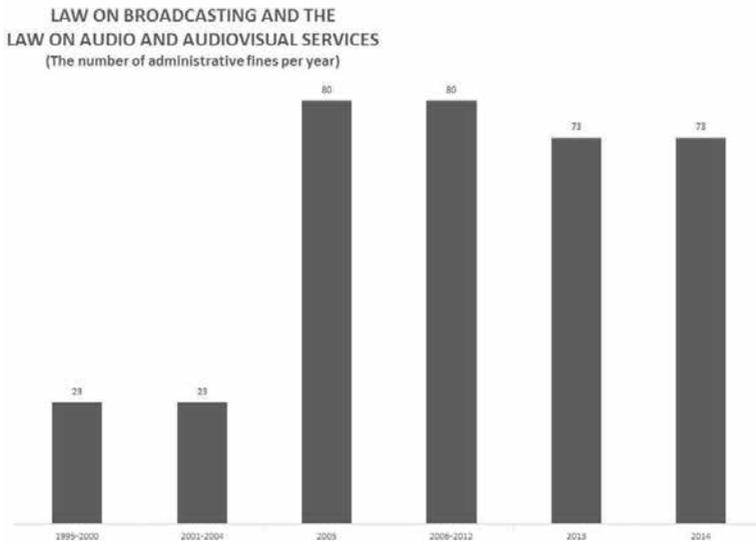


Figure 1: Fines in the Law on Broadcasting (1995-2013) and the Law on Audio and Audiovisual Media Services (2013-2014)

¹⁷ The European Commission: "The Former Yugoslav Republic of Macedonia 2014 Progress Report, SWD (2014) 303 final" (Brussels: 8 October 2014), available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf, accessed on 24 August 2015, p. 7.

As can be seen in Figure 1, the use of administrative fines has increased dramatically since the new law was passed. Under the Law on Broadcasting, from 1995 to 2004 there were only 23 fines prescribed by law and from 2005 to 2012 the number of administrative fines stipulated by the law on media rose to 80.

The case of the Telma TV, one of Macedonia's most important critical media outlets, illustrates the way that legal overregulation can act as a tool of government control. In 2014, Telma received three fines for offenses falling under non-adherence to the program formats imposed by the Agency for Audio Audiovisual Media Services. The largest penalty came in May 2014 for "5 minutes gap of unbalanced broadcasting of folk and pop music," which drew a fine of 20,000 euros.¹⁸ This large fine placed Telma on the edge of bankruptcy. There are other absurd examples for notices by the Agency for breaching the law. The TV station Alsat-M have been noticed because the "animated film 'Tom and Jerry' . . . aired on 2 and 3 February didn't acquire translation..."¹⁹ Also, TV station 24 Vesti had several notices for "unbalanced broadcasting of folk and pop music."²⁰ It is worth mentioning that the name of the station in Macedonian is 24 News, so this is very clear example that the government is breaching the editorial freedom of the media. Namely, it is not the problem of "unbalanced broadcasting of folk and pop music," but the imposition of broadcasting music on a news channel itself. Such fear of penalties contribute to an increased self-censorship among journalists, one of the most worrying phenomena in terms of freedom of expression.

¹⁸ The fine is for contempt of the obligations of Article 92 of the: Law on Audio and Audiovisual Media Services, Official Gazette of the Republic of Macedonia N°184 from 26.12.2013 year.

¹⁹ Agency for Audio Audiovisual Media Services, "Decision on Taking Action – Notice," (No 03-372 from 09 February 2015), available at:http://www.avmu.mk/images/Resenie_za_prezemanje_merka_TV_Alsat_M_-_clen_64_stav_3.pdf, accessed on 09 October 2015.

²⁰ Agency for Audio Audiovisual Media Services, "Decision on Taking Action – Notice," (No 03-961 from 07 August 2015), available at:http://avmu.org.mk/images/24_Vesti.pdf, accessed on 09 October 2015.

* * *

The issue of state control and the ruling party's (VMRO-DPMNE)²¹ abuse of the media is one of the central problems of the current political crisis in Macedonia. The European Commission's recommendations to overcome the current crisis²² includes those in line with our findings on the problem of overregulation in the media. Namely, the recommendations call for reducing defamation practices, stating that there is a need for "revising the procedural rules to exclude petty cases and instead increase the use of mediation to resolve these," and to "support and promote greater use of self-regulation as alternative to court action." However, in our opinion, this should be accomplished through secondary legislation and intra-institutional regulation in order to increase the autonomy of public institutions and reduce the possibilities for the government to execute illegitimate control through overregulation.²³

²¹ VMRO-DPMNE: Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity [ВМРО-ДПМНЕ: Внатрешна македонска револуционерна организација – Демократска партија за македонско национално единство]

²² European Commission, "Urgent Reform Priorities for the former Yugoslav Republic of Macedonia" (Brussels, June 2015), available at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf, accessed on 22 July 2015.

²³ This is added for the revised version from July 2015.

EDUCATION

Through control of education and limiting academic freedom, the government can establish a mechanism for long-term control not only over the educational system, but also over the society as a whole given the formative role of education for a society. In Macedonia, this has been accomplished through legislative overregulation and the increase of the number and amount of fines, which places pressure on students and on the academic community, which in every democratic society are the main agents of social change. In our study of legislative overregulation in education, we reviewed the laws on primary, secondary and higher education. In all cases considered there was visible growth in the number and amount of fines, but also an increase in unnecessary and illogical regulations. Punishment of those institutions and individuals that do not conform to these regulations and, in particular, to the personnel policies of the executive branch, provides a clear mechanism of control.

Self-censorship would be a logical consequence in a country in which the distinction between state institutions and the ruling party has been blurred. The blurring at issue is a problem established in evidence based reports, such as the EU progress report,²⁴ OSCE-ODIHR,²⁵ the Senior Experts Group Report²⁶ and authoritative policy research analysis such as Kurt Bassuener's "No Stability without Accountability,"²⁷ and "Unraveling the Political Crisis in Macedonia: Toward Resolution or Calm Before the Storm?"²⁸ by "The Balkans in Europe Policy Advisory Group."

²⁴ The European Commission: "The Former Yugoslav Republic of Macedonia 2014 Progress Report, SWD (2014) 303 final" (Brussels: 8 October 2014), available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf, accessed on 24 August 2015.

²⁵ International Election Observation Mission (IEOM): The former Yugoslav Republic of Macedonia Presidential and Early Parliamentary Elections, (27 April 2014), available at <http://www.osce.org/odihr/elections/fyrom/118078?download=true>, accessed on 24 August 2015.

²⁶ The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, Brussels, 8 June 2015, available at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf, accessed on 25 August 2015, p. 4.

²⁷ Kurt Bassauer, "No Stability without Accountability – The West's Responsibility in Macedonia", Democratization Policy Council, (June 2015), available at <http://www.democratizationpolicy.org/uiimages/DPC%20Policy%20Paper%20-%20The%20West's%20Responsibility%20in%20Macedonia-1.pdf>, accessed on 25 August 2015.

²⁸ Unravelling the Political Crisis in Macedonia: Toward Resolution or Calm Before the Storm?", The Balkans in Europe Policy Advisory Group (2015), available at http://www.suedosteuropa.uni-graz.at/sites/default/files/article_attach/Unraveling%20the%20Political%20Crisis%20in%20Macedonia.pdf, accessed on 25 August 2015.

PRIMARY EDUCATION. One of the most criticized new methods for pressure and control over primary education is the concept of “external examination,” introduced by the Law on Primary Education in 2008.²⁹ Under this practice, the Ministry of Education organizes an “external examination” in order to evaluate the: (1) knowledge gained through the year by the students, and (2) the teacher’s teaching and grading, whereby derogation in the grading is punished by fines. The testing is conducted directly by the Ministry of Education acting under the government’s orders.

The government presented this measure as a progressive step, intended to improve the quality of education, especially through standardization and evaluation of the quality of teachers, but the external examination opens the door to crippling fines for teachers. For example, Article 97 legally stipulates that 20% of all teachers who showed larger deviations in their assessment of the student’s test, will have their salaries reduced by 10% the next year. What is normally regulated in Europe by the institutions themselves and represents their autonomous right to an informed, professional and executive decision is transposed to the level of legislation and becomes part of direct governing of the Ministry.

Further, the section “XV Misdemeanor Provisions” Article 172 of the Law sets fines in the amount of 2500-3000 euro for the schools and 1500-2000 euro for school principals. Such fines create mechanisms for punishing the schools and principals the basis of political compliance. These fines are intended for errors which sometimes can be mere oversight such as not informing the parents about student’s grades at least two times per semester etc. The 2014 Law Amending the Law on Primary Education³⁰ adds to the overregulation. Article 6 of the amendment refers to Article 128 of the Law on Higher Education regarding the selection of a director. The selection criteria are over-regulated, like requiring special language skills. For example, the requirements are: English proficiency through defined tests: “TOEFL IBT - at least 30 points, IELTS - at least 3 points, BULATS - at

²⁹ Law on Primary Education, Official Gazette of the Republic of Macedonia no. 103 from 19.08.2008.

³⁰ Law Amending the Law on Primary Education, Official Gazette of the Republic of Macedonia, No. 41 of 27.02.2014.

least 20 points or KET (Cambridge English) - passed, APTIS - minimum level A2.”³¹ Also, they need to pass “a psychological test and a test of integrity.”³² These details should have been regulated in secondary legal acts adopted by the institutions and not by a law. Furthermore, there are very high fines for small omissions, like the fines of 1000, 600, and 300 euros³³ for the legal person and 300 euros for the teacher if an electronic records of grades³⁴ is not regularly updated. Note that the average teacher’s income is between 300 and 400 euros.

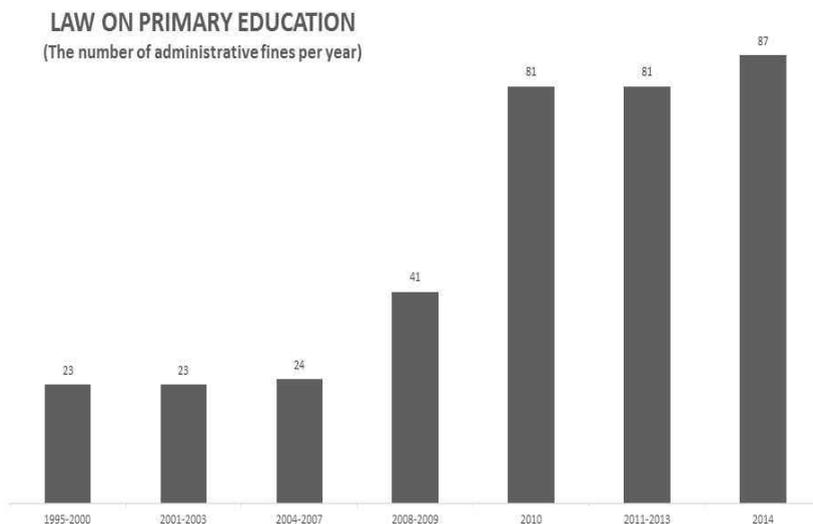


Figure 2: Fines in the Law on Primary Education (1995-2014)

As can be seen in Figure 2, fines under the Law on Primary Education have grown dramatically. Thus, in

³¹ Law Amending the Law on Primary Education, Official Gazette of the Republic of Macedonia, No. 41 of 02.27.2014, 3.

³² Law Amending the Law on Primary Education, Official Gazette of the Republic of Macedonia, No. 41 of 02.27.2014, 3.

³³ Law Amending the Law on Primary Education, Official Gazette of the Republic of Macedonia, No. 41 of 02.27.2014, 3.

³⁴ An E-Journal is a project of the Ministry of Education which purpose is enabling better communication between teachers and parents for the information of student’s everyday behavior with grades and absence see more at the official web site at: <http://ednevnik.edu.mk/>, accessed on 16 September 2015.

the period 1995-2003 year there were only 23 fines prescribed by the law. In the period from 2004-2007 year their number rose to 24, while in 2008-2009 their number reached 41 fines in the law. From 2010 to 2013 this grew to 81 fines and in 2014 alone there were 87.

SECONDARY EDUCATION. The legislation on secondary education has shown the same trends as the law on primary education. With the Law on Secondary Education,³⁵ the amount of fines was set as a percentage of salaries, but the 2014 Law Amending the Law on Secondary Education³⁶ gave fixed fines determined in euros. Furthermore, the amendment added fines totaling 1,000 to 2,000 euros for any responsible person who in some way hampers the “external examination.” Whereas previously fines would have been determined by secondary legislation according to the needs of specific institutions, the introduction of fines in the law increased the control of the executive over education. In addition to the fines, the law repeats again the highly restrictive standards given above for choosing the directors of schools that request specific exams, so certain companies that conduct the exams received political favoritism. Namely, TOEFL, IBT, IELTS, BULATS, KET (Cambridge English), APTIS are spelled out in the law as the only exams recognized by the state. Failure to provide proof of such exams taken and yet be appointed a school director is punishable by law in a form of administrative fine.

³⁵ Law on Secondary Education, Official Gazette of the Republic of Macedonia No. 44 09.20.1995.

³⁶ Law Amending the Law on Secondary Education No. 41 27.02.2014.

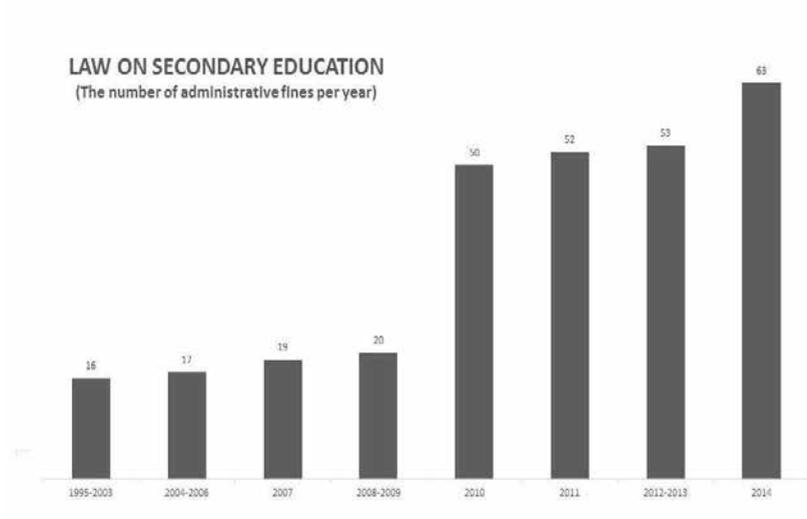


Figure 3: The number of fines in the Law on Secondary Education (1995-2014 year)

As shown in Figure 3, the number of fines stipulated by the Law of Higher Education has increased over the years. In the period until 2009 fines never exceeded 20 per year. They more than doubled in 2010, and continue to grow through 2014.

HIGHER EDUCATION. One of the main roles of higher education in a contemporary democratic and market-oriented society is to create professionals and leaders who will shape institutions. According to UNESCO, the role of education is defined as follows:

Education should be a means to empower children and adults alike to become active participants in the transformation of their societies. Learning should also focus on the values, attitudes and behaviors which enable individuals to learn to live together in a world characterized by diversity and pluralism.³⁷

So, from the perspective of any authoritarian government, exerting control over higher education is critical for achieving a long-term rule over the society.

Legislative overregulation of infringing on the autonomy of the higher education institutions is the central and most powerful means of establishing control over this domain of society. Thus, a continuous pressure on academia is being imposed. Namely, with minor administrative offenses one can be enforced through paying huge fines, and, therefore, a direct control can be established on the basis of blackmail and threat by the executive power.

The Law on Higher Education, which is currently under moratorium thanks to a massive academic movement against it in the first half of 2015, contains a number of examples of overregulation. For one, the law stipulates that a main criterion for the election of the professor is to publish in the “Web of Science.”³⁸ “Web of Science” is a brand name of the database of journals owned by Thomson Reuters. Thus there is not only open favoritism towards one legal entity that profits

³⁷ UNESCO: The Role of Education, available at <http://www.unesco.org/new/en/social-and-human-sciences/themes/flight-against-discrimination/role-of-education/>, accessed on 25 August 2015.

³⁸ “In Article 136, paragraphs 1 and 2, after the words “impact factor”, the following wording shall be added: “from the appropriate field listed in the Web of Science database.”

Paragraph 2 shall be amended to read as follows:

“As an exception to the rule, a person can be elected to a higher teaching and academic rank or to a teaching or scientific rank earlier, i.e. before the lapse of at least half of the term for which the selection to the current rank was made, if in addition to the requirements set out in paragraph 1 of this Article he/she has had scientific papers published in an impact factor scientific journal from the appropriate field listed in the Web of Science database, totaling at least 20 points in line with Article 95 paragraph 6 of this Law. Early election to a higher rank following the lapse of half of the time for which the selection was made may be granted to individuals who have obtained PhD or Master’s degrees from one of the 200 highest ranking universities according to the Shanghai list.” In: Law Amending the Law on Higher Education, Official Gazette of the Republic of Macedonia No. 10/2015 of 22.1.2015, English translation available at: <https://professorskiplenium.files.wordpress.com/2015/01/05-amendments-to-the-law-on-higher-education-macedonia-01-2015.pdf>, accessed on: 25 August 2015, accessed on 25 August 2015.y A Government over the higher allows the students to paArticle 23

from the activity this article of the law refers to, but also an explicit limitation of the academic freedom of individuals and institutions to determine their own professional criteria. The Law on Higher Education Institutions for Teachers in Pre-School Education, Elementary and Secondary Education³⁹ also sets standards for election to titles for professors, whereby the commission is approved directly by the Minister of Education, thus giving the government direct control over academia.

Article 167 of the section “Misdemeanor Provisions” of the law provides a series of fines of 1,000 to 2,500 euros for the legal entity and 500 to 1,000 euros for the responsible person. Article 40 of the 2013 Law Amending the Law on Higher Education⁴⁰ increases the fines to the amount of 5,000 to 7,000 euros for the responsible person, “if he does not deliver or if he submits incomplete data needed to update the database on higher education to the Ministry responsible for work in the field of higher education.” This transfers the work of the ministry to academicians not in the employ of the state, and requires the provision of information that may be personal and that not all will want to share in a public database. The law creates situations where a minor technical error can lead excessive fines: 5000 euros equals 10 months of salary for an employee of a scientific institution. The 2014 amendments to the law provided a series of new fines and regulations that further increased the possibility of pressure. Article 168-b even allows for one to three years’ imprisonment for the responsible person who acts contrary to the law.⁴¹

³⁹ Article 17 paragraph 9: “The review committee for selection to title for the persons mentioned in paragraph (1) of this Article shall be established by the Scientific Council after prior consent of the minister of higher education in charge and consists of at least five members of which at least two are from universities which are on the list prepared by the Center for World Class universities at Shanghai Jiao Tong University or on the list prepared by Quacquarelli Symonds (QS) from the UK.” in: Law on Higher Education Institutions for Teachers in Pre-School Education, Elementary And Secondary Education, Official Gazette of the Republic of Macedonia No. 10/2015, 20/2015 and 98/2015, available at: http://www.mon.gov.mk/images/documents/zakoni/Zakon_za_visko_obrazovni_ustanovi.pdf, accessed on 25 August 2015.

⁴⁰ Law Amending the Law on Higher Education, Official Gazette of the Republic of Macedonia No. 15 of 25.01.2013.

⁴¹ “The responsible person managing the higher education institution who has acted contrary to this Law, i.e. who has allowed a student to take more than one half of the third study year exams or to enroll in the fourth year of studies without having passed the State Exam scheduled for the second year of studies, or who has issued a higher education diploma to a student who has not passed the State Exam, shall be sentenced to one to three years’ imprisonment (Article 69-a).” in: Law Amending the Law on Higher Education, Official Gazette of the Republic of Macedonia No. 10/2015 of 22.1.2015, English translation available at: <https://profesorskiplenum.files.wordpress.com/2015/01/05-amendments-to-the-law-on-higher-education-macedonia-01-2015.pdf>, accessed on: 25 August 2015.

One of the most striking examples of overregulation in the 2013 amendment is prescription of standards that should be in the domain of the regulations and statutes of the institutions or universities. For instance:

The university or the unit thereof, as well as the higher education school/institution, is obliged to conclude at least two agreements for the double degree or a joint study program (joint degree) with a university from the first 500 highest-ranked universities according to the Shanghai list, i.e., 100 top-ranked universities in the MBA program, as well as with a higher education accredited institution as one of the first 200 top-ranked universities in the relevant scientific area, according to CIO Shanghai Tong University, US News and World Report, and the Times Higher Education Supplement-World University Ranking.⁴²

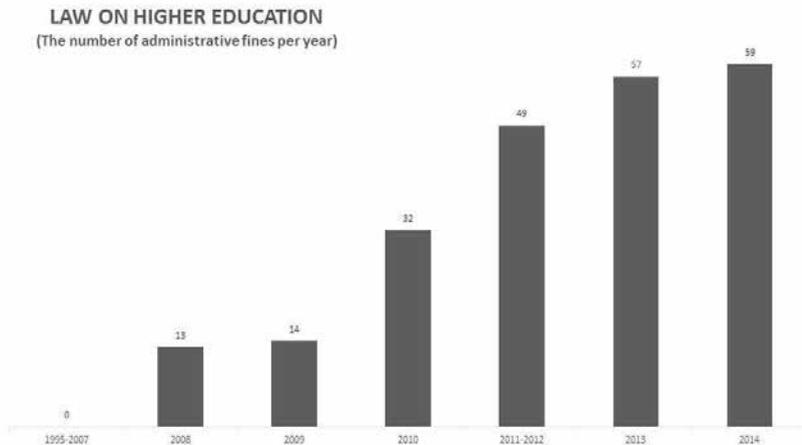


Figure 4: The number of fines under the Law on Higher Education (1995-2014 year)

⁴² Law Amending the Law on Higher Education, Official Gazette of the Republic of Macedonia No. 15 from 25.01.2013.

As can be seen from Figure 4, no fines were issued under the Law on Higher Education until 2007. The first fines appear after the amendments of 2008, where they numbered 13. The number of fines has continued to grow since then, so that under the latest version of the law from 2014 there were 59 fines.

CONCLUSIONS

The direct interference of the government and the parliament in programmatic and editorial choices through overregulation undermines media freedom.

The constant changes, new procedures, and pressure on academia have created a state of legal insecurity. The blurring of party and state control is a systemic problem of Macedonian society and institutions in the past few years. Control over education and academia has become a project of ideological control for the social reproduction of the desired model of an obedient citizen in conformity with the ideology and value system of the ruling party. The students' and professors' protests of 2014-2015 indicate that this effort has gone too far and created a backlash.

Legislation in the country covering media and education provide for an excessive number of administrative fines that serve as a means of direct control for the government, circumventing the judiciary. Indeed, given the size of the fines, a mere two or three for trivial errors can lead to the bankruptcy of a media outlet or the end of a teacher's career.

Self-censorship thus becomes the logical consequence of this pervasive overregulation.

RECOMMENDATIONS

TO THE PARLIAMENT AND THE LEGISLATIVE COMMITTEE:

- To conduct a legal review of the existing legislation in order to prepare a recommendation to the parliament and proposers to (a) overcome the problem of overregulation by transferring more of the regulations to secondary legislation and other documents adopted by institutions (such as the guides of institutions, statutes etc.), (b) to reduce administrative fining to the bare minimum in order to restore the sovereign domain of the judiciary within the separation of powers.
- To prepare a legal document that stipulates clearly and unambiguously which category of questions are subject to legal control, and which are subject to secondary legislation adopted by institutions in their respective domains.
- Submit its legislation to an in-depth systemic review by an independent EU legal expert group which shall determine the instances of breach of the right to autonomous business and policy decisions of the institutions, companies and other legal entities inscribed in the laws adopted by the Parliament in the past five years and propose solutions.

TO THE NON-GOVERNMENTAL SECTOR IN THE REPUBLIC OF MACEDONIA:

- To stress publicly to the techniques of overregulation and fining as mechanisms of absolute control by the executive branch and as an indirect partial suspension of the sovereign jurisdiction of the judiciary.

TO THE EUROPEAN COMMISSION AND OTHER INTERNATIONAL ACTORS ENGAGED IN THE MACEDONIAN EUROPEAN UNION INTEGRATION PROCESS:

- To include overregulation and excessive fining as one of main factors that might influence the level of Macedonia's compliance with the Copenhagen criteria and the separation of powers.

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Thus interdisciplinarity, multidisciplinary and transdisciplinarity are the approach that predominantly marks the scientific production of the Institute, serving as the basis for the creation of nuanced and context specific policy solutions addressing the particularities of the reality in question. The Institute is committed to scientific rigor which strives to evade academic elitism of scholarship for the sake of scholarship but is rather meant to serve as the basis for concrete, precise but also bold and innovative analyses and visions of social transformation.

