



Supervisory Commission

Facing the Publications Court

Policy brief done by Lawyer Tony Mikhael from Maharat Foundation

Beirut - December 2021



الجمعية اللبنانية
لتعزيز
الشفافية



Supervisory Commission facing the Publications Court

This brief comes as a summary of the monitoring, conducted by Maharat, of the previous 2018's parliamentary elections, and for the activities the foundation carried out in line with the electoral process, especially the part related to media and electoral advertisement, which constitutes an essential aspect of the electoral law and of the general basic principles to ensure fair, transparent, inclusive and democratic elections. This paper presents ways to contemplate media violations during the elections, especially when it comes to the powers of each of the Election's supervisory commission, the Appellate Prosecutor's office and the Publications court, and the complications arising from, first, the role of the Appellate Prosecutor's office, and second, the delay of the Publications court in considering violations. This document suggests recommendations to each of the court of Publications and the Parliament, in order to control media violations more effectively, which can be used as guidance for the 2022 elections and beyond.

Who looks at the media violations during the elections?

The authorities of each of the supervisory commission
the Appellate Prosecutor's office and the Publications court

Law No. 44 of parliamentary elections, issued on 06/17/2017, delegated to the Publications Court the authority to consider the violations committed by the media for the provisions of Chapter VI relating to electoral media and advertising, and violating the measures taken by the commission against the media.

Paragraph 1 of Article 81, attached to Paragraph B of the Electoral Law, stipulates that it is up to the commission to refer the violating media to the competent Publications Court. The text of Article 81 has indicated ambiguity regarding the process followed by the commission to refer the violating media to the Court, as the last paragraph of the article 1 mentioned above stipulated that "The Public Prosecution officer will pursue the offending medium before the Publications Court, automatically at the request of the harmed party" with specifying the deadlines to be adhered to by the media and the court to decide the cases. Here, the Commission cannot be considered harmed in order to practice its right to claim through the Appellate Prosecutor's office, though it is authorized by law to request prosecution in front of the court. And in the late ruling issued on January 25, 2019

the Publications Court responded to the prosecution against Al-Shiraa Magazine for violating the provisions of electoral silence for the Public Prosecution's Appeal against the magazine based on a referral by the Commission, outside the three-month period stipulated in Article 17 of Legislative Decree No. 77/11.

In this context, it can be highlighted that there is a procedural defect in the interpretation of legal texts that are related to the referral of the violating media to the Publications Courts, which limits the authority of the Supervisory Commission that has to act in partnership with the Public Prosecution office to bring the cases against media outlets in front of the Publications Court. If the Public Prosecutor neglects the mobilization of the case by filing it or delaying the prosecution outside the three-month period, the referral of the Supervisory Commission shall lapse and becomes impractical. Interpreting the text of Article 81 as above hinders the commission's role to effectively subject the media to the obligations and provisions of the Electoral Law.

From this angle, it is necessary to read the text of Article 81, which explicitly permits the Commission, when verifying the violation, to "refer the media outlet to the competent Publications Court" and this referral must be either straight through a direct claim carried out by the Commission in front of the court, or referred by the Public Prosecution office, administratively and not conditioned by the allegation of the Public Prosecution. This can be deduced from the text of the provisions of Article 81, which retained the authority of the Public prosecution office in moving cases automatically or based on the complained of the harmed party, and referring them to the Publications Court in other cases, where the Commission is not a party, the provisions of the law are applied.

Although the text of the Article 81 of the Electoral Law requires the Publications Court to issue its decision within a maximum of 24 hours in cases submitted by the Public Prosecution and by the personally affected parties, while preserving a period of 24 hours of the defendant from the date on which he was notified of the content of the case to exercise the right of defense, except that the above mentioned text did not specify a deadline for the Publications Court to decide on the referral received from the Supervisory Commission on the elections. Therefore, it has not been indicated that this time limit for the Publications Court applies on the cases referred by the Commission for media's violations of its obligations in accordance with the provisions of Chapter VI, which through the Supervisory Commission has indicated in this regard an ambiguity of the legal text and its lack of clarity and the delay of the Publications Court in deciding the cases referred by the Commission, in accordance with the provisions of Article 81 of the Electoral Law.

What is the impact of the delay in the Publications court ruling on media violations during the elections?

The delay of the Publications Court in ruling the violation by the media under the chapter related to Electoral media and advertising and the failure to take quick measures in this framework enables the media to escape the course of law of restrictions imposed on it to ensure fair competition between candidates and lists.

The text of Article 81 leaves wide discretionary authority to the Publications Court to decide on referral requests from the Commission against the offending media. Paragraph B of the above article stipulates that when referring the media violation by the Commission to the competent Publications court “to which it is up to take what it deems appropriate” of the following measure:

- Imposing a fine on the violating media, ranging in value from fifty to a hundred million Lebanese Liras.
- Partial suspension of the offending media outlet for a period of time not exceeding three days.
- Complete suspension of the violating media outlet for a period of time not exceeding three days.

The text of the article mentioned above entrusted the Publications Court with a discretion power in describing which act done by the media outlet constitutes a violation of the law, and it may take accordingly what the Court deems appropriate fit of measures. This would disrupt the Commission’s role in monitoring the media and deterring it from the persistence of violations that affect the legitimacy of the Electoral process.

And therefore, the power granted to the Commission to take any of the actions stipulated in Paragraph A of Article 81, in particular “sending a warning to the violating media or obligating it to broadcast an apology or to enable the affected party to exercise the right to reply” this will remain in vain in case the media outlet was prevented from responding to these procedures as long as the imposition of any immediate punishment is within the power of the Publications Court, that can, according to its discretion authority, not impose any penalty.



Case Study: Media violation of the Electoral Silence

The media that violated the electoral silence during the 2018 elections, which was referred by the Commission to the Publications Court, managed to pressure the minister of Information to intervene and request the Publications Court to carefully consider these referrals and justify the violations of the electoral silence through the requirements of the Media's work in need to inform the public about the positions and developments. Media representatives' voice got louder as the fines that could be imposed on the outlets by the Publications Court would reach a maximum of 100 million Lebanese Pounds, which is the equivalent to around 66,000 US dollars at the time, which would have been a huge financial burden on the media for every violation during the Electoral silence period.

The supervisory Commission complained in its report about interference in the work of the Publications Court, which did not immediately decide on the referrals submitted to it by the Commission to take punitive measures against the media.

The Supervisory Commission's experience with the Publications Court: The Publications Court did not rule the cases submitted by the supervisory Commission or referred by the Public Prosecution office as quickly as necessary during the campaigns period of the elections. Some verdicts were issued more than a year later after the elections ended (Publications Court ruling on Al-Shiraa Magazine on 25 November, 2019, hence it was on 1 June 2018 that the Chairman of the Supervisory Commission announced, through a press interview, the referral of 41 various media outlets, distributed between visual, audio, written and electronic means to the Publications Court, for violating the provisions of the law on the election of members of the parliament during the Electoral campaign and during the determined period of electoral silence. In the report, the Commission mentioned the referral of 11 media outlets to the court due to its violation of electoral silence provisions (The commission's report is published in the official gazette, annex No. 3, dated 18/1/2019). The commission did not allocate any section of the report related to the results of referrals mentioned above, and this section is shrouded in ambiguity which jurisdictions should seek to explain it.



The Problem

1

The main issue in deterring media violation lies in the disability of the Commission's power in this regard and this leave the matter to the Publications Court, which will have the discretionary powers, without any specific deadlines for deciding on the Commission's requests and their referrals, which allowed and will allow political interventions, delaying the decision concerning them, and letting media outlets escape any authority that deters the violations of the Electoral law and provisions of electoral media and advertising.

Solution

It is among the duties of the Publications Court to respond quickly and promptly to the requests of the Commission supervising the elections and dealing seriously with the facts and the data provided by the commission in order to take urgent measure against the media, while preserving the media's right to appeal these measures. The legislature can amend the text of Article 81, whereby it grants the media that have been affected by the urgent measures taken against it by the Court, whether it is in terms of imposing fines or stopping broadcasting to claim damages in front of the court.

The Parliament must also clarify the text of Article 81 and grant broader powers to the commission for immediate penalties on violating media outlets.

Stakeholders



Publications Court

accelerate the settlement of cases

The Parliament

Clarification of the text of Article 81 and consider giving the Commission broader authorities



Case Study: The French Example

The Supreme Council of Audio-Visual and Broadcasting has wide powers to organize election campaigns on television and radio and ensuring respect for the plurality of opinions and the representation of diversity in the media, and it has broad executive powers in imposing penalties for violating media. The powers of the Council are still expanding to this day, especially with the emergence of the complications of the digital world

In the anti-disinformation law published in 2018, for example, known as anti fake news law, it requires major platform operators on the Internet such as Facebook, Google, Twitter and YouTube to have a duty to cooperate in the fight against dissemination of false information. The Council was empowered to regulate some content published on digital platforms during the electoral campaign period.

It creates a positive collaboration on the platforms and imposes a system of mechanisms to fight disinformation. The law gives the Supreme Council for Audiovisuals the power to consider the extent of the application of this obligation, where it can impose penalties up to the suspension of broadcasting services of Television that is controlled by a foreign country or is found to be under its influence.

The rules derived from the French electoral law as well as the recommendations of the Supreme Council for Audiovisuals in France and the National Commission for Information and Freedoms in France, confirm the right of political parties and candidates to create websites freely, for purposes of Election campaigns, subject to the specific rules and prohibitions stipulated in the provisions of the Elections law, including the electoral silence requirements that apply to campaigns on the Internet and on any other platform and on any message of the electoral propaganda nature to be published by any means of communication to the public and electronic means.” While opinion polls are prohibited from being published on the Internet the day before and on election day. However, it is allowed to continue publishing previously published polls.

Text: Article 81

In penalties and fines

Taking into account the provisions of the Penal Code, the Publications Law, and the Audio Visual Media Law, the Commission may take what it deems appropriate of the following measures against any of the media and advertising outlets in violation of the provisions of this chapter related to Electoral media and advertising:



Sending a warning to the violating media or obliging it to broadcast an apology or enabling the affected candidate to exercise the right of reply



Referring the violating media outlet to the competent Publications Court, which can take the following measures it deems appropriate:

- Imposing a fine on the violating media, ranging in value from fifty to a hundred million Lebanese Liras.
- Partial suspension of the offending media outlet for a period of time not exceeding three days, this endowment includes all programs, interviews and bulletins, political seminars and news.
- In the event of a repeated violation, the offending media outlet shall be suspended from work completely and entirely shut down all its programs for a maximum period of three days.



Supervisory Commission facing the Publications Court

Prepared by the Consortium of organisations working on Elections (The Lebanese Association for Democratic Elections, The Lebanese Union for Persons with Physical Disabilities, Maharat, and the Lebanese Transparency Association). The policy paper is within the framework of the "Talk Politics" program, which is implemented in partnership with the United Nations Development Program and funded by the European Union and the United States Agency for International Development. The program aims to provide citizens with information about electoral reforms and to involve them in the democratic process.



This publication was funded by the European Union and the United States Agency for International Development. With technical support from the United Nations Development Programme. The opinions expressed in this publication do not reflect Official positions of the European Union, the United States government, or the United States Agency for International Development or the United Nations Development Program.



Co-Funded by the European Union
بتمويل مشترك من الاتحاد الأوروبي

