

ARTICLE 19

# Tunisia: Draft Decree on the Freedom of Audiovisual Communications and the Creation of an Independent Higher Authority for Audiovisual Communication

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October 2011

Legal analysis

# Executive summary

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In October 2011, ARTICLE 19 analysed the second version of the Draft Decree on the Freedom of Audiovisual Communication and the Creation of an Independent Higher Authority for Audiovisual Communication (the “Draft Decree”). The Draft Decree is an important piece of legislation that responds to the urgent need for legal guarantees of free broadcasting in the post-revolutionary period of Tunisia.

In facilitating the transition to Tunisia’s first free parliamentary elections, elections of the Constituent Assembly, ARTICLE 19 welcomes the Draft Decree as strengthening the foundations of the new democratic regime in Tunisia.

At the same time, ARTICLE 19 finds that the Draft Decree contains a number of significant shortcomings which must be addressed in order to adequately protect freedom of expression in the country. Most of the rights guaranteed in the Draft Decree are inadequately defined and a number of important principles and duties are left out altogether: e.g. editorial independence, pluralism, and non-discrimination. The Draft Decree could also be strengthened by incorporating the internationally recognised three-part test on restrictions of freedom of expression and by explicitly prohibiting prior censorship.

While the Draft Decree includes welcome guarantees for the independence of the broadcast regulator, these guarantees are generally insufficient. In particular, there are no provisions for public participation in appointment procedures, the conditions for dismissal are too vague, and there are no guarantees of financial independence. ARTICLE 19 further recommends that the regulator be vested with powers to develop codes of broadcast standards.

The biggest weakness of the Draft Decree, however, lies in its failure to set out licensing procedures and conditions. ARTICLE 19 is aware that there has been extensive consultations and discussion on licensing procedures and the procedures might be set up in a different piece of legislation than the Draft Decree. ARTICLE 19 fully supports the process of setting up such procedures urgently as in their absence, this could allow for arbitrary and unjustified refusals to grant licenses. Such specific law hence should accompany the Draft Decree or the procedure could be set in the Draft Decree. ARTICLE 19 reiterates that by setting clear time limits for the proceedings and on the duration of broadcast licenses – and by subjecting any refusal to issue a licence to judicial review – the Tunisian legislation can ensure transparency and fairness, promote pluralism, and prevent concentration of ownership.

ARTICLE 19 is further concerned that the Draft Decree contains no rules concerning broadcasting content, and that regulations for broadcasting during elections are too vague to guarantee election fairness: there is, for example, no obligation to give airtime to election candidates and no remedies provided for inaccurate information. Again, unless these guarantees are set up in a specific piece of legislation, this would constitute a serious violation of international freedom of expression standards.

While the Draft Decree ensures the accountability of the regulator, the regime could be further democratised by securing public participation and requiring the regulator to report to the Parliament. Finally, while ARTICLE 19 welcomes the Draft Decree’s liability regime and enforcement procedures, both can be improved by recognising the right to reply and the right to

rectify. ARTICLE 19 also considers that broadcasters should be explicitly protected against liability for the statements of others made during live broadcasts.

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# About the ARTICLE 19 Law Programme

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The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org).

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# Summary of Recommendations

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- The Draft Decree should explicitly guarantee the right to freedom of expression through the broadcast media. This right should include the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, orally, in print, in the form of art, through the broadcast media. The right to freedom of expression includes both the right of broadcasters to be free of State, political or commercial interference and the right of the public to maximum diversity of information and ideas in broadcasting.
- The Draft Decree should define the principles it guarantees.
- The Draft Decree should establish that in order to be legitimate, all restrictions of the right to freedom of expression should i) be established by law; ii) pursue one of the following legitimate aims: respect of the rights or reputations of others; the protection of national security or of public order; or the protection of public health or morals; iii) be necessary and proportionate for the achievement of the legitimate aims.
- The Draft Decree should explicitly guarantee pluralism and diversity, editorial independence, universal access, non-discrimination of private, public and community broadcasters, and should prohibit prior censorship.
- Professional organisations and media owners should not appoint member of the broadcast regulator.
- The President and the Parliament (the institution which currently exercise the sovereign will of the people) should appoint members to the broadcast regulator who are nominated by the public, professional and civil society organisations.
- Only the appointing body should have the power to dismiss members. A member should not be subject to dismissal unless he or she no longer meets the rules of incompatibility; commits a serious violation of his or her responsibilities; or is clearly unable to perform his or her duties effectively.
- The broadcast regulator should employ its own administrative staff
- The broadcast regulator should propose the budget to the Parliament who should adopt it with a vote in accordance with the normal procedure for assigning funds to independent public bodies.
- The rules relating to payment and reimbursement of members of the broadcast regulator be set out clearly in law.
- The broadcast regulator should be vested with powers to develop codes of broadcast standards to guide the coverage of particular issues such as elections, protection of minors, or reporting of crimes.
- The Draft Decree should secure fair and transparent licensing proceedings by setting out clear, precise and relevant legal rules. These rules should, as a minimum, ensure publicity

and establish time limits and clear and objective criteria for granting licensing. The criteria should include promoting a wide range of viewpoints which reflect the diversity of the population and prevent the concentration of ownership.

- The Draft Decree should impose content requirements aiming to protecting minors, regulate sponsorship, and prohibit any incitement to hatred based on race, sex, religion or nationality.
- Broadcasters should be obliged to participate in elections by providing adequate election information and providing voter education programmes.
- Broadcasters should be obliged to give airtime to election candidates.
- The airtime should be granted on “a fair, equitable and non-discriminatory” basis. This should apply not only to the amount of airtime granted but also to the scheduling of broadcasts and any charges levied.
- The broadcast regulator should have powers to impose a range of remedies in cases of inaccurate information or unjustified attacks including requiring the offending broadcaster to carry a correction, retraction or reply.
- The decisions of the broadcast regulator concerning remedies should be subject to judicial review.
- The Decree should provide for regular consultations of the broadcast regulator with the public and stakeholders on policy issues. This provision should be accompanied with a prohibition for the legislator and the public to influence the individual decisions of the broadcast regulator.
- The broadcast regulator reports only to a multi-party body such as Parliament.
- The Draft Decree should recognise a right to reply and a right to correction.
- The Draft Decree should provide that prompt and timely correction or reply shall mitigate the extent of damages caused by the broadcaster's violation of a person's reputation.
- The Draft Decree should provide that disputes as to the exercise of the right of reply and the right to correction or the equivalent remedies can be subject to judicial review.
- The Draft Decree should protect broadcasters against liability for the statements of others in certain defined circumstances.

# Introduction

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This legal analysis reviews the Draft Decree on the Freedom of Audiovisual Communication and the Creation of an Independent Higher Authority for Audiovisual Communication (the “Draft Decree”).<sup>1</sup> This is the second draft of the decree which ARTICLE 19 has reviewed, the earlier version in May 2011.<sup>2</sup>

The Draft Decree responds to the urgent need for legal guarantees of free broadcasting in the post-revolutionary period of Tunisia. Envisaged as being adopted by the President rather than the Parliament, the proposed legislation shall replace restrictive broadcasting laws from the previous regime and facilitate the democratic transition in the period before the first free parliamentary elections. In view of the important role of the media in securing public information and in facilitating forum for public debate and fair elections, ARTICLE 19 welcomes the Draft Decree as strengthening the foundations of the new democratic regime in Tunisia.

This analysis of the Draft Decree is being made from a freedom of expression standpoint and reviews the Decree in the light of international standards on freedom of expression. In the light of these international standards, including standards on broadcast regulations developed by ARTICLE 19,<sup>3</sup> this analysis seeks to respond to the following questions:

- Does the draft Decree provide guarantees for freedom of expression?
- Is the independence of the broadcast regulator secured?
- Does the broadcast regulator have sufficient powers to fulfil its remit?
- Is the regulation of licensing transparent, open, and ensuring diversity of media content?
- How does the draft Decree regulate the broadcasting content?
- Does the draft Decree include guarantees for fair broadcasting coverage of the elections?
- Is public accountability of the broadcast regulator secured?

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<sup>1</sup> This analysis is based on the unofficial translation of the Law from Arabic to English. ARTICLE 19 takes no responsibility for the accuracy of these translations or for comments based on mistaken or misleading translation. The text of the English translation is reproduced at the end of this analysis.

<sup>2</sup> The text of the earlier drafts of the Decree as well as previous analysis of ARTICLE 19 are available on request from the Law Programme of ARTICLE 19 at [legal@article19.org](mailto:legal@article19.org).

<sup>3</sup> ARTICLE 19, *Access to the Airways, Principles on Freedom of Expression and Broadcast Regulation*, London, 2002. The principles draw on international standards on broadcasting and freedom of expression and the extensive experience of ARTICLE 19 and work with partner organisations around the world. They can be accessed online at: [www.article19.org/data/files/pdfs/standards/accessairwaves.pdf](http://www.article19.org/data/files/pdfs/standards/accessairwaves.pdf)



- Do the complaint procedures for violations of the decree secure fairness?
- Are the sanctions for violations of the decree appropriate?

The following sections discuss these questions in more detail and highlight ARTICLE 19's main concerns with a number of aspects of the Draft Decree.

# Analysis of the Draft Decree

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## 1. Guarantees to freedom of expression in the Draft Decree

**ARTICLE 19 finds that the Draft Decree contains a number of explicit safeguards for freedom of expression. However, most of these guarantees are inadequately defined and may not fulfil their intended purposes. The protection of freedom of expression can be further enhanced if the internationally recognised principle of editorial independence, universal access and non-discrimination of broadcasters are incorporated in the Decree.**

ARTICLE 19 appreciates that several provisions in the Draft Decree explicitly provide for freedom of audiovisual communication (Article 1). According to Article 2 of the Draft Decree, this freedom shall be guaranteed “pursuant to international conventions and treaties ratified by Tunisia”. Article 4 entitles every citizen with the right to access to information and to audiovisual communication. Article 5 sets out that the rights and freedoms, provided by the Draft Decree, should be practised in compliance with a list of principles including freedom of expression and diversity in the expression of ideas and opinions. The same article requires that the principles concerning free expression are balanced with the respect of others’ rights and reputation and a number of “principles” such as respect for human dignity and private life, freedom of belief, protection of childhood, protection of national security and public order, protection of public health, promotion of culture, media production and national communication.

It is envisaged that the broadcasting sector shall be supervised by an independent regulator who has an explicit duty to protect the right to freedom of expression and “diversity in thought and opinion” (Article 16). Furthermore, the broadcast regulator should, when carrying out its duties and responsibilities, promote democracy, human rights and rule of law promote and protect freedom of expression, enhance diversity, support public and private media, avoid concentration of ownership, and establish a plural, diverse and balanced audiovisual media (Article 15).

As already noted, the aforementioned provisions can be commended. ARTICLE 19, however, notes that the safeguards of free expression set up in the Draft Decree suffer from some weaknesses. These include the following:

- **Lack of definition of specific freedoms and rights:** The Draft Decree does not define the specific freedoms and rights it guarantees. It is impossible to determine what is meant by “freedom of audiovisual communication”, or “right to audiovisual communication.” Noting that no international standards refer to the aforementioned freedom and right, it is recommended that the Draft Decree either describes the content of the freedom and the right or, alternatively, maintains the language of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of expression.
- Furthermore, in view of the lack of free media traditions in Tunisia, it is recommended that **the Decree specifies the meaning of the right to freedom of expression for broadcasters and individuals.** In this regard we point to ARTICLE 19’s Principles on Freedom of Expression and Broadcast Regulation, which specify this in the following manner:

The right to freedom of expression includes both the right of broadcasters to be free of State, political or commercial interference and the right of the public to maximum diversity of information and ideas in broadcasting.

- **No definition of principles:** ARTICLE 19 also observes that the Draft Decree does not define the principles it establishes. It is impossible to say what is meant by the principle of freedom of expression and objectiveness and transparency, for example. This vagueness is problematic in view of the lack of experience of public bodies and individuals in Tunisia in interpreting and applying the principles. Another shortfall of the Draft Decree, relating to the same issue, is the **failure to recognise important international law principles**. For example, the Draft Decree fails to mention any of the following principles:
  - Pluralism and diversity: The Draft Decree should establish that the state broadcast policy aims at securing pluralism – i.e. a variety of different types of media (public, private and community) with different owners - and diversity – i.e. a variety of different voices being given access to the media and a variety of different viewpoints being heard.
  - Editorial independence: The Draft Decree should establish that editorial policies and specific editorial decisions are made by broadcasters as opposed to the government, regulatory bodies or commercial entities.
  - Universal access: The state and broadcast regulator should be responsible for promoting universal and affordable access to the means of communication and for reception of broadcasting services and for taking measures to ensure maximum geographical reach of broadcasting.
  - Non-discrimination of private, public and community broadcasters: Access to state resources, including placement of state advertisements, should always be provided in a fair and non-discriminatory manner. State officials should not discriminate between private, public and community broadcasters when providing information to the media.
- **Restrictions of freedom of expression:** Protection of the right to freedom of expression should also be provided by incorporating the international test for the legality of restrictions on its application, as established by Article 19 paragraph 3 of the ICCPR.<sup>4</sup> According to this test, restrictions on the right to freedom of expression are illegitimate unless they meet the following three conditions: They should 1) be established by law; 2) pursue one of the following legitimate aims: respect of the rights or reputations of others; the protection of national security or of public order; or the protection of public health or morals. 3) be necessary and proportionate for the achievement of the legitimate aims.

Furthermore, although the wide list of principles and duties of the broadcast regulator in the Draft Decree includes protecting freedom of expression and enhancing diversity, ARTICLE 19 recommends that respecting and protecting editorial independence, guaranteeing universal access and protecting against discrimination become explicit duties of the broadcast regulator.

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<sup>4</sup> Article 19, paragraph 3 of the ICCPR states:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Finally, we also recommend that the Draft Decree should explicitly prohibit prior censorship either by the government or by the broadcast regulator and provide sanctions for attempting to carry out prior censorship and interfere with editorial independence.

#### **Recommendations:**

- The Draft Decree should establish the right to freedom of expression through the broadcast media. This right should include the freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, orally, in print, in the form of art, through the broadcast media.
- The Draft Decree should provide that the right to freedom of expression includes both the right of broadcasters to be free of State, political or commercial interference and the right of the public to maximum diversity of information and ideas in broadcasting.
- The Draft Decree should define the principles it guarantees.
- The Draft Decree should establish that to be legitimate all restrictions of the right to freedom of expression should i) be established by law; ii) pursue one of the following legitimate aims: respect of the rights or reputations of others; the protection of national security or of public order; or the protection of public health or morals; iii) be necessary and proportionate for the achievement of the legitimate aims.
- The Draft Decree should explicitly guarantee pluralism and diversity, editorial independence, universal access, non-discrimination of private, public and community broadcasters, and should prohibit prior censorship.

## **2. Independence of the Broadcast Regulator**

***ARTICLE 19 welcomes that the Draft Decree includes guarantees for the independence of the broadcast regulator. However, these guarantees should be extended since they are at present insufficient. Furthermore, the financial independence of the broadcast regulator should be clarified.***

The Draft Decree includes several statements that the High Independent Authority for Audiovisual Communication (hereinafter “the broadcast regulator”) should be independent and perform its functions without any interference from any entity (Article 6). Article 23 of the draft Decree states that it should enjoy an “independent budget”.

To secure the independence of the regulator the Draft Decree provides a number of requirements for its members. *First*, the members must be “independent” and not hold - or not have held during the preceding two years -governmental, electoral, partisan or political functions (Article 7 and Article 10). *Second*, the members should not be appointed by the government or political parties (as implied by Article 7). *Third*, the members should not have “direct or indirect contributions or financial interests in media unless they have relinquished these interests or contributions (Article 7). *Fourth*, the members should not be dismissed or suspended during their term of office except by a justified decision by the authority, through a vote, in cases of absence from three consecutive meetings of the regulatory body without excuse (Article 8). *Fifth*, members must inform the chairman of the broadcast regulator of any change to their status that may jeopardize their independence (Article 11). The Draft Decree also sets out the remuneration of the Chairman of broadcast regulator (Article 14).

ARTICLE 19 welcomes these safeguards for the independence as an important first step to bring the domestic legislation in compliance with international standards. At the same time, ARTICLE 19 is concerned that the proposed safeguards are insufficient to protect the independence of the broadcast regulator. Our specific concerns relate to the following aspects of the Draft Decree:

- The **broadcast regulator is not independent from media interests** because some of its members represent professional entities of journalists and non-journalistic professionals and owners of the media. Bearing in mind that the broadcast regulator will have to examine cases concerning the actions or financial interests of journalists and media organisations, we are concerned that professional organisations and media will be tempted to use their representatives in the broadcast regulator to apply pressure to reach decisions favourable for them. It is vitally important that the regulator be protected from such pressure. Noting that the broadcasting legislation should secure the independence of the broadcast regulator not only from the government and political parties but also from media interests (media organisations and media owners), ARTICLE 19 recommends professional organisations and media owners do not appoint member of the broadcast regulator.
- The **public does not participate in the procedure of appointment of members of the broadcast regulator**. The proposed procedure for appointing the members of the regulatory body in the Draft Decree is based on the idea that different public institutions – the President, the speaker of parliament, professional entities, owners of media, judges - should appoint their representatives to the broadcast regulator. This procedure secures equal presentation and influence of different interests in the operation of the broadcast regulator. However, the proposed regime fails to secure public participation, and hence, the democratic legitimacy of the broadcast regulator. ARTICLE 19 recommends that the President and Parliament appoint members to the broadcast regulator who are nominated by the public, professional and civil society organisations. Inasmuch as Parliament does not operate at the moment it should be replaced by other public authority legitimately exercising the sovereignty of the people.
- The **conditions for the dismissal of members of the broadcast council are vague and set a low threshold**, since members can be removed even for minor violations. It is recommended that only the appointing body have the power to dismiss members. A member should not be subject to dismissal unless he or she:
  - No longer meets the rules of compatibility;
  - Commits a serious violation of his or her responsibilities, as set out in law, including through a failure to discharge these responsibilities; or
  - Is clearly unable to perform his or her duties effectively.
- The **administrative staff of the broadcast regulator consists of persons “seconded from public departments”**. Article 26 of the Draft Decree provides that the broadcast regulator does not have its own administrative staff but that its staff instead consists of employees from public departments who are temporarily transferred to it. The word “seconded” implies that public institutions will pay the salaries of the administrative staff of the broadcast regulator. The dependency of the broadcast regulator on other administrative bodies for recruitment of administrative staff is problematic for two reasons. First, it puts into question the independence of the broadcast regulator. Second, the viability and effectiveness of the broadcast regulator as an institution is made dependent on other public bodies. For example, a frequent turnover of the staff, which can be one of the consequences of the proposed staff arrangement, could affect the capacity of the

broadcast regulator. ARTICLE 19 therefore proposes that the broadcast regulator employ its own staff.

- **An adequate funding for the broadcast regulator is not guaranteed.** Article 23 of the Draft Decree provides that the regulator's chairman proposes the budget of the broadcast regulator. The latter's board has powers to adopt the budget. The Draft Decree provides no guidance as to the determination of the budget. Noting that adequate funding is absolutely essential to the effective functioning of a broadcast regulator, ARTICLE 19 is concerned that the proposed legal framework for funding does not contain guarantees of adequate funding for the broadcast regulator and opens the door for interference and improper pressure. For example, the proposed regime is based on the assumption that any budget of the broadcast regulator, however big it is, will be covered by the state budget. This assumption runs against the situation in many countries where all budgets, even of independent institutions, are subject to serious public debates; in the end stakeholders then reach a compromise for the budget of independent broadcast regulators. It is therefore proposed that the funding scheme be revised. In order to protect the broadcast regulator from governmental interference it is advisable that the broadcast regulator propose the budget to Parliament who should adopt it with a vote in accordance with the normal procedure for assigning funds to independent public bodies.
- The Draft Decree contains **no rules relating to payment and reimbursement of members of the broadcast regulator.** We observe that only the salary of the chairman of the broadcast regulator is set out in the draft Decree. Mindful that any discretion in relation to salaries creates tension and opportunities for influence, we consider that this regime is problematic from the standpoint of the independence of the broadcast regulator. It is recommended that the rules relating to payment and reimbursement of members of the broadcast regulator be set out clearly in law.

#### **Recommendations:**

- Professional organisations and media owners should not appoint member of the broadcast regulator.
- The President and the Parliament (the institution which currently exercise the sovereign will of the people) should appoint members to the broadcast regulator who are nominated by the public, professional and civil society organisations.
- Only the appointing body should have the power to dismiss members. A member should not be subject to dismissal unless he or she i) no longer meets the rules of incompatibility; ii) commits a serious violation of his or her responsibilities, as set out in law, including through a failure to discharge those responsibilities; or iii) is clearly unable to perform his or her duties effectively.
- The broadcast regulator should employ its own administrative staff.
- The broadcast regulator should propose the budget to Parliament who should adopt it with a vote in accordance with the normal procedure for assigning funds to independent public bodies.
- The rules relating to payment and reimbursement of members of the broadcast regulator be set out clearly in law

### 3. Mandate and Powers of the Broadcast Regulator

**ARTICLE 19** observes that the powers vested in the broadcast regulator set in the Draft Decree are sufficient to fulfil its mandate. However, it should have competence to develop codes of broadcasting standards.

The Draft Decree provides that the broadcast regulator can develop rules relating to advertisement, and monitor the compliance of broadcasters with these standards (Article 16). While appropriate, the powers granted to the broadcast regulator are limited only to advertisement rules. Normally broadcast regulators are expected to respond to the need for a broadcasting code, covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy or various guides for consumers, for protecting children in a digital world, etc. Mindful of this need, it is recommended that the broadcast regulator be vested with powers to develop codes of broadcast standards to guide the coverage of particular issues such as elections, protection of minors, or reporting of crimes.

#### Recommendation:

- The broadcast regulator should be vested with powers to develop codes of broadcast standards to guide the coverage of particular issues such as elections, protection of minors, or reporting of crimes,

### 4. Licensing Regime and Procedures

**ARTICLE 19** considers that the biggest weakness of the Draft Decree is its failure to set out a licensing procedure and licensing conditions. Unless the licensing procedure is set in a separate piece of legislation, its lack may lead to unjustified refusals to grant licenses to broadcasters in violation of their right to freedom of expression.

ARTICLE 19 is aware that a number of legislation governing broadcasting is being developed in Tunisia and might complement the Draft Decree. The following comments should be viewed in the light of an assumption that the licensing procedures should be contained in one piece of law – this Draft Decree, and not be established separately.

ARTICLE 19 observes that a number of international standards protect the right to freedom of expression in licensing proceedings. For example, from a comparative perspective, it is useful to note that in the Recommendation Rec(2000)23 of 23 December 2000, the Committee of Ministers of the member states of the Council of Europe<sup>5</sup> listed requires the following:

- The basic conditions and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in the law.
- The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner.

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<sup>5</sup> Adopted by the Committee of Ministers on 20 December 2000 at the 735<sup>th</sup> meeting of the Ministers' Deputies. Available online at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=393649&Lang=en>.

- The decisions made by the regulatory authorities in this context should be subject to adequate publicity.
- Regulatory authorities in the broadcasting sector should have the power to authorise broadcasters to provide programme services on frequencies allocated to broadcasting
- Once a list of frequencies has been drawn up, a call for tenders should be made public in appropriate ways by regulatory authorities.
- Calls for tender should define a number of specifications, such as type of service, minimum duration of programmes, geographical coverage, type of funding, any licensing fees and, as far as necessary for those tenders, technical parameters to be met by the applicants.
- Calls for tender should also specify the content of the license application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing.

In addition, the principles on freedom of expression and broadcasting, developed by ARTICLE 19 and media experts,<sup>6</sup> require that clear time limits for the proceedings and on the duration of the broadcast licences should be set out in law. These time limits should be sufficient to give applicants a realistic opportunity to recoup their investment in both financial and human terms.<sup>7</sup>

ARTICLE 19's principles also require that any refusal to issue a license should be accompanied with written reasons and should be subject to judicial review.

Hence, we recommend that the Draft Decree include the above mention guarantees for transparent and fair licensing proceedings and ensure that licensing criteria are clear and objective in nature, promote a wide range of viewpoints reflecting the diversity of the population, and prevent the concentration of ownership.

#### **Recommendations:**

- The Draft Decree should secure fair and transparent licensing proceedings by setting out clear, precise and relevant legal rules. These rules should, as a minimum, ensure publicity and establish time limits and clear and objective criteria for granting licensing. The criteria should include promoting a wide range of viewpoints which reflect the diversity of the population and prevent the concentration of ownership

## **5. Regulation of the Broadcasting Content**

***The Draft Decree has no rules concerning broadcasting content. The only exception is Chapter 4 related to coverage of elections.***

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<sup>6</sup> *Ibid.* note 3.

<sup>7</sup> *Ibid.* Principles 21 and 22.



Mindful that it is normal for broadcast regulators worldwide to frequently examine complaints relating to broadcasting content, ARTICLE 19 is concerned that the Draft Decree does not have rules concerning broadcasting content. Similar to a previous section, we note that such regulation might be provided in a separate piece of legislation that is being drafted simultaneously with the Draft Decree. The following comments should be considered should such separate legislation not be adopted.

ARTICLE 19 notes that the broadcast regulator is not given guidance how to set the right balance between the right to freedom of expression and other legitimate interests such as privacy, reputation, national security and protection of public order whenever there is a dispute concerning broadcast content.

Broadcasting content is regulated either by broadcasting laws or by special codes of conduct adopted by broadcast regulators. For example, the Audiovisual Media Services Directive of the EU (“the AVMS Directive”)<sup>8</sup> requires that states introduce in their broadcasting laws restrictions on advertising and teleshopping for prescription medication and tobacco products, while alcoholic drinks must comply with specific restrictions.<sup>9</sup> Other similar content rules concern regulation of sponsorship, quotas for national or regional works<sup>10</sup>, and quotas for programmes by independent producers.<sup>11</sup> The AVMS Directive prohibits any incitement of hatred based on race, sex, religion or nationality and pornography or gratuitous violence as these are regarded as programmes that might seriously impair the development of minors.<sup>12</sup> By contrast, programmes that are only likely to impair the development of minors may be televised, subject to scheduling restrictions or use of technical measures (e.g. encryption), so that minors in the area of transmission will not normally hear or see such broadcasts.<sup>13</sup>

An example of regulation of broadcast content by a code of conduct is the Ofcom Broadcasting Code.<sup>14</sup> The UK regulator Ofcom is required by law to draw up a code for television and radio, covering standards in programmes, protecting the under-eighteens, relating to harm and offence, crime, religion, sponsorship, fairness and privacy. The Code, known as the Ofcom Broadcasting Code, is more than 100 pages long. Broadcasters are required by the terms of their license to observe the whole Code. Any viewer or listener who believes that the programme standard has been breached can complain to Ofcom who will adjudicate on the matter.

ARTICLE 19 recommends that the Draft Decree consider imposing content requirements aiming to protect minors, regulate sponsorship and prohibit any incitement to hatred based on race, sex, religion or nationality. Responsibility for oversight of any content rules should lie with the broadcast regulator.

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<sup>8</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive); available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

<sup>9</sup> *AVMS Directive*, Chapter VII.

<sup>10</sup> *Ibid*, Article 16 imposing requirements for European works.

<sup>11</sup> *Ibid*, Article 17.

<sup>12</sup> *Ibid*, Article 6.

<sup>13</sup> Article 27 (2), (3) of the *AVMS Directive*.

<sup>14</sup> *The Ofcom Broadcasting Code*, available at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code>

**Recommendations:**

- The Draft Decree should impose content requirements aiming to protecting minors, regulate sponsorship, and prohibit any incitement to hatred based on race, sex, religion or nationality

**6. Regulation of Broadcasting at Election Times**

*The regime of media coverage and participation in the elections and is vague and should be revised to guarantee fair elections and secure freedom of expression at election times.*

Chapter IV of the Draft Decree relates to broadcasting at election times. Candidates are entitled to use national media for their election campaigns (Article 40). The broadcast regulator has powers to regulate the use of the media in the elections, set out air-time shares for different candidates, and distribute (Article 42) and monitor the compliance of the rules (Article 44). Advertisement of political parties is prohibited (Article 43).

ARTICLE 19 finds that this regulation is insufficient to guarantee election fairness and the right to freedom of expression at election times. We note that broadcasting laws regulate both the participation of the broadcast media in the elections and the media coverage of election campaigns. Broadcasters play an important role in the distribution of adequate public information during the elections, and in the provision of voter education. The broadcast media are legally obliged to give parties and candidates direct access to election broadcasts. To ensure election fairness the election legislation should explicitly provide that the direct airtime access of the election candidates should be on a fair, equitable and non-discriminatory basis. The coverage of elections by the media may be further regulated by broadcast regulators which have powers to establish specific broadcasting election standards and monitors their implementation. In view of the need for rapid redress from unjustified attacks on one's reputation, the election legislation should establish mechanisms for rapid redress including procedures for correction, retraction and reply.

The above-mentioned standards for the participation of the broadcast media in the elections and the coverage of election campaigns are not incorporated in the draft Decree. In particular we point to the following shortfalls:

- The Draft Decree does not create an obligation for broadcasters to provide adequate election information, and to provide voter education programmes.
- Broadcasters are not obliged to give airtime to election candidates.
- The Draft Decree delegates powers to the broadcast regulator to regulate election campaigning on the media but fails to provide any guidance with respect to the rules which the broadcast regulator should adopt.
- No remedies are provided for inaccurate information or unjustified attacks toward candidates at election times, including mechanisms for rapid redress such as the obligations to carry a correction, retraction or reply.

**Recommendations:**

- Broadcasters should be obliged to participate in elections by providing adequate election information and providing voter education programmes.
- Broadcasters should be obliged to give airtime to election candidates.
- The airtime should be granted on “a fair, equitable and non-discriminatory” basis. This should apply not only to the amount of airtime granted but also to the scheduling of broadcasts and any charges levied.
- The broadcast regulator should have powers to impose a range of remedies in cases of inaccurate information or unjustified attacks including requiring the offending broadcaster to carry a correction, retraction or reply.
- The decisions of the broadcast regulator concerning remedies should be subject to judicial review

## 7. Accountability of the Broadcast Regulator

***The Draft Decree ensures the public accountability of the broadcast regulator. Nevertheless, ARTICLE 19 finds that the regime should be democratised by securing public participation in the operation of the broadcast regulator and by requiring that the latter reports to Parliament rather than executive bodies.***

The Draft Decree includes a number of obligations for the broadcast regulator aimed at making it publicly accountable. It is required to prepare an annual report of its activities (Article 20). A copy of the report should be published and posted on the website and sent to the President, the Speaker of Parliament and “relevant communication institutions”.

Noting the importance of public accountability of broadcast regulators, ARTICLE 19 welcomes the regime of accountability established by the draft Decree. The reporting is to be on a regular basis and will cover various issues which are explicitly provided in Article 20. Our remarks with respect to this regime are as follows:

- Public participation is not secured. Mindful that one of the best methods of public accountability is direct public and shareholder involvement in the work of public institutions, we note with regret that the draft Decree does not promote public participation. It is important that the broadcast regulator is seen to take public opinion and public interest into account in the decisions it makes. Consequently, we recommend that the Decree provide for regular consultations of the regulator with the public and stakeholders on policy issues. This provision should be accompanied with a prohibition for the legislator and the public to influence the individual decisions of the broadcast regulator.
- The broadcast regulator should report to a multi-party body, not the executive. We are concerned that the broadcast regulator reports to the president, the speaker of Parliament and other unspecified bodies about its activities. This obligation puts into question the independence of the broadcast regulator from these bodies. ARTICLE 19 recommends that the broadcast regulator report only to a multi-party body such as Parliament. Government and executive bodies should not be put in a position to review the activities of the broadcast regulator.

**Recommendations:**

- The Draft Decree should provide for regular consultations of the broadcast regulator with the public and stakeholders on policy issues. This provision should be accompanied with a prohibition for the legislator and the public to influence the individual decisions of the broadcast regulator.
- The broadcast regulator reports only to a multi-party body such as Parliament

**8. Liability and Enforcement of the Draft Decree**

*The Draft Decree envisages different sanctions for violations of the broadcast regime and requires that they are imposed by the broadcast regulator in a proportionate manner in view of the seriousness of the violation and the benefits gained by the violator. The proposed regime could be improved by recognising the rights to reply and correction and by absolving the broadcasters from liability for the statements of others.*

ARTICLE 19 welcomes the liability regime for including different sanctions including warnings. We also commend the enforcement procedures which include measures for fairness such as the representation of respondents by lawyers, publicity of the broadcast regulator's decisions, and the right to appeal the decision before a court.

The recognition of the right to reply and the right to rectify will improve the proposed liability regime. The right to reply allows everyone to defend his/herself against public criticism in the same venue where it was published. The right to reply should be distinguished from rectification. Unlike rectification, those who exercise the right to reply do not need to prove the statement was false and still less that their own counter-statement is correct. This is for the viewer or listener to appreciate.

For example, the Finnish Act on the Exercise of Freedom of Expression in Mass Media<sup>15</sup> guarantees the right to correction and reply in the following terms

*Section 8 — Right to reply*

A private individual, who has a justified reason to consider that a message contained in a periodical, network publication or a comparable program that is broadcast on a repeated basis is offensive, has the right to have a reply published in the same publication or program.

*Section 9 — Right to correction*

A private individual, a corporation, a foundation and a public authority have the right to have erroneous information on them or their operations contained in a periodical, network publication or program corrected in the same publication or in a program by the broadcaster in question, unless such correction is manifestly unnecessary owing to the minor significance of the error.

*Section 10 — Duty to publish a reply or correction*

The responsible editor shall publish a reply or correction, free of charge and without undue delay, appropriately extensively and in the same manner as the message on which the demand for a reply or correction is based.

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<sup>15</sup> Law 460/2003, Chapter 3 — Reply and correction

The contents of the reply or correction shall not be illegal or offensive. Where necessary, the responsible editor shall assist in the technical realisation of the reply.

Section 11 — *Demand for a reply or correction*

The demand for a reply or correction shall be presented to the responsible editor within 14 days of the publication of the message on which the demand is based. The demand shall be presented in writing or electronically so that its contents cannot be unilaterally altered and so that it remains accessible to the parties.

If the demand for a reply or correction is rejected, the rejection and the reasons for it shall be notified to the person presenting the demand within seven days of the reception of the demand. Upon request, the reasons for the rejection shall be provided in writing. The person presenting the demand has the right to submit the issue of whether the preconditions for the right of reply or correction have been met for consideration by the District Court of his or her domicile, or by the District Court of Helsinki, no later than 30 days after the reception of the written notification of the reasons for the rejection.

In the event that the District Court orders the responsible editor to comply with his or her duties under section 10, the court may reinforce the order by imposing a threat of a fine. The court order on the imposition of the threat shall be open to appeal as a separate matter.

ARTICLE 19 also considers that broadcasters should be explicitly protected against liability for the statements of others made during live broadcasts. The exception is necessary to mitigate the chilling effect such a liability has on broadcasters and protect expressions of public importance, especially during election campaigns. ARTICLE 19's principles on freedom of expression and broadcast regulation propose the following provision:

Principle 5: Liability for the Statements of Others

Broadcasters should be protected against liability for the statements of others in the following circumstances:

- during a live broadcast where it would be unreasonable to expect the broadcaster to prevent transmission of the statement;
- where it is in the public interest for the statements to be broadcast, for example to demonstrate the existence of certain views in society, and the broadcaster does not adopt the statements;
- in the context of direct access political broadcasts.

ARTICLE 19 recommends that similar provisions are included in the Draft Decree.

**Recommendations:**

- The Draft Decree should recognise a right to reply under the following terms

“A natural or legal person who is affected by a statement of fact in a broadcast shall be entitled to a right of reply. It should also be stated that the reply must be restricted to the facts and may not have any criminal content. It must be presented in writing and signed by the party concerned or his legal representative.

Broadcasters must broadcast the reply free of charge in such a way as to reach as soon as possible those who have taken note of the contested factual statement (for example, in the next edition of the same programme, or programme category).

Broadcasters may refuse to broadcast the reply if i) the person concerned has no legitimate interest in its dissemination, ii) the reply is unreasonably long (for example, considerably longer than the contested factual statement), iii) the request for a reply has not been received by broadcasters within one month of the broadcast of the contested factual statement.”<sup>16</sup>

- The Draft Decree should recognise a right to correction as follows.:

“A natural or legal person may request to correct untrue facts which affect them.

Broadcasters must broadcast the correction free of charge in such a way as to reach as soon as possible the public.

Broadcasters may refuse to broadcast a correction if i) the person concerned has no legitimate interest in its dissemination, ii) the correction is manifestly unnecessary owing to the minor significance of the error or iii) the applicant cannot prove that the statement affecting his rights and interests is false.”

- The Draft Decree should provide that prompt and timely correction or reply shall mitigate the extent of damages caused by the broadcaster's violation of a person's reputation.
- The Draft Decree should provide that disputes as to the exercise of the right of reply and the right to correction or the equivalent remedies can be subject to judicial review.
- The Draft Decree should protect broadcasters against liability for the statements of others in the following circumstances: i) during a live broadcast where it would be unreasonable to expect the broadcaster to prevent transmission of the statement; ii) where it is in the public interest for the statements to be broadcast, for example to demonstrate the existence of certain views in society, and the broadcaster does not adopt the statements in the context of direct access political broadcasts.

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<sup>16</sup> International Telecommunication Union, BDR Telecommunication Bureau, UNESCO, *Model Public Service Broadcasting Law and Aspects of Regulating Commercial Broadcasting*, Geneva, September 1999 provides for a two-month time limit for filing the request for reply.

# Appendix: The Draft Decree

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**DRAFT DECREE NO. \_\_\_\_ OF \_\_\_\_ DATED \_\_\_\_\_**

**REGARDING FREEDOM OF AUDIOVISUAL COMMUNICATION AND CREATION OF AN INDEPENDENT HIGHER AUTHORITY FOR AUDIOVISUAL COMMUNICATION**

***Interim President of the Republic:***

By a proposal from the High Authority for Realization of the Revolution Objectives, Political Reform and Democratic Transmission,

Having read decree No. 6 of 2011 dated 18 February 2011 regarding creation of the Authority for Realization of the Revolution Objectives, Political Reform and Democratic Transmission,

Decree no. 14 of 2011 dated 23 March 2011 regarding the provisional regulation of the public authority,

Basic law no. 40 of 72 dated June 1<sup>st</sup>, 1972 regarding administrative court as amended,

Law no. 8 of 1968 dated 8 March 1968 regarding regulation of the Audit Directorate as amended,

Law no. 64 of 1991 dated 29 July 1991 regarding competition and prices as amended,

Law no. 8 of 1993 dated 1 February 1993 regarding creation of the National Bureau for Radio and TV Broadcasting,

The telecommunications magazine issued by virtue of law no. 1 of 2001 dated 15 January 2011 as amended by law no. 46 of 2002 dated 7 May 2022 and law no. 1 of 2008 dated 8 January 2008, Law no. 33 of 2007 dated 4 June 2007 regarding public corporations for audiovisual sector, Decree no. 35 of 2011 dated 10 April 2011 regarding election of the National Constituent Assembly, as amended by decree no. 72 of 2011 dated 3 August 2011, Decree no. 41 of 2011 dated 26 May 2011 regarding access to administrative documents of public authorities as amended by decree no. 54 of 2011 dated 11 June 2011,

And the deliberations of the Council of Ministers,

The following decree is promulgated:

**ARTICLE (1)**

This decree ensures the freedom of audiovisual communication, regulates its practices and creates an independent regulatory authority.

**ARTICLE (2) DEFINITIONS**

The following terms shall have assigned meanings for the purposes of this decree:

**Audiovisual communication:** every radio or TV service provided to the public regardless of the mode of its delivery.

**Notification:** transfer of news, information, views or ideas for the purpose of disseminating knowledge.

**Audiovisual communication services:** imparting and broadcasting radio or TV data to the public or part of the public in a paid or unpaid manner.

**Transmission:** transmission of radio or TV programs or data in a paid or unpaid manner through ground connection equipment, cables, satellite, the internet network or any other mean directed to the public which is received simultaneously through receiver equipment or any other electronic facilities. The internal communications of private organizations or government institutions such as internal TVs or radios or intranet communications are not considered as transmission.

**Broadcasting:** covering a geographic area with radio or TV programs or relevant data.

**Audiovisual communication institutions:** institutions performing the activities of production and broadcasting such as public institutions or production and transmission institutions.

**Commercial audiovisual communication institutions:** private institutions for audiovisual communication which are not considered as public or associative institutions.

**Associative audiovisual institutions:** institutions owned or steered by non-for-profit organizations or associations, which operate on non-for-profit basis, broadcast programs directed to certain groups expressing their interests and needs based on budgets defined in applicable legislations.

**Broadcasting frequency plan:** plan on which broadcasting frequencies spectrum is allocated and distributed for different uses such as TV and radio broadcasting as well as for granting broadcasting licenses on the national and local levels for public and private sectors.

**Broadcasting frequency spectrum:** spectrum of electromagnetic waves which is considered as part of the public domain.

**Advertisement:** every communication process directed to the public for which paid broadcasting was allocated aiming directly or indirectly to develop, sell or rent products, provide services, ideas or issues or making an effect desired by the advertisement owner.

**Political advertisement:** every advertisement process using business marketing methods and techniques directed to the public and aiming at promoting a person, an idea, a program, a party or a political organization using radio or TV channels. The advertiser shall allocate part of the TV or radio broadcasting time to demonstrate paid or unpaid political marketing advertisements for the purpose of convincing recipients to accept its ideas, leaders, party or issues or influencing the attitudes and choices of electorate.

**Prohibition:** preventing the publication, broadcasting, distribution or presentation of information, media, outreach, cultural or artistic products in whole or in part regardless of their medium.

**License holder:** a natural or legal person who obtained a license to establish and use an audiovisual communication institution directed to the public.

**Recording:** every relevant stored audio or video information or data regardless of its form, source, date of production or legal status and whether its producer is the same person as its holder or not and whether classified or not.

## CHAPTER ONE: GENERAL PROVISIONS

### ARTICLE (3)

Freedom of audiovisual communication is guaranteed pursuant to international conventions and treaties ratified by the Republic of Tunisia.



#### **ARTICLE (4)**

Every citizen has the right to access to information and to audiovisual communication.

#### **ARTICLE (5)**

Rights and freedoms provided for in above articles shall be practiced under the following principles:

- Respect of international conventions and treaties related to human rights and public freedoms
- Freedom of expression
- Equality
- Diversity in expression of ideas and opinions
- Objectiveness and transparency

The practicing of these principles shall be subject to controls related to the respect of others' rights and reputation, and in particular the following:

- Respect of human dignity and private life
- Respect of freedom of belief
- Protection of childhood
- Protection of national security and public order
- Protection of public health
- Promotion of culture, media production and national communication

### **CHAPTER TWO: THE HIGH INDEPENDENT AUTHORITY FOR AUDIOVISUAL COMMUNICATION**

#### **ARTICLE (6)**

An independent public authority having legal personality and financial autonomy shall be created and its headquarters shall be located in the Capital Tunis. The authority is named the "High Independent Authority for Audiovisual Communication" and shall be responsible for ensuring the freedom and diversity of audiovisual communication pursuant to the provisions of this decree.

The Authority shall perform its functions with full independency without any interference from any entity to influence its members or activities.

#### **Section One: Composition of the High Independent Authority for Audiovisual Communication and its organization**

#### **ARTICLE (7)**

The High Independent Authority for Audiovisual Communication shall be steered by a board of nine independent persons who are known for their integrity, experience and professionalism in media and communication fields. This board shall be appointed under the following procedures:

- One member to be appointed by the President of the Republic following consultations with members of the board. This member shall be the chairman.
- Two members to be appointed by proposal from the Speaker of the Parliament. At least one of them should have experience in public audiovisual sector.
- Two members to be appointed by proposal from professional entities mostly representing journalists.
- One member to be appointed by proposal from professional entities mostly representing non-journalistic audiovisual professions.
- One member to be appointed by proposal from entities mostly representing owners of media and communication institutions.
- A judge of the second grade at least and an advisor from the administrative judiciary to be proposed by professional entities mostly representing judges. One of these judges shall bear

the functions of the Vice-Chairman of the High Independent Authority for Audiovisual Communication.

It is not allowed to appoint people who bore government, electoral, partisan or political functions or worked for a political party during the preceding two years for their appointment. It is also not allowed to appoint those who had, directly or indirectly, contributions or financial interests in media or communication institutions unless they relinquish these interests or contributions. Members of the Authority must work on full-time basis.

Chairman, Vice-Chairman and members of the Authority are appointed by a decree for six years non-renewable. One third of the Authority members shall be renewed every two years on rotational basis.

In case of a vacancy six months before the expiry of the membership term, appointment shall be made within 15 days following the vacancy subject to provisions of paragraph (1) of this article.

Appointed members to fill in vacancies shall perform their functions for the remaining term of the vacant seats. The term of members appointed to fill in vacancies may be renewed in case they perform their functions for a period not exceeding two years.

#### **ARTICLE (8)**

Members of the Authority shall work independently and impartially for the service of the public interest and no other interests. They cannot be dismissed or suspended during the term of their office except in the following cases and via a justified decision to be taken by the Authority through voting and after allowing the concerned person of defending himself:

- Absence from the Authority meetings without excuse for three consecutive times
- Breaching confidentiality of the Authority activities
- Violate prohibitions on the Authority members

Suspension and dismissal decisions shall be subject to the control of the administrative court pursuant to the provisions related to abuse of public powers.

#### **ARTICLE (9)**

Two reporters at least shall assist the Authority Board. They are to be appointed by the Chairman in consultation with members. Under the Chairman's authorities, there should be public staff for the appropriate function of the Authority.

#### **ARTICLE (10)**

It is impermissible to combine between membership of the High Independent Authority for Audiovisual Communication and any other partisan, electoral or public office or any other professional activity that may reduce the independency of members of the Authority with the exception of incidental teaching or research assignments. It is impermissible for any member, directly or indirectly, to have financial contributions or interests in any media or communication institutions.

Members of the High Independent Authority for Audiovisual Communication, upon commencement and completion of their assignments, shall submit a financial declaration to the Chairman of the Audit Bureau stating their incomes and properties.

#### **ARTICLE (11)**

Members of the Authority has no right to receive, either directly or indirectly, any fees except their entitlements for services they have provided before joining their positions. Intellectual and artistic property rights should be considered.

Appointed members, as needed, should adjust their status within two months. Otherwise, they are considered as have automatically resigned.

They should also inform the Chairman of any change in their status that may jeopardize their independency.

In any case, members shall not participate in the Authority sessions where issues they have direct or indirect interest in are discussed.

#### **ARTICLE (12)**

Members of the Authority and its staff shall maintain the professional secrets related to facts, events and information they become aware of due to performing their functional activities. Consideration should be given to what is necessary to prepare annual and periodic reports prepared by the Authority.

Members of the Authority, throughout their term and for two years thereafter, shall refrain from taking any declared position that jeopardize confidentiality of deliberations in matters to be decided or already decided by the Authority or referred to them within their competencies.

These provisions apply also on administrative staff and any person invited by virtue of his/her position or experience to participate in the works of the Authority.

#### **ARTICLE (13)**

Chairman of the Authority may appoint contracted experts who should be selected based on their experience and knowledge in the field of audiovisual media and communication to assist in conducting tests and any other functions as instructed by the Chairman.

#### **ARTICLE (14)**

Chairman of the Authority enjoys the position of a secretary of state in terms of administrative and financial privileges and shall receive a bonus equal to that of members of the parliament.

### **Section Two: Competencies of the High Independent Authority for Audiovisual Communication Subsection One: Control and Reporting Competencies**

#### **ARTICLE (15)**

The High Independent Authority for Audiovisual Communication shall work to regulate and organize audiovisual communication based on the following principles:

- Promoting democracy, human rights and rule of law
- Promoting and protecting freedom of expression
- Supporting public, private and associative audiovisual communication sector and enhancing its quality and diversity
- Promoting the rights of public in media and knowledge by guaranteeing pluralism and diversity in programs related to public affairs
- Avoiding concentration of ownership of audiovisual communication means and promote fair competition in this sector
- Establish a plural, diverse and balanced audiovisual media scene strengthening the values of freedom, justice and renouncing any discrimination on the bases of origin, gender or religion
- Promote accurate and balanced media programming
- Promote high quality educational programs
- Promote dissemination of audiovisual communication services to the maximum geographical scope nationally, regionally and locally.
- Develop and support programming and broadcasting that express the national culture.
- Ensure control of the use of modern technology
- Enhance financial and competitive capacities of audiovisual communication institutions in the Republic of Tunisia
- Promote the development of highly qualified human resources

#### **ARTICLE (16)**

The High Independent Authority for Audiovisual Communication shall:

- Work to ensure that all authorities, institutions or relevant parties respect the rules and regulations applicable to the audiovisual communication sector,
- Decide in license applications for creation or utilization of audiovisual communication institutions and grant necessary licenses. A license may not be assigned to another party except in exceptional cases and with approval from the Authority.
- Coordinate with the National Frequencies Agency to allocate necessary frequencies within the bandwidth dedicated for audiovisual communication services
- Permit the National Frequencies Agency to distribute frequencies of audiovisual sector to relevant institutions in coordination with other concerned entities.  
Priority in allocation of frequencies should be given to fulfilling the needs of public institutions.
- Monitor the compliance of audiovisual communication institutions by the contents of the conditions' booklets and generally respecting behavioral principles and rules applicable to the sector.
- Draft, endorse and monitor respect of booklets of conditions for public audiovisual communication institutions,
- Ensure freedom of expression and diversity in thought and opinion, especially with regards to political media either by private or public sector in audiovisual communication field.  
In this respect, the Authority shall prepare periodic reports to be publicly published and submitted to the speaker of the Parliament and the President of the Republic, stating the airtime consumed by political, unionist or professional figures in audiovisual programs. The Authority may make comments and submit recommendations as appropriate.
- Ensure respect of legislative and regulatory provisions regarding rules and conditions for production, programming and broadcasting of information related to electoral campaigns by audiovisual communication institutions from public and private sectors.
- Develop behavioral rules related to advertisements and monitor compliance of audiovisual institutions by these rules.
- Work to enact standards of legal or technical character to measure the audience of audiovisual programs and monitor the respect of these standards.
- Decide in disputes related to operation and utilization of audiovisual communication channels.
- Impose penalties for violations committed by audiovisual communication institutions based on the legislation and relevant booklets of conditions.

#### **ARTICLE (17)**

Radio-electric frequencies shall be allocated by the National Frequencies Agency based on the national plan of radio-electric frequencies in coordination with the High Independent Authority for Audiovisual Communication.

#### **ARTICLE (18)**

Licenses related to the exploitation of audiovisual communication institutions shall be subject to fees to be decided by a resolution from the High Independent Authority for Audiovisual Communication in coordination with the National Frequency Agency and the National Bureau for Radio and TV Broadcasting.

#### **Subsection two: Advisory Competencies**

#### **ARTICLE (19)**

The High Independent Authority for Audiovisual Communication shall:

- Compulsorily express its opinion before the Parliament and the Government regarding proposed laws, decrees or orders related to audiovisual communication sector.
- Express opinion before the Parliament and the Government in all matters referred to by the Speaker of the Parliament or the Prime Minister regarding audiovisual communication sector.

- Propose different procedures, especially those of legal character, to ensure the compliance by the principles stipulated in the constitution and relevant legislations and regulations.
- Make proposals related to changes in legislative and regulatory provisions as required by technological, economic, social and cultural developments in the activities of audiovisual communication sector.
- Express opinion regarding appointment of managers working in public audiovisual communication institutions.

#### **ARTICLE (20)**

In order to ensure transparency in its activities, the High Independent Authority for Audiovisual Communication shall prepare an annual report including:

- Copy of the Auditors' report on the Authority accounts
- Final statements and financial position of the Authority
- Estimated budget for the next financial year
- Presentation of different activities it implemented in the past year
- Data regarding granted licenses, resolved disputes and conducted investigations
- Penalties imposed by the Authority and relevant decisions
- Data regarding frequency plan
- Analysis of the extent of realizing the objectives of the Authority during the past year
- Formulation of objectives for the next year
- The report shall include proposals and recommendations deemed appropriate to develop freedom of audiovisual media and communication and enhancing its efficiency, quality and diversity
- This report shall be published and posted on the website of the Authority. A copy thereof shall be sent to the President of the Republic, the Speaker of the Parliament and relevant communication institutions.

### **Section Three: Operations of the Authority**

#### **ARTICLE (21)**

Sessions of the Authority shall be held periodically as stipulated in its internal regulations and as needed by invitation from its Chairman or one third of its members. Sessions are not legal unless attended by at least two thirds of members including the Chairman or the Vice-Chairman. Decisions shall be passed by majority of present members. The Chairman shall have preponderant vote in case of tie-vote. In case quorum is not available, the Chairman shall invite for another session within one week, which shall be valid regardless of the number of present members.

The Authority shall meet to discuss topics enlisted in its agenda as determined by the Chairman. Deliberations of the Authority shall be confidential.

The Authority shall develop its internal regulations and its Chairman shall represent it before third parties.

#### **ARTICLE (22)**

In order to fulfill its functions, the Authority shall recruit a group of controllers who shall be under the authority of the Chairman. These controllers are assigned, as needed, to monitor documents and places for the purpose of proving any violation to the provisions contained in booklets of conditions, applicable laws and other regulations.

Aforementioned controllers are assigned to:

- Record all radio and TV programs using appropriate means
- Collect all necessary information to ensure that licensed natural or legal persons fulfill all their obligations

Law enforcement officers may assist these controllers in their functions as needed.

It is impermissible to disclose information gathered by controllers except by a judicial order. This information shall not be used for purposes other than those assigned to these controllers.

The High Independent Authority for Audiovisual Communication shall undertake, in coordination with the National Frequency Agency and the National Bureau for Radio and TV Broadcasting, the technical monitoring of the use of radio frequencies allocated for audiovisual communication services.

#### **Section Four: Financial and Administrative Regulation of the Authority**

##### **ARTICLE (23)**

The High Independent Authority for Audiovisual Communication shall enjoy an independent budget to be prepared by its chairman and endorsed by its board.

The budget of the Authority shall compose of two chapters.

The first chapter shall cover ordinary expenditures and revenues. Ordinary revenues include:

- Self generated revenues
- Allocations made from the public state budget
- Contributions from national and international institutions
- Various revenues

The second chapter shall cover development expenditures and revenues including setup allocations from the state budget.

##### **ARTICLE (24)**

Chairman of the Authority is the primary officer for revenues and expenditures contained in the Authority budget. He may appoint the Vice-Chairman as an assistant officer.

##### **ARTICLE (25)**

Provisions related to the control of public expenditures are not applicable to the expenditures of the High Independent Authority for Audiovisual Communication. The accounts of the Authority shall be subject to the post audit of the Audit Bureau.

##### **ARTICLE (26)**

The Authority shall have an administrative structure composing of employees transferred from public departments and employees seconded as per the internal regulations of the Authority staff to be drafted by the Authority board and issued by a resolution.

Chairman of the Authority may, as needed, use the staff of the ministry in charge of telecommunications to conduct special researches and tests.

#### **CHAPTER THREE: DISPUTES AND PENALTIES**

The High Independent Authority for Audiovisual Communication undertakes *suo moto* or by prior request to respect the general principles of audiovisual activities pursuant to the applicable legislation.

Members of the Authority, by instructions from the Chairman, may conduct control and inspection activities for certain places under legal conditions. They may also obtain all necessary documents they deem appropriate for the purposes of research and investigations without any objections under the excuse of professional secrets.

They shall be assisted in their tasks, as needed, by law enforcement officers.

#### **ARTICLE (28)**

In case controllers come to know events that represent a violation for applicable provisions such as practices against respect and dignity of people, the protection of children, professional ethics or any other breaches to the booklet of conditions committed by licensed institutions, the concerned controller shall immediately notify this to the Chairman of the Authority who decides the actions to be taken after consulting the Authority. Actions may include referring the matter to concerned administrative, judicial or professional authorities.

#### **ARTICLE (29)**

In case of any breach for the provisions and obligations contained in applicable legislations or booklets of conditions, the Chairman of the Authority shall send a warning to the concerned institution to cease practices violating provisions of law or booklets of conditions within no more than fifteen days.

In case of non-compliance, the High Authority, after deliberations, may decide the following:

- Permit the publication of the warning in newspapers, compulsorily broadcast it on the institution channel or both
- Suspend the production or broadcasting of service(s) of a program or part of a program or an advertisement flash for no more than one month
- Reduce the period of the license or agreement
- In case of recurrence, the license may be temporarily suspended or finally withdrawn
- Financial fine followed, as needed, by suspension of production or broadcasting temporarily or permanently
- In all cases, the penalty shall be proportionate to the seriousness of the violation and the benefits gained by violator. The penalty shall not exceed 5% of the turnover of the financial years preceding the violation date
- Refer the matter to competent judicial or professional entities as needed

#### **ARTICLE (30)**

In case a serious breach for article 5 of this decree is committed and a non-repairable damage is inflicted, the Authority may order the suspension of the concerned program immediately through a justified decision after calling the violator to attend and informing him of the contents of the alleged violation.

In case of utmost certainty, the Chairman, as soon as notified by the violation, may invite the violator to attend on the date and time specified including even on holidays. The invitation must mention the alleged violation. The Chairman, after listening to the violator and enabling him of defending himself, may order the temporary suspension of the program in question.

The non-attendance of the violator may not prevent taking such action.

The Chairman shall refer the file to the Authority within one month of notifying the program in question by the temporary suspension decision.

If the license holder to use radio-electrical waves does not abide by relevant conditions, Chairman of the Authority shall issue a warning to the license holder to stop any violations within fifteen days. In case of non-compliance, the Chairman of the National Frequency Agency shall order the termination of the bandwidth usage license.

Punishments are imposed after informing the concerned person and enabling him of viewing his file and defending himself. The violator may appeal against these decisions before an administrative judge.

#### **ARTICLE (31)**

In case a person performs activities without a license, the High Independent Authority for Audiovisual Communication shall impose fines ranging between 20 thousand to 50 thousand dinars and may order the seizure of equipment used for performing these activities.

In case of illegal assignment of a license to third parties, the violator shall be fined by 25% of the assignment value in addition to the possibility of withdrawing the license.

#### **ARTICLE (32)**

The High Independent Authority for Audiovisual Communication shall not be liable for activities three years after their occurrence if no prior actions were taken for investigation, inspection or punishment of these activities.

#### **ARTICLE (33)**

The Authority shall hear dispute parties, who have the right to appoint lawyers. The Authority may also use experts and hear relevant parties invited legally to appear before it or any other person the Authority deems appropriate to help in solving the dispute.

The Authority shall take its decisions by majority of votes and shall announce them.

Every member has one vote. In case of tie-vote, the Chairman's vote outweighs.

Decisions of the Authority shall be justified and copies thereof shall be communicated to concerned people who shall comply with these decisions as soon as notified or appeal before the competent administrative court.

Sessions of the High Independent Authority for Audiovisual Communication shall be confidential.

#### **ARTICLE (34)**

A fine ranging between one thousand to ten thousand dinars, depending on the seriousness of the violation, shall be imposed on whoever deliberately breaches the confidentiality of deliberations, investigations or obtained data and uses this data for purposes other than those assigned to the Authority.

#### **ARTICLE (35)**

A fine ranging between 5 thousand to 20 thousand dinars shall be imposed on whoever hinders the progress of investigations by refusing to respond to the Authority requests for documents, data and evidences to reveal truth or whoever deliberately destroys or hides these items.

#### **ARTICLE (36)**

Penalties mentioned in articles 34 and 35 are imposed under the following procedures:

The High Independent Authority for Audiovisual Communication shall notify the producer, distributor or broadcaster of the audiovisual services by the alleged violations. The latter may review the case file and submit written comments within 30 days. In case of certainty, this period may be shortened but shall not be less than 7 full days.

#### **ARTICLE (37)**

Those against whom the Authority imposed any of the penalties mentioned in articles 34 and 35 above may appeal against these decisions before appeal departments of the administrative court.

#### **ARTICLE (38)**

If the Authority finds that a committed act represents a crime, the case file shall be referred to the geographically competent prosecutor to take necessary actions. This may not prevent the prosecutor from directly initiating a prosecution.



#### **ARTICLE (39)**

If the Authority finds that a committed act represents a breach to competition principles, the file shall be referred to the competition council.

### **CHAPTER FOUR: PROVISIONS RELATED TO ELECTIONS**

#### **ARTICLE (40)**

Candidates are allowed to use national media means only for their electoral campaigns. The High Independent Authority for Audiovisual Communication shall regulate the use of media means under principles mentioned in article 1 above. For this purpose, the Authority shall take necessary measures.

#### **ARTICLE (41)**

The High Independent Authority for Audiovisual Communication shall ensure multiplicity and diversity of media during electoral campaigns and shall work to remove all legal and administrative obstacles conflicting with the principles of access to media means on the bases of equality between all candidates or candidacy lists. Freedom of expression must not be restricted except in severe exceptional cases and on the bases of precise measures related to the respect of others' rights, dignity, national security, public order or health.

The High Authority shall set the rules and conditions for production of programs, reports and paragraphs related to electoral campaigns and their broadcasting. Public and private media institutions shall abide by these rules and conditions.

#### **ARTICLE (42)**

The High Independent Authority for Audiovisual Communication shall set the rules of electoral campaigns and their procedures, especially the time shares, programs allocated for different candidates, the distribution and timing of these programs in different audiovisual media means. This shall be done in consultation with different stakeholders on the principles of pluralism, equality and transparency.

#### **ARTICLE (43)**

All audiovisual media institutions are prohibited from broadcasting programs, advertisements or flashes for the interest of a political party or lists of candidates in a paid or unpaid manner. Every violation for this prohibition shall be punished by a financial fine equal to the amount received for such broadcasting. In all cases, the fine shall not be less than 10 thousand dinars. The fine shall be doubled in case of recurrence.

#### **ARTICLE (44)**

The High Independent Authority for Audiovisual Communication, using all appropriate means, shall monitor the observance of these rules by all candidates, audiovisual media institutions and shall receive appeals related thereto.

The Authority, as needed, shall take actions and impose necessary punishments in order to put an immediate end for these violations in all cases before the end of the electoral campaigning period.

### **CHAPTER FIVE: TRANSITIONAL PROVISIONS**

#### **ARTICLE (45)**

Temporarily and until legislative and executive authorities are formed on the basis of the new constitution, the appointment of the Chairman of the High Independent Authority for Audiovisual Communication and its members, who shall be independent figures with testified experience and proficiency in this field, shall be made by the provisional president of the Republic through a proposal from the High Authority for Realization of the Revolution Objectives, Political Reform and Democratic

Transmission in coordination with the National Independent Authority for Reformation of Media and Communication based on the same standards and specifications provided for in article (7) above.

**ARTICLE (46)**

During the first term of the Authority activities, one third of the members of the High Independent Authority for Audiovisual Communication shall be renewed as provided for in article 7 hereunder by conducting a lot among members excluding the chairman and the vice-chairman whose membership term shall be six years.

**ARTICLE (47)**

All previous provisions conflicting with the provisions of this decree are abrogated with the exception of decree No. 35 of 2011 dated 10 April 2011 related to the election of the National Council as amended by decree No. 72 of 2011 dated 3 August 2011.

**ARTICLE (48)**

This decree shall be published in the official gazette and enters into force as of the date of its publication.

Tunis, on \_\_\_\_\_

*Interim President of the Republic*

*Fuad Al-Mubazaa*