

## **How to ensure independence of public service media and regulatory bodies**

*By Ph.D. Bent Nørby Bonde, Media Progress, 1.12.2016*

Independent media institutions are crucial for genuine democracies. The most important institutions are national and regional public service media and regulatory bodies that are responsible for the allocation of frequencies and licenses to private media, media market regulation, and protection of media independence. For this reason, it is essential to ensure the political and economic independence of public service media and of new regulatory bodies for the audio-visual sector. A key factor is the composition and function of the governing bodies and the procedures for the selection of chairpersons and general directors.

In a worst-case scenario, the government is mandated to appoint members of the boards of regulatory bodies and the public service media. This jeopardises media independence and limits media's ability to hold the government accountable towards the public. It is slightly better when members of the Parliament choose the members of these ruling bodies, because opposition parties at least will have a minority influence in the decisions. However, this type of procedure makes independent regulatory bodies and public service media accountable to political parties rather than to the public. A third procedure for choosing members to the governing bodies is used in the Western Balkans.

As part of their decade-long preparation for membership of the European Union and their compliance with EU standards, the six potential candidates in Western Balkan have implemented improved media legislation and regulatory measures with regards to the election of board members for public service media and regulatory bodies. The measures to protect the political independence of these institutions constitute a promising step forward but do not fully prevent undesirable politicisation.

Characteristically, the potential Western Balkan EU-members (Albania, Bosnia-i-Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia) explicitly define what public or civil society organisations are eligible as nominators of candidates for the governing body. In most cases, a parliamentary committee invites these nominating organisations to nominate candidates. In one country, the nominating organisations may propose four times as many candidates as the number of available seats in the governing body, whereas only the required number of candidates are nominated in other places.

### **Nominating organisations:**

The system of nominating organisations is recommendable to ensure ownership and respect from civil society and the media sector. Nominating organisations should preferably include rights based freedom of speech NGOs, professional media owners and journalist associations, independent producers or associations of judges, universities or other stakeholders. If the categories of nominating organisations are mentioned explicitly, the law should be phrased so as to provide for the possible existence of competing organisations – e.g. describe that the organisation with most members should be entitled to nominate candidates.

In five of the six listed potential EU-member states, the legislation specifies the eligibility criteria with regards to the candidates' educational and professional background. The nominating organisations normally make a public announcement to attract candidates with the desired profile, and each organisation nominate their candidate following a public selection procedure.

### **Number of nominated candidates:**

The experience from Western Balkans demonstrates that the selection of board members of governing bodies becomes less politicised when the number of nominated candidates corresponds with the exact number needed for the ruling body in question. In one Western Balkan country, the parliament is mandated to make the final election among the candidates where at least four times as many candidates are nominated as needed. As a result of this procedure the election process and the role of the governing bodies of the public service media and the regulatory body as well have become politicised, making them accountable to parliamentarians rather than to the public. It should therefore be avoided that public authorities or the Parliament are mandated to make the final decision among nominated candidates.

### **Role of the Parliament:**

In a few countries, the members of the existing governing body invite the nominating organisations to suggest candidates for the future governing body when their terms expire. In other countries, the Parliament or the parliamentary committee on media invites the nominating organisations to submit candidates. In cases where the number of nominated candidates corresponds with the number of candidates needed for the governing body, the role of Parliament is restricted to validating that all candidates live up to the minimum requirements stated in the law. However, if the election procedures imply that an excess number of candidates are nominated the parliamentary process has in many cases proven to be a much politicised election. Politicians in transitional countries have proved often to be keen to exert political influence on the editorial line of public service broadcasters, endangering media freedom. The election of independent regulatory bodies is similarly important because their decisions on the licensing of private media and other media regulation have great economic and political impact on media and society.

### **Requirements to the candidates for a governing body:**

In all parts of Western Balkans, the legislation specifies the grounds for exclusion of candidates with political and economic conflicts of interests from becoming members of the governing bodies of public service media and regulatory bodies.

In addition, in most cases the eligibility criteria for the candidates are specified with regards to the candidates' educational and professional background in order to professionalise (and reduce politicising) the work of governing body,. This is strongly recommended by the Council of Europe as a means to ensure that the most qualified

and professional candidates are nominated for the governing bodies of particularly regulatory bodies. A reasonable formulation with regards to eligibility criteria would for example be:

*Members of the governing body of the Independent Regulatory Body shall hold an academic degree and have at least 10 years work experience in the following fields: Media in general; audio-visual services, audiovisual programme production, media technology, economy, administration, justice, cinematography, journalism, business and management, public relations, or international relations. Members shall have high human, professional and moral credibility and authority, be fully committed, objective and impartial in exercising their functions. They shall be appointed and act in their professional capacity and shall not represent any other interest. Ineligible for memberships are: politicians at local and national level; individuals elected, nominated or appointed by political bodies and political party officials. Ineligible are also media owners, management, employees, and contracted persons having a stake in legal entities engaged in production; transmission and/or distribution of radio and/or television programmes or other Audio/Visual Media services and related activities; spouses or relatives of persons mentioned above.*

The recommendations above are based on the experience not only from Western Balkans but also from member states in the European Union. These recommendations intend to support and safeguard media independence, prevent politicisation of the regulatory body, and to contribute to democratisation. Please find below a chart based on accessible laws and bylaws in English presenting an overview of the procedures for the election of board members and managers of the public service media and regulatory bodies in the Western Balkan region.

## Election of governing body and the GD of the public broadcasters (Albania, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, and Serbia)

	<b>Albania:</b> Radio Televizioni Shqiptar (RTSH) <sup>1</sup>	<b>FYROM Macedonia:</b> MRT (Makedonska radiotelevizija) <sup>2</sup>	<b>Kosovo:</b> RTK (Radio Televizioni i Kosovës/Radio Televizija Kosova) <sup>3</sup>	<b>Montenegro:</b> RTCG (Radio i televizija Crne Gore) <sup>4</sup>	<b>Serbia:</b> RTS (Radio-televizija Srbije) and RTV (Radio Television of Vojvodina) <sup>5</sup>
<b>Types and number of nominating organisations</b>	<p><b>Authorised nominators are:</b>  <b>NGOs</b> (human rights, children's rights, disabled children's rights, public policy)  <b>Journalist, media and authors associations</b>  <b>Lawyers associations</b>  <b>Public institutions</b> (Universities, courts, arts)</p>	<p><b>Authorised nominators are:</b>  <b>Public institutions</b> (universities, arts) nominate 3 members;  <b>The largest journalist's association</b> nominates 2 members  <b>Association of the Local Self-government Units</b> nominates 3 members  <b>Parliamentary Committee</b> nominates 5 members  <i>Ministry of Information Society and Administration determines which journalists' association has the largest base of dues paying members,</i></p>	<p>Authorised nominators not specified. PSB Board "shall be composed of public personalities with professional qualifications in various areas such as: culture, art, cinematography, journalism, law, business and financial management, public relations, international relations, academia, media and engineering"</p>	<p><b>Authorised nominators are:</b>  1. Universities, for one member; 2. Montenegrin Academy of Science and Art, and "Matica crnogorska," for one member; 3. Culture (national institutions, NGOs), for one member; 4. Chamber of Commerce for one member; 5. Media NGOs for one member; 6. NGOs (human rights, environment, consumers' rights; disabled persons, education and social welfare) for two members; 7. trade union represented in the Social Council, for one member; 8. Montenegrin Olympic Committee and Montenegrin Para-Olympic Committee, for one member</p>	<p>The Council of the regulatory body shall determine in detail the procedure for appointing members of the PSB Management Board.</p>

<sup>1</sup> Law no. 97/2013 date 4.3.2013 On audio and audio-visual media services in the Republic of Albania. (Please note that the English version of this law translates "Radio Televizioni Shqiptar" uses the corresponding English abbreviation ART)

<sup>2</sup> Law on Audio and Audiovisual Media Services (2013)

<sup>3</sup> Law No. 04/L-046, On the Radio Television of Kosovo, 29 March 2012.

<sup>4</sup> Law on Public Broadcasting Services of Montenegro (2008, 2012).

<sup>5</sup> Law On Public Service Broadcasting (2014)

	<b>Albania:</b> Radio Televizioni Shqiptar (RTSH)	<b>FYROM Macedonia:</b> MRT (Makedonska radiotelevizija)	<b>Kosovo:</b> RTK (Radio Televizioni i Kosovës/Radio Televizija Kosova)	<b>Montenegro:</b> RTCG (Radio i televizija Crne Gore)	<b>Serbia:</b> RTS (Radio-televizija Srbije) and RTV (Radio Television of Vojvodina)
<b>Number of nominated candidates</b>	Not specified	13	Ad-hoc parliamentary committee recommends 2 candidates for each vacant seat	9	Not specified
<b>Number of council members</b>	11members	13 members	11 members. At least two (2) Board members shall be appointed out of the Serb community, and one (1) member shall be appointed from other non-majority communities, and at least two (2) members out of female gender	9 members Esteemed experts in the field relevant for performing of activities of the PSB Council (media, law, economy, technical sciences, sociology, marketing, broadcasting, etc), with permanent residence in Montenegro, who is a holder of a university level degree, at least.	9 members Prominent experts in fields relevant for the public service broadcaster institutions (experts in the fields of media, culture, management, law, and finance).
<b>Role of Parliament or parliament's media committee</b>	Parliamentary committee examines all nominees and excludes them one by one. It shortlists 5 candidates endorsed by the majority and 5 candidates by the minority. The candidacies should be submitted to a vote in Parliament and each exclusion explained.	Parliamentary committee compiles on basis of the candidates from the nominators a proposed list to the parliament, which appoints the new members.	Ad-hoc parliamentary committee reviews and interviews candidates. It then recommends 2 candidates for each vacant seat to the Assembly of Kosovo which subsequently selects one of the candidates by majority vote.	The Working Body of the Parliament proposes a list for the PSB Council appointment, with attached reasoning and report on completed procedure for the Council appointment, The Parliament shall decide upon entire proposed list of candidates for the Council appointment.	The Management Board is appointed and dismissed by the Council of the regulatory body by a two-thirds majority of the total number of members.

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<b>Who chooses the chairperson? How?</b>	Parliamentary committee shortlists four candidates who applied for the vacancy. The minority in the committee may exclude two of these and the assembly will vote among the remaining candidates. The candidate receiving a majority is elected as Chairperson of ART Steering Council..	PSB Programme Council members elect their chairman by majority vote	PSB Board with simple majority vote by secret voting	PSB Council in a manner and according to the procedure regulated by the PSB Rules of Procedure	Not specified.
<b>Who chooses the general director</b>	PSB Steering Council appoints and dismisses the General Director with two thirds of the votes.	PSB Programme Council	PSB Board	PSB Council	Management Board by a two-thirds majority of votes of the total number of members

### Election of Board and the GD of the public broadcasters (Bosnia and Herzegovina)

	<b>Public Broadcasting System<sup>6</sup></b>	<b>BHRT</b> Bosanskohercegovačka radiotelevizija <sup>7</sup>	<b>RTV FbiH</b> Radiotelevizija Federacije Bosne i Hercegovine <sup>8</sup>	<b>RTRS</b> Radiotelevizija Republike Srpske <sup>9</sup>
	The Public Broadcasting System in Bosnia and Herzegovina shall consist of Radio-Television of Bosnia and Herzegovina (BHRT), Radio-Television of the Federation of Bosnia and Herzegovina (RT FbiH), Radio-Television of the Republic Srpska (RT RS), and Corporation of Public Broadcasting Services of BiH (Corporation). Laws on BHRT, RT RS and RT FbiH shall be	Through the Joint Legal Entity, (the Corporation), BHRT shall participate in acquiring programming ; introducing and using new technologies in the field of broadcasting ; exchanging and participating in joint technical and other technological projects with other broadcasting	The Public Broadcasting System in Bosnia and Herzegovina consists of the Radio-Television of Bosnia and Herzegovina, the Radio-Television of the Federation of Bosnia and Herzegovina, Radio and Television of Republika Srpska and the Corporation of Public Broadcasting	Public Broadcasting Service of Republika Srpska, (RTRS) shall constitute part of the Public Broadcasting System of Bosnia and Herzegovina in which the Law on the public Broadcasting System of Bosnia shall regulate the relationships between the public services and Herzegovina.

<sup>6</sup> Law on the Public Radio and TV System of BiH, 2005, amended in 2009 and 2010,

<sup>7</sup> Law on the Public Broadcasting Service of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", 32/10

<sup>8</sup> Decree On Proclamation Of The Law On Public Service Radio-Television Of The Federation Of Bosnia And Herzegovina

<sup>9</sup> Law on the Radio and Television of Republika Srpska, "Official Gazette of Republika Srpska", No. 49/06

	<b>Public Broadcasting System</b>	<b>BHRT</b> Bosanskohercegovačka radiotelevizija	<b>RTV FbiH</b> Radiotelevizija Federacije Bosne i Hercegovine	<b>RTRS</b> Radiotelevizija Republike Srpske
	harmonised with the provisions of this Law.	agencies and program producers ; other activities in accordance with the Law on System.	Service of Bosnia and Herzegovina.	High representative to Security Council 27.april 2016 : “Contrary to the provisions of existing State-level legislation, amendments to this law provide RTRS with a possibility for broadcasting on more than one channel on its own frequencies”.
<b>Types/number of nominating organisations</b>	Not specified	Not specified	Not specified	Not specified
<b>Number of nominated candidates</b>	Not specified	Not specified	Not specified	Not specified
<b>Number of council members</b>	12 members All members of the public broadcasting services’ boards of governors (four members from each public broadcasting service), serving ex-officio.	4  One member from among each of the constituent peoples of BiH and Others.  Two of those four members must have permanent residence in the Federation of Bosnia and Herzegovina, Two must have permanent residence in Republika Srpska.  Amendment 2010: In nomination and appointment of the members of the bodies of the BHRT, equal representation of both genders shall be promoted, and the percentage of participation of genders in the bodies of the Agency, as a rule, shall indicate equal gender	4  One member from among each of the constituent peoples of BiH and Others. Members of the Board shall be citizens of Bosnia and Herzegovina .	4  One member from among each of the constituent peoples of BiH and Others. The members of the Board of Governors may only be citizens of Bosnia and Herzegovina, i.e. citizens of Republika Srpska with permanent residence in Republika Srpska.

	<b>Public Broadcasting System</b>	<b>BHRT</b> Bosanskohercegovačka radiotelevizija	<b>RTV FbiH</b> Radiotelevizija Federacije Bosne i Hercegovine	<b>RTRS</b> Radiotelevizija Republike Srpske
		representation.		
<b>Role of Parliament or parliament's media committee</b>		<p>The regulatory body shall conduct a fair selection process based on the standards in the Law on Ministerial, Council of Ministers and Other Appointments of Bosnia and Herzegovina and draw up a ranked shortlist of candidates. The Parliamentary Assembly of Bosnia and Herzegovina shall appoint the members.</p> <p>Amendment 2010: The regulatory body shall undertake all measures necessary to ensure equal representation of genders on the rank lists.</p>	<p>The regulatory body shall conduct a fair selection process based on the standards in the Law on Ministerial, Council of Ministers and Other Appointments of Bosnia and Herzegovina and draw up a ranked shortlist of candidates. The Federal Parliament shall appoint the members who have been shortlisted.</p>	<p>The regulatory body shall conduct a fair selection process based on the standards in the Law on Ministerial, Council of Ministers and Other Appointments of Bosnia and Herzegovina and draw up a ranked shortlist of candidates. The national Assembly of Republika Srpska shall appoint members of the Board of Governors.</p>
<b>Who chooses the chairperson? How?</b>	Chairman of the Board of Governors of the Public Broadcasting Service of BiH.	The member of the Board of Governors serving the final year of his/her fourth term shall chair the Board of Governors during that year.	The member of the Board of Governors serving the final year of his/her fourth term shall chair the Board of Governors during that year.	The member of the Board of Governors serving the final year of his/her fourth term shall chair the Board of Governors during that year.
<b>Who chooses the general director</b>	System Board chooses the General Director of the Corporation of Broadcasting Services BiH. The Chairman of the System Board and the director of the Corporation may not be from the same constituent people.	The Board of Governors	The Board of Governors	<p>The Board of Governors.</p> <p>Statutes 2011: Board of Governors are also responsible for the increase in the coverage area of the RTRS broadcasting signal.</p>
<b>Function of the System Board</b>	<p>The System Board acts as the supervisory board for the Corporation of the public broadcasting services.</p> <p>Article 12: The Corporation of Public Broadcasting Services of BiH is a jointly run structure amongst the public broadcasting services with</p>			

	<b>Public Broadcasting System</b>	<b>BHRT</b> Bosanskohercegovačka radiotelevizija	<b>RTV FbiH</b> Radiotelevizija Federacije Bosne i Hercegovine	<b>RTRS</b> Radiotelevizija Republike Srpske
	equal rights and obligations towards all three public broadcasting services. The Corporation shall have its organisational units in Sarajevo, Banja Luka and Mostar.			

## Members of the regulatory body (Albania, Bosnia-i-Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia)

	<b>Albania:</b> Audiovisual Media Authority (AMA) <sup>10</sup>	<b>Bosnia-i-Herzegovina:</b> Communications Regulatory Agency (CRA) <sup>11</sup>	<b>FYROM Macedonia:</b> Agency for Audio and Audiovisual Services <sup>12</sup>	<b>Kosovo:</b> Independent Media Commission (IMC) <sup>13</sup>	<b>Montenegro:</b> Agency for Electronic Media of Montenegro (AEM) <sup>14</sup>	<b>Serbia:</b> Regulatory Authority of Electronic Media (REM) <sup>15</sup>
<b>Types and number of nominating organisations</b>	<b>Authorised nominators are: NGOs</b> (human rights, children's rights, disabled children's rights, public policy) <b>Journalist and media associations</b> <b>Professors' associations</b> <b>Lawyers, electric and electronic engineering associations</b> <b>Courts</b>	Authorised nominators not specified.	<b>Authorised nominators are: Public institutions</b> (universities) nominate 1 member <b>The largest journalists association</b> nominates 1 member <b>Lawyers association</b> nominates 1 member <b>Trade Unions association</b> nominates 1 member <b>Association of the Local Self-government Units</b> nominates 2 members <b>Parliamentary Committee</b> nominates 2 members	Open publication of vacancies made by IMC. An ad hoc committee of the Kosovo assembly nominates two for each vacant position, and the Parliament chooses one of two as member.	<b>Authorised nominators are:</b> <b>Academia</b> nominate one member; <b>NGOs</b> (human rights and freedoms) nominate one member <b>NGOs</b> (media) nominate one member <b>Montenegrin PEN Centre</b> nominates one member <b>Commercial broadcaster associations</b> nominate one member.	<b>Authorised nominators are:</b> <b>A committee of the Parliament;</b> (2 members) <b>A committee of the Parliament of the Province of Vojvodina</b> (1 member); <b>Accredited universities</b> (1 member) <b>Associations of electronic media and/or associations of journalists</b> (1 member) <b>Professional associations of film, stage, theatre artists and composers</b> (1

10 Law no. 97/2013 date 4.3.2013 On audio and audio-visual media services in the Republic of Albania.

11 Law on Communications of Bosnia and Herzegovina (2003, amended 2006, 2010 and 2012)

12 Law on Audio and Audiovisual Media Services (2013)

13 Law No.04/L-044, On the Independent Media Commission, 2 March 2012

14 Law on Electronic Media, enacted in 2010 and amended in 2011

15 Law on Electronic Media, 2014

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						member) <b>Associations for freedom of expression and protection of children</b> (1 member) <b>National councils of minorities</b> (1 member) <b>Churches and religious communities</b> (1 member)
<b>Number of nominated candidates</b>	More than 28 More than four candidates per AMA member vacancy.	14 Twice as many candidates as posts available	8	14 Ad-hoc parliamentary committee recommends two candidates per vacant seat	5	9
<b>Qualifications and conflicts of interest of the candidates</b>	10 years of work experience or more in the following fields: Media in general; audiovisual services, audiovisual programme production, media technology, economy, administration, competition rules, Albanian language disabilities and other vulnerable groups; art, culture and music; justice, law and public administration; science, environment,	Members of the Council of the Agency shall be appointed in their personal capacity as individuals with exceptional legal, economic, technical or other relevant expertise and experience for the fields of telecommunications and/or broadcasting  Officials in legislative or executive functions at any level of Government, or	The Council members should represent the diversity of the Macedonian society with equitable representation of both genders.	Members shall be distinguished personalities from various fields, such as culture, art, justice, cinematography, journalism, business and management, public relations, international relations and media and information technology Members shall have high human, professional and moral credibility and authority, be fully committed, objective	Council members shall be elected from among renowned experts in the fields relevant for AEM's work, holding university degrees, who are Montenegrin citizens and reside in Montenegro. The following shall not be eligible for Council members: 1) members of the national Parliament and local councils, 2) persons elected, nominated or appointed by the President, the Parliament or the Government of Montenegro,	Council members are elected from the ranks of distinguished experts in the field important for performing duties from the Regulator (media experts, economists, lawyers, telecommunication engineers, etc.). A member of the Council can only be a person who has a university degree, who is a citizen of and resides in the territory of the Republic of Serbia

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	and technology; consumer protection; social sector and education activities; local, public and national communities	members of political party organs shall not be named as candidates for the membership of the Council of the Agency. Members of the Council of the Agency shall declare any interest in a telecommunications operator or a broadcaster and shall recuse themselves in cases that present a conflict of interest		and impartial in exercising their functions, shall be appointed and act in their professional capacity and shall not represent any other interest outside the IMC. They shall not seek or accept any instruction in relation to the IMC activities from any person or entity outside the IMC	3) political party officials (presidents, Presidency members, their deputies, members of Executive and Main Boards, and others, 4) shareholders and members of management, employees, and contracted persons having a stake in legal entities engaged in production, transmission or distribution of radio or television programmes or other AVM services and related activities (advertising, electronic communications) 5) persons convicted for misuse of office, corruption, fraud or theft, regardless of the punishment pronounced or convicted for other criminal offences to imprisonment sentence exceeding six months, for the period for which the legal consequences of the conviction take effect, 6) spouses of persons listed under items 1 to 4 of this paragraph or who are related to them in	

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					straight line regardless of the degree of kinship or in indirect family relations up to the second degree and in-laws.	
<b>Number of council members</b>	7	7	7	7	5	9
<b>Role of Parliament or parliament's media committee</b>	The parliamentary committee shortlists 3 candidates endorsed by the majority and 3 candidates by the minority. All candidates are submitted to approval by parliament.	The Council shortlists candidates for nomination by the Council of Ministers. The Parliament of Bosnia and Herzegovina shall accept or reject these nominations. If the Parliament rejects a nomination, the Council of Ministers shall nominate another person from the list of candidates submitted and submit this nomination to the Parliament.	The Assembly shall appoint the Council members upon proposals from authorised nominators. The nominated candidate shall present its views in front of the Working Body of the Assembly responsible for audio and audiovisual media services.	Ad-hoc parliamentary committee reviews and interviews candidates. It then recommends 2 candidates for each vacant seat to the Assembly of Kosovo which subsequently selects one of the candidates by majority vote.	The Parliamentary committee establishes the list of nominees for Council members. If nominators submit more separate nominations, the draft list shall use the following criteria: 1) enjoying support of the greatest number of authorised nominators; 2) the nominee with more years of experience Parliament shall decide on the Draft List of Nominees in its entirety.	The Parliamentary committee shall organize a public discussion with the proposed candidates Council members are appointed by the Parliament, following the proposal of the authorized nominators. A member of the Council shall be elected if s/he is voted for by a majority of the total number of members of the Parliament.
<b>Who chooses the chairperson? How?</b>	The parliamentary committee shortlists four candidates. The minority in the committee may exclude two of these candidates. The remaining candidate	The members shall elect a chairman and a vice-chairman from amongst themselves	The Council of the regulatory body elects its president.	The Council of the regulatory body elects its president	The Council elects the chair from among the Council members	The Council shall elect a President and Vice President from among its members by a two-thirds majority of the total number of members.

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	receiving more than half of the votes of the members of parliament shall be elected as the Chairperson of AMA.					