Part B

South Eastern Europe

Albania

I Freedom of Expression

a) Constitutional Guarantees of the Freedom of Expression.

In the series of missions of the Albanian state, parliament and government, from 1991 until now there is the continuation of attempts to complete the national legislation with the legal framework deals with free expression, press, media and broadcast activities, taking into consideration the fact that Article 10 of the Convention for the Protection of Human Rights provides the freedom of expression and information as one of the most important principles of a democratic society and one of the first conditions for prosperity and development of the human beings.

The legal framework that rules all the process and the activities dealing with the media, public and private televisions and all activities including production, broadcast and rebroadcast of programmes and information, has been improved continuously from 1991 until nowadays with different legal acts, laws and decisions of the Council of Ministers.

The first step in this process was the approval of the law No. 7491, dated 29.04.1991 "On the main constitutional provisions" that provided for the first time in the article 16 of the law the constitutional guarantees of freedom of expression and freedom of radio and television. Based on the law "On main constitutional provisions", of 1991 there are approved:

- On 14.5.1997, the first law No. 8221 "On public and private radio-television in the Republic of Albania"; and
- On 30.09.1998 the second law No. 8410, "On public and private radio-television in the Republic of Albania", amended with law No. 8655, dated 31.7.2000, with law No. 8794, dated 10.5.2001.

The Albanian Constitution of 1998 approved by the law No. 8417, dated 21.10.1998, is the main act that gives constitutional guarantees for the citizens and interested legal subjects for the freedom of expression, freedom of

the press, radio and television and broadcast and rebroadcast of programmes and information of any kind by means of sound, image, coded signals, writing, intended for the public via electromagnetic waves, cables, responders, satellites or by any other means.
More concretely, article 22 of the Albanian Constitution of 1998 provides that:

1. Freedom of expression shall be guaranteed.
2. Freedom of the press, radio and television shall be guaranteed.
3. Prior censorship of a means of communication shall be prohibited.
4. Law for the operation of radio or television stations may require prior permission.

The Albanian constitutional guarantees on free expression confirms the will of the Albanian state to ensure the delivery of free information and ideas and the independence of radio and television broadcaster in order to facilitate the formation of the free exchanges between cross border programmes and activities.

Also, the Albanian Constitution of 1998 in Article 58 provides that the copyright is protected by law and gives the guarantee that the freedom of artistic creation and scientific research, utilization as well as profit from their results shall be guaranteed for everyone. The law "On copyright" No. 7564, dated 19. 05.1992, numerate the audiovisual works through the most important works enjoy protection.

Based on the above-mentioned constitutional framework there is approved a package of laws dealing with press, media, public and private television and broadcast activities. The entire chain of laws approved by parliament and other legal acts approved by Albanian government creates possibility for:

- Consolidation of a wide broad legal and theoretical concept of freedom of the expression and press, for written and electronic media;
- Definitions of the main principles for the practical execution of the activity on press, media, broadcasting, other than being free, respecting the personality and dignity of the citizens, being impartial and respecting the political opinions and religious faith, respecting the privacy of human beings, as

well as their fundamental freedoms and rights, the prohibition to infringe the constitutional order, sovereignty and national integrity;
- The process of setting up and giving definitions and competencies of the public and independent bodies and institutions charged to take care with the enforcement of the legal instruments in the field freedom of expression and issuing of the licences for the interested subjects;
- Elaboration of the new methodology in broadcasting and rebroadcast of the information through radio and television, etc.

b) Enforcement of International Legal Instruments in the Field of Human Rights, containing Freedom Of Expression Provisions

One of the most important objectives of a developed society is to have a contemporary legal framework for all economic, political, social, educational, informational aspects of life but the second objective, as important as the first one, is to ensure the proper instruments for the implementation of all this legal framework in the practice.

Bearing in mind Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights Deputies and the Article 15.b of the Statute of the Council of Europe, the Recommendation Rec (2000) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for broadcasting sector adopted on 20 December 2000 at the 735th meeting of the Ministers' stressed the important role played by the broadcasting media in modern, democratic societies.

It creates the need for greater adaptability of regulation so that domestic legal systems and democratic and cultural traditions should be combined with the establishment of regulatory authorities in different ways but always informed by the principles of independence, effective powers and transparency.

Recommendations about the establishment of independent regulatory authorities for the broadcasting sector; the approval of provisions in domestic legislation and meas-

ures in internal policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, about the way the regulatory authorities are composed, their competences, etc are carried out in Albania.

There is approved a new legislation, there is established a new system of regulatory authorities and in order to have more independence by the influence of political power, more financial and economic independence the process of improvement of legislation is going on.

The European Convention On Human Rights lastly has its impact in the domestic legislation in domestic court system and especially in Albanian Constitutional Court that based in the article 131 of the Albanian Constitution has the competence to decide on the conformity of:

- the Albanian legislation with Constitution and international conventions and agreements, before and after the process of ratification by the parliament, (article 131/a, b);
- legal acts of the local and central administration with the international conventions and agreements, (article 131/c);
- the final adjudication of the individual complaints for the violation of their constitutional rights to due process of law, after all legal means for the protection of those rights have been exhausted.

The Law No. 8525, dated 9.9.1999, "On Ratification of the European Convention on Transfortier Television" provides the freedom of broadcast based on the article 10 of the European Convention on Human Rights. This law provides the rights and obligations of the subjects or parts, the questions of programming, the public awareness for big events, cultural objectives, dealing with games, sportive activities, publicities, advertisement, news, teletex service, etc, the reciprocal assistance between undersigned states, etc.

Article 20 of the Convention provides to set up a Permanent Committee that will take care with the implementation of the Convention.

c) The independent mechanism/body for responding to broadcasters' complaints of violations of broadcasting freedom.

The National Council of Radio-Television (NCRT)
NCRT is an independent body supported by the state budget that has based its activity on the law "On public and private radio-television in the Republic of Albania" and it is set up in order to check the implementation of this law and other laws dealing with media, too, by the subjects that exercise their activity as public or private radio and television in Albania.

Regulator Entity of Telecommunications (RTE)
RTE is the regulatory authority that regulates the rules and the way of the delivery of the radio-televisual programmes.

Complaints Council for the Radio and Television
Another mechanism for complaints is the Complaints Council for the Radio and Television. It is an advisory body set up at the National Council of Radio and Television.

Court System
- The court system is the independent system, part of judiciary power that takes decisions in cases when interested parties represent their sue/claim in the court because of contradictions with the decisions of the NCRT or TRE.
- The Constitutional Court is the independent institution that takes decisions in cases of violation of constitution and European Convention on Human Rights.

d) Examples of violations of the right to free _expression in broadcast media from the last 2-3 years.

The press in Albania is developing rapidly beginning from the technical level. The Albanian legislation has created the possibility that the competition be free and if the number of broadcasts is limited, this is not because of law and policy but because of the fact that frequencies as a national resource are limited.

The Tirana District Court has a number of cases involving broadcasters claiming the revocation of the administrative act (decision of NCRT). Concretely, the decision No. 502, dated 15.2.2001 of Tirana District Court held that the revocation of the decision of NCRT Nr. 30, dated 14.11.2000 obliging NCRT to issue national licence in the favour of the plaintiff that was the Company Radio +2. The Court noted that there were 4 frequencies at the disposal of NCRT giving it the possibility to issue 4 national licences. Company Radio +2 was the second in the list of the broadcasters and NCRT only awarded a local licence to it, excluding the possibility of getting a licence on the basis that plaintiff did not have the confirmation from bank regarding its financial situation. Court decided the obligation of NCRT to issue national licence in the favour of plaintiff. Tirana Court of Appeal overruled the Decision of Tirana District Court deciding that NCRT is obliged to evaluate the claim of plaintiff because the reason of its exclusion was not based in law (bank confirmation is not condition for licence).

A number of District Court's decisions are suspended up to the moment the Albanian parliament will approve a new law should extend the possibility to have the new map of frequencies in Albania.

Media Vizion SH.A sued NCRT in Tirana District Court, because NCRT violated the article 24 of the law on broadcasts. NCRT failed to respect the time limit of 90 days and did not respond to the claim of Media Vizion for a national licence. Court decision held that the NCRT should evaluate the claim of plaintiff.

Last year the National Council of radio Television (NCRT), issued the licence for broadcast in favour of two private televisions KLAN and ARBERIA refusing the licence to the other interested parties, such as Tele Norba, Gjeli Vizion, etc. A big debate began because of the dilemma raised by the refused subjects making comments that this was a case of violation of the freedom of expression of broadcast media and a situation of an unfair competition organized by NCRT. In reality the refused parties fulfil the technical and legal conditions for the licence but the possibility of issuing licence by the NCRT has been limited because of there were frequencies only for two subjects. A claim has been represented in the Albanian Constitutional Court about this

problem but since the law changed at that time, the request was withdrawn.

The periodical magazine INDEX MEDIA gives different cases of violation of the freedom of speech, but mostly dealing with the activity of newspapers. Free Media Albanian Forum, Media Institute and Research Institute on Democracy and Development publish it.

Mostly it is economic problems that in practice create the violation of the free expression of broadcasts and effect pressure on them because of the rule that public institutions have to transmit their advertisement only through the public press institutions and Albanian Public Television has a domination of the market on this point.

II National Legislative Acts Regulating Broadcasting

National legislative acts regulating broadcasting are:
a. The Law No. 8417, dated 21.10.1998 "On Constitution of the Republic of Albania". In this point is important to explain that since the Constitution of the Republic of Albania is approved after the approval of the law "On public and private radio-television in the Republic of Albania", article 158 of the Constitution provides that situation: laws and other normative acts approved before the date the Constitution enters into force shall be applied as long as they have not been abrogated. It means that the Constitution of 1998 is the main legal base for the law on public and private radio televisions;

b. The Law No. 8410, dated 30.9.1998 "On public and private radio-television in the Republic of Albania", amended by Law No. 8655, dated 31.7.2000, and by Law No. 8794, dated 10.5.2001. This law provides as the first condition for the exercise of the activity of a radio or television broadcaster, the necessity of having a licence. The main body issuing the licence is the National Council of Radio and Television. Its competences are provided by the article 7 of the law, as twice amended. For the purposes of this Law, the term "local radio or television broadcast" shall mean any coverage by television or radio signal transmitted by such televi-

sion or radio operators as have been licensed to do the same across the territory of communes, municipalities, and administrative units of no more than two prefectures (area of coverage), when these constitute a single geographical entity and provide sufficient financial resources for radio and television production and broadcast of programmes.

c. The Law No. 8288, dated 18.02.1998, "On the Telecommunications Regulatory Entity." This law provides for the establishment of a new body. Its activity guarantees the protection of public interest in field/environment of telecommunications. Within telecommunications activities, there are included the commercial activities dealing with the broadcast of information from one source to one or some other destinations.

d. The Law No. 7564, dated 19. 05.1992, "On Copyright," amended by Law No. 7923, dated 19.04.1995. This law is aimed at being implemented in collaboration with the law "On public and private radio-television in the Republic of Albania", in the disputes related to the violation of the copyright and violation of the rights deal with the broadcast. The competent institution for dispute resolution is district court. (See the article 3 and 43 of the Law No. 8410, dated 30.9.1998 "On public and private radio-television in the Republic of Albania", changed by article 10 of the with Law No. 8794, dated 10.5.2001 that provides: "Where provisions governing copyright and radio-television broadcasting rights are violated, the interested party shall file charges with the court in compliance with and as specified by the law on copyright.")

e. The Law No. 7756, dated 11.10.1993 "On media", amended by the Law No. 8239, dated 3.9.1997 that has only article 1 explaining that media is free and freedom of media is protected by law.

f. The Law No. 8525, dated 9.9.1999, "On ratification of the European Convention on Transfrontier Television" provides for the freedom of broadcast based on Article 10 of the European Convention on Human Rights. This law provides the rights and obligations of

the subjects or parties, the questions of programming, the public awareness for big events, cultural objectives, dealing with games, sporting activities, publicity, advertising, news, teletex service, etc, the reciprocal assistance between undersigned states, etc. Article 20 of the Convention provides for the establishment of a Committee that will be responsible for the implementation of the Convention.

g. Decision No. 440, dated June 1, 2000 "On the approval of the charter of the Albanian Radio-Television (ART)".

h. Law No. 7726, dated 29.6.1993 "On national archival fund and archives", since all the news and other registered programmes is not excluded by the provisions of the law on archives.

III Regulatory Authority

a) Status

There are different regulatory authorities of private broadcasting:

National Council of Radio and Television

The most important one is called National Council of Radio and Television, (NCRT). It is set up by law No. 8410, dated 30.9.1998 "On public and private radio-television in the Republic of Albania", changed with Law No. 8655, dated 31.7.2000, and changed with Law No. 8794, dated 10.5.2001.

The National Council of Radio-Television, which is an independent body acting on the basis and for the implementation of the provisions of this law, is set up for the regulation and supervision of radio-television activity in the Republic of Albania.

The National Council of Radio and Television has its own management, which shall conduct all such basic and administrative activities as may be required for the proper functioning of the Council.

The structure, the employee structure, the organization of the activity, the competencies and the supplementary annuities and employment criteria shall all be defined by the NCRT, in compliance with the legislation in force. The salary structure of the NCRT's management shall be approved by the Council of Ministers.

The meetings of the National Council of Radio and Television shall be convened only when not less than 4 members are present and the decisions shall be adopted when they are taken with the relative majority of those present.

Telecommunications Regulatory Entity

Telecommunications Regulatory Entity (TRE), is another authority. Law No. 8288, dated 18.02.1998 sets it up. TRE is a public, legal no budget, body headed by the Leading Council composed of 5 members nominated for 5 years with the right to be re-elected not more than two times. The activity of TRE deals with the main objective as follows: giving guarantees for the protection of public interest in field/environment of telecommunication. In telecommunications activities are included the commercial activities deal with the broadcast of information's from one source to one or some other destinations.

b) Political Independence

National Council of Radio and Television

The National Council of Radio and Television is composed of the chairman, deputy chairman, and five members who are personalities from the social, cultural, legal, economic, and educational, media, and technical sphere of radio-television.

The People's Assembly elects the members of the National Council of Radio and Television for a five-year term, and for no more than two successive terms. The President of the Republic proposes to the People's Assembly one candidate, while the Permanent Parliamentary Commission for the Public Information Media, representing equally the ruling and opposition parties in the parliament, proposes the other six candidates.

The chairman of the National Council of Radio and Television is elected by the People's Assembly among its seven members and on the basis of two candidates proposed by secret ballot by the NCRT.

The deputy chairman of the National Council of Radio and Television is elected by the NCRT itself by secret ballot between two candidates.

The duration of the term of the first elected chairman and deputy chairman of the NCRT shall be six years, in order to ensure better continuity of the functioning of the NCRT for the five-year rotation of members in the terms to follow.

Telecommunications Regulatory Entity

The article 3/2 of the over mentioned law provides that one of the members of Telecommunications Regulatory Entity is nominated by the President of the Republic, two members are elected by the Parliament, and two others are nominated by the Council of Ministers.
The members should be selected through the qualified specialists with more than 10 years experience in sectors of telecommunications, economy, law or public administration.
The member of TRE is dismissed if he:

- has physical or mental disabilities;
- is declared guilty and imprison condemned by a court decision;
- is elected deputy of the Parliament or elected / nominated in local administration;
- has refused to conduct his duty for more than 6 months without any reasonable excuse; or
- has violated one of conditions of Article 3 of the law.

c) Economic Independence

National Council of Radio and Television

The members of the National Council of Radio and Television are not allowed to:

- be members of political parties and associations, members of parliament or of the government, nor declare publicly their opinions or act in their own interest;

- be members of anonymous companies related to the mass media or represent advertisement interests that run contrary to their function;
- have financial interests that are related to radio and television broadcasting through ownership, employment, or advertisement relations;
- protect the interests of a company or firm producing audio-visual materials, press publications, advertisements or telecommunications.

The obligations foreseen in points three and four of shall continue to be in force for one year after the completion of the term of NCRT members.

Telecommunication Regulatory Entity

Based in the article 3/2 of the law No. 8288, dated 18.02.1998, of the each member of TRE, before he/she should be nominated should:

- withdraw from any position, job, and consultancy;
- sell or liquidate any financial interest in commercial companies acting under the jurisdiction of TRE.

Article 3/3 provides a prohibition where there are conflicts of interests when any member of TRE:

- is a deputy of the Parliament or elected/nominated in local administration;
- has the family relations with members of the Council of Ministers,
- has financial interests in a commercial company deals with the TRE activity,
- is excluded by the law from the possibility of having public/statutory responsibilities.

d) Financial Independence of the NCRT

Sources of funding for the NCRT are:

- income from the payments for receiving and renewing the licence;
- income from annual fees for the licensing of the radio-television broadcasting, defined in the fiscal laws;
- 5 per cent of the annual income of the radio-television licensees;

The initial activity funding allocated by the Council of Ministers after the nomination of the members of the NCRT. This initial funding may be paid as well by the

reserve fund of the Council of Ministers, financing from the state budget, donations.

The NCRT keeps accounts of income and expenses in compliance with the Albanian accountancy legislation.

The NCRT may also benefit from financial or material donations. Donations must be accepted unconditionally and used for work purposes as assessed by the NCRT. Donations must be declared and recorded in a register that the NCRT keeps especially for this purpose.

By the end of the year, the NCRT has the obligation to send a copy of the register, entries and expenses to the High State Audit and another copy to the Permanent Parliamentary Commission for the Public Information Media. The register must contain the type, size and time of the assistance, the donor and the manner the donation was delivered. The register must contain the identity and signature of the donor.

e) Competences

National Council of Radio and Television

The National Council of Radio and Television has the following competencies:

- Controls the implementation of the laws on media by the entities exercising private and public radio-television activities in the territory of the Republic of Albania.
- Monitors informative programmes broadcast by national radio-television operators.
- The National Council of Radio and Television requests the Telecommunication Regulatory Entity (TRE) to allocate the frequency bandwidths for local and national radio-television activities.
- Guarantees fair competition in the field of electronic media, ensuring at the same time the further development of the Albanian public radio and television.
- Issues to and revokes licences from private bodies for the broadcast of radio-television programmes, including teletext, in the territory of the Republic of Albania and supervises the observation of conditions defined in the licence.
- Drafts the regulation on the criteria for granting licences in compliance with this law.

- Grants and revokes licences for the installation of radio-television responders of foreign programmes in various areas of the country.
- Grants and revokes licences to rebroadcast foreign radio and television in the territory of the Republic of Albania for the public in Albania.
- Issues authorizations to the Albanian private and public operators to broadcast from Albania to other countries (third parties), in compliance with international conventions.
- Determines the norms for the production and broadcast of the public and private electronic media, related to various aspects of the implementation of this law.
- Decides the application of sanctions provided by this law, against the parties that violate these provisions, as well as, as the case may be, demanding the intervention of other bodies according to their competencies.
- Keeps records, files and archives of licences, as well as related documentation reflecting all subsequent changes.
- Requests from the state administration, courts, banks and other relevant bodies, as well as from the office holders of the licensed subjects, any information it deems necessary to check the accuracy of data provided by the applicant for the licence before the licence is granted or at any other
- Expresses officially its opinion on the signing and correct enforcement of international agreements related to radio-television broadcasting.
- Participates in international activities dealing with the strategy and perspectives of the development of radio and television, represents Albania, and supports the participation and cooperation of public and private subjects with analogous European and world organizations in the sphere of radio-television programmes and broadcastings. Develops studies with recommendations on Albania's stand on international official discussions on radio-television broadcasting.
- Suggests changes to legislation and regulations, which are dictated by the technological, economic, social and cultural evolution in the field of electronic and mass media.

- Develops the organizational structure and internal rules of procedure for the administration of the NCRT.
- Reports at the beginning of each year on its annual activity and the manner in which the public and private networks have observed the obligations emerging from this law. The report is submitted to the People's Assembly's Permanent Parliamentary Commission for the Public Information Media and to the entire People's Assembly.
- Checks the quality of signal reception in the licensed areas in cooperation with the TRE and demands solutions to public complaints with regard to the quality of the transmission of radio-television signals.
- Imposes administrative sanctions as follows: warning, fine of up to three (three) percent of the annual turnover of income; Temporary suspension of the licence; Reduction of the duration of the licence; Revocation of the licence. The NCRT determines the sanctions provided in the law not later than one year from the date of the perpetuation of the violation. The punished operator may appeal the decision of the NCRT to the court within one month from the date of the notification of the punishment.
- Issues decisions for the implementation of this law.

Telecommunication Regulatory Entity

TRE has the further rights and obligations:

- Promotes development of telecommunications through choosing operators during licensing.
- Promotes competition among telecommunication operators based on the principles of transparency, non-discrimination and honest competition.
- Compiles terms and criteria of licensing the telecommunication operators.
- Licenses legal and juridical persons complying with the terms and defined conditions.
- Creates favourable conditions for the entrance of new operators in the telecommunication market.
- Organises the co-operation of the operators to secure a unique national telecommunication network, open and integrate able to the international network.
- Assists operators in achieving the inter-connection agreements and intervenes, in case of disputes, for such issues.

- Guarantees the security and quality of the services offered by the operators.
- Increases the efficiency of the services offered by operators in compliance with the terms of licences.
- Monitors the application of the law "On telecommunication in the Republic of Albania" and the other legal and sub-legal acts linked with it, and also denounces the violation, according to the case, to the competent institutions.
- Compiles the plan of the national phone directory and secures its application by the operators.
- Protects interests of the users of the network and services of telecommunication.
- Verifies the homologue paternity of the imported equipment of telecommunication and of those produced in the country.
- Processes norms and standards of telecommunication in compliance with the international recommendations, and also coordinates the work with the department of standards and quality concerning them.
- Monitors the electro-magnetic adaptability for all the terminal equipment linked at the public network of telecommunication. Sets and checks the application of the procedure of establishment of the tariffs of the use of the services of telecommunication, offered by the public operators for the services with limited competition.
- The TRE approves tariffs of telecommunication and procedure of their establishment, according to the rules set in this law.
- Compiles the plan of radio frequencies for civil purposes and sets the range of frequency for each civil user by giving the appropriate licences. Identifies the violators and undertakes the steps to avoid the abusive using.
- Takes to the Council of Ministers the report for its annual activity.
- Publishes information for the general development of telecommunication in Albania.
- Harmonises the interests of the users, state, public operators, investors and shareholders in the telecommunication sector.
- Plays the role of the arbitrator in the disputes among public operators and decides on the resolu-

tion of their disputes in compliance with the competencies set at this law.
- Undertakes independent decisions, without outer intervention, including the government ones.
- Take independent decision, without interferences from governmental bodies.

f) Accountability

The competent authorities are considered independent by the respective laws, but anyway the fact that initial funding is done by the Council of Ministers and it is the government that defines the salaries means that each authority is accountable before the highest executive institution for them.
Concretely, it is provided in the article 8/19 of the law on TRE that it is obliged to send annual reports to the Council of Ministers in order to explain how the funds received from the budget of state has been used and the way the authority has conducted its competences.

Also, it is the accountability of NCRT before the People's Assembly for the NCRT because is provided in the article 7 of the law "On public and private radio-television in the Republic of Albania", that NCRT reports at the beginning of each year on its annual activity and the manner in which the public and private networks have observed the obligations emerging from this law. The report is submitted to the People's Assembly's Permanent Parliamentary Commission for the Public Information Media and to the entire People's Assembly.

Another mechanism for complaints is the Complaints Council for the Radio and Television. It is an advisory body set up at the National Council of Radio and Television. The National Council of Radio and Television appoint it.

This Council is composed of the chairman and two members, experts in the field of the media, who are appointed for a three-year period with the right to be re-elected not more than once.

The object of the activity of the Complaints Council is to sensitize the public to ensure that public and private

radio-television entities implement moral and ethical norms in their progress in a responsible way.

The Complaints Council oversees especially those public and private radio-television programmes that display abuse of violence, sex, and dignity. For this purpose, the Council has the right to demand and examine any audio-visual materials, only after it has been broadcasted, when it deems this necessary for the object of its work.

The Complaints Council examines complaints against public and private radio-television programmes that are contested by public opinion within two months from the broadcast date.
The Complaints Council conducts opinion polls on moral and ethical issues of public and private radio-television programmes. Conclusions reached from the polls and the public complaints are forwarded to the National Council of Radio and Television, as well as to all public information electronic media, which are obliged to publish these conclusions. The Complaints Council publishes the conclusions each 6-month in a special bulletin.

The decisions of the regulatory bodies can be challenged in court system, respectively in districts or Appeal courts depended by the kind of RA decision and by the kind of decision taken.
A complaint can be made against a decision of NCRT for fine within 5 days from the date of proclamation or of notification to the district court where the violation is committed, in compliance with the Civil Procedure Code, chapter “Judgment of administrative disputes”.

Article 17 of the Law on TRE provides that licence has the right to appeal against the order of the NCRT in the Appeal Court within 30 days from the moment he receives notice of the order of TRE on the violation of the conditions of the licence.

IV Licensing System

Licences for radio-television broadcasting serve as permission to install technical equipment and grants the private subject the right to broadcast. It must contain the legal requirements, the rights and obligations of the subject that asks to be licensed, and determine the tech-

nical and programming conditions necessary to perform broadcasting.

The licence authorizes the use of national or local broadcast networks, and determines the working frequencies, power, location, coverage area, as well as other elements provided in this law, in Law No. 8288, dated 18.2.1998 "On the Telecommunication Regulatory Entity", as well as the binding agreements for this purpose between the NCRT and the TRE.
Based on article 20 of the law On public and private radio and television in the Republic of Albanian" amended by Article 4 of the law Nr. 8655, dated 31.7.2001, there are two types of licences shall be issued by NCRT: national and local.
Conditions for licences for radio and television broadcasting at the national level shall be issued to:

- Joint stock companies established in the territory of the Republic of Albania that declare and sign that financial capital is able to meet the needs of the technical and programming project presented in the licence application.
- The shares that represent the capital in a radio or television licence holder company shall be nominal in value;
- No natural or legal person, foreign or national, may hold more than forty percent of the total capital of the company. Regular and special shareholders' meetings of a joint stock company, whose sole purpose is the conduct of radio-television activities, shall be recognized only if no less than two-thirds of shareholders are present;
- Any natural or legal person who holds shares in a national radio or television company shall not be permitted to hold shares, directly or indirectly, in a second national radio or television company; nor shall such a person be issued a broadcasting licence for local radio or television.
- The holder of a national radio or television broadcast licence shall cover more than seventy percent of the territory of the country. Within six years of issue, such coverage must reach not less than 90 percent of the territory and not less than 90 percent of the population.

Licences for radio and television broadcasting at the local level shall be issued to:

- Natural or legal persons and non-profit organizations registered in the territory of the Republic of Albania with the sole purpose of conducting radio and television activities.
- Licences for local broadcasts in urban areas with more than 200,000 inhabitants shall not be issued to natural persons.
- Such licence shall not be issued to the same person for more than two local broadcast zones. A person to whom a local television broadcast licence has been issued may only be granted a second local radio broadcast licence. A person to whom a local radio licence has been issued may only be granted a second local television broadcast licence.
- The holder of a local radio or television broadcast licence must cover that area of the district specified by the licence in accordance with technical broadcasting parameters. The implementation of such technical parameters shall be monitored by the NCRT.
- To be granted a local (zonal) licence, at least fifteen percent of the weekly programmes must be intended for information and programmes related to local conditions, but which must not be advertisement in character.

The licence is issued by the National Council of Radio and Television, which organizes for this purpose a competition of candidates based on the applications submitted does not need a licence.

The broadcast licence is valid only for the subject to whom it has been issued. If the licence holder enters into civil juridical relations, the subject of which is also the licensed radio-television activity, then the cessation or delegation of the rights emerging from the licence requires the approval of the National Council of Radio and Television. The subject that has earned these rights is granted approval in the form of a new licence of the same content. When the Council does not approve of the delegation for reasons provided by this law, it offers the frequencies held by this licence for a new competition of candidates.

The decision to grant or not to grant a licence is announced within 90 (ninety) days after the deadline for submitting the applications.

For the approved applications, the decision contains the contents and quantity of programmes, in compliance with this law, the technical broadcasting conditions, deadlines, and annual tariffs to be paid by the licence holder.
The decision to grant the licence is published in the next issue of the Official Journal.
The licence holder shall be registered with the tax authorities.

The duration of the licence for television broadcasting is granted for a period of up to six years for radio broadcasting and up to eight years for television broadcasting, starting from the date of the publication of the decision in the Official Journal.

The local radio-television broadcasting licence is granted for a period of up to three years for radio broadcasting and up to five years for television broadcasting.

The request for renewing the licence is made ninety days before its expiration date. The National Council of Radio and Television decides whether to renew the licence or announce the competition among candidates, if the licence holder has not abided by the law.

The licence is denied to:

- Persons who have been deprived of their ability to act by a final court ruling;
- Parties and political organizations, religious communities and associations,
- Local authorities and state authorities of all levels;
- Public entities of economic character, banks as well as other credit institutes.

The licence becomes invalid when:

- The licence has expired and has not been renewed;
- The licence holder relinquishes in writing the right to hold the licence;
- The National Council of Radio and Television has made a decision to revoke the licence on the basis of the competencies given to it by this law;

- Bankruptcy is declared;
- The applicant does not take the licence or assume financial obligations provided by law 90 days from the moment he/she has been officially notified of its approval.

The National Council of Radio and Television has the right **to revoke** broadcasting licence when:

- It has been granted as a result of false data presented to obtain the licence;
- The conditions under which the licence has been granted are not met;
- There is a serious violation of the obligations provided for in this law or other legal obligations related to programme broadcasting in compliance with article 137 of this law;
- Broadcasting has not started after the decision to grant the licence is in effect for a time period of:
  a. 180 (one hundred eighty) days for local radio broadcasting;
     270 (two hundred seventy) days for local television broadcasting;
  b. One year for national radio broadcasting; One year and a half for national television broadcasting;
- After broadcasting has begun, during one calendar year, the broadcaster does not broadcast for 30 days, not including interruptions for technical reasons that do not depend on the licence holder;
- Changes have occurred with the licence holder making it impossible to meet the conditions defined in the contract;
- The property of the licence holder is available for auction.

When the broadcast licence is revoked, the licence holder is obliged to return it, without asking for compensation for damages from the National Council of Radio and Television.

In the sector of Telecommunication the licences are qualified: Licence for service with limited competition and with free competition. The competent authority for issuing these licences is Leading Council of TRE, based on the article 9-12 of the law on TRE. The duration for

the licence on telecommunication is 30 years and TRE is obliged to specify the frequencies, the power, and the covering zone from the broadcasting operators within 2 weeks from the date it is issued the licence from NCRT. The procedure for licence began with the representation of application form and payment of the fee fixed from Leading Council of TRE. The competition is considered free for subjects that have fulfilled the legal conditions.

V Advertising and Sponsorship

Under the Albanian legislation advertisement is considered any message that aim at promoting the sale and purchase of goods or performance of services, by presenting an idea to achieve the desirable effect for the advertiser, which has been allocated broadcast time in return for payment or another form of reward.

a) General Requirements

The advertisements should fulfil the following conditions:

- Spoken in Albanian or have Albanian subtitles;
- Fair and do not damage others;
- Not deceitful and do not prejudice the interests of consumers;
- Not announced by the usual news anchors or programme announcer(s).

Subliminal advertisements (that act in the viewer's subconscious and because of the speed of transmission are not perceived by the human senses) are prohibited.

b) Timing and Frequency of Advertisements

Advertisements are broadcast between and within the various programmes, as well as in special programmes (advertisement programmes).

In radio, the broadcast of advertisements is clearly separated from other parts of the programme by acoustical means, while in television, with the aid of optical and acoustical means. Advertisements may be inserted between programmes as well as, in the cases described below, in the body of programmes, provided that they do not damage the integrity and value of the programmes.

Advertising Breaks During Programmes

With regard to programmes composed of independent parts, cultural and sports programmes, or similar events

that contain intervals, the advertisements are inserted only between the parts or in the intervals. In other programmes, advertisement interruptions shall not occur earlier than 20 minutes from the previous interruption.

Film broadcasting (excluding documentaries), when their duration is longer than 45 minutes, may be interrupted once for every complete 45-minute period for advertisements that do not surpass two minute blocks. The other interruption is allowed if the film continues for at least 20 more minutes after two or more 45-minute periods.

Advertisements are not inserted in any broadcasting of religious services.
Newscasts, documentaries, and children's programmes that continue for less than half an hour are not interrupted by advertisements.

Total Quantity of Advertising

The duration of advertisement broadcasting on television must not exceed 15 percent of the daily broadcast time.

The duration of television advertisements in a given broadcast hour must not exceed 12 minutes.

The duration of radio advertisements must not exceed 10 percent of the total broadcast time.

The requirements of this article are obligatory for the public radios and televisions.

c) Restricting Provisions for Content of Advertisements

Radio and television shall refrain from broadcasting:

- Advertisements that influence the content of the programmes;
- Advertisements that encourage pornography and violence;
- Advertisements of tobacco products;
- Advertisements of armaments and military equipment;
- Indirect advertisements;
- Religious or atheistic advertisements;
- Advertisements of food products that are not

approved by the competent bodies,
- Advertisements of political parties or associations, except for cases provided by law;
- Other advertisements that violate the laws in force.
- It is prohibited to broadcast on radio or television advertisements encouraging behaviour that endangers the health and the normal psychic development of children.

d) Sponsorship

Under the Albanian law, sponsorship is considered the direct or indirect financial contribution of a natural or legal person to a radio-television programme, with a view to promoting the name, Production Company, or image of this person.

When a programme or series of programmes is partly or fully sponsored, this must be clearly identified in the respective titles at the beginning and/or end of the programme.

Independence from Sponsor

In no case may the sponsor interfere with the contents and scheduling of sponsored programmes to influence the editorial responsibility and independence of the sponsored programme.

Restrictions on Sponsorship

The sponsored radio-television programmes shall not make special references to promote the sale, purchase, taking or leaving on lease, and preference for the sponsor's services or services of a third party.

Natural or legal persons shall not sponsor programmes, when their principal activity is the manufacture, sale, or provision of services, whose advertisement is prohibited by this law.

Newscasts and coverage of the events of the day shall not be sponsored.

Sometimes there is an indirect pressure of the publisher or owner of the press that is almost in all cases businessmen makes the television or newspaper factorised

in the market because he claims to use his property in the proper way he might have realized his interest. It is considered an indirect pressure.

In other cases the broadcasters are forced to violate the professional principles to portray the interests of their publisher/owner, dictated by the relations with the government.

Another threat of the freedom of the press is the market companies doing the advertisements in radio, televisions or media in general. Promoters in the press are mainly large companies that have established their monopoly in Albanian market and promote their goods or services. They are the main channels for broadcaster sponsorship. In front of them the radio-televisions should stay silent because of this unwritten pact.

80% of the advertisements come by the state institutions dealing announcements for vacant jobs or bids. In the moment that such institutions are in touch with the broadcaster, the first step done by them should be the interruption of the sponsorship. A practical case happened with Tirana Municipality that violated the law on official announcements. The most dangerous threat for the freedom of press is the economic dependence that brings agreement through business, politicians and publishers, which does not deal with the free and correct information.

Bosnia and Herzegovina

Introduction

This is the second country report on media landscape in BiH. It focuses on the media-related legislation, rules and regulations and activities of the Communications Regulatory Agency (CRA), as well as information on the regulation and activities of the BiH Press Council, in reference to print media.

I Media-related Legislation

Freedom of Access to Information Act was adopted on all three levels - Bosnia and Herzegovina (17 November, 2000, OG 28/00), Federation of BiH OG 32/01 and Republika Srpska, OG 20/01;

Act on Defamation exists, up to now, only in Republika Srpska. The draft legislation, which has recently been presented to the Parliament of the Federation of BiH, has been sent for additional drafting, after strong objections from the international community and human rights organizations, who claimed that the draft legislation gave too much power to governing bodies. Upon this intervention, new draft has been, up to now, adopted by one house of the Federation of BiH Parliament.

In May 2002, the High Representative imposed a set of laws on the Public Broadcasting System for BiH, which were later adopted by relevant parliaments. This set encompasses:

- Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina;
- Law on Radio Television of Republika Srpska;
- Law on the Radio-Television of the Federation of Bosnia and Herzegovina; and
- The Decision on the Liquidation Procedure to be Applied in the Winding-Up of the Public Enterprise Radio and Television of Bosnia and Herzegovina

(Laws from 15 July, 2002 OG 13/02; the Decision on Liquidation from 29 July, 2002, OG 35/02);
BiH Parliamentary Assembly adopted the Law on Copyright and Related Rights (10 April, 2002, OG 7/02);

BiH Parliamentary Assembly adopted the Election Law (19 September, 2002, OG 23/01). Upon this, the Election Commission (established by this Law), adopted the Rules on media representation of political subjects (11 July, 2002, OG 16/02)

II CRA

The Communication Regulatory Agency (CRA) is an independent regulatory body, whose responsibilities connected to broadcasting include:

- award of broadcasting licences;
- programme monitoring; and
- standard setting in terms of the establishment of codes of practice.[8]

The name of the agency itself comprises the word "regulation". With regard to broadcasting, regulation in itself means establishment and maintenance of order in that field - and with regard to telecommunications, in the BiH circumstances, it means a creation of a healthy telecommunications market, particularly focusing on removal of the existing monopoly in the field of telecommunications services.

Regulation in field of broadcasting is under no circumstances to be understood in terms of censorship. On the contrary, regulation means positive approach to establishment and enabling of professional media in BiH, especially considering that media is treated to be the fourth power in any state, after legislative, executive, and judicial bodies. Another aspect of importance of regulation is found in the fact that freedom of speech and freedom of expression have their responsibilities. As the Article 10 of the European Convention on Human Rights states that the exercise of free expression may be subject to:

> "such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others,

[8] For legal bases and history of predecessor of the CRA, i.e. former Independent Media Commission (IMC) and the CRA, please refer to last year country report for BiH.

for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Communication Regulatory Agency starts from the premise that media regulation makes an important contribution to a healthy broadcasting environment by emphasising and supporting creative freedom, cultural and political diversity and the democratic process, while protecting human dignity.

a) Rules and Regulations

Since its inception, the IMC - now CRA - has created a number of codes and rules that are binding for the BiH broadcasters. All such rules have precedence over any existing laws or regulations on media applied in Bosnia and Herzegovina, which are in contradiction with it. All rules are subject to revision in the light of experience and changing circumstances. In the beginning of the IMC mandate, broadcasters did not take the whole conception of the regulation all that seriously, but the efforts of the organisation resulted in the media community now being strongly involved not only in enforcement of the rules, but also in the creation process through the inputs sent during the drafting procedure. The common point for all CRA rules is that they give a basic and simple set of rules for broadcasters. However, in order to assist the broadcasters in the implementation of the rules, the guidelines have been issued with detailed explanations of certain rules that may cause confusion.

The first set of rules passed by the IMC was Broadcasting Code of Practice which has been in force since 1 August 1998. This Code sets out the rules and standards applicable to programme content broadcast by all broadcasters in BiH. The Code regulates such issues as incitement to violence, language of hatred and intolerance, decency and civility, fair and impartial programming, etc.

On 9 March 2000, the IMC adopted the Advertising and Sponsorship Code of Practice for Broadcasters. This Code applies to all advertisements and sponsorship of programmes on both public and private radio and television stations in Bosnia and Herzegovina.

Further, *Rule 1/1999* - Definitions and Obligations of Public Broadcasting gives a clear and precise definition of the public broadcasters, but apart from that, it also sets out their obligations. In brief, public broadcasters are those funded by public funds, and, as such, have obligations to adhere to. Those obligations are, inter alia, transparency, meeting certain requirements regarding programme content, limited time for advertisements and sponsored programmes, establishment of editorial councils, etc. One of extremely important obligations for public broadcasters is to be separated from political structures.

Rule 2/1999 - Compliance with Copyright Obligations
Broadcasting Code of Practice, in its Preamble, states, inter alia:

> „Broadcasters shall comply with generally accepted standards for intellectual property and refrain from any misappropriation of programmes."

This obligation is also stated in the Terms and Conditions of IMC Broadcasting Licence. In order to make it clearer to broadcasters how to comply with this obligation, the IMC adopted on 21 October 1999 the aforementioned rule. It establishes operating requirements for broadcasters regarding this issue. However, this rule is very specific, as it not a comprehensive rule, but gives a briefest overview of the broadcasters' requirements and some guidelines for their compliance.

Rule 3/1999 - Broadcast Licence Fees
CRA is authorised to collect broadcast licence fees. To this aim, on 9 December 1999, the Rule on Broadcast Licence Fees was adopted. Given a specific situation in Bosnia and Herzegovina, the basis used for determining the fees were number and output power of the emitters. This Rule was widely discussed by the broadcasting community in BiH, and following their recommendations directed through the BiH Association of Broadcasters, the Rule was changed in March 2000. New, changed, Rule is now more detailed and makes a difference between public and private broadcasters regarding the amount of fees.

Rule 04/2000 - Merit Based Competitive Process for the Awarding of Long-Term Broadcasting Licences

This Rule shall be described in more details later in the text.

For the purposes of additional guidance on interpretation of Codes, there are also supplementary guidelines. The first set of guidelines was Guidelines on Reporting Provocative Statements, adopted 9 June 1999. The Broadcasting Code of Practice, article 1, states, inter alia:

„1.1 General

Programmes shall meet generally accepted community standards of civility and respect for the ethnic, cultural and religious diversity of Bosnia and Herzegovina."

The broadcasters have occasionally had troubles making a distinction between their responsibility to report and discuss news events fully, fairly and accurately without omitting relevant facts, and their wish to make public either their personal views or the views related to just one group of people. Therefore the Guidelines were issued with clear instructions as to how to treat sensitive issues. The importance of this is indisputable, especially in BiH, where media had an extremely important role during the recent war, and where tensions, at times, can be high.

Articles 1.4 and 1.6 of the Broadcasting Code of Practice define fair and impartial programming and false and deceptive material. The Guidelines on Accuracy and Balance were adopted on 21 October 1999, as a tool for journalists in distinguish good journalism from bad, and journalism from propaganda.

Guidelines on Copyright Obligations were adopted on 12 March 2001 in order to help broadcasters better understand their obligations with regard to protection of copyrights. The CRA hopes that the Copyright Law will help greatly in ensuring respect for copyrights and related rights.

Clearly, the experience of the IMC, now CRA, grew over years since its formation. The aforementioned Codes and Guidelines have stood up extremely well over the period. The application of simple, broad and common sense articles has readily adapted to the climate here.

b) Freedom of Expression

One of the main responsibilities of the CRA is the development and ensuring of enjoyment of right to freedom of expression and related rights. In line with that, it is very important to mention a decision of the Human Rights Chamber for Bosnia and Herzegovina[9], in the case "ORDO RTV St. George against Bosnia and Herzegovina", in relation to the actions taken by the CRA against this broadcaster. The Chamber announced that the CRA did not violate the right to freedom of expression by passing the decision to revoke the provisional licence of RTV Sveti Georgije. The Chamber also stated that the CRA Rules and regulations are state-level legislation and that its intervention against repeated programmes of RTV Sveti Georgije were prescribed by law, had legitimate aim and were necessary in a democratic society.

The right to freedom of expression and related rights are considered the most important rights and freedoms necessary for functioning of a democratic society. The CRA makes a great effort to work towards protecting and developing this fundamental right and sees this decision as a major support in further development and protection of this right.

c) Licensing Process

Upon its establishment, the IMC undertook to issue provisional licences, the process that served as a kind of a "screening process" (Phase 1 Process), given a chaotic situation in the broadcasting media in BiH. The IMC collected information on all existing broadcasters and issued provisional licences to all. Provisional licences mainly relied on the existing situation, which in essence means that the technical parameters were not changed except in cases of very strong interference. After registration of the existing situation in this field, the IMC started the Merit Based Competitive Process for the Awarding of License (Phase 2 Process), grounded on the Rule with the same name that came into force on 1 October 2000. The objective of the Rule was to allow the CRA to select the most successful broadcasters in Bosnia and Herzegovina for awarding the License.

[9] Human Rights Chamber has been established by the Annex 6 of the General Framework Agreement for Peace for BiH, as the highest judicial body deciding upon cases of alleged violations of human rights in BiH.

In addition to examining applications according to the general criteria for awarding Licenses, the application of this Rule included a process comprising assessment and evaluation of the broadcasters on the basis of points scored in four criteria: programme quality, financial information and viability, technical operations, and prior compliance with the IMC Regulations. Article 3 (c) of the Rule states:

> „In order to obtain a licence, each broadcaster must achieve a minimum of 12 (twelve) points in section (b) 1 (Programme quality), and a minimum of 6 (six) points in each of sections (b) 2 and 3 (Financial Information and Viability and Technical Operation). The minimum of 24 points, so calculated, shall include any deductions following from (b) 4 (Prior Compliance with IMC Regulations)."

The allocation of frequencies and management of the frequency spectrum is in all countries based on the planning of the International Telecommunications Union (ITU). The radio frequency spectrum of Bosnia and Herzegovina was planned with the ITU during the time of former Yugoslavia. The Stockholm and Geneva Broadcast Frequency plans of 1961 and 1984 are not adapted to the situation today. The main task for states that are members of ITU is to make sure the use of the frequency spectrum is in accordance with ITU rules and that interference is avoided. This task is an obligation that follows from ITU membership and it is consequently obligatory for ITU members to have a system for giving its subjects the right to use the spectrum. In this regard, it is very important to note that the ITU is to convene a major conference to review the whole of region in 2004.
Before the establishment of the IMC, frequency management and broadcast licensing was handled by different bodies in different parts of the country, with no coordination and little respect for any rules. The broadcasters in many cases did not apply for any licence at all but just started broadcasting or changed frequencies or other parameters.

CRA announced the final results of the CRA Merit Based Competitive Process for the Awarding of Long-

Term Broadcasting Licence in April 2002. The results of this process are as follows:

Stations applying for the Licence:

TOTAL: 258[10]
TV: 61= 27 public + 34 private
Radio: 197 = 95 public + 102 private

Qualified stations:

TOTAL: 183 = 71 %
TV: 42 = 16 public + 26 private
Radio: 141 = 62 public + 79 private
Out of this number, 7 applicants, i.e. stations that will commence their broadcasting operations, qualified for the Licence:

TV: 3 = 2 private + 1 public
Radio: 4 = all private

Not qualified stations:

TOTAL: 75 = 29 %
TV: 19 = 11 public + 8 private
Radio: 56 = 34 public + 22 private
Upon the completion of the long-term licences issuance, the CRA will determine conditions for continued issuance of broadcasting licences. Requirements, as set forth in the international human rights law, such as issues of national minorities, etc. will be taken into consideration.

In the field of telecommunications, the CRA has issued licences for entity-owned mobile operators, and decided to issue a third licence on the basis of a tender

[10] Remark: This number of stations includes one station that was awarded long-term licence before the beginning of the Phase II, but it also participated in the competition process. Out of this number, 14 applicants also submitted this request (10 radio stations (1 public and 9 private), and 4 TV stations (1 public and 3 private).
248 stations that were issued a provisional broadcasting licence in the Phase I participated in the competition process for long-term licences. 19 stations did not apply. From this number, 4 stations (3 radio and 1 TV, all private) were issued long-term licences before the competition begun. Not counting 4 above mentioned stations, 15 that did not submit the request includes 10 radio stations (2 public and 8 private), as well as 5 TV stations (1private and 4 public).

process announced this spring. Due to different reasons, this tender process has not been completed successfully, and the CRA revoked the tender. It is currently trying to find the best solutions for issuance of the third (and possibly a fourth) licence for mobile operators. In addition, the CRA issued licences for fixed operators, as well as Internet Service Providers.

d) Election-Related Activities

General elections in Bosnia and Herzegovina were held on 5 October, 2002. CRA was responsible for ensuring compliance by broadcasters on these Rules and CRA Rules and regulations. Official commencement of the election period was sixty (60) days prior to Election Day, i.e. 5 August, 2002. As pre-election campaign developed, CRA has received relatively small number of complaints against broadcasters. The overall impression is that the stations, apart from few notable exceptions, approached their obligations of informing the public on these important issues in a professional manner and in compliance with rules and regulations.

III Print Media

a) General - on Self Regulation by the Press

The case for self-regulation rests on the premise that in democratic societies self-imposed rules are likely to carry a greater moral authority and, consequently, to work with greater effectiveness than externally imposed legal rules.

Self-regulation works well because it is accessible to everyone, rich and poor alike. It is fast and flexible, is independent of all special interests and operates at no cost whatever to either the taxpayer or the complainants. With regard to the press, self-regulation serves as a major defence of democratic freedoms because newspapers and periodicals are, after all, public watchdogs. They help voters to make informed choices and reach considered opinions. Newspapers and periodicals, for their part, have come to accept that freedom of expression is not an absolute right, but a right that is conditional on the general notion of the public interest and more specific rights to privacy and the other requirements of their Code of Practice.

There are believed to be over 50 Press Councils operating around the world, but the BiH Press Council is the first of its kind in South East Europe. Whatever the differences in the constitutions and procedures, all independent Press Councils serve two main purposes (and the BiH Press Council is no different). They protect press freedoms and they protect the citizens from abuses of those freedoms by the press, while giving due regard to those matters which affect the public interest.

b) The BiH Press Council

In April 1999, six journalist associations adopted a voluntary Press Code and subsequently formed a working group to investigate the establishment of a Press Council to oversee the Code.

The Press Council for BiH was formally established as a functioning body in February 2001. A primary function of the BiH Press Council is to deal with complaints from members of the public about newspapers and magazines (first complaint arrived in September 2001). This is a free, quick and easy service with the aim of resolving disputes in an amicable way by mediation rather than going to full adjudication by the Council. The Council publicises and operates a transparent procedure for these complaints and makes public its findings, including posting the adjudications on its website.

It is extremely important to note that the BiH Press Council is not be able to fine, suspend, close down or licence newspaper or magazines. It seeks to resolve any complaint based on fairness and common sense and only through journalistic remedies.

Other general functions include:

- to act as a professional press industry advisory group for the public and appropriate authorities;
- to promote those developments that ensure the freedom of the media and the protection of journalists rights;
- to stand against any developments that could jeopardise the rights and privileges of journalists and endanger the free flow of information;
- to give recommendations and guidelines for journalistic work as appropriate; and to propose amendments to the Press Code.

c) Principles

The Press Council adheres to certain principles in its operation, namely:

- it is independent of political party or special interests' influence;
- it is transparent in its financial operations;
- it adheres to pertinent law and professional standards;
- it serves citizens and press in both entities.

d) Members

The Press Council has thirteen members, composed as follows:

- International Chairman (two year mandate);
- Six representatives of the press industry;
- Six members of the general public.

The public members cannot be engaged in or, other than by their membership on the Press Council, be connected with or advisory to the business of publishing newspapers, periodicals or magazines. The role of the public members is to ensure that the voice of the general public is heard on the Press Council.

The first members of the Press Council are elected for a two-year period by the founding journalist associations by consensus. A separate Nominations Committee shall elect future members for a two-year period.

e) Adjudications

At the time of writing the BiH Press Council has adjudicated over 30 complaints and mediated - to the satisfaction of both the press and complainants - another dozen or so.

Bulgaria

I Constitutional Principles

The fundamental principles, rights, and obligations, related to the freedom of speech and of mass media, are provided by the Constitution of the Republic of Bulgaria.

Article 39:
Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way
This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.

Article 40:
The press and the other mass information media shall be free and shall not be subjected to censorship.
An injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours.

Article 41.
Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.
Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.

In order to enforce these provisions in practice and to avoid any ambiguity in the interpretation of their content, the Bulgarian Constitutional Court provided

Binding Interpretation ?7 in 1996. According to Article 12 of the Constitutional Court Law, the interpretation of the Constitutional Court shall be binding on everyone.

By ratification in Parliament, the Republic of Bulgaria has become a party to all of the most important international instruments, dealing with human rights - Convention for the Protection of Human Rights and Fundamental Freedoms, Convention on the Rights of the Child, International Pact on Civil and Political Rights, Framework Convention for the Protection of National Minorities. The European Convention for Transfrontier Television and the Explanatory Report to its revised version have also been ratified in the country. Having once been ratified by the constitutionally established procedure, these instruments are considered a part of the Bulgarian legislation and supersede any domestic legislation stipulating otherwise (Article 5 - Constitution).

II Legal Framework

In 2000, the penalty of imprisonment for slander and libel, disseminated also by mass media, has been removed from the *Criminal Code of the Republic of Bulgaria* and replaced with a fine. This is a great relief for working journalists because there have been a number of cases when journalists could be imprisoned because of their materials and publications, even though the source of information was not credible or had misled them on purpose. Now, the risk is only financial and the fines are quite high - from three to ten thousand for slander and from five to 15 thousand for libel.

The *Law for Public Access to Information* was brought into force in the middle of the year 2000. According to this law, "public information" is every piece of information, related to public life in the Republic of Bulgaria and giving citizens the possibility to form their own opinion about subjects of the law. The Law provides for public access to information, created or kept by state officials or by local regulatory bodies in the Republic of Bulgaria. Restrictions of public access to information are not allowed except in specified cases. A reason for denying public access to information exists when:
The required information is considered classified infor-

mation, being a state or administrative secret, as well as in cases specified in Article 13 (2) of the Law.
The access affects the interests of a third party and there is no written permission for granting the required public information
The required public information has been given to the inquirer in the last six months.

In these cases, a partial access may be granted to those pieces of the information, access to which is not restricted.

The Law is also applicable for public access to information, created and kept by mass media and related to the transparency of their actions. Article 18 explicitly states what information about mass media is considered to be public. Information related to mass media shall be deemed public only if it refers to:

1. Persons taking part in the management of the respective mass medium and their position allows them to exercise an effective control over the medium management or activities
2. Business related parties taking part in the management of other mass media and their position allows them to exercise an effective control over the mass media management or activities
3. Employees of a mass medium who participate in or influence its editorial policy
4. Statements on the public goals of a mass medium and on the principles or the internal mechanisms, used by the respective mass medium for guaranteeing the credibility and the objectivity of the shared information
5. The financial statements of a mass medium owner and the dissemination of its productions.

Access to information, described in Article 18, shall be exercised in conformity with and by preserving the balance between the principles for transparency and economic freedom, as well as the principles of protecting personal data, trade secrecy, and confidentiality of journalistic sources that have requested anonymity.

The *Telecommunications Act* applies to those electronic media that operate by using radio frequencies. The

national telecommunications regulatory body, the Communications Regulation Commission, has the following legal capacities:

To monitor and, on demand, to present to the Council for Electronic Media information about the technical parameters necessary for terrestrial radio broadcasting of radio and television programmes in populated areas, in specific regions, or at the whole territory of the Republic of Bulgaria as well as information about the available radio frequencies, the permitted transmission power, possible transmission points, as well as all other technical information, requested by CEM

To grant licences for telecommunications activities and for using available and/or building, maintaining, and using new telecommunications networks, through which radio and television broadcasting can be performed, after the approval of the Council for Electronic Media.

To manage the allocation of the radio frequency spectrum for civil purposes by developing a regulatory policy for its use, to develop and publish the principles of the management and allocation of the radio frequency spectrum; to grant radio frequencies and radio frequency bands to telecommunications operators, licensed in accordance with this Law

On demand and after consultations with interested parties, to manage the international co-ordination of radio frequencies and radio frequency bands and the equipment for their use. The international co-ordination includes all radio services (according to the appendix of the Law)

To manage the national co-ordination of radio frequencies, radio frequency bands, and the equipment for their use for civil purposes with all interested parties. The coordination is managed so that it guarantees safe aerial and marine navigation.

The *Radio and Television Act* is the specialized law for regulating radio and television operators in the Republic of Bulgaria. It was passed by the 38th National Assembly and has been in force since 28 November 1998. After its initial approval, several amendments and supplements have been made - the last one in August 2002. Significant changes of the Act were made in November 2001 and the most important amendments will be emphasized further in the report.

The Radio and Television Act (ZRT) is, to a great extent, harmonized with the European Convention for Transfrontier Television and with the Explanatory Report to its revised version. However, there are still some discrepancies - especially in the chapter on advertising and sponsorship - that create a number of problems for the active radio and television operators in Bulgaria because the Bulgarian Law is more restrictive than the Convention requirements and does not allow enough flexibility in offering and positioning commercials in broadcast programmes.

The Radio and Television Act (ZRT) regulates radio and television activities at the territory of the Republic of Bulgaria. According to Article 1 (2), *"Radio and television activity means the creation and broadcasting of radio and television programmes and other supplementary information services. Broadcasting is carried out by terrestrial transmitter, by cable, by satellite or by means of some other technical method, in an encoded or unencoded form, intended for immediate reception by an unlimited number of persons, free of charge or at no charge."*

Although the PURPOSE of the Act is not explicitly stated in the Law, it is referred to in a number of provisions as follows:
To guarantee the independence of radio and television operators and their activities from political and economic interference
To ensure free production of radio and television programmes in the Republic of Bulgaria
To prevent censorship of programmes in all its forms
To ensure freedom of receiving and transmitting radio and television programmes at the territory of the country in conformity with this Law
To guarantee freedom of expressing one's opinion in radio and television programmes

The Act provides the GENERAL PROVISIONS for carrying out radio and television activities:
Guaranteeing the right to free expression of opinion
Guaranteeing the right to information
Preservation of the secrecy of the source of information

Protection of the personal inviolability of citizens
Withdrawal of programmes that encourage intolerance among citizens
Withdrawal of programmes that go against good manners, especially if they contain pornography, praise or vindicate cruelty or violence, or instigate hatred, based on race, sex, religion, or nationality
Guaranteeing the right to response
Guaranteeing the copyrights and related rights of broadcasted programmes
Preservation of the purity of Bulgarian language.

a) Subjects

The Law distinguishes between *public and commercial* radio and television operators. It suggests that the main purpose of commercial operators is to distribute profit. We consider this notion to be a weakness in the law because, in practice, the basic purpose of commercial operators has turned out to be satisfying the public interest by creating a variety of programmes and a pluralistic expression of opinions. Moreover, in a number of cases, commercial operators perform their public service functions much better than public operators, because the state public radio and television are still not free from political and economic pressure in creating and presenting their programmes and in broadcasting news. The distribution of profits results from the professional modern management of a commercial operator.

Public radio and television operators are given a number of functions that guarantee the dissemination of information of public and social importance, protect national interests and universal human values, including those of minorities, and assist the development and popularisation of the Bulgarian culture and language.

The state-owned Bulgarian National Television (BNT) and Bulgarian National Radio (BNR) are subjects of the Law and are referred to as national public operators. The Law introduces special obligations only for these two operators. They are obliged to:
Provide programmes addressed to all citizens of the Republic of Bulgaria
Contribute to the development and popularisation of the

Bulgarian culture and language, as well as the culture and language of citizens in accordance with their ethnic identity
Provide access to the national and European cultural heritage by their programmes
Include in their programmes broadcasts that inform, educate, and entertain
Apply the new information technologies
Cover the variety of social ideas and beliefs by a plurality of viewpoints in each and every piece of news and in all reports on current political and economic issues
Promote mutual understanding and tolerance in the relationships of citizens and institutions.
Give citizens the possibility to acquire information about the official position of the state on important issues of public life.

b) Financing

Commercial operators are financed mainly from sales of advertising time and sponsorship, as well as from proceeds, related to carrying out their radio and television activities. Commercials in their programmes can take up to 15 per cent of the daily programme time and up to 12 minutes per hour.

Public private operators are financed not only from advertising, sponsorship, and grants, but also from the Radio and Television fund. They need to apply in order to receive resources from this fund - for financing only significant cultural and educational projects as well as projects and activities whose purpose is to increase the territorial and/or population coverage of radio and television programmes. The duration of commercials in the programme of these operators is limited to 6 minutes per hour.

According to the Law, BNT and BNR are financed in three different ways - mainly from a national budget subsidy, which amounted to 40 million BGN for BNT and 17 million BGN for BNR in 2002; from sales of advertising time and sponsorship; and from the Radio and Television fund. The overall duration of commercials in the programming of state-owned media cannot be higher than: 15 minutes per day and 4 minutes per

hour for BNT and 6 minutes per hour for BNR. There is one more restriction for BNT - it can use up to one third of its daily advertising time in prime time (7pm - 10pm).

It is obvious that such distribution of the state-owned media budget (with the main resources coming from the national budget subsidy) cannot guarantee the public nature of BNT and BNR because they are almost completely financially dependent on the state. The Radio and Television Act envisages a smooth transition from state financing of these media to financing from the Radio and Television fund - 50 % for 2003, 60% for 2004, 70% for 2005, 80% for 2006, and 100% financial dependency on the fund as of 1 January 2007.

This decree of the law will hardly be complied with in 2003 because the financial sustainability of the Radio and Television fund is still not accomplished due to reasons that will be revealed further in this report. It is worth mentioning that the dual financing of BNT and BNR - once from the budget and once from the advertising market - puts the other market players in an unequal position and in some cases leads to unfair competition on behalf of the state-owned media because the secure national budget subsidy gives them a possibility to play in a not very fair manner on the advertising market. So far, all suggestions and recommendations of the private sector to ban or at least to limit advertising in state-owned media significantly have not met the support of lawmakers.

Every person, registered in accordance with the Bulgarian legislation, can apply for a licence according to ZRT and after receiving it to perform radio and television activities via terrestrial broadcasting. This means that the Law does not put any restrictions, based on the nationality of the legal entity owner, applying for a licence. A detailed account of the restrictions, according to which a person cannot apply for and, therefore, cannot be granted a licence, are provided in Article 138 of the Law. The basic limitations are related to people carrying out advertising activities, people who cannot prove the source of their finances or people who have been given bank credits and have failed to return them, monopolists on the telecommunications market, as well as people involved in security or insurance companies.

The last restriction is a remnant from our past - in the beginning of the 90s, people with a criminal background performed security and insurance activities.

If they are in compliance with the above-mentioned requirements, persons can produce and disseminate programmes via cable or satellite according to a registration regime. The amendments in ZRT from the end of last year (2001) made the regime less burdensome for operators who produce such programmes. However, although the changes seem positive, the Law now puts operators in an unequal position because there are two different regimes for carrying out one and the same activity, such as the production of programmes. The control over these operators has been reduced and the quality of programmes has decreased. This is not in the public interest. Linking the regime for carrying out the activity to the way programmes are disseminated is in contradiction with the principle of separating content from transmission.

Radio and television operators bear responsibility for the content of their programmes. They are obliged to broadcast only programmes with a preliminary settled copyright and related rights, to abide by the above-mentioned fundamental principles and the supplementary requirements, described in Article 17 of the Law, and to guarantee the right to response of every person that has felt offended by statements made public during a programme. Radio and television operators do not have the right to include information about a citizen's private life in their programmes without his or her consent but they can include information of public interest about the private lives of people, exercising legal capacities in state bodies, or of citizens, whose decisions have a social impact.

Fifty per cent of a mass medium programme should consist of European productions when this is practically possible and 10 per cent of the programme should represent productions by independent producers from the last 5 years.

The Law guarantees the freedom of expression of journalists, working in electronic media. It stipulates that an employee's public critique of an operator's programme

policy is not considered to be disloyalty to the employer. Journalists, who have signed contracts with radio and television operators, have the right to refuse to work on an assigned task if it is not related to the implementation of the provisions of this Law or of the respective contracts and if it goes against their personal beliefs. The editorial statutes for work in the field of political journalism are agreed upon between the owners and/or the governing bodies of radio and television broadcasters and the journalists who have signed contracts with them.

An editorial statute must contain specific definitions and measures for:

1. Ensuring the freedom and personal responsibility of a journalist in performing an assigned task
2. Protection of journalists
3. Professional and ethical norms for journalists in the respective radio and television operators
4. The ways of making decisions related to a journalist's work
5. Establishing an internal body for resolving the disputes, which have arisen in the course of a journalist's work

II National Regulatory Body

After the changes in ZRT at the end of 2001, the National Council for Radio and Television (NCRT) was dismissed and a new regulatory body was constituted - the Council for Electronic Media (CEM). The amendments of the Law stipulate that CEM is the legal entity to receive the property, the archive, as well as all legal capacities, rights and obligations of NCRT.

The Council for Electronic Media is an independent specialised body that regulates radio and television activities by registering or issuing licences for carrying out a radio and television activity and by exercising control over the activities of radio and television operators only for enforcing the provisions of this law.

a) Appointment

The Council for Electronic Media consists of nine members - five are elected by the National Assembly and four

are appointed by the President of the Republic. Their mandate lasts for six years. A person cannot be a member of CEM for more than two consecutive mandates.

In the course of the debates on the amendments of the Law at the end of 2001, there were a number of proposals about the way members would be elected in the two quotas and if these proposals had been approved, they would have granted greater guarantees for the *political independence* of the regulatory body. One such proposal was the quota of the National Assembly to be voted with a qualified majority so that the possibility to nominate and elect only persons, designated by the governing majority, would be eliminated. According to another rejected proposal, members of CEM had to be people, nominated by Non-Governmental Organizations, working in the media field.

According to the enforced decree, once the members of CEM have been chosen, they can be dismissed only with a decision by CEM itself. This guarantees that, after their election, the members of CEM "lose touch" with those who have elected them, cannot be dismissed with a political decision and as a result their mandate is stabilized and they have the freedom to make decisions according solely to their professionalism and public interest.

Unfortunately, the *government eludes the mandate principle, stipulated in the Law and guaranteeing the stability of the regulatory framework and the independence of the national regulator*. *De facto* and *de jure*, the government discontinues the mandate of regulatory body members long before its actual end by using law-making techniques, such as dismissing one regulatory body (NCRT) and constituting another (CEM)[11]. At the moment, there is a public debate on a new draft Radio and Television Act, developed by a deputy from the ruling majority. According to the new draft, the Council of Electronic Media, constituted only a year ago, should be dismissed and replaced by two new regulatory bodies - one for public and one for private media. Since this draft of the Law has still not been officially submitted

[11] In relation to this question, an ex-member of NCRT and a current member of CEM is joking that he is in his first mandate for the fourth time.

for discussion in the Bulgarian Parliament, the current report will not dwell on its provisions. The purpose of the example, given above, is to clarify how lawmakers, elected to guarantee stability, are used for resolving issues of subjective nature.

With the last year amendments in ZRT, significant positive steps have been made. One of them is the newly introduced requirement of professional qualification for members of the national regulator. According to Article 25 of the Law, a member of the Council for Electronic Media can be a person with a professional background in the sphere of electronic media and/or telecommunications, with at least five years' experience in a radio and/or television organisation or in the sphere of telecommunications, or five years' experience as a lecturer in the sphere of media or telecommunications.

Decrees were enforced that practically guarantee ***the independence of the regulator from operators***. During their mandate, members of CEM cannot:

- (For two years after the end of their mandate) be consultants or members of bodies that manage, control, or supervise radio and television operators, as well as acquire shares or stock in radio and television operators and advertising agencies
- (For one year after the end of their mandate) be consultants or members of bodies that manage, control, or supervise non-profit organisations that have been granted a licence for radio or television operator
- Receive any form of remuneration from radio or television operators, except in accord with the legislation for intellectual property.

Decrees were approved for avoiding a conflict of interests among CEM members in the decision making process. Every member of CEM and of the licensing contest commission, designated by the regulator, is obliged to disclose to CEM in writing every significant commercial, financial, or other business interest, which he/she or his/her family members may have in taking a specific decision. The Law provides a definition of the notion of "significant interest".

Members of CEM are obliged to present a declaration to the Council at the beginning of their mandate and at least once every six months with the names and addresses of persons related financially to them or to their family members. The declaration should also disclose the business interests that have occurred or can occur. The declarations are kept in a special public register at the Council for Electronic Media. A member of CEM, who has an indirect business interest in taking a specific decision, is obliged to declare it and to refrain from participating in the discussion and from voting. An affected or any other interested party can request the Supreme Administrative Court to revoke the decision, taken in violation with these requirements.

b) Legal Capacities

According to Article 32, the Council for Electronic Media:

1. Supervises the activity of radio and television operators and their conformity with this law. Article 33 of the Law gives a detailed account of the cases, when CEM can exercise its legal capacities.
2. Appoints and dismisses the general directors of BNR and BNT
3. Approves the members of BNR and BNT Boards of Directors proposed by the general directors
4. Expresses an opinion in drafting normative acts and before signing any international agreements, related to radio and television
5. Expresses an opinion about the project on subsidizing BNR and BNT from the national budget
6. Annually approves the planned extra budget costs of the Radio and Television fund
7. Conducts surveys of the public opinion about the activity of the radio and television operators and their programmes
8. Expresses an opinion about changes in the fees for using radio and television services
9. Takes decisions about granting, changing, supplementing, revoking, transferring, and terminating licences for radio and television activity
10. Addresses the respective competent bodies when the normative acts have been violated during performance of radio and television activity

11. Appoints members of the Board of Directors of the Radio and television fund, adopts regulations for the structure and activity of the fund and its Board, and appoints the executive director of the fund
12. Has the right to issue imperative orders regarding the implementation of the issued licences for radio and television activity
13. Demands information from the Communications Regulation Commission about the technical parameters necessary for terrestrial radio broadcasting of radio and television programmes in populated areas and regions or at the whole territory of the Republic of Bulgaria, also information about the available radio frequencies, permitted transmission power, possible transmission points, as well as any other technical information that is necessary
14. Organizes the contest for selecting a radio and television operator to be granted a telecommunication licence for using available and/or building, maintaining, and using new telecommunications networks for terrestrial radio broadcasting
15. Grants an individual licence for radio and television activity to the winner of the contest according to Clause 14 (see above) and informs the Communications Regulation Commission to issue a telecommunications licence to the respective person
16. Updates the registrations for carrying out radio or television activity in cases, stipulated in the Law
17. Represents the Republic of Bulgaria, together with other bodies, in front of inter-state and inter-government organisations dealing with electronic media issues; Is in charge of the coordination between state administrative bodies and Non-Governmental Organisations in the process of establishing a common policy regarding electronic media
18. Makes other decisions related to the exercise of its legal capacities, stipulated by this Law, and takes decisions related to international agreements in the field of radio and television activity in which the Republic of Bulgaria is a party.

CEM has adopted a universal licensing procedure - a serious step forward.

The amendments, passed in November 2001, brought about a very important positive change related to the legal capacities of CEM in issuing licences for radio and television activities. Until then, the legal framework demanded the issue of two types of licences: 1) a telecommunications licence, giving an operator the right to use a frequency from the radio frequency spectrum and issued by the regulator as a result of a contest; and 2) a programme licence, issued by the ex-regulatory body, NCRT, without any contest. Contrary to the European principles, a priority was given to telecommunications licences. A contest commission, specially appointed by the Council of Ministers, approved the issue of such a licence. In this way, the ruling party had a direct control over the very beginning of the licensing procedure. It turned out that the programme licence was just a supplement to the telecommunications licence. Another practical problem arose from the fact that the two licences were issued independently by two different regulatory bodies in accord with two different laws. This often created absurd situations, in which one person had a licence for a frequency only, and another had only a programme licence while, according to the law, an operator needs both licences in order to carry out radio and television activities.

The amendments of the Law resolved this problem by introducing a universal licensing. The rules and the order of the licensing procedure will be exposed in the Licensing section of this report below. Our focus now is on the licensing philosophy that has changed completely. At the moment, a person needs to approach only CEM in order to be granted the right to carry out a radio and television activity. The licences are still two types - a programme licence, issued by CEM, and a telecommunications one, issued by the Communications Regulation Commission. However, there is a single contest procedure for issuing the licences. During the procedure, a candidate's documents are evaluated both from a programme and technical point of view and the winner in the contest is granted a programme licence, which automatically forces the telecommunications regulator to issue a licence for the use of a frequency from the radio frequency spectrum. In this way, programme requirements rather than technical ones are given a due

priority and at the same time the principle of separating content from transmission is also considered. The necessity for issuing a separate telecommunications licence is stipulated in an imperative decree in the Bulgarian Constitution, according to which the right to use a frequency from the radio frequency spectrum can be granted only by the state or by a respective state body, such as the Communications Regulation Commission.

While the legal licensing capacities of CEM are a positive change, the newly introduced right of the regulator to issue imperative orders regarding the implementation of the issued licences for radio and television activity contradicts *the principle of non-interference of the regulatory body in the programme content*. In relation to this new decree of the Law, the Constitutional Court of the Republic of Bulgaria was approached and the Bulgarian Media Coalition defended its position with an official statement emphasizing that this decree should be omitted because it directly contradicts the Constitution. The Constitutional Court reached a decision to leave the decree in force but it framed the right of the regulatory body to issue imperative orders by listing all articles of the Law, the implementation of which may be the subject of the imperative orders. Unfortunately, in practice, it turned out that CEM goes beyond the framework of its rights.

c) Publicity and Transparency of Decisions

As a part of its legal capacities, CEM approves regulations, decisions, and declarations and expresses its opinion in cases, stipulated by the Law. The Council for Electronic Media is obliged to announce publicly the decisions taken in relation to the exercise of it legal capacities including the way, in which the Law has been enforced, as well as the reasons behind a change in its established practices. The decisions taken by CEM are reasoned and can be revoked by the Supreme Administrative Court. The Council for Electronic Media issues an information bulletin that includes the text of the decisions and up-to-date articles on the problems of the audio-visual culture, the results of the monitoring of radio and television operators, as well as the results of the surveys of the public opinion conducted at the request of

the Council for Electronic Media. Prior to March 31, CEM publishes an annual report on its activities. All these acts and documents, issued and promulgated by CEM, constitute the regulatory framework that reveals the policy of the national regulator for exercising its legal capacities for supervising conformity with the Law.

According to the Law, until the end of this year, CEM is financed from the state budget and from January 1, 2003 - from the Radio and Television fund. Since there are no returns to the fund, the state financing of CEM will most probably continue in the course of next year and this will not contribute to its financial independence. For the time the members of CEM perform their duties, they receive a monthly remuneration equal to three average monthly salaries, as determined by the National Institute of Statistics.

d) Radio and Television Fund

The Radio and Television fund is an extra-budgetary account of CEM and is managed by the Board of Directors, elected by the Council. The fund resources are raised from:

- Citizens' monthly fees for receiving radio and television programmes;
- The initial and annual fees for issuing a licence as well as the fees for registering a radio and television activity collected by CEM;
- Accumulated bank interests of the fund resources;
- Grants and testaments; and
- Other sources, stipulated in the Law.

Citizens pay a monthly fee for receiving radio and television programmes equal to 0.6% of the minimum monthly salary in the country for every registered electrometer. Legal and natural entities, performing commercial activities, as well as state and social organizations pay a monthly fee equal to 2.5% of the minimum monthly salary in the country for every registered electrometer. Certain groups of people and institutions do not pay fees - people with physical or mental disabilities, hospitals, kindergartens, social care homes, educational, social and cultural institutions. The fee should be paid along with electricity bills following the estab-

lished procedure at the pay desks of the National Electricity Company. Since 1998, when the Law was enforced, there has not been developed a practical way for collecting the fees from citizens.

Licensed and registered radio and television operators pay fees to CEM. The amount of the fees is determined by the Fee Rate, developed by CEM and approved by the Council of Ministers. So far, such a rate has not been approved and operators do not pay taxes because there is no legal act to determine the amount of the dues as well as a payment method and deadlines.

The fact that fees have not been effectively collected from citizens and operators shows that the public financing of CEM, BNT, and BNR so far has not been possible. This only increases their financial dependency on the state.

III Licensing and Registration

The Law describes two instruments for receiving licences for performing radio and television activities - a licence and a registration. Radio and television activity performed by terrestrial broadcasting follows an established licensing procedure. The production of programmes to be transmitted by cable or satellite requires a registration.

Every person, registered according to the Bulgarian legislation, can apply for a licence or a registration. **An important change, brought about by the amendments in ZRT in 2001, is the open contest procedure for issuing licences - it can be opened at the request of CEM or of any other interested party**. When an interested party submits a petition, CEM is obliged, within 14 days, to request information from the Communications Regulation Commission about the available frequencies of the respective populated area. The Communications Regulation Commission responds in the next three to six months depending on whether they need to reach an international agreement. If their answer is positive, CEM initiates a contest procedure for issuing a licence. Their decision is promulgated by "State Gazette" and specifies the date, time, and place of the contest, the deadline and the place for

submitting an application, the place, the deadline and the procedure for receiving application materials. The application materials consist of:

- A project licence for exercising a telecommunications activity and a supplement with the technical parameters corresponding to the currently available radio frequency spectrum
- The expected rate of development and/or of providing services
- Environmental protection requirements
- Quality requirements
- Requirements related to the creative, financial, and technical abilities and experience
- Evaluation criteria and their importance in determining the overall evaluation by giving a priority to the evaluation of the programme project.

The Council of Electronic Media chooses a chairman and members of an expert commission for carrying out the contest. Members of CEM and of the Communications Regulation Commission should be a part of the expert team. Experts from other interested administrative institutions and organizations can also become members of the commission. The commission members sign a declaration for confidentiality of the contest information.

On the basis of the application materials, the report of the expert commission, and the overall evaluation of the extent to which a candidate fulfils the contest requirements, CEM ranks candidates and takes a decision for issuing a licence for radio and television activity and an individual telecommunications licence to the number one candidate. If the approved candidate decides to give up the licence within 14 days of CEM's decision, the Council offers the licence to the second candidate. If the second candidate also refuses to use the licence, the procedure is terminated.

A licence for radio and television activities cannot be granted to persons or related parties who are not registered under the Trade Act, to persons who hold a licence of the same kind, for radio and television activity with a regional or local coverage unless the candidates give up

their former licences. This provision and the provision, according to which a person cannot acquire more than the maximum allowed stakes and shares of a specific radio and television station, guarantee the absence of an extreme concentration.[12]

A licence is personal and is granted for a 15-year term. This term may be extended with a decision of the Council for Electronic Media. A change in the ownership of the licence can be permitted by CEM if the person that will receive the licence fulfils the requirements for initial licensing.

A licence is terminated after:

- The end of its term, unless an application has been submitted for its extension;
- Its revocation;
- Termination of the legal entity or death of the natural entity - sole proprietor; or
- The request of the licensee before the end of the term.

When a licence for radio and television activity issued under this Act is to be terminated, CEM asks the Communications Regulation Commission to terminate the corresponding individual licence for telecommunications activity.

The licence is revoked in case of:

- Serious violations of the principles for carrying out radio and television activity;
- Violations of Article 6 (3), Article 7, 10, Article 13 (4), and Article 19; or
- Finding false data in the declarations made under Article 111.

CEM comes up with a reasoned decision for revoking the licence of a radio and television operator. The revocation comes into effect after a written notification from CEM specifying a term for the removal of the violation. The reasoned decision of CEM to revoke a licence specifies also a period of at least 2 years, during which the person cannot apply for a new licence. After

[12] The maximum shares and stakes allowed are determined by the law against monopolies.

revocation of the licence, the licensee is obliged to terminate his/her radio and television activity.

The STRATEGY for the Development of Radio and Television Activities in Bulgaria

According to the amendments of ZRT in August 2002, the National Assembly will approve a Strategy for the Development of Radio and Television Activity through Terrestrial Radio Broadcasting, drafted by the Council for Electronic Media and the Communications Regulation Commission. The strategy should consider the national priorities and public interests in licensing so that the free radio frequency spectrum is used more efficiently. The Strategy may be updated every three years or less often depending on the economic and technological development of the electronic media market in Bulgaria. The updating will follow the order, in which the Strategy has been approved. The deadline for drafting the Strategy and submitting it for discussion in the Bulgarian Parliament is November 15, 2002. CEM and the Communications Regulation Commission have already developed the draft Strategy. Its content has been subject to a number of public discussions, involving all interested parties. Since the National Assembly has not yet approved the draft Strategy, this report cannot comment on the Strategy content. We will just mention that the Strategy is divided into two phases - a short-term phase from 2003 until 2005 and a long-term phase from 2006 until 2008.

The overall expectations are that in the short-term phase all applicants for local radio activity will be finally licensed, a second private national television operator will be also licensed, and the procedure for licensing local television operators will begin if an interest is expressed on behalf of interested parties. During this phase of the Strategy, an overall survey of the radio and television activity will also be conducted and, if necessary, a readjustment of the radio spectrum will be made so that it is used more effectively. Until 2005, certain measures should be taken for the development of BNT and BNR public character as well as of the institutional stabilization of CEM.

In the long-term phase, a second private national radio operator is expected to be licensed and pilot projects for digital radio and television broadcasting (T-DAB and T-DVB) will be developed. A national plan for a mixed type digital television will be developed and the Stockholm 1961 plan will be revised.

New contest licensing procedures will be available after the National Assembly approves the Strategy for the Development of Radio and Television Activity through Terrestrial Radio Broadcasting. The contests and licensing procedures that have started before the enforcement of this law will be finalized in accord with the Strategy for the Development of Radio and Television Activity through Terrestrial Radio Broadcasting approved by the National Assembly.

Hungary

Overview

Since the early 1980s, the emergence of new broadcasting techniques has modified the old rules and has led to the creation of new channels, new programmes and new services. Cable TV, local channels and telecommunications satellites were the first to spark off changes. But the major upheaval occurred with the arrival of direct broadcasting satellites that have demolished audiovisual frontiers between European countries.

I Guarantees of Freedom of Expression

The Hungarian Constitution provides under Article 61 that everyone has the right for a free opinion and to receive and disseminate information of public interest and that Hungary recognises and protects the freedom of the press. Article 61 of the Hungarian Constitution, adopted in 1949 provides anchorage for freedom of expression in the domestic legal order. Article 61 of the Constitution reads:

> *(1)* In the Republic of Hungary everyone has the right to express his opinion freely, and furthermore to access and distribute information of public interest.
> *(2)* The Republic of Hungary recognizes and respects the freedom of the press.
> *(3)* A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the public access to information of public interest and the law on the freedom of the press.
> *(4)* A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the supervision of public radio, television and the public news agency, as well as the appointment of the directors thereof, on the licensing of commercial radio and television, and on the prevention of monopolies in the media sector.

Article 7 of the Constitution undertakes to harmonize domestic Hungarian law with the country's obligations under international law and Article 8 recognizes the

inviolability and inalienability of fundamental rights. As such, these Articles indirectly guarantee the protection of freedom of expression.

The International Covenant on Civil and Political Rights was ratified by Hungary in 1974 and incorporated into the national legal order by virtue of Law Decree VIII of 1976. Hungary ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1992, and its necessary promulgation as law was ensured by Act XXXI of 1993. Ratified in 1995, both the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities entered into force in Hungary in 1998. The European Convention on Transfrontier Television (ECTT) was ratified by Hungary in 1996 and it came into effect the following year. Hungary also ratified the Amending Protocol to the ECTT in 2000 (by tacit acceptance). The actual incorporation of the ECTT into national law took place with the passage of Act XLIX of 1998 on the Promulgation of the European Convention on Transfrontier Television.

II Act. No. 1 of 1996 On Radio And Television Services

The Hungarian Media Act, which was passed on 20 December, 1995 with nearly 90 percent of MPs voting in favour, and came into effect on 1 February, 1996, represents a fine example for a new generation of audio-visual laws, currently being enacted within the context of European-wide liberalisation in media services. Though it seems that the voting for the Act shows a clear agreement from Hungarian parties, this Act is an example for how an Act can be destroyed by politics. After the Media Act was created (but before it passed the voting at the Parliament) the politics came into it and because of this fact, the Act is sometimes unfortunately unreadable (with phrases having been left incomplete or phrases that are “not Hungarian” and so on). The purpose of the Media Law is twofold: it seeks to provide for the creation of private broadcasting on a nationwide scale and also to ensure the independence of publicly funded broadcasting from governmental control.

The Media Law abolished the monopoly of state broadcasting, and institutionalised a basically dualistic broadcasting system consisting of commercial and other broadcasters. However, the Law does not make use of the notion of commercial broadcasting, because it implicitly starts from the philosophical assumption that, as a rule, all (broadcasting) activities are enterprises, aiming at maximum profits, and only the exceptions have to be named specifically. The Law names two great categories of exceptions: public service broadcasting, where public money is involved, and non-profit oriented broadcasting, where the criterion is to recycle any profits into the broadcasting activity. It is very interesting that there is nothing about the commercial broadcasting in the Media Act, though it is an important sector and very popular amongst population. Although it does not expressly refer to them, the Act is definitely used in relation the commercial broadcasters too.

At the beginning, the Media Law specifies general rules and principles, which apply to all broadcasters, regardless of their status. E.g. information provided must be many-sided, factual, objective and balanced, shall not be „in the service of any party or political movement", facts and opinions have to be separated. Section 5 also regulates the protection of the personality, the mental or physical development of minors. Specific programme structure requirements regulate the percentage of Hungarian content in music broadcasts, the obligation of national and regional television stations (again regardless of their status) to broadcast programmes made by outside sources, the obligation of all broadcasters to provide public service type programmes in at least ten percent of their broadcasting time.

The principle objective of Act I. of 1996 is the safeguarding of basic rights related to communication. In its Preamble, lawmakers identify as one of the reasons for the accomplishment of the Act the ensuring of the right to access information and prevention of the emergence of monopolies. However, the Act does not interpret precisely the basic principles included in the Preamble and §31 (see further below). Thus, this has remained a task of the Commission.

In the majority of EU member states a consensus has been achieved regarding the permanent necessity for public service broadcasting. Its functions are being crystallized parallel to the institutionalisation of commercial media outlets. Public service media outlets are to fulfil such specific tasks that a broadcast provider operating on commercial basis is unwilling or unable to perform. One of the most pressing problems is that civil society is being pushed into the back-seat in the media outlets, which clearly hinders the development of civic identity.

Public service broadcasters in Hungary are the Hungarian Radio, the Hungarian Television and Duna (Danube) Television. In accordance with the decision of the Hungarian Constitutional Court, public service broadcasters in their financing and operation must be independent and therefore must not directly or indirectly be connected to the funds of the central budget. This is why the new Act intends to transform these state budgetary organisations into share companies, but solely with an executive chairman, without having a board of directors. Though the clear regulation, this independence is not always guaranteed, so the Hungarian Television and the Hungarian Radio is always in the focus of political attacks in 2002 too.

Public Endowment Boards of Trustees

Act I. of 1996 has called into being the Endowment for Hungarian Public Television, Endowment for Hungarian Public Radio and Endowment for Duna Television to exercise ownership rights over the public service broadcast providers being transformed into joint stock companies. Civil organizations, as provisioned for by the Act, are entitled to delegate members into the Board of Trustees of these Endowments, while their presidiums consist of members nominated by the parliamentary parties and elected by the National Assembly.

The membership of each civil organisation is for only one year and there are a lot of questions concerning this: e.g. is one year enough for a member to get acquainted to the situation? There were several attacks at the last election because ORTT failed to examine the civil organisations and the delegated members, so it is possi-

ble that an organisation, which was established recently or has only e.g. three members becomes the delegate in that "media jackpot" (as Hungarians call this election). This year there are such organisations amongst the delegated like Hungarian Bicycle organisation and it is definitely clear that they have no experience or knowledge about the media field. Further, because these civil members' vote is equal to that of politically nominated members, there are attempts by political parties to "delegate" their candidates through a civil organisation. This situation has to be changed soon because it constitutes a real danger for public service broadcasting. So unfortunately we have to say that real civil control (which was the original idea) does not work at all.

Nowadays there are problems concerning the members of the Public Endowment Boards of Trustees that were delegated by political parties too and this is one of the biggest problems in the Hungarian media situation. During the last four years there were six parties in the Hungarian Parliament, three of them (Fidesz, MDF and FKGP - all right wing) in governing position, the other three (MSZP - left wing, SZDSZ - liberal, MIÉP - right wing) in the opposition. The governing parties elected their candidates (2 for Fidesz, 1 for MDF and 1 for FKGP) and they told the opposite side to select their candidates. The situation is that MIÉP is in opposition in name but it votes with and for the governing side as a right-wing party. There are four members of the governing side, so there could be four members representing the other side too. It would be obvious that MSZP (with 136 MPs) gets 2 places and there is 1 for SZDSZ (24 MPs) and 1 for MIÉP (12 MPs), but MIÉP wanted 2 places, which was unacceptable to MSZP. So the situation is that formally the opposition cannot decide about their selections (which is definitely because the government considers a party (MIÉP) that votes with and for them as an opposition party). That is why there are only 4 members. Although formally the government has done nothing wrong, the position is incompatible with the law. Unfortunately, the Hungarian government seems to be happy with the current situation, ignoring the decision of the Constitutional Court, which said that this situation should be ended. This decision

was handed down almost two years ago but the situation still remains the same. Maybe this big trouble could be solved only after the next year election.

After this year's parliamentary election there are only four parties in the Parliament. The governing position changed, so the left wing MSZP and the liberal SZDSZ formed a governing coalition, while Fidesz and MDF are in opposition (the right sided FKGP and MIÉP didn't get enough votes, so they are no longer represented in Parliament). Now one could think that everything would turn out all right in legal way, but unfortunately this is not the case. The term of the political members of the Board of Trustees is four years, so the pre-existing situation cannot be changed - though the four missing left winged candidates were elected - because the delegated member of FKGP is still on the Board although his party is not in the Parliament anymore. The strangest thing is that the FKGP's member is considered as neutral by the Act (because his party is not in the Parliament), though in the last four years this party was voting with the right wing in the government, so it could not really be considered as neutral at all. This is a "small gap" in the media legislation and they used it.

III Regulatory Authority

a) Status

The basic institution of Act I. of 1996 is the National Radio and Television Commission (ORTT - Országos Rádió és Televízió Testület) which is independent of the executive branch in power, its members are only subordinate to the Act and cannot be issued orders within the sphere of their activities, are only held accountable by the National Assembly and cannot be recalled. The ORTT is (nominally) an independent legal entity that manages its own economic and administrative affairs. Keys of the independence of the Commission with no tradition in the constitutional system of institutions are the nomination of its members on the basis of party parity, and their election with a qualified majority of the representatives, furthermore its financing independent of the state budget.

The tasks and related licenses of ORTT are regulated in detail by the Act (Section 31). The principal task of the

Commission constitutes of the protection of the freedom of expression, enhancing broadcast providers' access to the market, breaking up information monopolies and preventing the emergence of new ones, protection of the independence of broadcast providers, and monitoring the assertion of the constitutional principles of the freedom of the press.

> (1) The National Radio and Television Commission protects and promotes the freedom of speech by means of facilitating the broadcasters' entering in the markets, by means of disassembling information monopolies and of preventing the development of new ones, by means of protecting the independence of broadcasters; and also by monitoring adherence to the constitutional principles of free press and by reporting its findings to Parliament.
>
> (2) Members of the Commission are only governed by this present Act, and in the course of performing their duties, they may not be ordered otherwise.

During the summer of 1996 ORTT determined the General Terms and Conditions of Tender in such a way so that the regulations included in it are applicable to the acquisition of both the national, both the regional and local broadcast providing licenses. This important document of the process of media transformation was published in Muvelodési Közlöny (Cultural Gazette) on August 31, 1996. By mean of this the Commission has further cemented the institutional system, which is destined to accomplish the freedom of disseminating information and access to information in Hungary.

b) Functions

The ORTT's powers are primarily regulatory, but monitoring is also a mainstay of its activities. Specifically, the ORTT's responsibilities include:

- Ensuring the operation of the Complaints Commission;
- Supervision / control of broadcasting, in technical and substantive terms, including monitoring programme content and adherence to the conditions of broadcasting agreements;
- Taking an advisory role, including an obligation to

"form and express opinion" on draft laws touching on its areas of competence and expertise;
- Drafting position papers and recommendations on the conceptual issues of the development of broadcasting in Hungary;
- Furnishing the Government with whatever information it needs for budgetary planning purposes; and
- Overseeing the licensing process.

c) Funding and Remuneration

The ORTT's budget is approved by way of Act of Parliament. The remuneration of ORTT members is fixed by statute (Section 39). The Chairperson shall receive fees and entitlements equivalent to those of a departmental minister and those of an ordinary member shall be equivalent to the fees and entitlements of a permanent secretary.

d) Membership

Election

The ORTT must comprise at least five members, each of whom is elected for a four-year term-of-office by a simple majority of all Members of Parliament. All other members are nominated by parliamentary groupings (one member per grouping). If the Government or the Opposition is composed of only one such grouping, it will be entitled to nominate two members. Right now there are some who are questioning the way of forming of ORTT, because they say that such an important body should not be part of the political system. It should be remembered that the role of ORTT is such that it should be independent in all ways. There are some who suggest that media professionals or civil professionals should be members (alone or mixed with politicians) of the body. Maybe this will be solved in the new Media Act too.

The procedure for the election of members to the ORTT is divided into distinct stages, namely the nomination of candidates in the manner outlined above, the interviewing of candidates by a parliamentary committee on cultural and media issues, and the election of members by Parliament. It is possible to be re-elected to the ORTT. The President of the Republic and the Prime Minister jointly nominate the Chairperson of the ORTT.

Exclusion from membership

The possession of a criminal record precludes an individual from being nominated. Ineligibility for membership of the ORTT also arises by virtue of holding a governmental position. This also applies to members of Parliament and their employees and to national or regional officers of political parties. Membership of the ORTT is ruled out for broadcasters, programme distributors, press publishers and distributors (and for anyone who has a legal status of appointment or employment with them), for members of their governing bodies, or managers of such enterprises and indeed, anyone having any interest therein. Members of the Board of Trustees, and employees, of the Hungarian Radio Public Foundation, the Hungarian Television Public Foundation or the Public Television Foundation "Hungária" are also ineligible for ORTT membership. The extensive list of ineligible persons is completed by the inclusion of close relatives of all of those listed above. Because of this rule there were several political attacks towards the Chairperson, Judit Körmendy-Ékes, whose husband was the subject of a guilty verdict by a court of law and incurred a prison sentence.

The attack arose in recent weeks: it seems that all political parties were not satisfied (because of different reason of course) with the work of the Chairperson, Judit Körmendy-Ékes. The left wing has problems with her and her work for a long time, but some days ago an important right wing party called on her to resign. Her term expires only in 2004, so it will be an interesting part of the Hungarian media field in the following years.

Once elected to the ORTT, members' activities are restricted by statutory provisions designed to avoid potential conflicts of interest (Section 35). Members are not permitted to become involved either in party political activity or to make a party political statement. Their professional activities are confined to "those scientific, educational, literary, artistic and other activities that fall under the protection of copyright law." Moreover, members may not accept any remuneration from broadcasters - even the royalties that might have arisen from their pursuit of the aforementioned activities.

Removal of members

There are a number of stated grounds for which a member's term of office will be brought to an end, including expiry of the ORTT's term, resignation, dismissal, expulsion, death, establishment of a conflict of interests, or discontinuation of the nominating Parliamentary grouping (Section 37).

Dismissal will arise in the event of a member failing to fulfil his/her duties for an uninterrupted period of three months for reasons outside of his/her control. Expulsion, on the other hand, takes place when a member fails to otherwise fulfil the duties for which s/he is responsible or when s/he is the subject of a guilty verdict by a court of law and incurs a prison sentence.

e) The Complaints Committee

The National Radio and Television Commission's (ORTT) Complaints Committee is one of the new institutions in the wake of democratic changes in the media. Sections 47-51 of Act I. of 1996 on Radio and Television regulate the Complaints Committee's activity as well as the mode of lodging complaints.

The Complaints Committee of the Commission deliberates individual grievances alleging legal infringements. Means for submitting grievances are regulated by the Act, while ORTT has determined statutes with regard to the actual procedure. The Commission for the duration of 5 years has elected the 13 members of the Complaints Committee with consensus. The same conflict of interest regulations are applicable to its members as to that of the Commission. Its members hold chairmanship of the Committee in alphabetical order rotating at every quarter. The institution of the complaints committee is not yet familiar to the average citizen.

The Committee must make a decision on complaints submitted to it within 15 days of the complaint being lodged (Section 49(4)) and it is empowered to demand the broadcaster in question to promptly provide it with the disputed programme item and any other pertinent information requested.

f) Sanctions

Section 50(2) provides:

> If in the opinion of the Complaints Committee the broadcaster has violated the requirement for the provision of balanced information, then the broadcaster shall publish - with no explanatory comment from his part - the findings of the Complaints Committee at the time and in the manner specified in the Complaint Committee's standpoint, or, alternatively, the broadcaster shall offer the complainant an opportunity to present his standpoint.

More severe or repeated violations of the requirement to provide balanced information could prompt the Complaints Committee to recommend to the ORTT that it impose a fine on the offending broadcaster. The Act does not directly specify an ethical institution with regard to the assertion of basic principles as stipulated by its Preamble and §31. Such a role is fulfilled by the Regulations for Providing Public Service Broadcast, for the compilation of which the public service broadcast providers are legally sanctioned. These regulations, with almost no precedent in the field of domestic mass communication, fundamentally alter the operations of the public service media outlets transformed into joint stock companies.

g) Appeals

According to Section 51, a decision of the Complaints Committee may be appealed to the ORTT, as long as it is initiated within forty-eight hours of the communication of the original decision. The broadcaster's appeal has a delaying effect. The ORTT's ruling on the matter is both binding and of immediate effect. This ruling is, however, subject to judicial review in the courts.

IV Licences

The Act gives opportunity to sort the broadcasters in different ways. According to size of the coverage we can discern national, regional and local broadcasters in Hungary. The definition of "national broadcasting" is where at least the half of the country's population lives under the coverage. Broadcasting can be qualified as

"local" where the number of population is maximum 100.000 or 500.000 (within one town). Broadcasting is qualified "regional" where the coverage is larger than the local's one, but does not reach the national one's size (Hungary's population is ten million).

There is another way for standardisation, differing by the means of broadcasting. There are terrestrial (on frequency), satellite, cable and AM Micro broadcasting possibilities. It is still questionable whether "broadcasting" via the Internet means broadcasting, according to the media law.

On the basis of the content of programmes, the media law defines public service, non-profit and specialised broadcasters. Public service broadcasters usually broadcast public service programmes and the following conditions are essentials to their operation:

- Must have authorisation from ORTT (registration or contract),
- Must meet the requirement of the definition detailed in the media law on public service broadcaster,
- Must prepare a Code of Public Service Broadcasting, accepted by ORTT.

The non-profit broadcaster, in accordance with the definition, serves ethnic or other minority groups in favour of ethnic, cultural aims, or intends to become the public forum of a certain vicinity. In this case the broadcaster applies the incomes solely to keep on or develop its broadcasting. Besides this definition, the law creates other rules (special advertising limitations - only three minutes per an hour) for that type of broadcasters, but does not define the type of business organisation. Therefore it is not necessary to operate as a fund or public utility company to receive this status.

The definition of "specialised broadcasting" stipulates that 80 percent of the programmes is designed by the same genre of programmes, and also undertaken in the application by the broadcaster. (We have to say that the real definition of "same genre" cannot be found in the media law, neither the Commission has stated it.) The Commission has already accepted three broadcasters' application so far; all of them are broadcast by satellite.

These broadcasters have to consider other specific regulations as well (e. g. rules for ownership structure and advertisement, in Paragraph 86, Section 6).

A broadcasting licence is valid for a maximum of ten years in the case of television stations and seven years in the case of radio stations (Section 107). A licence can ordinarily be renewed once at the request of the broadcaster for a five-year period, without having to go through the tendering process. The licence may not be renewed, however, if the licensee has violated the terms of the licensing agreement repeatedly or severely.

V Media Ownership

Hungarian natural or legal persons are required by Section 122 of the Media Law to hold at least 26 per cent of the votes in a limited company licensed for national broadcasting. This restriction on foreign ownership is more lenient than those that apply in other neighbouring countries.

Cross-media ownership is curtailed by a prohibition on those possessing qualifying holdings, publishing or founder's rights in a daily newspaper or weekly periodical, from acquiring qualifying holdings in a national broadcaster or programme distributor broadcasting through non-network based transmission and vice versa (Section 125).

Regional and local broadcasters may not usually acquire direct or indirect holdings in any other organization engaged in regional or local broadcasting within the same signal area (Section 124). A non-profit oriented broadcaster may obtain a further broadcasting licence, but only in its capacity as a non-profit broadcaster (Section 127).

VI International Landscape

It is almost certain that Hungary will be part of the European Union in 2004, so it is worth taking a short look at the media legislation from this point of view too. The Freedom House said in its 2002's report that the Hungarian press is free though there are some warning signs. Freedom House gives punitive points for each country. The maximum is 100 points and countries

getting less than 30 are in the free category. Hungary got 23 points (2 from 30 in the legislation part which is extremely good, 8 from 40 in the political attacks part which is acceptable and 13 from 30 in the economic attacks part, which is a thing to think it over).

On the other side - though Hungary is considered as a country which is ready and well prepared for the joining to the European Union -, the European Union asked the Hungarian government and Parliament to do everything to solve the problems in the audiovisual and media field. These yearly report was created before the 2002's election and after it there are some good signs. In July 2002 Hungary penultimate closed the audiovisual chapter concerning the join to the European Union and it seems that it was one of the main parts of the procedure. Connected the closing of the chapter the Parliament altered the Media Act to meet the requirements of the European Union.

VII Recent Questions

Firstly we have to say that after 2002's election the former prime minister, Viktor Orbán said in a right wing "street assembly" that the Hungarian Television should be divided into two parts: one left wing public service broadcaster television and a right wing one. We do think that this request is absurd, not only because it is only part of the political war, but also because the Hungarian Constitution declares that the public service broadcasters should be independent from all political movement and influence.

In a positive development, Hungary's first Roma-language radio station, Radio C, which reaches Budapest's 100,000-strong Romany community, was granted a permanent license. In addition, a new press freedom group was established in 2001. The Budapest-based Hungarian Press Freedom Centre seeks to protect and enhance press freedom in Hungary through advocacy, research, training, and legal assistance for journalists.

At last we have to speak a little about the possibility of a new Hungarian Media Act. It is only a wish now because it seems that there is no consensus in the ques-

tion between the political parties. So we just can list the topics where changes should be made:

- the Board of Trustees (both the civil and both the political candidates);
- the Regulatory Authority's (ORTT) situation;
- the political attacks;
- new technologies (internet etc.).

Since the Media Act could be altered only by 2/3 of MPs voting in favour, the so long waited consensus should born once.

VIII Conclusions

There are several serious problems nowadays concerning the Hungarian media field and legislation (e. g. members of the ORTT, political attacks) but we can think that the situation will be better in some years when the members of the parties and the parties themselves realise that though the media is the field of "life and death" (as says in Hungary) but sometimes the political interference is worse than no interference at all. We think that the really waited joining to the European Union will help to normalise the situation by getting acquainted to the EU legislation and practice.

Macedonia

I Freedom of Expression

Article 16 of the Constitution of the Republic of Macedonia guarantees the freedom of conviction, conscience, thought and public expression of one's thoughts. It guarantees the freedom of speech, public address, public information and founding institutions for public informing. It guarantees free access to information, freedom of receiving and transferring information; it guarantees the right of response in the media. It guarantees the right to correction in the media. It guarantees the right to protect the source of information in the media. Censorship is forbidden.

The Constitution of the Republic of Macedonia reads that the international agreements ratified in compliance to the Constitution become part of the internal order and cannot be changed by a law.

There is not an independent mechanism/body for responding to broadcasters' complaints of violations of broadcasting freedom.

There are examples of violations of the rights to free expression in the broadcast media especially during the election campaigns and most often they are carried out by cutting off electrical power, physical attacks on journalists, attempts to confiscate video cameras and taped materials, etc.

II National legislative acts, regulating broadcasting

- Law on Broadcasting;
- Law on Founding the Public Company Macedonian Radio and Television
- Law on Founding the Macedonian Broadcasting Public Company
- Law on Telecommunications
- Law on Licences
- Provisions from the Criminal Law
- Law on Copyrights and Kindred Rights

III Regulatory authority

a) Status

There is a regulatory authority. In compliance with the Law on Broadcasting there is a Broadcasting Council which has been defined as an independent body and it looks after the interests of the citizens in regard to the broadcasting activities that include monitoring of the activities of both the private media and the Macedonian Radio and Television. Even though it has been defined as an independent body the Council is not really that for many reasons.

There is an opportunity for either certain political powers or state institutions (e.g. president, parliament) to interfere with the independence of the regulatory body and influence the way it functions, either directly or through "the stick and the carrot" mechanisms.

The Broadcasting Council is a nominally independent body that represents the interests of the citizens of the Republic of Macedonia in regard to broadcasting activities. It consists of 9 members elected and capable of being dismissed by the Parliament of the Republic of Macedonia on a proposal by the Parliament, i.e. the Parliamentary Commission selecting from people who are competent and experts on media, economy, education, culture, etc. The Council elects a President and a Vice President from among its members.

Specific qualifications have not been identified; it is provided only that the members should be experts and competent persons in any of the given areas. The members of the Council are elected for a period of 6 years. The procedure for changing (dismissing) members from the Council is not included in the Law on Broadcasting; it only says that its members are dismissed by the Parliament of the Republic of Macedonia on a proposal by the Parliamentary Commission for Election and Appointment. The reasons for dismissal are set out in the Law on Broadcasting:

- if the Council member is convicted for a criminal act for which the sentence is at least 6 months;
- if s/he has been convicted for a criminal or other act that makes him unsuitable for the position; and

- if s/he has no justification for absence from the Council meetings for more than 6 months.

The Law on Broadcasting does not include special provisions for appearing before a court, so the provisions that refer to everybody else refer to the Council members as well. The wages of the Council members are determined by the Council with a Decision by the Council passed with majority votes from the total number of members. There are no special rules on the way the wage is determined and what the wage of the Council members will be.

According to the Law on Broadcasting, the Broadcasting Council is financed from the funds of the Broadcasting Tax. But Article 77 of the Law, which deals with allocation of the means from the Broadcasting Tax, whether on purpose or by mistake, makes no allocation of means for the work of the Council. Hence for two years, until a Decision was passed by the Government that determined the funds that would be drawn from the Broadcasting Tax for the work of the Council, the Council was financed from the budget i.e. from the funds coming from the Broadcasting associations that they paid for the licences without there having been a decision from an authorised body for that purpose (illegally). In that period no economic independence of the Council was possible since it depended on the Government of the Republic of Macedonia i.e. whether and how much funds the Government would allocate for the work of the Council from the collected funds from the licences. Since July 2000, the Council has been financed from the broadcasting tax, but the decisions passed in the period of Council's economic dependency are still in effect.

According to the current practice of the Broadcasting Council, conflicts of interests appeared in the following cases:

1. The employees who work on monitoring and development of the private Broadcasting Associations own private companies who prepare technical specifications on the broadcasting coverage and studio projects. The conflict is even bigger since the projects that are submitted by the broadcasters and by the cable TV stations are reviewed by the same people.

2. The members of the Broadcasting Council lobby for RTV or cable TV licences for their close relatives or members of their family.
4. The Broadcasting Council members who work at the Department for monitoring the programme of the broadcasters at the same time cooperate with scientific institutions or private media research agencies.
5. The Broadcasting Council members before that worked as advisors to the Prime Minister or the Director of the MRTV.
6. Individuals collaborating with the Broadcasting Council as experts in the analysis of project of public interest are at times people working at the executive authorities; the most extreme example is the participation of a minister in this analysis.
7. Broadcasting Council experts who analyse the programmes, as projects of public interest, at the same time are private producing associates in private producing companies.

Some public authorities can use their financial decision making power to interfere with the independence of the Broadcasting Council because the amount of funds planned for the expenditures of the Council is not determined by a law, but it is determined with a decision by the government of the Republic of Macedonia. The main and fundamental source of funds for the Broadcasting Council is the Broadcasting Tax that is obligatory for the citizens and it is up to 1/12 depending of the annual finance plan of the Council. Hence the financial dependence of the Council upon the Government is obvious because the Government at any time could pass a decision for changing the amount of money planned for covering the expenditures of the Council.

The Council has no legal authority to pass decisions with legal effect over the private broadcasters. The Council may only propose action whilst it is the Government that passes the decisions. The Government decides about the projects of public interest, appointing and withdrawing licences, etc. The Council passes decisions with majority votes for its own activities, wages of the members, financial plan, decisions for establishing monitoring groups, etc.

b) Competences

The Broadcasting Council cannot develop and enforce regulations and internal rules.

The Broadcasting Council, apart from monitoring of the programme of the private broadcasters, does not have any activities promoting and developing programmes, maybe only unsuccessful attempts.

The broadcasting licences for the radio-television programme broadcasting by the private broadcasters are appointed by the Government of the Republic of Macedonia on a proposal by the Council.

The approval for purchasing and installing radio stations (transmitters) as well as working licences for every radio stations (every single transmitter) are provided by the Ministry of Transport and Communications on a request by the private broadcaster who previously was awarded a licence.

The licences for transmitting radio-television programme for the private broadcasters are appointed by the Government of the Republic of Macedonia on a proposal by the Council. In regard to the monitoring, the Council is authorised to do monitoring, to point out irregularities in the broadcasting, to warn by proposing the Government to take away licences and to inform the authorised inspectorate about the irregularities.

The Council has no right to allocate or to take away licences; it has no right to allocate funds for projects of public interests; and it has no right to sanction irregularities in the activities of the broadcasters.

There is a monitoring programming on behalf of the BC in order to ensure that content regulations, ensuing from different legal acts, are complied with but not a consistent policy for it.

If the Broadcasting Council registers violation of the provisions of the Law on Broadcasting or violations on the provisions of the Agreement for Licences it could undertake the following measures (sanctions):

- to send a written warning that if they continue with the violation of the legal i.e. agreement provisions proposals would be submitted to the Government for taking away the licence and to the Ministry of Culture for starting offence procedure;
- to send a written warning with a request to be published by the broadcaster to which it refers;
- to address a request to the Ministry of Culture for undertaking the measures that are prescribed with the supervision procedure.
- proposal to the Government of the Republic of Macedonia for taking away the licence.

Since the Council could only make written warnings and proposals, it cannot impose sanctions in respect of any violation of the provisions and, as a result, there are no reasons for complaints to the court. If the Government, on a proposal by the Council, decides to revoke a licence, the private broadcasters have a right to appeal before the court because a decision by the Government is a decision of first and last degree. It does not belong to the management procedure and as a result the Law on Licences does not include appeals for not awarding or taking away licences. If the sanction comes from the inspector at the Ministry of Culture, the private broadcaster may appeal against the inspector's decision before the second-degree commission of the Government. After the decision of the second-degree commission, if the private broadcaster is not satisfied with the decision it could start a case before the Supreme Court of the Republic of Macedonia.

The Council is authorised to announce competitions for projects of public interest within the 10% of the broadcasting tax, and all the private broadcasters and producers could compete. The Council creates a commission of Council members and experts outside the Council who propose which projects will be financed and how much funds would be allocated for the proposed project. Based on the Council's proposal the Government of the Republic of Macedonia passes a decision. In practice, funds are allocated to private broadcasters, „close to the government" as well as to private broadcasters and producers close to the Council. Hence the paradox that

some totally unknown local radio gets an enormous sum of money for projects and a private broadcaster close to the opposition gets nothing or very little. The interest for projects is especially great among the private broadcasters with low rating because the Council does not control whether the means are appropriately spent i.e. in accordance with the project's financial plan.

c) Accountability

The Council neither according to the Law nor according to the practice is an independent body, and even less accountable.

According to the Law, even though it is defined as an independent body the Council cannot be an independent body because the amount of money it needs for its work is determined by the Government by a decision taken at a Government meeting. In practice the Council is not an independent body because it protects the interests of the government, a plastic example for that is the scandalous manner in which it allocates funds for financing projects of public interest.

According to the Law on the Council there is no mention of accountability of that body because for that to be necessary, the Council would have to have legal authorisation to pass decisions and sanctions. The Law on Broadcasting does not include any possibility for the Council to pass decisions or to have a right to sanction.

The Broadcasting Council is accountable before the Parliament of the Republic of Macedonia by presenting an annual report before it. There is no accountability before the state organs and the general public. The Council is obliged to submit an annual report to the Parliament of the Republic of Macedonia.

The Law on Broadcasting determines the work of the Council to be public. The Council decides how it will make its activities public. In practice the Council meetings are public, the Council publishes press releases and organises press conferences, publishes a bulletin, etc.

There are no appeal mechanisms about the work of the Council.

The Council cooperates with NGOs, for example the PHARE Programme. It organises seminars, workshops, etc. The Council only formally cooperates with broadcasters' associations and in essence it really works on the creation of many associations in order to deny their legitimacy and to incite a dispute among the members, to oppose the broadcasters' associations because it does not suit either it or the government to have a strong organised professional association of private broadcasters.

IV Licensing system

Laws that regulate the procedures of licensing:

- Law on Broadcasting;
- Law on Licences; and
- Law on Telecommunications.

a) Enforcement of the laws

There are unlicensed broadcasters which operate in the country. According to the recently published list by the Telecommunications Directorate, there are 198 broadcasters without licences, as opposed to the 120 legal private broadcasters who pay for licences, taxes.

The unlicensed broadcasters destroy the media value and at the same time usurp the already small market of the legal ones by offering extremely low cost advertising services.

After getting a licence, licence holders have to prepare a technical specification and to submit it to the Telecommunications Directorate for permission to purchase and install a radio station. The licence requires that the equipment be installed within a year, and to have a technical check up. After that, it receives a working licence that is valid for 10 years. These licences have not been received yet for several reasons:

1. Those with licences have not submitted yet the appropriate documentation;
2. The Control Centre of the Telecommunication Directorate has not carried a technical check up because of subjective reasons. Their justification is the insufficient number of people, vehicles and

equipment or that they have not received an order for a technical check up. The Telecommunication Directorate is directly responsible for not respecting all the time schedules for issuing licences.

b) Access to Frequencies and Equipment

The Law on Telecommunications includes a Plan for Utilisation of the Radio Frequencies' Ranges and a Plan for Allocating Frequencies.

The Republic of Macedonia is a member of ITU Geneva and it complies with the ITU Plan. These plans are essential and they refer to the national public and private licensees with adequate equipment, above 100 metres effective height.

For the lower zones the Telecommunication Directorate has its own frequency plan that includes micro locations, zones of coverage, direction of emission, number of frequencies, strength of the RF emission. This frequency plan is not public and the Telecommunication Directorate and the Broadcasting Council are co-responsible for it.

Telecommunication Directorate at the Ministry of Transport and Communications are the regulatory bodies planning the range of national frequencies, which are to be allocated for broadcasting services.

The Law on Broadcasting of the Republic of Macedonia prescribes provisions according to which the Government of the Republic of Macedonia announces a competition for allocating licences for private broadcasting activities for private broadcasters on a proposal by the Broadcasting Council. The competition is published in the Official Gazette of the Republic of Macedonia. For the licence one should pay. Unlike private broadcasters, the Public Enterprise Macedonian Radio and Television got a licence with a law on its founding, and the public broadcasting companies that act locally get a licence with a foundation act.

Apart from the licence the private broadcasters should have a right to use radio frequencies. The right to radio

frequencies is used with a permission for procurement and installation of radio stations i.e. with a working licences for the radio stations. The licence for using radio frequencies is allocated on a written request by the private broadcaster.

Even though the Law on Broadcasting includes equal attitude towards all the broadcasters for using the basic broadcasting network, this provision is not respected in practice. In reality, another provision from the Law on Founding the Public Enterprise Macedonian Radio and Television is practised and that is the provision according to which Macedonian Radio and Television has the right to use the basic broadcasting network, to fully satisfy its needs without paying for that and only if there are capabilities that are not being utilised by the Macedonian Radio and Television could such capacity be used by the private broadcasters in compliance with the pricelist of the Public Enterprise Macedonian Broadcasting. But in practice even these capabilities are difficult to get.

The basic condition of the Broadcasting Companies on a national level is for covering 70% of the population in the Republic of Macedonia.

The national Macedonian Radio and Television covers: the first TV channel 90%; the second TV channel 90%; the third one 30%; Satellite Europe, Canada and Australia; the first radio channel 95%; TV channel 75%, third channel 20%.

Private national broadcasters:
Radio Network Kanal 77 - 95%, Antena5 - 75%, TV A1 - 85%, Sitel - 80%.

The proportion in regard to the audience and the coverage is to the benefit of the private RTV stations, if they have the same coverage, the number of audience would be greater.

c) Granting of a licence

The licences are allocated by the Government of the Republic of Macedonia. As noted, the Broadcasting Council only proposes and the Government is not

obliged to follow the Council's proposal. The working licences for the radio stations are allocated by the Telecommunication Directorate, which is under the Ministry of Transport and Communications.

The Telecommunication Directorate is a state institution rather than a legal entity and it operates under the Ministry of Transport and Communications. The Telecommunication Directorate is not an independent structure and it is financed from the budget.

The broadcasting licence is allocated by means of a competition published in the Official Gazette of the Republic of Macedonia. The competition gives the formal and the fundamental conditions that every potential broadcaster needs to fulfil. The permission for procurement and installation of the radio station and the working licence for the radio station is given based on a submitted written request by the private broadcaster who previously was allocated broadcasting licence.

Specifications given in the competition for a licence: type of broadcasting service, technical parameters (frequency, power, location); beginning and duration of the licence, the amount and the way of payment for the allocated licence; duration of the programme broadcasting (daily, weekly, etc.).

The competition for a licence is totally non-transparent and unfair because:

- There is no right to appeal;
- The names of the members of the commission are not announced;
- There is no insight in the situation according to the project documentation;
- There are no notes on the submitted documents and they are not returned nor there is right to see the documents.

There are limitations on private broadcasting organizations obtaining licences and those are: a private broadcaster could have only one licence; a private broadcaster cannot work in the printed media; a political party, religious community; religious group, a public person or a

political party representative cannot be a founder of a broadcasting organisation; a public person or a political party representative cannot be a director or editor in chief.

There are limitations on foreign broadcasting organizations obtaining licenses in regard to the amount of the founding capital when receiving the licence. After receiving the licence there are no limitations, all the laws of the Republic of Macedonia apply for him just as they do for the domestic private broadcasters.

The public local and national broadcasters do not pay a licence fee. The private broadcasters pay a licence fee. The licence fee is calculated with the formula for determining the frequency fee (H=25 x A x G x Z x 1/T).

A-1 for a audible broadcasting; A-2 for television
G - depends on how big the settlement of the servicing zone is
Z - depends on the number of inhabitants in the servicing zone
T - depends on the number of users of a frequency in the servicing zone.

d) Renewal and withdrawal of Licences

The licence term for a national private broadcaster is 10 years and for the local private broadcasters 7. The period is definitely not reasonable period in terms of repayment of invested funds.

The price depends on the territory for which it is issued (national or local level).
The way the annual licence fee is formed:

1		2		3
Fee for a transmitting and linking frequency	+	Licence and other expenditures fee	=	**Total annual licence fee**

There is no legal framework for a licensee to apply, however the private broadcasters may address the Council in a letter and to ask it to propose the Government to decrease the licence fee. There was such reduction of the licence fees on an initiative by the APEMM when the

licence fee was reduced for 10% on a local and 20% on a national level first time and among 28-36% of the fees with the last reduction from July 2001.

In the current practice, after several licences were taken away at the next competition for those licences, the same entities did not apply at the competition and the licences were allocated to others. They have not yet expired and we have no experience of whether the first licences would be renewed.

There are no provisions, favouring local radio and TV stations to national/chain broadcasters, or vice versa, in the competition for licenses.

The licence could be taken away when ever the Council considers that the private broadcaster does not comply with the provisions from the Law on Broadcasting, the Broadcasting Agreement, the Law on Copyrights and Kindred Rights and other legal provisions that refer to broadcasting and on a proposal by the Council and with a decision by the Government. In accordance with the law if its provisions are violated a protection measure could be undertaken by forbidding broadcasting for a period ranging from three months up to a year because of a violation of the provisions from the Law on offence procedures i.e. on a charge by an authorised person (inspector or the plaintiff) in a court procedure with a court decision. The reasons for this measure in the Law are numerous, i.e. as violations are defined almost all the violations of the imperative norms prescribed by the provisions within the Law on Broadcasting. There are no specific provisions for refusing renewing of the licence within the Law on Broadcasting i.e. there are provisions which determine the conditions for renewing the licence which are too strict and inapplicable.

In practice until now on a proposal by the Council and with a decision by the Government the licence of a local broadcaster was withdrawn because he had not paid the licence fee and a local broadcaster was forbidden to broadcast for a period of six months because of a violation of the provisions from the Law on Copyrights and Kindred rights.

There are no mechanisms in place allowing for appeals against refusals to renew a licence or withdrawals. All the decisions concerning licences are passed by the Government on a proposal by the Council. If a party is not satisfied with the decision of the Government it does not have a right to appeal.

e) Monitoring broadcasters' compliance with their commitments and obligations under the law and the licence

Macedonia has signed the European Convention of Transfrontier Television and complies with it. The European Convention of Transfrontier Television is transposed in the national legislation.

The law does not make a difference that the Convention applies to Television only or it is applied to radio with the same power.

The Broadcasting Council has permanent monitoring groups that follow the programme contents from the aspect of their compliance with the law and the European conventions which are implemented in the laws of our country. The regulatory authorities have the right to request and receive information from broadcasters on the programme content/intended programme content. Whenever there are changes in the programme content the broadcasters are obliged to inform the Council about those changes.

The regulatory authorities have the power to consider complaints, concerning individual broadcasters' activity and to publish their conclusions, theoretically, but we are not familiar with any such examples in practice.

V Licence conditions / Content regulation

a) Reflecting Diversity of Opinions

The terms of licence include an obligation to broadcast programmes, catering for 1) special interests, 2) community interests, 3) minority interests, 4) educational purposes. These requirements are part of the programme content of the media and the Council monitors the programmes and undertakes measures for which it is authorised if the requirements are not respected.

According to the agreement for a licence, the national broadcasters are obliged to broadcast news edition every day, and the local broadcasters should have at least 20% informative programme abut the developments on their territory, something that we cannot define. The informative programme with the media is usually a product of the company itself, agency news or a repeat playing of another media's programme, a foreign one that has news in Macedonian for which it requires permission from the Broadcasting Council.

There are measures, obliging broadcasters to take into account the multiethnic audience in given regions and provide equal programme time for the needs of minorities. This applies only for the state broadcaster. In practice it is even more respected. The Council monitors. The private broadcasters are not obliged but they have the right to broadcast a programme for the multiethnic audience with no limitations. There are no provisions for or limitations to broadcast in a minority language.

There is a provision that the broadcasters should produce certain percent of a programme of their own. There are no special percentages about programmes produced in the country or Europe.

b) Provisions against Hate Speech and Provoking Violence

- Promotion of tolerance and respect and nourishing of cultural differences;
- Misuse of broadcasting programmes for calls for destruction of the constitutional order of the Republic, provoking violence and calls for a military aggression or inciting national, racist or religious hatred and intolerance are forbidden;
- Stimulation of the spirit of tolerance, mutual respect and understanding between individuals of different cultural and ethnic origin;
- Equality of freedom and rights regardless of gender, race, colour of the skin, nationality or social origin, political or religious conviction and estate or social position of the citizen;
- When allocating funds for projects of public interest the council takes into consideration the satisfaction of the multicultural interest of the citizens.

c) Protection of State Interests and National Security

- Maintenance and nourishing of national identity, language culture and folk creativity;
- Misuse of broadcasting programmes for calling for destruction of the constitutional order of the Republic, provoking violence and calls for military aggression or inciting national, racist or religious hatred and intolerance are forbidden.

d) Advertising and Sponsorship

The financial sources of the broadcasting companies founded by the state are: broadcasting tax, marketing services, selling of its own programmes, sponsorships, donations, etc.

For the public (state) it is limited up to 7% of every hour broadcasted programme, and for the commercial broadcasters up to 20% of every hour of broadcasted programme.

The interests of the private broadcasters are not protected.

The provisions of Television without Frontiers Directive/Convention in regard to advertising are partially transposed in Macedonia. The Law on Broadcasting incorporates the following restrictions on advertising: seduction of the public is not allowed; the interests of the children must not be violated; the integrity and the value must not be violated; advertising of tobacco, alcohol and drugs with prescription is forbidden.

There are provisions protecting competition. For example: the public broadcasters do not pay a licence fee, do not pay a fee for using the broadcasting network, there is no control over their pricelist, etc.

There have been no attempts to prevent disloyal competition and dumping. On the contrary, there have been successful attempts to incite disloyal competition by the public (state) broadcasters.

The Law on Broadcasting is supposed to require the identification of the beginning and the end of the pro-

gramme; prohibit the influence the content of the sponsored programme, prohibit interference with the editing policy, the sponsoring of news and political or religious programmes. The sponsored programmes should not stimulate selling, purchasing or renting products and services by the sponsor. However, the practice shows that the sponsors give money for specific programmes and require most advertising and exclusive rights in that programme. According to us in the practice there is sponsorship but also there is advertising.

There are no preferences for broadcasting government advertisements on the public radio and TV stations. There are no any discriminatory taxes and import duties, that favour state media and penalize private ones.

f) Broadcasting standards

There is no code of ethics for broadcasters or any other adopted standard of conduct in Macedonia.

The broadcasters of programme of ethnic origin have identical problems, as those who do not broadcast programme based on certain ethnic origin. Hence, they deal with the problems in a similar ways as the rest of the broadcasters. They address the bodies that are authorised for the given problem. There is no code of conduct.

g) Concentration of Ownership

A legal entity or private person could establish only one electronic medium, and s/he could be the co-founder in another only with 25%. A legal entity or private person who owns a printed medium cannot own an electronic medium. And an electronic medium (broadcasting organisation) cannot found an organisation in the printed media.

There are no discriminatory measures against national minorities or non-nationals in terms of ownership.

VI International Standards

a) European Union

The current law implements the principles of freedom of expression, freedom of receiving and access to information and freedom to found institutions for public

informing, principles that are guaranteed in the Constitution of the Republic of Macedonia and in Article 10 of the European Convention on Human Freedoms and Basic Rights Protection. The current law also implements some general provisions, rights and obligations that emerge from international documents that the Republic of Macedonia has ratified and refers to acts (declarations, resolutions, directives, recommendations) of the Council of Europe and the European Union on protection of the source of the information, right to respond, protection of minors, provisions against violence, etc.

Until now the Council has supported the initiative for using the programmes via satellite channel „Europe via Satellite" and initiated active participation in the activities and the programmes of the Council of Europe through a cooperation with the Media Sector at the Directorate for Human Rights at the Council of Europe. With the implementation of the European regulatory framework the Broadcasting Council became a member of the EPRA in May 1999.

By signing the Stabilisation and Association Agreement of the Republic of Macedonia with the European Union our country is obliged to undertake activities for harmonisation of the national legislation with the EU legislation. Within that action plan, in the section of audiovisual policy, to be more precise in the broadcasting section our country is obliged to implement the „Television without Frontiers" Directive. Within the changes in the Law on Broadcasting that are being prepared all the EU standards will be taken into consideration in order to implement them within the national legislation except those that are already implemented within the current Law on Broadcasting with the first Directive from 1998.

b) Other International Standards

The Republic of Macedonia accepted the European Convention of the Council of Europe on Trans-frontier Television and the Television Without Frontiers Directive, and their ratification is underway. With the changes in the Law on Broadcasting it is planned to

work out and treat more comprehensively the existing provisions in the law that refer to protection of minors, a right to a response, advertising of teleshopping; showing violence in the electronic media, etc. and also to implement new principles by introducing new provisions that refer to independence of the regulatory bodies, media covering of the election campaigns, etc.

The Broadcasting Council should carry out these activities. One of the primary tasks of the Broadcasting Council is to harmonise the national legislation in the broadcasting area with the legislation of the Council of Europe and for that reason the Council in the past period undertook numerous activities for harmonisation of the Macedonian with the European legislation and practice.

Republic of Montenegro

I Introduction

Considering the essential role of the media, especially broadcast media, in the societies in transition as a basic mechanism of intensifying democratic processes in them, an active dialogue has been established between competent state authorities, media community representatives and non-governmental sector in the Republic of Montenegro with the aim of developing new media legislation which conforms with the European standards in this field. In July 2001, the Secretariat of Information of the Republic of Montenegro established the Working Group for Drafting the Broadcasting Law and the Media Law aiming at the development of legal framework for the complete and feasible media system reform. Its unavoidable part is the transformation of present Public Enterprise "Radio-Television of Montenegro"

The Working Group has established an active co-operation with the Council of Europe, European Agency for Reconstruction, European Media Institute, "Article XIX" organisation, and other international institutions interested in this process in the Republic of Montenegro. The Working Group activities have been presented to the public on regular basis, by publishing working versions of these laws, as well as by organising public debates followed by thorough discussion on the objections, suggestions and opinions of the interested parties in the Republic of Montenegro in order to obtain the most acceptable normative solutions.

Having supported the adopted objectives and methodology of the Working Group and with the aim to support the media legislation reforms, in August 2001, the Council of Europe and the European Agency for Reconstruction adopted the Joined Initiative for providing support for the implementation of activities in this field in the Republic of Montenegro.

The aim of the aforementioned Initiative was the formulation and implementation of the legisla-

tion in compliance with the Article 10 of the European Convention on Human Rights and Fundamental Freedoms and with the practice of the European Court of Human Rights. The cornerstone of the adopted Initiative is to enable the Council of Europe to monitor and provide professional assistance and opinions on the compliance of legal documents with the European standards related to the media freedom, in direct co-operation with other international institutions and organisations, especially with the European Commission and OSCE.

II Media Law

a) Reasons For The Adoption Of The Law

One of the basic mechanisms for intensifying democratic processes in the Republic of Montenegro is the adoption of the appropriate legal framework in the media sphere in compliance with the European standards. Free flow of information among all social subjects establishes an efficient balance between administration, media and public interests and creates basic preconditions for development of civil society.

During the drafting of the Media Law, the Working Group had in mind that the purpose of democratic changes and reforms in the media sphere must be to reinforce confidence in all institutions of the system. Therefore, an issue of readiness of political parties and other social segments to support a quick and efficient transformation of the media sphere, especially state owned broadcast media into the citizens' public broadcasting services, remained open for the Working Group. Future success of the activities related to the improvement of existing laws and other media system regulations will depend upon that determination.

Namely, with the coming into effect of this Law, as well as of the Broadcasting Law and Law on Public Broadcasting Services "Radio of Montenegro" and "Television of Montenegro", a new phase of development of legal system in this field will start, which will set the foundations for complete regulation and harmonious functioning of media system.

Estimating that it is not possible to have complete insight into the range of changes proposed by the Media Law in relation to the existing Public Information Law without understanding the solutions given by the Broadcasting Law and the Law on Public Broadcasting Services "Radio of Montenegro" and "Television of Montenegro", the Working Group believes that these laws, with the need for the adoption of the Law on Free Access to Information, provide the final element of the information system in the Republic of Montenegro and create better conditions for its further democratic development. Foreign experts engaged by the Council of Europe and European Media Institute, during two expert missions, have confirmed the fact that the normative solutions of the Media Law represent significant democratisation of relations in this field.

b) Explanation Of Basic Legal Institutions

With regard to the Constitution of the Republic of Montenegro, which guarantees the freedom of press and other forms of public information, as well as the right of citizens to express and publicise their opinions in media along with the right to publish newspapers and be informed by other media, the Media Law gives the concepts and methodology of development of these fundamental constitutional principles. In accordance with that, the Media Law follows the logic of establishing an obligation for the Republic to provide and guarantee such rights and freedoms.

i) Basic Provisions

These define concepts and guarantees freedom of information in the Republic of Montenegro on the level of standards contained in the international documents on human rights and freedoms (the United Nations, OSCE, the Council of Europe, the European Union). It also prescribes that the law should be interpreted and implemented in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms using as precedence the case law of the European Court of Human Rights.

The law prescribes that the Republic shall guarantee the right to free founding and undisturbed work of media as

well as equal participation in information to both domestic and foreign legal and natural persons.

The Republic becomes obliged to provide a part of the funds for the realization of the citizens' rights to be informed as granted by the Constitution and law, without any discrimination whatsoever and on the basis of programming important for development of science and education; development of culture; informing people with hearing and sight impairments.

With the aim of realising the citizens' rights to be informed in their own language (Article 68 of the Constitution of the Republic of Montenegro), the obligation of the Republic to provide a part of funds for programming in Albanian and languages and alphabets of other national and ethnic groups is prescribed in the fields important for development of science and education; development of culture and informing people whose hearing and sight is impaired.

The amount of funds necessary for the realisation of the mentioned rights will be prescribed by the Budget of the Republic, and the manner and conditions of the allocation shall be determined in compliance with the act of the Republican administrative body competent for information issues.

An emergency procedure is prescribed for the court to rule on any case of violation of the freedom of information, granted by the Constitution and law.
It is prescribed that any information at the disposal of legislative, executive and judicial authorities, companies and institutions, which are granted competencies of a public authority are to be accessible to the public in compliance with a separate law on free access to information. Detailed elaboration of this basic position, according to the suggestions of the Council of Europe and other organisations that have sent their opinions and suggestions, is to be provided by the separate Law on Free Access to Information.

The basic provisions of this Law ban the monopoly in the field of information and foresee regulation of monopoly protection in the field of information by separate laws.

According to the new law, any bulletins, catalogues and other publications intended exclusively for advertising, business communication, educational process or internal work of legal entities, religious, non-governmental and other organisations, school publications, "Official Gazette of the Republic of Montenegro", official gazettes of local authorities and other official publications, as well as posters, leaflets, advertising materials and signs, video pages without live picture shall not be defined as media unless it is regulated differently by this Law.

For the first time, in compliance with the European standards, the ban is introduced for the Republic, local authority and any legal entity with the majority shares owned by the state or completely or mainly financed from the public revenues to be the founder of a channel. The exception exists only in cases regulated by the Broadcasting Law, referring to the public broadcasting services. That is the basis of unconditional and quick transformation of all channels/broadcasters founded by the Republic or local authorities i.e. state owned media.

ii) Media Foundation

This regulates the foundation and registration of broadcasters. As opposed to the current legal solution, it is predicted that register entry does not represent the act of foundation and basis for the beginning of work for broadcasters, but it is used only for verifying the existence of new broadcasters. The broadcaster is founded by a Deed of Foundation, freely and without obtaining any approval and is entered into the Media Register kept by the competent Republican authority, which has the character of public register. In this way, the recommendations of the Council of Europe have been mainly respected in the sense of eliminating any unnecessary administrative obstacles that could endanger the right of free media founding and consequently the freedom of information and expression.

Broadcast companies will be founded in a manner and according the procedure regulated by the Broadcasting Law.

iii) Media Distribution

This guarantees free distribution of domestic and foreign media in the Republic. It prescribes the pos-

sibility that the competent court, on the basis of the State Attorney's proposal, may ban the distribution of a publicised media programming that invites to forceful destruction of the constitutional system and violation of territorial integrity of the Republic, infringes on the guaranteed human and citizen's freedoms and rights, or instigates national, racial or religious intolerance or hatred. Such determination is in compliance with the Article 10, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The judicial procedure based on the proposal for banning the distribution of the publicised programming is described in detail along with the established right to damage compensation in case the court rejects the banning proposal and the damage is caused by the measures resulted from unfounded temporary ban.

iv) Obligatory Data Publishing

This prescribes the obligation for all media in the Republic to publicise an imprint and short imprint, which must be clearly separated from the rest of the content of the programming and must contain the basic data about the broadcaster. In order to protect the copyright owner, the obligation of broadcaster is to include prescribed data, on the appropriate place, regarding the author of the publicised programming, legal or natural person that is the copyright owner and name of legal or natural person that keeps used object of cultural heritage or archive material or its corresponding reproduction.

v) Rights And Duties In The Domain Of Information

The founder of the channel is responsible for all information published in the channel. Furthermore, the interested person is granted the right to press legal charges in the competent court against the author and the founder of the medium for the compensation of damage, if the publicised information damages his interest protected by law.

Basic provisions prescribe that information obtained in an illegal manner may be publicised only when they are in the interest of national security, protection of territorial integrity or public safety, preventing disorder or

crime and protection of health or morals, protection of reputation and the rights of others, preventing the confidential information disclosure or aimed at the preservation of the authority and impartiality of the judiciary, which is in compliance with the Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

It is foreseen that journalist will not be held accountable if, in the course of his work, he obtains or publicises the information that is considered to be state, military, official or business secret, if there is an overriding interest of the public to be informed. It is also foreseen that journalist and other persons who, in the process of gathering, editing or publicising programming, obtain information that can indicate identity of the source, is not obliged to disclose to the legislative, judicial or executive authority or any other natural or legal person, the information identifying a source of published information who wants to remain unknown.

The Law prescribes the obligation of protection of minors in media with special rules on programming that could endanger health, moral, intellectual, emotional or social development of a child. Moreover, the media must not publicise the identity of a minor under the age of 18 involved in a criminal act, either as a victim or a defendant. In compliance with the recommendations received, an exception has been prescribed that the identity of a minor, sentenced for a criminal offence, may be publicised if there is an overriding interest of the public to be informed.

Taking into consideration that the media can give positive contribution to the fight against intolerance, especially by developing the culture of understanding among different ethnic, cultural and religious groups in the society, with the aim to prevent the hate speech and promote tolerance and understanding, media are forbidden to publicise information and opinions that instigate discrimination, hatred or violence against person or group of persons based on their belonging or not belonging to certain race, religion, nation, ethnic group, sex or sexual orientation.

The Law forbids advertising the sale or purchase of human organs or tissues for transplantation or transfusion. It is also forbidden to advertise weapons, narcotics, tobacco products, traffic of commodities and providing services prohibited by the law, medicines and medical treatments available with the medical prescription only, curing procedures and methods which are not in compliance with separate law on health care. It is prescribed that advertisements for all other medicines and medical treatment must be clearly recognisable as such and true.

While advertising alcohol beverages, media must observe the provisions of a separate law related to all sorts of advertising (media, billboards…).

The Law prescribes the obligation of the media and journalists to inform about judicial proceedings in an objective and true manner. In case of publicising the information that criminal charges were brought against a certain person, that person has the right, after the completion of the court proceedings, to request the publicising of information on the final suspension of proceedings, denying or acquitting the charges.

vi) The Right To Correction And Reply

This right is based on the constitutional right to reply and correction (Article 36 of the Constitution of the Republic of Montenegro) as well as on the need of the individual to be granted adequate means of legal protection from information that contain incorrect statements referring to him. In this way, legal measures are provided against publicising information in media - including facts and opinions - that represent interference in private life of an individual or attack to his dignity, honour or reputation.

The Law prescribes in detail the responsibilities of media, manner and deadlines for the realisation of the right to reply or correction, as well as the court proceedings if a medium refuses to publicise the reply or correction of information or publicises them inconsistently with law.

The proceedings upon the complaint for publicising a reply or correction is urgent and media are obliged to

keep all texts and broadcast recordings for at least 30 days upon their publication and to make them available to persons who may claim the right to correction or reply on the basis of the provisions of this Law.

vii) Foreign Information Activity

This is the result of the need to regulate the issues, which were until now, temporarily, regulated by the Regulation on Conditions for Performing Foreign Media Activity in the Republic of Montenegro ("Official Gazette of the Republic of Montenegro", No. 39/98).

The proposal of legal solutions in this field make the information system complete and closer to the quality of information in the developed European countries, with precisely established rules and obligations of subjects in performing foreign media activity. The proposed solutions and their application enable better flow of information between the Republic of Montenegro and the international public.

The Law prescribes the conditions for performing information activity of foreign media branch offices and foreign information institutions.

The possibility is foreseen that foreign states, international organisations and foundations may found foreign information institutions on the basis of contract between a foreign country, an international organisation or foundation and the Government of the Republic of Montenegro.

The obligation is prescribed that these institutions are to be entered into a record with the Republican administrative body in charge of the information issues.

II Broadcasting Law

a) Explanation Of Basic Legal Institutions

With regard to the Constitution of the Republic of Montenegro, which guarantees the freedom of press and other forms of public information, as well as the right of citizens to express and publicise their opinions in media along with the right to publish newspapers and be informed by other media, the Broadcasting Law gives the concept and methodology of development of

these fundamental constitutional principles, with a special emphasis placed on broadcasting and broadcast media as a specific form of realising the right of freedom of expressing and being informed. In accordance with that, the Broadcasting Law follows the logic of establishing a framework of clearly regulated mutual rights and duties of all subjects in this system according to the European standards in this area.

The starting basis in drafting this law were principles contained in the international documents and human rights, such as, primarily:

- The International Convention on citizens` and political rights (Article 19);
- The European Convention on Human Rights and Fundamental Freedoms;
- Declaration of The Council of Europe on freedom of expression and information;
- Directive of the European Union „Television without Frontiers";
- Convention on Transfrontier Television of the Council of Europe;
- Relevant recommendations of the Council of Europe.

These documents emphasise the importance of a wider range of independent and autonomous means of communication for a democratic society, which makes possible expressing of a variety of ideas and opinions. In reaching that goal, the establishment of special independent regulating organs for the broadcasting area, with expert knowledge of the area, ought to play a special role in legislatively determined frameworks. Also, technical and economic development that causes expansion and further increase of the complexity of this area, influences the role of these organs and creates the need for further adjustment of regulations, apart from the self-regulatory measures adopted by the broadcast media themselves.

b) Media Law: Basic Provisions

These define the concepts and manner of organising the broadcasting activity in the Republic of Montenegro in accordance with the Media Law on the same level of standards contained in the international documents on

human rights and freedoms (the European Union, OSCE, the Council of Europe, the European Union, etc.).

This law determines the rules and obligations in the broadcasting realm, especially the establishment of an independent regulating organ; issuing licences for transmission and broadcasting, and licences for building and using cable, satellite and Multipoint Multichannel Distribution Systems (MMDS) for distribution of broadcasting and other telecommunication signals; broadcasting subscriptions and taxes; establishing transmission and broadcasting companies; building and using broadcasting stations, cable, satellite and MMDS distribution systems; the rights and positions of public broadcasting services; hindering illicit media concentration; supervision over the implementation of this law as well as other questions of importance to the broadcasting area.

The law establishes the broadcasting area on principles of: freedom, professionalism and independence of broadcast media, and their equal development; prohibition of any form of censure or illicit interfering in the work of broadcast media; equal development of public and commercial broadcasters, rational and efficient use of broadcasting range of frequencies; free and equal access of broadcasters to telecommunication infrastructure for the purposes of broadcasting; development of competition and pluralism in the broadcasting area; application of international standards and principles dealing with the broadcasting realm; objectivity, as well as non-discrimination and public procedure for issuing licences to broadcasters.

c) Broadcasting Agency

The law determines the establishment, jurisdiction, organs and manners of financing of the Broadcasting Agency as an independent regulatory organ, legally separated from, and independent of, state organs and all legal and natural persons who are engaged with the activity of producing, transmission and broadcasting radio and television programmes or with the activities related to them.

i) Functions

The Agency and the independent regulatory organ in charge of telecommunication are bound by the Law, in

accordance with this law and a special law that deals with the realm of telecommunications, mutually to co-operate and co-ordinate their work in order to provide rational and efficient use of broadcasting spectrum of frequencies and apply regulations regarding building and using cable, satellite and MMDS system for distribution of broadcasting and other telecommunication signals. In the course of its almost one-year work, the Working Group for drafting the Media Law and the Broadcasting Law, have on several occasions been reminded of the incompatibility of the solutions proposed by the Telecommunications Law with European standards regarding broadcasting. Since it occurred as necessary to make changes and amendments to the Telecommunication Law in order to ensure a thorough and rational regulation of this area and in order to efficiently realise the rights and duties of broadcasters, the Working Group wished, therefore, without trying to prejudice the solutions that are going to be adopted, to issue the obligation of co-operation of the two regulatory organs (for the broadcasting and the telecommunication areas) so that the legislative framework for the broadcasting system would enable the realisation of the rights and duties of broadcasters issued in international documents.

Within its basic authorities, the Agency passes the Strategy of broadcasting development and the Plan of broadcasting frequencies allocation; it provides an efficient use of the broadcasting frequencies spectrum; it issues licences for transmission and broadcasting; it determines fines to broadcasters; it supervises the application of this law and brings closer regulations for its implementation; it co-ordinates and reports broadcasting frequencies to the international broadcasting and telecommunication organisations through the authorised state organ.

The Law decided to give the Agency the public authority, for the sake of conducting this Law and the broadcasting Strategy, to pass explanatory acts (instructions), to supervise the work of broadcasters and companies for transmission and broadcasting, and to discuss objections of natural or legal persons to their work. It is the Agency's duty to conduct all its activities and pass all its decisions in a transparent way. The Agency has

to give any person whose rights or duties are being discussed the right to express him/herself, and in case he/she is not satisfied with the decision reached, he/she has the right to review it in the court.

ii) Structure/Appointment

The Agency's organs are the Council and the Director.

Respecting European standards in this area, the Law established a detailed procedure of nomination and of the rights and duties of the members of the Agency Council, as its central body. Members of the Agency Council are chosen from the realm of distinguished experts from the areas important to performing broadcasting activities (telecommunication, media, law, economy, etc.). The law prescribes in detail conditions and ways of nomination in order to ensure the nominees' independence from any sort of political, economic or other entangling or interests in the work of the Agency Council.

In order to ensure independence from any state body, both in the process of nomination of members and in the way of the Agency's financing, it has been regulated that the Agency Council Members are nominated by the authorised nominators, and their decisions about nominations, reached in accordance with this Law, are confirmed by the Parliament of the Republic of Montenegro. On the other hand, in case of the cessation of the mandate of a council member, according to legislatively determined conditions, the decision about it is to be brought by the subject who had nominated the member.

To secure independence in performing their work, either of separate members or the Agency Council as a whole, the Article 17 of the Law specifies that the Agency Council Member does not represent the authorised nominator, but performs its duty independently, according to its own knowledge and conscience. Therefore, having as a basis the Constitution, this Law, and adopted strategic and other documents in the broadcasting are, the Agency Council has to perform its role in such a manner to make possible the realisation of principles defined by Article 3 of this Law.

The authorised nominators, each one member, of the Agency Council are:

- The Government of the Republic of Montenegro;
- the University of Montenegro/ Electro-technical Faculty;
- associations of broadcasters in Montenegro - with the exception of associations of public broadcasters;
- non-governmental organisations from the broadcasting area.

The Article 14 of the Law prescribes in detail under what conditions a certain person cannot be appointed an Agency Council member. A thorough and detailed list is created in order to avoid possibilities of a formal influence of certain centres of political and economic power on the work of the Agency's Council. The issue of the conflict of interests that might occur after the end of term of a member of the Council of the Agency has also been regulated.

The independence and autonomy of work of the Council of the Agency is also ensured by strictly determined conditions and procedures, which have to be obeyed in case of ending of members' mandate, with a special accent placed on cases of dismissal of the Agency Council Members. This also is a way of eliminating the possibility of using the dismissal of a member as a means of putting pressure on his work.

Within its authority, the Agency Council:

- adopts the Strategy of broadcasting development and the Plan of distribution of broadcasting frequencies;
- issues licences for transmission and broadcasting and licences for building and using distribution systems; and,
- on that basis, determines the compensation;
- it pronounces sanctions to broadcasters in accordance with the Law,
- it considers objections of legal and natural persons regarding the work of broadcasters and companies for transmission and broadcasting;
- it determines minimal quotas to public broadcasters for transmitting programmes of independent productions, as well as quotas for transmissions of

advertisements, in accordance with European standards;
- it nominates and dismisses the Agency Director and Managing Board for transmitting and broadcasting.

The Law regulate the terms and the manner of electing the Agency Director, as well as his rights and duties. Just like in electing members for the Agency Council, the candidates for the place of the Director of the Agency must meet all the requirements regulated by the Law.

In order to provide financial independence of the Broadcasting Agency, the Law issues a clear and completed system of financing, which is supposed to enable it to perform its legislatively established duties autonomously, promptly and efficiently. Thus the Law states that the Agency collects the means from fees for registration of broadcasters; from fees for licences for transmission and broadcasting; from permissions for building and using the distribution system; from the share of the broadcasting subscription; from taxes for radio transmitters; from income of companies for transmitting and broadcasting, as well as from other sources in accordance with the Law.

The Working Group believes that such a framework would be enough to cover the expenses of the Agency. The Law regulates the obligation of the Agency to use all possible extra profits (over expenses) solely for fulfilling the legislative duties of performing the function of an independent and regulative organ in the broadcasting area. In order to ensure free approach of the public to the work of the Agency, and the transparency of the Agency's doing business, the Law established that all Agency's accounts of profit and expenses are subject to an annual revision performed by an independent authorised auditor, hired by the Agency Council. Furthermore, the Agency is expected, within assigned terms, to publish in its Operation Bulletin, the annual report on its work and the report of the authorised auditor, as well as to make them appropriately available to any interested person.

d) Licence For Transmission And Broadcasting

The law establishes a procedure of issuing licences for transmission and broadcasting, as one of the basic assignments of any independent regulative body in the broadcasting area. European standards, which must be respected in this area, imply that regulations which deal with the process of issuing licences must be clear and precise, and must be applied in an open, transparent and impartial manner, in a procedure that implies public notice of free broadcasting frequencies, administered, in the name of the Republic, by the Broadcasting Agency, and which can be assigned for a use to broadcasters under clearly specified conditions.

Existing legal acts that are currently used to regulate this area imply an unnecessarily complicated procedure for obtaining a broadcasting licence, which, for its part, implies previous acquiring of various documents from many different authorities. That is why the Drafter of the Law has decided to apply, in accordance with European standards in this area, the „one-stop-shop" (OSS) principle. This principle implies that broadcasters of broadcasting programmes will be able to obtain all the documentation (licences, etc.) for broadcasting in one place, in the shortest period of time and in the most efficient way, i.e. through an independent regulative body in charge of the broadcasting area. Therefore, by obtaining the licence for transmission and broadcasting, the broadcaster acquires the right of broadcasting, directly or through distribution centre.

In accordance with that, paragraph 3 of the Article 31 establishes that licences for transmission and broadcasting are made up of licences for radio-stations and licences for transmission of broadcasting signals through distribution systems, and those licences are issued by the Agency in co-operation with the authorised organ. Thus, the broadcaster, who had previously, in an open competition, obtained the right to broadcast a programme, is enabled to get in one place and in a short time a single licence which would consist of a whole set of licences, permissions, and similar, all of which was until now possible to obtain only through an

unnecessarily long and complicated procedure and from many different authorised state bodies.

The Law establishes that the owner of the licence for transmission of broadcasting signals can be either native or foreign, legal or natural person, registered for production, transmission and broadcasting radio and/or television programmes, and with a residence or a seat on the territory of Montenegro. On the other hand, it is not allowed that a foreign legal or natural person participates in the basic capital of legal persons who perform duties of public broadcasters, nor that a legal person whose establisher is a political party, an organisation or a coalition has the licence for transmission and broadcasting. Religious communities, i.e. other religious organisations and legal persons who are their establishers, are allowed to have the licence for broadcasting radio programme on a local level.

The Law distinguishes three categories of broadcast media: Republican public broadcasters, local public broadcasters and commercial broadcasters. This simple classification comes from the intention to make a general division of the broadcasting area, in accordance with international standards, into public and commercial broadcasting, with all its particularities in the way of financing, programme schemes, etc. During drafting the law, the Working Group considered various ways of transformation of state broadcast media. On that occasion many options were taken into consideration:

- privatisation,
- establishment of strong republic public services that would use some of personnel, technical and other potentials of local broadcast media,
- transformation of all state broadcast media, on the republic and local level, into public broadcasters.

The direction in which the transformation of these media will go will be decided by their founders, but the law also established a six-month term for co-ordinating their work and their organisation with this Law.

The Law establishes clearly and meticulously every phase of the procedure of issuing the licence for transmission and broadcasting. Thus, Article 37 of the Law

regulates the manner of announcement, the content and the terms of the Broadcasting Agency's open competition for issuing new licences for transmission and broadcasting, all of that in accordance with the Strategy of broadcasting development, and based on the Plan of allocation of broadcasting frequencies. The licence for transmission and broadcasting programmes is issued for a period of 10 years with the possibility of an extension. The Agency keeps a public register of issued licences for transmission and broadcasting and a register of licences for building and using distribution systems, according to a procedure established by the Agency through a special act. It is also established that the Agency, in accordance with the Media Law, informs the state body competent for the information issues on the data for registration in Media Records that refer to the media founder - the broadcaster, which has obtained the licence for transmission and broadcasting.

The Law also regulates the cases when the licence for transmission and broadcasting may cease to be valid before the expiration of the period of time for which it was issued.

Special attention is paid to regulating one of basic functions - supervision over broadcasters' work and their observance of the conditions established by the law, as well as through issued licences for transmission and broadcasting. Thus, in cases of violation of the law, or by-law acts based on the law, or issued licences, the Agency is authorised to impose upon the broadcaster some of the penalties prescribed by the law (a warning, a fine, suspension of a licence, taking away of a licence). All decisions about pronouncing penalties to broadcasters are brought by the Agency only after a conducted procedure that left the broadcaster the possibility to defend its case. The decisions are then published in the Agency Operation Bulletin or in another form according to this law and the Statute of the Agency. Bearing in mind the principle that all stated penalties ought to be open for discussion by authorised court bodies, this law gives the broadcaster the possibility to start an administrative procedure against any decision of the Agency regarding pronouncement of penalties.

The law establishes that the broadcaster with a granted licence for transmission and broadcasting pays only two kinds of compensations: a single compensation for registration and the annual compensation for the issued licence.

All broadcasters are responsible for the content of the programmes they broadcast in accordance with this Law and with the Media Law. Special rights and duties of broadcasters of broadcast programmes have been established, as well as specific forms of information and expression. Those rights and duties include:

- the duty to inform the public truthfully, thoroughly, objectively and promptly about events from the country and abroad that are of the public's interest; the duty to respect and promote fundamental human rights and freedoms, democratic values and institutions, pluralism of ideas; the duty to promote the culture of a public dialogue and respecting the language standards, the privacy and the dignity of citizens;
- the duty to possess and broadcast its own unique identifications logo;
- the right to make a network of more broadcasters for the purpose of simultaneous broadcasting of a programme;
- the rights and duties that deal with obtaining and using of exclusive right for broadcasting of an event of high importance for the citizens.

Respecting the right of the public to be informed of the events of a special interest to them which can be the subject of exclusive rights, the draft Law establishes that broadcasters cannot obtain the right of exclusive broadcasting in relation to events of high importance to the citizens in the Republic unless they provide a high-quality reception of the broadcast programme for at least 85% of the citizens in the Republic. In accordance with European standards, the duty of the Agency Council is to prepare a list of all events important for the citizens of Montenegro in a clear and transparent way.

e) Cable, Satellite And MMDS Distribution Systems

The law seeks to establish a procedure of building dis-

tribution systems based on modern solutions for wide-range networks, leaving out the digitalisation in broadcasting and technological convergence in the realm of telecommunications, and in accordance with international standards and recommendations. This section of the Law regulates the area which was until now established by the Decision of the Government of the Republic of Montenegro about the ways and terms of building and using cable distribution systems („Official Gazette of the Republic of Montenegro", Number 41/2000) and was not appropriately regulated by the Telecommunications Law. Since the distribution of broadcasting signals through cable distribution systems represents an important condition for a sustainable and high-quality development of broadcasting in Montenegro, the drafter estimated as very important to regulate this area in a thorough way.

This draft law establishes that the Agency, in co-operation with units of local self-government on whose territory a cable distribution system is being built, according to a previously announced open competition, issues a licence which ensures the right to build and use the cable distribution system. The licence to build and use a cable distribution system is issued for the period of 10 years to a legal person who, in accordance with the terms of the open competition, had proved to have the best conditions. Establishing regulations concerning all closer technical terms regarding building, using, activating and technical inspection of the built cable distribution system will be done by the Agency in co-operation with regulative organ authorised for the broadcasting area. The law also establishes the obligation of the Transmission and Broadcasting Company to enable the access to and the use of the available infrastructure to the legal person who obtained the licence for building and using the cable distribution system (cable operator), according to its technical possibilities and general acts, which is regulated by a separate contract.

In order to establish the principle of equal presence of all broadcasters to the infrastructure for transmission, broadcasting and distribution, the Law prescribes for Transmission and Broadcasting Companies, in accor-

dance with the Company's Statute, to publicly present a general act on the prices of its services regarding using the available infrastructure. The Law also prescribes the cable operator's obligation to pay a fee for building and using the cable distribution system. The fee is divided fifty-fifty, between the Agency and the unit of local self-management on whose territory the cable distribution system is being built.

The Law also prescribes the terms and the procedure by which the issued licence for building and using a cable distribution system can be taken away, as well as a set of rights and duties of the cable operator:

- prohibition of participating in the basic capital of the legal person who is the broadcaster of a broadcasting programme;
- prohibition of distributing of own programmes, except for the data regarding the exact time and the data regarding the functioning of the system;
- obligation to distribute the programme of the Republican and local public broadcasters, without compensation.

As special aspects of the distribution of broadcasting signals, the Agency also establishes issuing of licences for satellite distribution and for distribution through MMDS system (Multipoint Multichannel Distribution System: a multichannel wireless system for distribution of broadcasting signals). The licences for satellite distribution are issued without announcing any open competition and at the request of the owner of the earth satellite station, in case he met all conditions established by this law, which regulates the area of telecommunication. As for issuing licences for MMDS distribution of broadcasting signals, regulations of this law which deal with issuing licences for transmission and broadcasting and with issuing licences for building and using cable distribution systems are applied. More detailed terms, the very procedure and fees for obtaining the licence for satellite distribution and MMDS distribution system are prescribed by the Agency.

f) Broadcasting Subscription

The Law regulates the way of collecting broadcasting subscriptions as one of important condition for function-

ing of the broadcasting system, and especially of the republic public broadcasters. It is prescribed that broadcasting subscription is paid by every household and every legal person that has a seat on the territory of Montenegro, where the technical conditions are provided for reception of at least one radio and television programme. The payment is collected directly by the Agency or by making a contract with other legal persons, chosen on the basis of a public tender. In accordance with the draft of Law the means from the subscription belong to:

- 75% to the republic public broadcasters (radio and television),
- 10% to the fund of the Agency for helping local public broadcasters (radio and television),
- 10% to the fund of the Agency for helping commercial broadcasters (radio and television), and
- 5% to the Agency.

The Drafter of the Law considers that the resources obtained through a uniform broadcasting subscription for the territory of the Republic of Montenegro should be used to establish, at the Agency, the funds for helping local public broadcasters and commercial broadcasters. Also, in order to ensure undisturbed functioning of the Agency, a part of the resources is assigned as its income. The resources from the two above-mentioned funds, the Agency assigns through open competitions, which are announced every six months, under the terms and in the way established by the Agency.

As opposed to the current legislative act, a novelty is introduced, which says that every owner of a motor vehicle in the Republic is required to pay a tax for using radio receiving sets, and the tax represents the income of the Agency. The tax is paid to the giro account of the Agency, and is distributed as follows:

- 75% to the Republic public broadcaster (radio),
- 10% to the fund of the Agency for helping local public broadcasters (radio),
- 10% to the fund of the Agency for helping commercial broadcasters (radio), and
- 5% to the Agency.

Exemptions from paying this tax apply to the owners of vehicles that have been estimated in a technical inspection as not having the possibility of installing radio

receiving sets. The same rules for using resources from radio receiving sets are applied for using resources from broadcasting subscription.

The Law establishes the terms under which certain legal and natural persons can be exempt from paying broadcasting subscription.

g) Transmission And Broadcasting Company

This regulates the details regarding the establishment, authority, bodies and manners of obtaining funds of this Company. The founder of the new public transmission and broadcasting company (which until recently was a part of the „Telecom of Montenegro" stock company) is the Republic, and the founder's rights are performed by the Broadcasting Agency in the name of the Republic. All reports made according to this basis have proved that the Broadcasting centre can do business autonomously and profitably even after separating from „Telecom of Montenegro". The unsettled question is whether the property of the Broadcasting centre enters the property of „Telecom of Montenegro", which is in favour of privatisation. Another unsettled question is how much the ownership capital of the state in the „Telecom of Montenegro" would be reduced if the property of the Broadcasting Centre were transferred in a separate public firm. The European experiences and recommendations are backing the idea of forming an autonomous transmission and broadcasting company. There is no such case in the comparative practice of a 100% private property in this segment, which is also logical, because that would create a monopoly position of one subject over the work of broadcasters.

In order to create conditions for a free and equal access of broadcasters to the broadcasting infrastructure, which is of universal interest, some of the Broadcasting centre authorities established by the law are the following:

- building, using and maintaining of the object and the equipment for transmission of broadcasting and other telecommunication signals;
- management over the capacities of the primary network in cable distribution systems for broadcasting;

- technical co-ordination and adjustment of the broadcasting system of the Republic with broadcasting systems of other European countries.

Due to the importance of the work performed by this company, the bankruptcy procedure or the privatisation of the Broadcasting centre cannot be done without the approval of the Parliament of the Republic of Montenegro.

In accordance with the Law, the means for the establishment and the work of the Broadcasting Centre are the devices, equipment, objects and other property or real estate of the broadcasting system of the Republic, used currently or in the past by the Stock Company „Telecom of Montenegro" business unit „Broadcasting centre" and „Major capacities" in the section dealing with broadcasting.

The Broadcasting Centre bodies are the Board and the Director. The law establishes the procedure of their nomination, their rights and their duties in detail. The Managing Board of the Broadcasting centre is nominated and dissolved by:

- the Council of the University of Montenegro / Electro-technical Faculty (one member);
- republic public broadcasters (one member);
- local public broadcasters (one member);
- Commercial radio and television stations (two members: 1 - radio, 1 - TV stations); and
- the employed in Broadcasting centre (one member).

h) Terms Of Building, Using And Maintaining Of Broadcasting, Satellite, MMDS And Cable Distribution Systems

This establishes the terms of building and using of these systems. This law obligates the Broadcasting centre, the broadcaster, and the distributor of broadcasting signals, to ensure continuous and secure work of their systems, structures and equipment and to keep the record. It is also established that all special acts, on that basis, are established by the Agency.

i) Public Broadcasters

The law establishes general principles to be followed during the process of establishment and work of the broadcasters of broadcasting services.

In accordance with European standards, the main obligation of public broadcasters is to provide a wide range of programmes that present the society on the whole. In accordance with that principle, they are expected to contribute to a free expression of opinions with a guarantee of independence of the programme broadcasting from any political or economic influence or any other pressure. The editorial independence of a public broadcaster implies that public broadcast media determine the content of their programmes freely and without external influences that violate legitimate rights and interests. Public broadcast media, therefore, eventually have to be directly responsible to the public.

The law prescribes that legal persons, whose founder is the Republic or units of local self-management (i.e. broadcasters of broadcasting signals), perform their activity by transmitting and broadcasting programmes as public broadcaster on the territory of the Republic or on the territory of the units of local self-government, and that they have special duties in realising the common interest through the area of informing in accordance with this Law and the Media Law. It is also prescribed that broadcasters of public broadcasters are founded according to the law on the territory of Republic and by the decision of an authorised assembly for the territory of the unit of local self-government.

The draft law prohibits broadcasting of political propaganda by public broadcasters, as well as religious propaganda, except during the period of the election campaign. The content of political propaganda during the election campaign must clearly indicate the name of the purchaser of the programme content, who will be held responsible for the authenticity and accuracy of the contents of political propaganda, and the one held responsible for their co-ordination with regulations of this and the Media Law will be the broadcaster of public broadcaster.

In accordance with recommendations regarding financing of public broadcast media, the Law establishes that the State takes over the obligation of regulating and establishing a corresponding, secure and public financial framework that guarantees public broadcasters the necessary resources for performing their tasks.

The Law obliges the state to guarantee independence of public broadcasters from any kind of influences. Since public broadcasters work in the interest of citizens/public and are responsible exclusively to them, the Law establishes that, on that basis, the State provides restricted financial funds. The Law establishes that broadcasters of public broadcasters collect income from subscription and other sources in accordance with the Law and the founder act, as well as that Republican Budget, that is the budget of a unit of local self-government, provide a share of financial resources for the realisation of constitutionally and legislatively guaranteed citizens' rights to be informed, without discrimination, on the basis of programme contents of importance for the development of science and education, the development of culture and informing of persons with damaged hearing or sight. It is also prescribed that Republic, that is a unit of local self-government, is responsible for providing financial resources for the above mentioned programme contents in the native languages of national and ethnic groups. The authorised administration organ for public informing affairs, in the name of the Government of Montenegro, i.e. the authorised organ of executive power in the unit of local self-management and the broadcaster of public broadcaster establish by a contract mutual rights and duties regarding using the above mentioned resources, but the ways and terms of providing resources must not influence editorial independence and broadcaster's autonomy. For, in accordance with the European recommendations, the state is supposed to guarantee that it would support, and where necessary establish the corresponding and secure financial framework, which would guarantee to public broadcasters the necessary resources for performing the functions and assignments for which they exist.

Furthermore, in accordance with recommendations and instructions, the Law prescribes that public broadcasters

ought to have an obvious editorial independence from any organ. With regards to management, which is also dealt with in this section, broadcasters of public broadcasters, in accordance with the law, consist of the following organs: the Council, the Administrative Committee and the Director. The Law or the decision of founding a public broadcaster establishes the manner of nomination, choices, decisions and authorities of organs, and other questions relevant to the work of broadcasters of public broadcasters. The Council of the public broadcaster represents the interests of the citizens of the Republic, that is the unit of local self-management on whose territory its programme is broadcast, and can consist of 11 members from the realm of distinguished experts in the areas relevant for performing functions of public broadcaster (journalists, sociologists, lawyers, economists, engineers, media analysts, marketing experts, etc.). The Council of the public broadcaster needs to be functionally independent of any state organ, as well as of all legal and natural persons engaged with the activity of production or transmission of a broadcasting programme, or with some related activities.

As opposed to commercial broadcasters, broadcasters of public broadcasters are exempt from the obligation of acquiring a licence for transmission and broadcasting, and all licences for radio-stations and licences for transmitting their signals through distribution systems are provided by the Broadcasting Centre.

j) Preventing Illicit Media Concentration

This regulates the questions related to the presence and preventing of illicit media concentration. The purpose of these regulations is to create conditions for presenting different opinions, ideas and attitudes through a variety of media. The Working Group has considered several methods used for surveying and preventing media concentration (market participation, television / radio public, crossing ownership), and eventually decided to use the method of crossing ownership, having in mind the attained level of development and the size of total, and especially media market in Montenegro.

In accordance with the law, illicit media concentration can serve as a basis for taking away the licence for transmission and broadcasting, in case the broadcaster, even after being warned by the Agency, does not co-ordinate its ownership structure with this law and proceeds with illicit media concentration.

k) Advertising And Sponsorship

The law establishes the way and terms of broadcasting advertising and sponsored programme contents. Even though the European standards for this area contain very specific and concrete parameters related to allowed structure and volume of advertising messages in broadcaster's programmes, and especially in public broadcasters, the drafter decided to choose the solution which gives the Agency, as independent regulative organ for the broadcasting area, the authority to assign, in accordance with European standards, quotas for advertising and sponsored programme contents.

The law prescribes that advertisements are broadcast in turn of a financial or some other compensation or with the aim of self-advertising. Advertisements have to be recognisable as well as audibly and visually separate from other programme content, and advertisements that are broadcast free of charge have to be separately marked as such.

III The Law On Public Broadcasting Services - "Radio Of Montenegro" And "Television Of Montenegro"

a) Explanation Of Basic Legal Institutions

On the basis of the Constitution of the Republic of Montenegro, which guarantees the freedom of press and other forms of public information, as well as the rights of citizens to express and publicise their opinions in the public information outlets, the Law on Public Broadcasting Services "Radio of Montenegro and "Television of Montenegro" gives the concept and methodology of these fundamental constitutional starting points in compliance with the principles defined in the Media Law and the Broadcasting Law.

In that respect, the Bill follows the logic of creating the legal environment with clearly regulated rights and lia-

bilities of national public broadcasting services in the Republican media system in compliance with the European recommendations in this domain.

The starting point in drafting this law were the principles contained in the international documents on human rights discussed in relation to the broadcasting law. These documents emphasise the importance of the wide range of independent means of communication for the society, which provides the variety of ideas and opinions. In the system of media diversity, the Republican public broadcasting services must find their own space as broadcasters that produce the programme observing the highest professional standards in this field.

> *The acceptance of these standards enables us to be up to date with contemporary European flows. The delay, postponement, dilemmas or insisting on perfect conditions or solutions will make the transformation of state-owned media into public services absurd, because the dynamics of their change is important for the overall transformation of the society and therefore the media system.*

b) Status

The law defines the legal position of Public Enterprise "Radio-Television of Montenegro", the main activity of which is the provision of the Republican public broadcasting services. The founder of this Enterprise is the Republic of Montenegro, and the RTCG Council exercises the founder's rights on behalf of the Republic. In that way, the readiness of the Republic of Montenegro to provide full independence of this enterprise in relation to all public authorities of the Republic is emphasised.

With regard to this issue, the Working Group has tried to find a solution for one more significant problem related to the legal position of the Public Enterprise RTCG alone, and that is the legal framework according to which this enterprise should be projected with reference to positive legal solutions in our current system. Namely, the newly adopted Law on Companies ("Official Gazette of the Republic of Montenegro" No. 2/2002) does not foresee a public enterprise as a separate form of company,

and the existing Law on Public Enterprises ("Official Gazette of the Republic of Montenegro" No. 6/91) has still not been brought into line with the Constitution of the Republic of Montenegro. Therefore, a clearer positive legal distinction between the Law on Companies and the Law on Public Enterprises is necessary (whether it is a matter of relation between general and separate law or the general law abolishes the separate one - the Law on Public Enterprises). The Law on Companies provides that a founder may be only one person in the case of a limited liability company - in this case the State. Therefore, the Drafter has chosen the concept of public enterprise primarily for the reason of the realisation of the public interest through the activities of this enterprise. However, the legal dilemmas related to the existing lack of conformity of the Law on Companies with the Law on Public Enterprises still remain, as well as the dilemma concerning the definition of the status of legal entity the existing Public Enterprise "RTVCG" is being transformed into. However, it could not be expected from the Working Group to clear out all ambiguities in this field but to offer solution applicable to this specific case. The public authorities of the Republic of Montenegro, on the other hand, must initiate the process of systematic legal regulation in the field of public enterprise and social activities aiming at the removal of the existing legal gaps and collisions and accordingly provide the success of a model suggested by this Law.

c) RTCG Activity

The main activity of RTCG as the production and broadcasting of two programmes of the Radio of Montenegro and Television of Montenegro, by means of two independent networks on the national level of coverage (85% of population) and broadcasting of one radio and one television programme respectively by means of satellite. The Law provides for RTCG to perform other activities in compliance with law, provided that they contribute to more complete use of the company capacities and creating conditions for the provision of quality public broadcasting services. However, with the aim to realise better protection of public interests, the Law provides that the change of the main activity and privatisation of RTCG may not be effected without the consent of the Parliament

of the Republic of Montenegro. The Law also prescribes, in compliance with the Article 67 of the Constitution of the Republic of Montenegro guaranteeing the members of national and ethnic groups the rights to be informed in their own language, that RTCG may found the regional studios with special obligation to produce and broadcast regional programmes and programmes in the languages of national and ethnic groups living in these areas.

d) Public Accountability

Public accountability is realised at several levels: through the appointment procedure of the RTCG Council Members, as a central supervisory body of the public broadcasting service, publicising the RTCG Operating Bulletin which includes information about the RTCG activities as well as though the possibility of submitting the petitions and complaints of viewers and listeners on the RTCG work. These provisions are in compliance with the European standards related, in addition to the guaranteed editorial and management independence and autonomy, to the accountability for the manner of managing their activities and using the resources provided by the public for that purpose. Therefore, the valid principle was that public broadcasting services must be directly accountable to the regulatory body for the broadcasting field, to the courts in compliance with law, but also to the overall public in a way prescribed in the Article 6 of this Law.

e) Content Requirements

In compliance with the Broadcasting Law, the chapter "RTCG Obligations", establishes the obligation of Republican public broadcasting services to produce and broadcast different programming (news, cultural, art, educational, scientific, children, entertainment, sports and other) and make sure that they are equally represented, with the obligation to satisfy the public interests at both national and local level. The editorial independence of RTCG is guaranteed by explicitly prescribing that it alone decides about its programming, its airtime and manner or transmission. Radio of Montenegro and Television of Montenegro, as two main public broadcasting services within RTCG are obliged to observe professional standards and programme rules adopted by

the RTCG Council, and like all other media, they are obliged keep the public truthfully, completely, impartially informed and in a timely manner about events and issues of public interest both in the country and abroad; to contribute to the observance and promotion of basic human rights and freedoms, democratic values and institutions, pluralism of ideas, to improve the culture of public dialogue and respect linguistic standards and privacy and dignity of citizens.

f) Independence

The manner and sources of RTCG funding are one of the main factors for the realisation of editorial and management independence of the public service broadcasters, given that the source and range of their financial resources can essentially determine free space for the implementation and realisation of their tasks. The Law provides a ring fenced and efficient financial framework, which should provide RTCG with enough funding to perform its legally prescribed functions as public broadcasting service. Taking into account the aforementioned principles, the Working Group has proposed by this Law a wide range of financial sources for the RTCG, which include:

- *a part of broadcasting subscription and broadcasting tax for the use of radio receivers in motor vehicles,*
- *revenues from the production and broadcasting of advertisements,*
- *production and sale of audio-visual works,*
- *sponsorship and*
- *other sources in compliance with the Media Law.*

The Law prescribes the procedure of acquiring the funds from the Budget of the Republic on the basis of creating the conditions for the fulfilment of the Republic's obligations related to the realisation of the guaranteed citizens' rights to be informed on the basis of programming important for science and education development, development of culture, information intended for persons with eyesight and hearing impairments. Furthermore, the Law foresees that RTCG may acquire a part of funding from the Budget of the Republic of Montenegro on the basis of programming in Albanian

and languages and alphabets of other national and ethnic groups related to science and educational development, development of culture, information intended for persons with eyesight and hearing impairments, in compliance with the Article 68 of the Constitution of the Republic. The Law explicitly prescribes that the manner and conditions of providing funds from the Budget of the Republic must not influence the editorial independence and autonomy of RTCG. The publicising of a contract stipulating mutual rights concluded between the administration authority in charge of the information issues and RTCG in the RTCG Operating Bulletin (Article 11) is foreseen as additional protection with regard to that issue. The obligation of the Republic to provide the funds from the Budget for payment of services of transmission and broadcasting of RTCG programme provided by the Company for the transmission and broadcasting or radio and TV signals (Broadcasting Centre) is also a novelty. Thus, the undisturbed and continuous process of production and broadcasting of public broadcasting service programmes is additionally ensured.

The Chapter "RTCG Bodies" takes a central position in the Law, given the importance of the internal organisation of the enterprise for the overall transformation process of present Public Enterprise "Radio-Television of Montenegro" into a new enterprise involved in the activity of the Republican public broadcasting services. Prior to drafting new management system of RTCG, the Working Group was informed in detail about the situation in this biggest media company in the Republic. The data available have shown that comprehensive re-organisation of state-owned media may be completed only upon creating the conditions for the appointment and beginning of work of new management and supervisory bodies that will provide the efficient work of these media within precisely defined competencies. The analyses have shown that one of the pressing issues of the Public Enterprise "Radio-Television of Montenegro" has a disproportionate number of employees which must be considerably reduced so that this enterprise could survive and begin realising the objectives of every public broadcasting service - production and broadcasting of programmes of public interest. However, the analyses have shown that the

management teams in the state-owned media are neither ready nor able to begin with the independent operation because the present inefficient financial system relies primarily on the revenues from the state budget.

The comparative experiences show that in order to achieve the success in the project of the state-owned media transformation into public broadcasting services, it is necessary previously to adopt the legal framework for their transformation, setting up the foundations for the internal re-organisation of a certain media company, relying on the valid European principles and standards in this field. With the view of the entire situation and after a number of consultations and a public debate, the Working Group has tried to project, in the proposed normative solutions, the efficient and sustainable management model for the public broadcasting services

The Law foresees the RTCG Council to represent the citizen's interests. Its members will be elected among prominent experts from among journalists, sociologists, lawyers, economists, engineers, media analysts, experts in marketing, broadcasting, etc. who are in favour of observance of democratic principles and the rule of law, development and promotion of constitutional order, protection of human rights and freedoms and protection of freedom of speech.

The RTCG Council should be independent of any state authority, as well as of all organisations and persons involved in the activity of production and broadcasting of radio and TV programmes or the related activities. In accordance with the recommendations, the Law prescribes that the RTCG Council Members are entitled to monthly remuneration for their work. Bearing in mind the overall financial situation, but also the importance of the activities RTCG Council will perform, the Drafter considers that the remuneration must not be lower than half of the remuneration of the Supreme Court Judge in the Republic of Montenegro.

The appointment and recall procedure of the RTCG Council Members, observing the principles of publicity and impartiality, prevents any political or other influ-

ence on the member election, in compliance with the valid European standards. In that way, editorial and management independence of the Republican public broadcasting services is protected. It should be emphasised that the RTCG Council Members do not represent the institutions or organisations which appointed them, but perform their duties independently, according to their knowledge and conscience without obligation to observe anybody's instructions related to their work, except the decisions of the competent court.

It is important to emphasise that, pursuant to this Law, the persons who might, according to their functions or positions, show the conflict of interests with regard to the RTCG work may not be appointed the RTCG Council Members, the RTCG Managing Board Members, as well as the Director General and Directors of Radio of Montenegro and Television of Montenegro. Therefore, the members of these bodies shall not be:

- Members of Parliament and city council members,
- RTCG employees,
- Government officials,
- officials of political parties,
- persons with a stake in the assets of other broadcasters or
- persons that are sentenced by final and binding decision for certain criminal offences.

ROMANIA

Introduction

The actual state of the audiovisual media in Romania required adequate legislation reform, strictly related to its specific characteristics developed as a result of former legislation and audiovisual policy. The limits put to the development of private media by the "local licence" concept, which was not indeed a matter of legislation, but a policy topic, are to be over passed not only by a regular legislation, but by "compensation principle" legislation.

The main problem of the development of broadcasting in Romania originated in the concept of local licence, which, for almost 10 years was the only one to operate in process of granting licences. According to that "concept", the winner of the licence auction was supposed to broadcast programmes dedicated strictly to the needs of a local audience. There was no idea about the overall needs for information for the entire population of the country. Audiovisual policy did not consider national range audience, but only local audience. Despite the fact that the audiovisual law itself had no provisions on the "local licence concept", the birth place of that concept was in the National Audiovisual Council's decisions related to the licensing auctions. At the same time, all available frequencies for private radio and TV broadcasting were low power frequencies (at a range between 10 and 500 watts ERP- estimated radiated power), i.e. local coverage frequencies. A first break in this local licence oriented system was made by NAC this year by the issuing of a decision which sets up a network operating system for the existing licences of major media companies. This decision was issued as a result of a special request of the Romanian Association of Broadcasters (Romanian Association for Audiovisual Communications -ARCA). This was followed by other decisions and finally this year, by new legislation, namely the Audiovisual Law nr 504/2002. ARCA was deeply involved in the making of the law in the Parliament, some of the laws provisions emerging from the lobby actions of the association

1. Freedom of Expression

The Romanian Constitution guarantees of the freedom of expression within the terms of Article 30:

(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.
(2) Any censorship shall be prohibited.
(3) Freedom of the press also involves the free setting up of publications.
(4) No publication may be suppressed.
(5) The law may impose upon the mass media the obligation to make public their financing source.
(6) Freedom of expression shall not be prejudicial to the dignity, honor, privacy of person, and the right to one's own image.
(7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.
(8) Civil liability for any information or creation made public falls upon the Publisher or producer, the author, the producer of the artistic performance, the Owner of the copying facilities, radio or television station, under the terms laid Down by law. Indictable offenses of the press shall be established by law.

Those provisions are extended by Article 31 containing provisions concerning the right to information:

(1) A person's right of access to any information of public interest cannot be restricted.
(2) The public authorities, according to their competence, shall be bound to provide for correct information of the citizens in public affairs and matters of personal interest.
(3) The right to information shall not be prejudicial to the protection of the young or to national security.
(4) Public and private media shall be bound to provide correct information to the public opinion.
(5) Public radio and television services shall be autonomous. They must guarantee for any impor-

tant social and political group the exercise of the right to be on the air. The organization of these services and the Parliamentary control over their activity shall be regulated by an organic law.

Enforcement of international legal instruments in the field of Human Rights, containing freedom of expression provisions

Romania ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Law nr 30/1994. The European Convention on Transfrontier Television was signed in 1997 and is now under procedure of ratification in the Parliament (the ratification law was recently adopted by the Parliament and sent to the Presidency for promulgation - the President sent it back for some revisions, some weeks ago)

The Romanian Constitution provides that international treaties ratified by the Parliament prevail over domestic laws. Despite that, there is questions of interpretation as to whether a certain Romanian legal provision is consistent with international treaties. For instance, the audiovisual law interferes in a confused manner with article 10 of the European convention on human rights which stress that the restrictions of the freedom of expression should be prescribed by law and backed by motivations related to the needs of a democratic society. So, instead of going further than the Constitution in offering specific regulations related both to human right items and to the audiovisual field, the audiovisual law generally quotes the overall provisions of the Constitution.

Article 10 ECHR and its case law implies specific regulations related to limitations of freedom of expression. ARCA proposed that, according to the European Court of Human Rights considerations, some specific regulations should be put in the law. For instance, 'critical value judgments can be made by journalists unless proven untrue". Also, "limits of permissible criticism should be wider with regard to the government, politicians and public persons than in relation to a private person". Or, "a journalist should not be sued for publishing false information concerning any private or public person unless he knew

that the information is false or if he did not fulfilled the normal procedure in verifying the information". Criticism of the government is one of the needs of democratic society as stated also by the ECHR case laws.

• There is no independent dedicated body for responding to broadcasters' complaints of violations of broadcasting freedom, although, there are ways to address to the Parliament (the Commissions for abuses or the media Commissions) and also to use the legal court procedure.

• There are no notorious cases of violations of the right to free expression in broadcast media, although there are some in the printed press, evaluated as such by decisions of the ECHR (Dalaban and Constantinescu cases).

• Right now there is a case related to decision of NAC to withdraw the licence of a TV station (OGLINDA TV), but the evaluation of the legal character of that decision is now to be made in the court. As for the different evaluations made so far by different bodies, there is no overall trend to agree on or to deny the validity of the NAC decision.

• The National legislative acts regulating broadcasting are the recently adopted AUDIO-VISUAL LAW (law nr 504/ 2 July 2002) and the Public Broadcasters Law (Law No. 41 of 17 June 1994 (The Parliament will proceed soon in adopting a new law for public broadcasters).

2. Regulatory Authority

A. Status

The regulatory authority of both private and public broadcasters in the field of audio-visual programme services is the National Audiovisual Council as a public autonomous authority under the control of the Parliament and the warrantor of the public interest in the field of audio-visual communication. It was set up by former audiovisual law (Law 48/1992) and its prerogatives were redefined in the current Law 504/2002.

As warrantor of the public interest in the field of audiovisual communications, the National Audio-Visual Council must ensure the following:

a) the observance of a pluralist expression of ideas and opinions in the programme services trans-

mitted by radio broadcasters under the jurisdiction of Romania;
b) the pluralism of information sources of the public;
c) the favouring of free competition;
d) a fair balance between the national radio broadcasting services and local, regional or thematic services;
e) the protection of human dignity and of minor children;
f) the protection of the Romanian culture and language, as well as of the culture and languages of ethnical minorities;
g) the transparency of mass communication means from the audio-visual sector;
h) the transparency of own activities.

Political Independence

The Council is made up of 11 members proposed by: a) Senate: 3 members; b) Chamber of Deputies: 3 members; c) President of Romania: 2 members; d) Government: 3 members.

The proposals assign the candidate for the position of a titular, as well as the candidate for the position of a deputy and they shall be forwarded to the specialized standing commissions in order to hear the candidates in joint session.

Further to the hearing, the specialized standing commissions draw up a joint notification which they present in the joint session of the Chamber of Deputies and of the Senate. Candidateship shall be approved by the vote of the majority of deputies and senators.

Although proposed by different political bodies, the eleven NAC members and their deputies are supposed to be independent in that they "do not represent the authority that proposed them", as the Law states. Theoretically there is no possibility for politicians to interfere with NAC, except the procedure of *post factum* control over the actions of the Council. This was stated by the law after long debates structured on two lines: experts from Council of Europe asked for absolute independence of the Council members, proposing even an immovability status for them, while the senators and the deputies in the media commissions

were interested that a certain accountability exists, of course *post factum*, the independent status of the power of decision of the Council being preserved.

Their salary are at the level of a minister (500 EUR net salary for the president) and of a secretary of state for the rest of the members.(350 EUR).

The NAC is financed through the state budget, which is decided once a year by the Parliament by the budget Law. There was a proposal to let the NAC take 25% of the fines related to audiovisual law infringements, but this was not accepted (due to our lobby, among others).

The position of a member in the Council is incompatible with any other public or private office, save didactically ones, provided they do not result in conflicts of interests.

As far as the Parliament can be induced by the government (the leading party) to limit the NAC budget, there is a possibility, even very weak, to influence the Council.

There was a big crisis in the NAC decision making process: two years ago, after a dialogue with our association and following our proposal, the Council issued a decision to organize an auction for important high power frequencies in order to complete the existing networks o low power frequencies. The government suddenly issued an emergency order stating that only the government can organize auctions for high power frequencies. Finally the conflict ended by compromise, the government giving up its initiative on condition that NAC should also withdrew its decision for auction.

B. Competencies

NAC can issue regulatory normative decisions in order to accomplish its attributions and follow the provisions of the Law.

NAC is also involved in the making, together with the Ministry of Communications, the strategy in the field of using radio electric frequencies and of the National Plan for radio electric frequencies allotted to the audiovisual communication. Also, by its prerogatives in

granting the licence and issuing decisions as secondary legislation, the Council sets up a policy dedicated to the development of audiovisual industry.

The Council has all licensing and monitoring prerogatives as far as the programme content of the licences is concerned. The technical aspects of the broadcasting are under the control of the Ministry of Communications, but with no influence on the audiovisual licence. The monitoring capacity of NAC is not covering the whole range of programmes broadcasted. There are no funding procedures for programme production.

Although, while the law was made, there was a large request, coming even form experts of the Council of Europe, to define the law infringements as contraventions only, the law contains also penal fines.

Any sanction, as with all decisions of the Council, has to be published, including their reasoning. The decisions related to sanctions may be appealed at the administrative contentious Court within 15 days after communication. Those decisions are final if not attacked within the term stipulated by law.

C. Accountability

The Council is accountable to the Parliament by presenting an annual report or reports requested by the Culture and Media Commissions of the Parliament. Only the annual report implies procedure aimed to remedy the effects of the council activity. The Council must fulfil the programme of measures established by the decision of the Parliament, if the Parliament evaluates a need of remedy. The members in the Council may be revoked on the proposal of the specialized commissions of the Parliament only if they can not exert their functions for a period longer than 6 months or in case of a penal conviction applied by a final court decision.

There is no accountability before the general public, except the Council's duty to publish regular reports on its activity and, as for the Council regulatory decisions, the legal provision to publish them and their reasoning in the Official Gazette. Actually, the Council runs a web site

containing updated information on council's activities and decisions. Recently, by comparison with the last years, there is a also better practice for press conferences. There were 4 conferences in the last two months, while previously there were years with no press conferences.

The Council was several times involved in debates and discussions with the broadcasters' association (ARCA) with strong results in setting up new decisions aimed to improve the overall regulatory framework. Most of those discussions were the association's initiative. For instance, last year the Council agreed on a strategy proposed by ARCA to allocate high power frequencies in order to complete major existing networks of local licences up to national range networks. There was even a decision of the Council in that respect, but at that time the Government issued a law in emergency procedure (emergency order) forbidding the Council to decide on allocation of high power licences. This ended with an important public debate and a compromise between the Government and the Council: the government revised its decision and the Council gave up the idea of managing, for the moment, high power frequencies licences. Another example: this year the Council agreed, on another proposal of ARCA, and issued a decision stating that network of local licences can operate as networks for a single programme, enabling broadcasters not to waste their financial resources and act as national range networks. Another case was a revision of the Council decision on advertising in order to make it comply better with the Directive on Television Without Frontiers regarding provisions which were previously understood to be more restrictive than the directive stated (provisions concerning insertion of isolated spot, total duration of teleshopping and right to announce anytime name of sponsors during sponsorship programmes - this was again a proposal of ARCA).

4. Licensing system

The procedures of content licensing are regulated by the new audiovisual law 504/2002 (attached hereto). As for the technical aspects of licensing (ethnical authorizations or transmitting licence - in case of terrestrial broadcasting) there are very few provisions in a very recent law, mostly oriented to communications in a

broad technical meaning (telephony, data communications, use of non audiovisual frequency bands), i.e. the law no. 591 from 29/10/2002.

A. Enforcement of the laws

There are no companies acting as unlicensed broadcasters. The unlicensed broadcasting is a piracy phenomenon, i.e. individuals broadcasting with very limited resources and in small areas, with non-professional equipment. They are quite numerous and the authorities do not have yet convincing legal instruments to stop them. Anyhow, they do not enter in competitive relationship with lawful licensed broadcasters.

The reason for the failure to enforce legal provisions on piracy is actually an inconsistent link between different domains of legislation involved in dealing with that problem. Even if proved to break the law for illegal use of the frequency spectrum, there is no possibility to convict pirates and they can anytime start again their operations.

B. Access to frequencies and equipment

The audiovisual law states that a National Plan for radio electric frequencies has to be set up by the Ministry of Communications within 12 months of the issuing of the law, based on the strategy of the Council for covering the territory with audio-visual programme services which will also designate the areas and localities covered thereby. As a matter of fact, even if not linked to a programme coverage strategy, plans for frequency assignment are already existing, issued by International Telecommunications Union (ITU) under the name of Geneva Plan (issued in 1984 for radios) and Stockholm Plan (issued in 1965 for TV), both updated yearly. At the end of 1997, ARCA asked the Ministry of Communication on information related to those plans. The answer was that that kind of information is classified. ARCA contacted ITU and made the same demand with better results. ITU delivered to ARCA a CD-ROM edition containing all plans related to frequencies assigned for broadcasting worldwide, including Romania. Based on that information, ARCA started a public debate with the result that the bodies involved in broadcasting became aware and responsible of that kind of information, while the broad-

casters community expected them to act as such. One year later, the first private national radio network based on the plan was licensed.

A Mixed Consultative Commission composed of 3 members proposed by the Council and 3 members proposed by the Ministry of Communications is entitled to establish the strategy in the field of using radio electric frequencies, the National Plan for radio electric frequencies allotted to the audio-visual communication and for the solving of the issues related to the use of the radio electric spectrum destined to audio-visual communication, as well as those regarding the new technological developments with an impact upon audio-visual communication.

Actually, the mixed commission will build the strategy, but the plan itself will be the Ministry of Communications' product. Of course, it will be very difficult for the Council for audiovisual to establish the strategy for the covering the territory with programmes in absence of an evaluation of the frequency resources. So, the building of the strategy will imply a strong cooperation between the Council and the Ministry. But that kind of cooperation was always a problem in Romania.

On the other side, the law states that the Plan shall include "at least" a certain number of networks of frequencies, for radio and TV, and that some of them will be attributed to the public stations. While the law was drafted, ARCA argued that is not realistic and logically correct to set up by law what was supposed, according to the law itself, to be the result of the work of the Council, the Ministry and of the Mixed Commission. At that time ARCA argued also that, while the draft law even indicated the number of networks that are to be made available by the Plan, it is not possible to indicate the number of networks and the way to allocate them (in fact to allocate them mostly to public broadcasters) before the Council strategy for programme coverage of the territory is made, with a proper balance between public and private, or before the accomplishment of the work of the mixed commission and the Ministry, in that respect. The Parliament accepted ARCA's proposal by letting the number of networks with no upper limit ("at least"). Actually, a simple evaluation

of the Geneva and Stockholm Plans allows approximating a minimum number of 6 national radio networks and 4 national TV networks. Depending on the coverage policy, that number could increase.

So far, except our putting at disposal of the association members and other involved bodies of the Plans, there was no official delivery of that information. In fact broadcasters can not set up a long term strategy based on official information on frequencies.

The broadcasting infrastructure in terms of towers, etc., which was primarily state owned, is available for private broadcasters as well. Actually, the association was involved in discussion on that topic with the state company (Radio communications Company),which owns the infrastructure. Because of the debts of the public stations (three were even unofficial statement on the idea to stop transmissions as a way to stimulate the payment of those debts), they were interested in offering services for private broadcasters in order to get extra funding. At that time private broadcasters were not interested in using those services considering the extra expenses involved and the fact that those services were not suitable to local broadcasting, while all the private companies were broadcasting on basis of low power frequencies (except the first private national radio network).

C. Granting of a licence

The Audiovisual Council is the regulatory authority which grants the licences to both public and private broadcasters. Actually, the law states that the Council grants audiovisual licences, i.e. content licences. Whenever the broadcasting of a programme service involves the use of a terrestrial radio electric frequency, it will be done based on the audio-visual licence, as well as based on a broadcasting licence, compulsorily issued to the holder of the audio-visual licence. This body entitled to issue the broadcasting licences is the Ministry of Communications.

But, this broadcasting licence is nothing else than a simple authorization. There is no contest or auction to obtain that licence, and the law states that grant of the licence is mandatory (compulsory) to the owner of the audiovisual

licence. More than that, the audiovisual licence has, among its characteristics, an attached frequency, with all indication on the technical elements of the frequency, including location for the transmitter. In fact, when a company wins an auction organized by the Audiovisual Council for an audiovisual licence implying terrestrial broadcasting, it automatically gets a broadcasting licence from the Ministry of Communications.

A simple question is legitimate here: why is there a need for that broadcasting licence practically which is just an appendix with no relevance and doubles the audiovisual licence? The answer is in the history of the making of the law. Primarily, when the draft law was initiated by the Ministry of Communications, the draft stated that, in the case of licences implying terrestrial broadcasting and use of terrestrial frequency, primarily the Council will grant audiovisual licences (programme licences) with no auction procedure, and secondarily, that the Ministry of Communications will grant the broadcasting licence (transmitting licence) through auction. So, all owners of audiovisual licences could participate in the auction for transmitting licence but only one, i.e. that one which offers more money for the use of the frequency, will get the transmitting licence from the ministry. Actually, this only one will be able to use the audiovisual licence, while the rest could only keep it in a directory.

Of course, because that licensing mechanism implied that the licences were practically granted by a political body, i.e., the Government - through its Ministry of Communications, which was practically and theoretically unacceptable, a huge debate emerged, comprising discussions with the prime minister, press conferences and seminars with experts coming form the Council of Europe. The result, after months of debates, was that the Ministry practically gave up its intentions to control the licensing process. So, the presence of the broadcasting licence in the law is only a faint relic of that quarrel. Actually, the broadcasting licence has absolutely no relevance and is automatically contained in the audiovisual licence granted by the Council. So, practically there is no political inference of the Government in the licensing process. In fact, a simple problem still

remains: the broadcasting licence is the same technical authorization as the so named "technical operating certificate" which is in the law also. So a broadcaster gets two technical authorizations for the same topic.

In short, as mentioned above, there are quite sufficient guarantee for the political independence of the licensing body.

As for the Ministry of Communications' role in the audiovisual law, there is another story here. Primarily, in the audiovisual law as issued in 22 July 2002, the authority entitled to issue technical licences and authorizations was the so named "National Regulatory Authority for Communications", which was recently set up, but not still entirely operating. In the same time, in the telecommunication legislation in force, recently revised by an emergency order (no 79/2002), the authority entitled with the same competencies was the Ministry of Communications. So, for a few months, two different legal provisions were in force with different provisions on the same issue. Recently, on the occasion of issuing of Law no 591 in 29/10/2002 concerning the approval by the Parliament of the Emergency order mentioned here, a new legal provision was added. That provision was changing the recently issued audiovisual law, by replacing the item "National Regulatory Authority for Communications" with "Ministry of Communications and Informatics", which meant that the ministry was entitled to deal with all technical aspects of broadcasting. There was a new debate on that issue, concerning the possible political involvement in the decision-making in the audiovisual domain. Joining this debate, we argued that, according with new telecommunications package of directives of European Community, there was no special requirement regarding the political independence of regulatory authorities in telecommunications. Directive 21 /2002 states that "Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organizations providing electronic communications networks, equipment or services", but no more than this. The explanation for that is that some major European countries still assign to the governmental bodies the task to

deal with technical regulatory aspects of broadcasting. As for the broadcasting regulatory authorities, The Council of Europe recommendation no 23/2000 on the independence of regulatory authorities is specifically regarding bodies as NAC, which is indeed politically autonomous.

As mentioned before, only terrestrial broadcasting (by using a terrestrial frequency) implies an auction for getting the audiovisual licence. Since the new audiovisual law is in force, no auction has been organized so far. The Council is supposed to issue regulation on organizing auction or concerning non-auction licences - a decision on satellite licences was issued last week. The law states the overall specifications of a licence - it comprises: the number of the licence; the identification data of its holder, the type of programme services, the name and identification elements of the programme service, the general format of the programme service and the structure of the programmes, the broadcasting area, the validity period, the fees and taxes to be paid, the telecommunication means used for broadcasting and its holder, the assigned frequency or frequencies, as the case may be. Although fees and taxes are mentioned, actually there are no taxes for the audiovisual licence. As for the broadcasting licence, the law provides a tariff established by the Ministry of Communications for the use of the spectrum. The problem here is that, so far, only the monitoring of the spectrum, which is a service provided for the benefit of the broadcaster, implied a tariff. The use of spectrum does not implies a service and should be subject to a tax, not to a tariff. Beyond that, the Ministry did not yet set up the level of those “tariffs”.

The law contains provisions, specifically requested by the European Commission, allowing foreign broadcasting organizations to obtain licences.

D. Renewal and withdrawal of licences

• The licence term is 9 years, both for radio and TV. The right of renewal of the licence offers another 9 year period for operating it, providing in total a reasonable period, in terms of repayment of invested funds.

• A local radio licence costs approximately 40 000 Euros, while a TV licence goes up to 200 000 Euros. As

for a national radio network the investment goes to 6-8 million Euros.

• The licence programme format can be amended based on the approval of the Council.

• The renewal of the licence was not allowed prior to moment the new law came in force.
Renewal of licences and right to transfer licences (the law states: " the audio-visual licence may be ceded to a third party only with the approval of the Council and if the new holder assumes all the liabilities deriving from the licence") were main points of interests for the lobby made by the broadcasters association (ARCA). Immediately after the law came in force and Council provisions were made available, a lot of transferees of the licences were carried out. That phenomenon will continue up to the moment when the bad results of the "local licence concept" mentioned above will disappear, letting strong companies act as national networks and balance the economic difficulties implied by years of waste of resources caused by the "local licence" practice. After the setting up of the market on better economic grounds, i.e. after the development of strong private national networks, the Council will probably look again to protect local licences were needed, based on specific evaluations and not on the automatic and non-sense mechanism of the "local licence concept".

• A licence can be withdrawn if legal procedures for authorization are not fulfilled, or, in special cases, when committing certain contravention inflicts serious prejudices upon the public interest, according the Council's decision.
So far there were no withdrawal of licence except some based on authorization procedure failure. As for the already mentioned withdrawal of the OGINDA TV licence, the Council itself primarily mentioned a motivation to withdraw that licence involving such evaluation on "serious infringement of public interest", while later an authorization procedure failure was also mentioned as reason for "de iure" withdrawal of the licence. The last one seemed to be more realistic. Actually, while the mentioned licence ended due to a lack of

completion of legal procedures, there was no need for the Council to try to end it by using legal provisions related to content issues. The matter of fact is that while the licence was legally stopped by lack of licence update procedure, the Council decision to stop the licence by content reasons is now ineffective and subject to a Court debate. The Court debate on that topic is also proving the effectiveness of the mechanisms for appeals against Council decisions.

E. Monitoring broadcasters' compliance with their commitments and obligations under the law and the licence

• As mentioned above, Romania signed the European Convention on Transfrontier Television, but the ratification procedure is somehow confusing, although very close to an end.

• Except some provision related to advertising, the law does not make the difference that the Convention applies to Television only and it is applied to radio with the same power (despite the fact that ARCA always argued in favour of a specific treatment for radio broadcasting)
The monitoring of programme content is based on the approval by the Council of the programme format based on its compliance with the licence provisions. Any other control of the content of the programmes can be done only after the programme was broadcast. The Council is authorized to request and receive from broadcasters any necessary data, information and documents in order to accomplish its responsibilities, having the obligation to keep the confidentiality of the data that are not of public nature. Secondary regulations so far stressed that a record of the programme should be made available for the Council for 30 days.

• The regulatory authorities have the power to consider complaints concerning individual broadcasters' activity and to publish their conclusions.

5. Licence conditions / Content regulation

A. Reflecting diversity of opinions

So far there were no new licences granted on the basis of the new law. Because of the delay in harmonizing

legal provisions concerning technical authorization for broadcasting (the above mentioned contradiction between audiovisual law and Emergency Order 79/2002) no technical authorization was delivered since the coming in force of the audiovisual law. Procedure related to starting to operate licences already granted is also stopped for the same reason. ARCA intends to start a debate on that, if technical authorization procedure in no resumed in reasonable time.

The law contains provisions which could imply specific tasks for broadcasters.

There are no minimum news requirements in the law.

The law states that the Council have to act for the protection of the Romanian culture and language, as well as of the culture and languages of ethnical minorities
The law states also that "since the date of accession, any radio broadcaster under the jurisdiction of Romania shall reserve to European works a majority proportion of his broadcasting time, save the time dedicated to the news, sportive events, games, advertising, as well as teletext and tele-shopping services. Until the date of accession, a significant proportion shall be reserved to Romanian audio-visual works".

Recently the Council issued a decision providing that the programmes should obtain at least 30% Romanian programmes.

Provisions against hate speech and provoking violence are major issues set up according to the Constitution and the Convention for human rights, as well as considering the recommendations of the Council of Europe.: "The transmission of programmes comprising any form of instigation to hate due to race, religion, nationality, gender or sexual orientation is interdicted"

C. Protection of state interests and national security

There are no specific provision in that respect in the audiovisual law.

D. Advertising and sponsorship

The provisions related to advertising a strictly following the Directive for Television without frontiers. We do not quote here those provisions while they are exactly the same as those of the Directive. With some exemptions, (i.e. the 45 and the 20 minutes rules) those provisions apply to radio also.

Specific limits are put to public broadcasting companies which may insert advertising spots, including self promoting or teleshopping ones, only between programmes. Also the total advertising time per hour is limited at 8 minutes for public broadcasters. Those provisions were put in the law after a long debate on financing of public broadcasting companies. ARCA was involved here, bringing arguments even based on a study on public broadcaster funding made by EBU. The fact are that the budget of public TV (which joins 14% advertising revenues, 10 % from state budget funding and the rest coming from public fees) overpasses by 50% the total budget (around 60 millions USD last year) of the private TV broadcasters, which comes solely from advertising. This is why, among other reasons, there was a consensus to stimulate raise of advertising revenues in private broadcasting.

Recently the Council issued a decision restricting the advertising time for alcoholic distilled beverages. ARCA intends to argue against that decision by referring to decisions of European Court on similar issues (*Gourmet* judgment of the European Court of Justice). Also ARCA intends to propose to the Council a fair understanding of the 45 minutes rule, according o the European Court of Justice judgment, issued on 28 October 1999, which stress that "in order to calculate the 45 minute period for the purpose of determining the number of advertising interruptions allowed in the broadcasting of audiovisual works such as feature films and films made for television, the duration of the advertisements must be included in that period".

Similarly, the explanatory report on the Convention of Television without frontiers stress that the 45 minutes rule is to be construed as allowing to the broadcaster "to

determine at what point (of the 45 minutes period) the interruption should occur".

H. Broadcasting standards

So far there is no ethic code of broadcasters, although ARCA is intending to promote one. Actually, some of ARCA actions involved overall agreement of the broadcasters to comply with rules related to copyright legislation on transmitting procedures, for instance. Those can be considered practically as elements of such an ethic code.

I. Concentration of ownership

There are no limits to cross ownership concentration. As for avoiding ownership concentration (in order to avoid dominant position in forming the public opinion) in tv or radio only, the law states "It is considered that a radio broadcaster holds a dominant position in forming the public opinion at national level when its market share exceeds 30% of the market of television programmes broadcast at national level. The establishing of the market share of each national, regional or local radio broadcaster is performed annually by establishing the average market share registered during the respective year for the entire broadcasting duration." ARCA did not considered that the market share (instead of audience share) is the best instrument to evaluate the media concentration, when withdrawal of licences could follow, according to the law, if upper limits are exceded. Also, we consider that there is another provision which is not sufficiently reasonable: "A natural or legal person may become directly or indirectly a majority investor or shareholder at one single audio-visual company and may hold maximum 20% of the share capital of other companies". This could imply that owners of small companies should be subject to such provisions, with no relevance to media concentration issues.

Serbia

I Freedom of Expression

Article 46 of the Serbian Constitution reads:

> "The freedom of the press and other media is guaranteed.
>
> Citizens have the right to express and publish their opinion in mass media.
>
> The right to publish newspapers and dissemination of information in other forms is granted without prior permission, but upon registration with competent organs.
>
> Organisations of Radio and Television must be established in accordance with the law.
>
> The right of correction of any incorrect information, which violates someone's rights or interests is guaranteed. The right of compensation of damages incurred thereof is also guaranteed.
>
> Censorship of the press and other forms of public dissemination of information is forbidden.
>
> No one may prevent the distribution of published materials and dissemination of other media, except when the competent court determines that the information incites violent destruction of constitutional order, disruption of territorial integrity of the Federal Republic of Yugoslavia, violation of guaranteed freedoms and rights of the citizen, or incites national, racial or religious intolerance and hatred.
>
> Public media outlets financed by public revenue are obliged to inform the public timely and impartially."

The Serbian Constitution guarantees the freedom of opinion, expression and the press. However, the form of that guarantee is different from the one used in the relevant international conventions, given the fact that freedom of opinion and expression are stipulated in more than one provision, and especially because freedom of the press and other media is stipulated separately.

Article 45 of the Serbian Constitution guarantees the right to public expression of opinion. On the other hand, differing from ICCPR, ECHR and other international human rights instruments, freedom of the press and other media is regulated by separate provision in the Serbian constitutional system. The Constitution pro-

claims the freedom of press and the other media[13]. Citizens have the right to express and publish their opinions in the media[14]. The right to publish newspapers and dissemination of information in other forms is allowed to everyone without prior permission but upon registration with the competent organ[15]. However, organisations of radio and television have to be established in accordance with the law[16]. Even though censorship is generally forbidden, the Serbian Constitution contains conditions upon which the distribution of published materials and dissemination of other media may be prevented[17]. It may be noted that these conditions for limiting the freedom of the press do not contain everything that is required by the ICCPR and the ECHR (for example, protection of public health and moral is not provided). The condition that every limitation must be provided by law is not explicitly stated (even though one might conclude that limitations are allowed only when provided by law by interpreting the whole constitutional text). Also, the proportionality principle - the requirement that the purpose of every limitation must be achieved with as little as possible consequences to the freedom of the press itself - is not mentioned (for example, the „necessary in the democratic society" standard contained in ECHR, or some other wording bearing the same meaning is missing). Since the principle of proportionality is not incorporated into Serbian legal system, it is essential that it is provided in the future legal texts.

It may be concluded that the Serbian constitutional provisions on freedom of expression are, generally, in accordance with the international standards. However, the problem is that Serbian Constitution does not follow the wording of international standards, which contain „seeking" and „receiving" information regardless of frontiers and the medium of their transmission[18]. Even if one could conclude that „receiving" information is successfully guaranteed by guaranteeing the freedom of the

[13] Article 46, item 1 of the Constitution of the Republic of Serbia.
[14] Article 46, item 2 of the Constitution of the Republic of Serbia.
[15] Article 46, item 3 of the Constitution of the Republic of Serbia.
[16] Article 46, item 4 of the Constitution of the Republic of Serbia.
[17] Article 46, item 6 of the Constitution of the Republic of Serbia.
[18] See General Comment of the UN Human Rights Committee NR. 10/19 from July 23rd, 1983, Item 2.

press and other media, the freedom to seek information remain missing. That normative problem has a very strong impact in the practice, especially in the work of journalists, to whom the state authorities have often not disclosed public information. Also, the lack of the freedom to seek information in the Constitution results in a lack of freedom of information legislation in Serbia.

There was a number of recorded violations of freedom of expression in broadcasting media in Serbia in the previous years. Mentioning only the most important ones would require more space than this legal survey has at its disposal. Therefore we shall only mention some of the publications containing reports on violations of freedom of expression in Serbia - firstly, Free 2000 Committee's and ANEM's reports for 1998, 1999 and 2000, then OSCE Representative on Freedom of the Media Yearbooks for 1998/99 and 1999/2000, as well as CPJ and Helsinki Committee in Serbia reports for recent years. For the latest cases, one might check Radio B92 (http://www.b92.net/) and ANEM (http://www.anem.org.yu) web sites.

II National legislative acts regulating broadcasting.

Serbian Parliament adopted on July 18, 2002 the Broadcasting Act. This, the first of the long awaited set of new media laws, came into force on July 27, 2002. A version of the Broadcasting Act in English may be found on the B92 web site.

III Regulatory authority.

Articles 6 to 37 of the Broadcasting Act of Serbia (hereinafter: „BA") are directly dedicated to establishing the Republican Broadcasting Agency (hereinafter: „RBA"), as an independent regulatory authority. The RBA is established as an autonomous i.e. independent organisation exercising public competencies pursuant to the BA and regulations passed on the basis of the BA to secure conditions for the efficient implementation and improvement of the set broadcasting policy in the Republic of Serbia in a manner befitting a democratic society.

The Agency is an autonomous legal person and is functionally independent of any state body, as well as of all organisations and persons involved in the production and broadcasting of radio and television programmes and/or related activities.

Anyhow, one should bear in mind that the BA has just came into force some two and a half months ago, and RBA is yet to be formed. Therefore this survey is based solely on the provisions of the BA. The way these provisions are to be implemented is yet to be seen.

a) Status.

The RBA is an independent organization to which public authority is transferred by the law. Under Article 6 of the BA, it is functionally independent of any state body, as well as of all organisations and persons involved in the production and broadcasting of radio and television programmes and/or related activities. Its competences imply not only regulatory powers over commercial broadcasters, but also significant authority over the public service broadcaster(s)[19]. It is established by the law, and is construed in a way that should enable a significant degree of political, economic and financial independence. In drafting the articles of the BA relating to the RBA, the authors had born in mind provisions of the Recommendation of the Committee of Ministers of the Council of Europe NR. 23 from December 2000, on the establishing and independence of regulatory authorities for broadcasting. A form of a smaller regulatory authority consisted of experts has been chosen, so that the RBA should consist of 9 (nine) members, preferably experts in the fields related to broadcasting.

As for *political independence*, politicians cannot be members of the RBA. BA strictly forbids state and party officials to run for a position in the RBA, and that includes their spouses, parents or children or individuals collaterally related to the second degree to them (Article 25 of the BA). Apart from that, the BA provides for a two-phase appointment of RBA members. The first phase is proposing the members to the parlia-

[13] BA provides for a national PSB and for regional PSBs for Vojvodina and, in the future, Kosovo (if it remains a part of Serbia).

ment. There are eight different authorised nominators, one for each member. Every authorised nominator is entitled to propose a list of two candidates. National Assembly (parliament) then chooses one of the two proposed candidates. Eight authorised nominators are:

1. The National Assembly of the Republic of Serbia;
2. The Assembly of the Autonomous Province of Vojvodina;
3. The Government of the Republic of Serbia;
4. The Executive Council of the Autonomous Province of Vojvodina;
5. The Rectors of universities in the Republic of Serbia by common agreement;
6. Associations of public media outlets in Serbia, associations of journalists in the Republic of Serbia, professional associations of film and drama artists in the Republic of Serbia and professional associations of composers in the Republic of Serbia by common agreement.
7. Domestic non-governmental organisations and civic organisations primarily focusing on the protection of the freedom of speech, the protection of the rights of national and ethnic minorities and the protection of the rights of the child by common agreement;
8. Churches and religious communities.

All of the drafts preceding the final version of the BA had less politically dependant bodies, and more of the various represents of the civil society as the authorised nominators. Government officials insisted that the addition of the National Assembly of the Republic of Serbia, the Assembly and the Executive Council of the Autonomous Province of Vojvodina to the detriment of the represents of the civil society was necessary in order to ensure the majority support in the Parliament. Anyhow, all authorised nominators, including Assemblies and Government/ Executive Council are required to nominate individuals enjoying the reputation of a prominent media experts, advertising experts or prominent experts in a field relevant to the work of the RBA. Members of the RBA shall not be representatives of their nominators, nor can the nominators withdraw them. Additionally, in order to

make it impossible for the nominators to be certain that the person they have nominated is appointed, there must be two candidates on each nominators' list, and the final decision is in the hands of the parliament. On the other hand, the parliament cannot choose anybody who was not proposed by the authorised nominators, and it is therefore not free to appoint whom it sees fit. This, however, does not apply for the one of the members of the RBA, who is both proposed and appointed by the National Assembly of the Republic of Serbia.

The ninth member of the RBA is nominated by the previously appointed RBA members whereby the nominee must fulfill criteria for RBA membership set forth in the BA and must be a person residing and employed in the territory of the Autonomous Province of Kosovo. The nomination of the ninth RBA member is confirmed if at least five RBA members have voted for him/her.
The term of office of the RBA members is longer then the one of the MPs. Namely, it is 6 (six) years compared to the 4 (four) years of parliamentary term. Moreover, upon appointing the first nine members of the RBA, the parliament shall randomly decide which three members are to serve two years, which three are to serve four, and which three members are to serve the full term, thus making it impossible for one composition of the parliament (apart from the one deciding on the first appointment) to appoint all of the RBA members.
RBA members can be dismissed only in cases provided by the law. Article 29 of the BA provides four cases:

1. if a competent health institution finds the member incapacitated by an illness to fulfil the duties of RBA member for a period exceeding six months;
2. if it is determined that, during the submission of the nomination, the member gave false personal data or omitted to report data on circumstances relevant for eligibility;
3. if it is determined that some of the circumstances relevant for ineligibility occurred during the tenure of the RBA member;
4. if for no good reason, the member omits or refuses to fulfil the duty of a RBA member for at least 3 consecutive months or a period of 12 months during which the member has failed to fulfil his duties for at least six months.

The decision on dismissal is left to the parliament. However, it may be reached only on the basis of a duly reasoned motion for dismissal following a procedure, wherein all the relevant circumstances have been determined and the RBA member concerned has been given the opportunity to be heard on all the circumstances. Dismissed RBA member cannot turn to the court and appeal, apart from the constitutional complaint provided in the Federal Constitution (Constitution of the Federal Republic of Yugoslavia). Apart from that, tenure of a RBA member may terminate by expiration of the term of office, by written resignation or by death of an RBA member.

Lastly, the salary that RBA members are entitled to should be determined by the parliament, upon proposal of the RBA itself. The amount of the salary should be high so that the probability of corruption is reduced, but the BA does not explicitly state that.

Economic independence is achieved by the fact that individuals, who as owners of shares or stocks, members of management or supervisory bodies, employees, contractors et al, have an interest in the legal persons involved in the production and/or broadcasting of radio and television programmes or related activities (advertising, telecommunications, et al) are not eligible to be RBA members because the membership of such an individual in the RBA may lead to a conflict of interests. BA provides that every candidate for RBA membership must give a sworn statement that he/she does not fall under categories mentioned above, and in case the false statement is given, apart from the other consequences (criminal law, eventual compensation of damages), dismissal from the RBA is possible. Dismissal is also possible in case the member did not fall under mentioned categories upon appointment, but has fallen under them later on, during his term.

Lastly, the *financial independence* is achieved through the funding the RBA. The RBA income comprises funds collected from the fees the broadcasters pay for the right to broadcast programmes. Only if the RBA fails to accrue the planned income from the fees, the lacking funds shall be provided from

the budget of the Republic of Serbia. The provision of lacking funds shall in no way influence the independence and autonomy of the RBA.

These statutory guarantees of RBA independence, however, must be proven in practice before one might reach a conclusion on their effectiveness.

b) Competence

RBA competences, under BA, include:

1. Passing the broadcasting development strategy in the Republic of Serbia with the consent of the Government of the Republic of Serbia;
2. Controlling and ensuring the consistent application of the provisions of the BA;
3. Issuing broadcasting licences and prescribing the licence form;
4. Setting technical, organisational and programming conditions for the production and broadcasting of programmes pursuant to the provisions of the BA;
5. Prescribing rules binding on broadcasters which ensure the implementation of the broadcasting policy in the Republic of Serbia;
6. Supervising the work of broadcasters in the Republic of Serbia;
7. Considering submissions filed by natural and legal persons and complaints of broadcasters concerning the operation of other broadcasters;
8. Delivering to the competent state bodies its opinions with regard to accession to international conventions related to the broadcasting sector;
9. Imposing adequate sanctions against broadcasters in keeping with the BA;
10. Performing other duties in accordance with the BA. (media concentration etc)

As it may be seen, BA has construed the general competences of the RBA in a very broad manner, so that it assumes almost all powers over broadcasters and broadcasting in Serbia.

In addition to the general competencies, RBA is also competent to take measures in the broadcasting sector with the aim of:

1. Protecting minors;
2. Enforcing regulations on copyright and neighbouring rights;

3. Preventing the broadcasting of programmes which contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of race, religion, nationality, ethnicity or sex.

As for sanctions, the RBA may issue the broadcaster a reprimand or a warning and may temporarily or permanently revoke its broadcasting licence. A reprimand shall be pronounced against a broadcaster, which has for the first time breached an obligation stipulated by the BA or an RBA by-law passed on the basis of the BA, and shall not be published by the media.

A warning shall be pronounced against a broadcaster which: (a) despite the issued reprimand, continues acting in contravention of obligations stipulated by the BA or an RBA by-law passed on the basis of the BA; (b) violates an obligation for the first time, but in a manner in which this violation seriously threatens the implementation of principles regulating relations in the broadcasting sector; or (c) violates a term set forth in the broadcasting licence. When issuing a warning, the RBA shall expressly specify the obligation the broadcaster has violated and define measures the broadcaster is to take to rectify the violation. The warning shall be published in the media and obligatorily in the programme of the broadcaster concerned.

The RBA shall pronounce a temporary broadcasting licence revocation lasting up to 30 (thirty) days against a broadcaster which, despite the pronounced warning continues failing to abide by the provisions of the BA or an RBA by-law passed on the basis of the BA or does not abide by the terms embodied in the broadcasting licence or does not act pursuant to measures for remedying the violations specified in the RBA warning. The permanent revocation of a broadcasting licence shall be pronounced against a broadcaster which has not fulfilled its obligations and has previously been punished at least three times by temporary broadcasting licence revocation.

A broadcaster on which a sanction has been imposed may appeal to the court should it consider the RBA decision illegal.

Finally, RBA does not, under BA, have any power to provide funding to commercial or public broadcasters.

c) Accountability.

As for the accountability, BA provides that the RBA is accountable to the public. It has the obligation to publish its annual reports (Article 36 BA), and to make them available to all interested persons. Accountability towards the state organs is achieved through approval to the RBA financial plan which must be given by the parliament, but the parliament does not have any special powers, such as the possibility of rejecting the annual report. RBA must keep its records public, it must publicize all of its decisions „in an appropriate way" (which would probably mean having the RBA bulletin in practice). In the last instance, all of RBA decisions may be challenged in court, and the court is specially authorised to pass temporary injunctions, thus preventing the implementation of the RBA decisions before the court decides upon their legality.

IV Licensing system

Some of the provisions of the licensing system inherited from the Milosevic era would be applied during the provisional period and until the passing of the new telecommunications legislation. BA provides radical changes bringing Serbian legislation in line with mainstream European practices regarding licensing broadcasters, but public tenders for broadcasting licences according to the BA are yet to be called, most likely not before Spring or Autumn 2003. Here we shall present, firstly, former licensing system, and than provisions of the BA.

In earlier system, there are two separate proceedings - for granting the use of frequencies and for issuing licenses for transmitters and links.

Granting the use of frequencies

Five laws and a range of other regulations are applied during proceedings for granting the use of frequencies. These are the following laws:

Federal laws:

1. Law on Systems of Communications of the SFRY (Official Gazette of the SFRY, 41/88);
2. Law on Basis of Public Information System of the

SFRY (Official Gazette of the SFRY No 84/90).

Laws of Republic of Serbia:

1. Law on Systems of Communications (Official Gazette of the Republic of Serbia No 38/91);
2. Law on Public Information (Official Gazette of the Republic of Serbia No 19/91);
3. Law on Radio and Television (Official Gazette of the Republic of Serbia No 48/91). This Law was superseded by BA.

Some of the mentioned regulations were passed ten years ago, but Serbian legislator started to follow up on trends in developed countries only after the political changes of October 5th, 2000 had happened - a new telecommunications regulation is being prepared. However, regulations contained in the 1988 Federal Law on Systems of Communications, which are according to present standards extremely outdated, are still in force. One more characteristic of rules regarding allocation of frequencies is explicit lack of coordination of legal regulations, which brings an absence of a coherent legal normative system for this area. Consequently, in practice, there are a lot of dilemmas even in view of whether federal or republican organs are competent for award of frequencies.

The Federal Law on Systems of Communications deals with the award of frequencies in the Articles 64 to 67 quite generally, without specifying neither who is competent for awarding nor under which condition frequencies are awarded. Article 66 of that law runs like this:

> "Users of radio frequencies can be awarded one or more exclusive, joint and general radio frequencies depending on distribution plan of radio frequencies…",

which is definitely insufficient, bearing in mind that this provision is relating not only to frequencies, which are assigned for transmission of radio and television programme but also to frequencies used by police and army, flight control etc.

The Serbian Law on Systems of Communications, however, treats award of frequencies more specifically. It specifies at least who is competent to pass laws and regulations on the award of frequencies. Article 26 runs like this:

> "Radio frequencies, which are disposed of by the Republic of Serbia, are granted for use under conditions established by special decree passed by the Government of Republic of Serbia.
>
> If one has not started using the awarded frequency within 3 months after acquiring necessary documentation for work, the right of its use ceases."

It should also be mentioned that, as it appears, this provision is not relating only to frequencies assigned to electronic media but also to those assigned to others.

The Law on Radio and Television of the Republic of Serbia treats the award of frequencies more precisely. The first part of it is called "Provisions on Broadcasting". Articles 4 to 11 provide that for the use of frequencies, which are disposed of by Republic of Serbia, the request must be submitted to Government of Republic of Serbia[21]. They also foresee what a request must include[22] and define rules that must be applied in case of competing requests, where the priority of particular submitter depends on planned programme's guidance[23]. Article 5, item 2 has special importance because it prescribes fee for use of frequencies, the amount of which must be defined by Government of Serbia's decree as well as provision of Article 6 which foresees that all frequencies except those assigned to state broadcaster RTS shall be awarded only and exclusively in public bid. For award of frequency itself the most important provision is Article 7, and it reads as follows:

> "The Government of Republic of Serbia, on the basis of plan and possibilities of radio broadcasting system, examines which frequencies are free and once a year proclaims public bid for use of frequencies where it adduces radio frequency, locality and conditions for use.
>
> Deciding and granting use of radio frequency shall be performed within 3 months from the day public bid is proclaimed."

The Law also foresees that the same frequency can be awarded to a larger number of users but with established

[21] Article 4, item 1 of the Law on Radio and Television of the Republic of Serbia.

[22] Article 4, item 2 of the Law on Radio and Television of the Republic of Serbia. We must emphasize here that one is required to submit numerous data for award of frequencies - data on programme guidance, technical survey, proof of ownership of means for performing activity and manner of financing, opinion of competent republic organ on technical capacities for performing the activity.

[23] Article 5, item 1 of the Law on Radio and Television of the Republic of Serbia.

timetable for use[24]. Frequencies shall be awarded for the period of ten years at the longest and they can be cancelled when the requests of international coordination of frequency plans are such or when its use interrupts programmes important for Serbia[25]. The Law provides conditions under which the frequency can be revoked. Finally, Article 11 provides establishing a Commission that should examine requests for award of frequencies. It is nominated by the Government of Serbia and its competence is to suggest decisions on award or revocation of frequencies to the Government (so, the competence is only advisory). It should also be stressed that provisions of the Law on Radio Television of Serbia refer only to frequencies, which are awarded to electronic media.

Provisions of federal and republican laws, which regulate public information, are of indirect importance during award of frequencies to radio and TV stations because, for example, the Government of Serbia according to Article 4, item 3 of the Law on Radio Television, decides upon submitted requests and grants frequency "according to law on public information…"

Beside the normative problem, it is useful to look back and briefly observe the practice relating to the application of the above-explained regulations in recent years, when those laws were passed and when local and regional private radio and TV stations began to appear. Such a review shows that the area of award of frequencies in Serbia was full of anarchy and arbitrariness. Firstly, it should be emphasized that the Government of Serbia, in spite of quoted provision of Article 7 of the Law on Radio Television, has not proclaimed any public bid for award of radio frequencies and TV channels from 6 January 1994 until today, although it was legally obliged to proclaim that kind of public bid at least once in a year. From that reason no radio and television station could have been legally established and set to work from that date (the same happened with stations, which were not granted frequency on the last bid)[26]. The

[24] Article 8 of the Law on Radio and Television of the Republic of Serbia.
[25] Article 9 of the Law on Radio and Television of the Republic of Serbia.
[26] The results of that public bid were published in the Official Gazette of the Republic of Serbia No 23/1994, at 532. It is very interesting that stations, which participated with all necessary documentation and were not awarded frequency, never got the information on reasons for refusing their requests. In this public bid TV BK Telekom got its first licences. On the obligation to conclude an administrative case by individual decisions rather than by a "winners list" see the Articles 196 to 204 of the Law on the General Administrative Procedure.

award of frequencies to the media is permanently mysterious and secret. For example, the radio frequency plan (distribution plan and assignment plan) was never presented to public. The plan would show which frequencies are foreseen for work of electronic media and which are disposed of by Republic of Serbia, which by Montenegro and which by the Federation. Also, the public was never introduced reasons for such decisions - decisions on award of frequencies were never explained but published as a list of "lucky winners".

Effectively, due to the illegal inactivity of Republic Serbia's Government during past years, the award of frequencies was "relocated" to Radio Television of Serbia[27], because according to Article 6 of the Law on Radio and Television of the Republic of Serbia, the RTS is the only entity which can be awarded a frequency without public bid (that advantage was used a lot in practice) and, according to Article 15 of the same law, the RTS was enabled to dispose of its own frequencies and transmitters by contract. Therefore, signing a contract with the RTS, where it would oblige itself to transmit programme of particular electronic media on its frequencies and through its transmitters with fee in return, was the only lawful way for media, which failed to acquire right of frequency's use from the Government of Serbia, to work. The problem that appeared with this kind of frequency distribution was that all legal criteria for the award of frequencies were not binding on RTS due to the freedom of contract rule. Besides, the fee assigned for budget was kept in public enterprise (i.e. RTS, which is organized as a public enterprise).

As far as fees are concerned, it is very interesting that the Law on Radio and Television foresees its existence[28]. They were introduced by a by-law[29], which was passed by the Government of Serbia, but they were not charged. So, although there were legal basis for charging fees they were never charged. This is especially interesting from the view of analysing the last frequen-

[27] Consequently, in this period a lot of stations started their work - TV Pink, TV Palma and some local television stations in inland Serbia. In the same way earlier Radio B92 and Radio Indeks from Belgrade started their work.
[28] Article 5, item 2 of the Law on Radio and Television of the Republic of Serbia.
[29] By-law on the Amount of the Fee for the Use of Radio Frequencies (Official Gazette of the Republic of Serbia No 35/92).

cy distribution, made by federal organs. It was a Public Bid for award of radio and television frequencies for temporary use, which was proclaimed by Federal Ministry of Telecommunications (hereinafter referred to as: FMT) in the middle of February 1998. Under that Public Bid, fees for broadcasters were introduced and later charged without any legal basis whatsoever for that provision in federal legislation.

Therefore many broadcasters in Serbia were pirates under Milosevic rule. And, due to a moratorium for issuing licenses to broadcasters, proclaimed by the FMT after the fall of Milosevic, the situation in Summer 2001 is pretty much the same. Serbia is awaiting for new regulations to regulate the licensing system in a new way.

Issuing licenses for transmitters and links.

Now we shall analyse the existing regulations which refer to the award of licences for broadcasting radio stations (i.e. transmitters and links). This area is regulated, in positive legislation, by Articles 68 to 79 of the Federal Law on Systems of Communications and by other regulations passed upon that law, first of all by the "Book of Rules on Data and Documentation that are to be Submitted with the Request for Acquiring Licences for a Radio Station"[30]. The Federal Law on Systems of Communications foresees that a radio station can be acquired and used only on the basis of a previously acquired licence[31]. According to Article 68, Item 2 a licence is required for every transmitter or link, without any exceptions for the electronic media. It is important to emphasize that the acquisition of a radio station is conditional upon the prior acquisition of a licence. Article 69 of the Law on Systems of Communications of the SFRY foresees that licences for radio stations are granted by a federal telecommunication administrative organ, that is the FMT. The procedure for submitting an application for a licence is basically regulated by Article 72 of that law, which foresees that a request is submitted directly to the competent organ, which is the FMT. It also foresees that with the request the following should also be submitted: (1) Data on the radio station, that is locality and assignment, exit power and data on antennas, and (2) the opinion of the competent

[30] Official Gazette of the SFRY No 22/91.

[31] Article 68, item 1 of the Federal Law on Systems of Communications.

organ in the Republic or in the autonomous region on coordination with developing plan of radio communications. Besides, if the radio station is used in a network, a corresponding documentation on the radio network should also be submitted[32]. However, the Book of Rules on Data and Documentation that are Submitted with the Request for Acquiring Licence for Radio Station (in the following: Book of Rules) has illegally[33] widened this list so that for each licence for a transmitter a vast number of various data and documents are required - all those foreseen in the Law on Systems of Communications as well as those situated in the Book of Rules. The request to submit proof on registration of enterprise for radio broadcasting activity (which is, due to Article 3 of Law on Radio Television of Serbia and non-proclamation of public bid for award of frequencies by the Government of Serbia, impossible to have) and the request to submit proof of registration as a public media outlet in the register (which is absurd because for such registration of electronic media outlet one has to submit licence for transmitter which creates another "vicious circle" in existing broadcasting law), contained in the Book of Rules, is illegal and create problems in the practice. Namely, it disables persons to be awarded licences for transmitters in practice. This "anomaly" of the Book of Rules, together with already mentioned problems in regulations and practice relating to award of frequencies, make an "impenetrable wall", which renders legal establishment and work of broadcasting media in Serbia under existing regulations impossible, despite declarative provisions in constitutions and laws on public information.

Apart from that, in other provisions on licences for transmitters, the Federal Law on Systems of Communications foresees that a licence for radio station is valid for 10 years[34]. Further on, it can be issued for shorter period of time *only* at the request of the user. The holder of a radio station has an obligation to submit a request for an extension of a licence at least 60 days before it expires. In the

[32] A radio network is defined in Article 2, item 1, point 14 of the Federal Law on Systems of Communications.

[33] AHere, unlawfulness is expressed through the fact that other regulation went on "further from law" i.e. it imposed interested persons larger limitations then the law itself - list of application additions was enormously and unjustifiably widened.

[34] Article 74 of the Federal Law on Systems of Communications.

case of electronic media transmitters one submits with the request an attestation of a technical examination that has been performed on the radio station[35]. Temporary licences exist only for a radio station "the quality of which is examined, researched, and demonstrated", that is only for the so-called experimental phase of broadcasting. They are valid at the longest for 60 days and are granted by the FMT in concordance with the Federal Ministry for Defence and the Federal Ministry for Home Affairs[36]. At this point, the provision of the Public Bid of the FMT of February 1998, which foresaw the granting of temporary licences with a term of validity of 12 respectively 24 months may be considered illegal. Finally, the strict provisions of Law on Systems of Communications of SFRY, which refer to cessation of licence validity[37], should also be mentioned. A licence, which ceased to be valid, must be returned to the competent organ within 30 days. It is also foreseen that the radio station holder is obliged, in the event of changing his/her name or firm, to acquire new licence. It can be concluded that licences for transmitters are not transferable in positive legal system. The term for setting radio station to work is one year from the day licence is granted, that is 30 days from finishing the facility in which transmitter is placed, although in certain circumstances it can be prolonged[38]. A radio station can be set to work only after a technical examination. However, if it turns out that, although the station fulfils all conditions set out in the law and in regulations, it causes damaging interruptions to others or suffer damaging interruptions from other radio stations, then the issuer of the licence is obliged to take necessary measures to remove those interruptions[39].

Conclusion on earlier system.

An analysis of the earlier regulations on granting of licences for acquisition and work of broadcasting radio stations shows that this area was affected by huge imperfections and incoherent solutions, which demand thorough revision. We consider the Book of Rules

[35] Article 17 of the Book of Rules.
[36] Article 75 of the Law on Systems of Communications of the SFRY.
[37] Article 76 of the Law on Systems of Communications of the SFRY.
[38] Article 77, item 1 and Article 78 of the Law on the Systems of Communications of the SFRY.
[39] Article 17 of the Book of Rules.

unlawful, as it renders the acquisition of a licence for electronic media transmitters impossible. The same it true about the lack of legal connection between licences and awarded frequencies. The FMT Public Bid was an attempt to eliminate this second imperfection, but it was done in illegal manner, as was shown, by proclaiming "temporary" licences, which depend on the frequency awarded and are valid 12 respectively 24 months, whereas licences cannot either be valid for more than 60 days or anything else than 10 years, unless the company had applied for a shorter term.

The situation in earlier regulations referring to the allocation of frequencies and issuing of licences for transmitters in Serbia clearly shows that the best way out from a very bad situation was adopting a completely new and coherent set of regulations.

BA on licences

The Broadcasting Act of Serbia changes the licensing system thoroughly. It provides for the RBA to issue broadcasting licences, which consist of two parts - the first is the licence for a proposed programme, and the other is the license for proposed transmitting equipment (transmitters and links). It excludes the possibility of pirate stations, providing effective means in the hands of the RBA to eliminate them. It also provides for the adoption and publication of a frequency plan (assignment and distribution plan). RBA is the body which passes the broadcasting strategy for Serbia, and the telecommunications authorities plan the frequencies according to that strategy. BA provides for public bids for granting licences, and the proceedings are construed in a way which enable much more transparency than in the existing regulation. The term of licences is set at eight years. Proposed programme content is of the greatest significance for success of an application, but apart from that the technical, financial and human resource aspect of the application is also of relevance. Lastly, the RBA is obliged to take into consideration the importance for the applicant for development of democratic processes in the previous period, in the case that more than one applicant is competing for the same licence. This provision is important to independent media in Serbia, since they

could not compete technically or financially with media moguls who were backed by the Milosevic regime in the past. Lastly, RBA is authorised and obliged to monitor observance of the licence conditions of all broadcasters, apart from PSBs. A person, which has applied at the public tender and is dissatisfied with the RBA decision, has the right to file an objection within 15 days after the day of receipt of the decision rejecting the application. The RBA shall decide on the objection within 30 days after the date of its submission. An administrative lawsuit may be launched against the decision on the objection.

V Content regulation.

a) Reflecting diversity of opinions.

According to the Article 3 of the BA, the regulation of relations in the broadcasting sector shall be based, among others, on the principle of full affirmation of civil rights and freedoms and especially the freedom of expression and plurality of opinion.

RBA is obliged to, in the licence issuance procedure, in the event that more than one person fulfilling the terms has applied for the same radio frequency, take into the consideration and give advantage to the one which provides stronger guarantees that it shall contribute to better quality and more diverse programming.

As for the public service broadcasters, according to the Article 77 of the BA programmes produced and broadcast within their service must ensure diversity and balance (mutual coordination or conformity) of content upholding democratic values of modern society, particularly the respect for human rights and cultural, national, ethnic and political pluralism of views and opinions. Public broadcasting service carriers shall, according to the BA:

- Ensure that programmes which are produced and broadcast, and particularly programmes with news content, are protected from any influence of the authorities, political organisations or centres of economic power;
- Produce and broadcast programmes intended for all segments of society, without discrimination, particularly taking into consideration specific societal

groups such as children and youth, minority and ethnic groups, handicapped, socially and medically vulnerable groups and the deaf-mute (with the obligation to simultaneously broadcast written text describing the audio segments of the action and dialogue) et al;

- Adhere to linguistic and speech standards not only of the majority population but also, proportionately, of national minorities and ethnic groups in the area where the programme is being broadcast;
- Ensure the satisfaction of the needs of citizens for programme content expressing cultural identity not only of the nation, but also of national minorities and ethnic groups, by enabling them to follow certain programmes or blocks of programmes in the areas where they live and work, in their native languages, both spoken and written;
- Provide adequate time slots for broadcasting content related to activities of civic associations and non-governmental organisations, as well as of religious communities in the area where the programme is being broadcast;
- Provide during election campaigns free-of-charge and balanced broadcasts of promotions of political parties, coalitions and candidates for federal, republican, provincial or local elections, whose candidacies have been accepted, whereat these broadcasters may not broadcast a paid election promotion and, pursuant to their general by-laws, may refuse to broadcast programmes and advertisements if these do not serve the election campaign;
- vEnvisage in their annual plans the broadcasting of independently produced programmes, the selection of which is based on a public tender and upon the conclusion of a written contract with the independent producer at customary market conditions;
- Enable the use of self-produced teletext or teletext independently produced by a third party at the recommendation of the Agency;
- Respect the traditional spiritual, historical, cultural, humanitarian and educational importance and role of churches and religious communities in society.
- Mutually cooperate and exchange programme contents of interest to the citizens of Serbia.

b) Provisions on hate speech and provoking violence.

Article 46 Item 6 of the Serbian Constitution provides that hate speech is one of the grounds whereby the dissemination of information may be prevented (if other conditions are also met), whereas hate speech is defined as information which incites to national, racial or religious intolerance and hatred. The Federal Law on Basics of Public Information System contains only one provision related to programme content of media outlets - the concept of programme cannot be directed to: ... incitement to national, racial or religious hatred and intolerance[40]. The provision is actually a re-phrase of the constitutional provision stipulating possible grounds for the limitation of the freedom of expression. According to the Article 8 of the BA, RBA is competent to take measures in the broadcasting sector with the aim of preventing the broadcasting of programmes which contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of race, religion, nationality, ethnicity or sex. Suppression of hate speech is further elaborated in Article 21 which reads:

> "The Agency shall ensure that the broadcasters' programmes do not contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of their different political affiliation or of their race, religion, nationality, ethnicity, sex or sexual affiliation.
>
> Conduct in contravention of the prohibition in para 1 of this Article shall be deemed grounds for pronouncing the envisaged sanctions by the Agency, independently of the other legal remedies at the disposal of the aggrieved."

c) Protection of State Interests and National Security

Article 46 Item 6 of the Serbian Constitution also provides incitement to violent change of social order set forth by the Constitution and endangering territorial integrity and independence of the country as possible grounds for limiting the freedom of expression. Federal media legislation bans programme concept which

[40] See Article 17, item 1 of the Federal Law on Basics of Public Information System.

includes incitement to violent change of social order set forth by the Constitution and endangering territorial integrity and independence of the country[41].

d) Advertising and Sponsorship

The Serbian Constitution does not provide for the freedom of advertising. Advertising freedom has neither been mentioned in relation to freedom of expression nor to freedom of media. Advertising is rather under-regulated in Yugoslavia. Superseded Law on Radio and Television of the Republic of Serbia contained only one provision on advertising. In Article 13, item 5 of that Law it was stated:

> "Commercial programmes and advertisements on radio and television must be clearly and recognizably separated from other programmes, and advertising of political and religious goals, tobacco, alcohol and medicines is forbidden."

Some other regulations order bans on advertising either regarding to the product or to the activity which is advertised. Article 54 of the Federal Law on Production and Trade of Medicines[42] for example forbids advertising of medicines. The Code of Ethics of the Bar Association of Serbia forbids attorneys to advertise their services. In practice, however, the ban on advertising tobacco and alcohol is often breached, and radio and television programmes are full of advertisements for cigarettes and various alcoholic drinks. The Ministry of Trade of the Republic of Serbia, authorized to supervise advertising in radio and television programmes, does not take any measures to prevent those advertisements. In the Article 29, item 2 of the Law on Radio Television of the Republic of Serbia the time of advertising was restricted for PSB to 20 % of its programme. There were no time limitations for other broadcasters. These provisions were not in conformity with the European standards[43]. The superseded Law on Radio and Television of the Republic of Serbia contained no provisions on sponsoring. The lack of regulation on sponsoring enabled companies, which produce goods that cannot be advertised, to reach the same goal by sponsoring. In practice, sponsoring is clearly identified as such, but this was not, contrary to the European standards demanded by the law[44].

[41] Article 17, item 1 of the Federal Law on Basics of Public Information System.
[42] Official Gazette of the Federal Republic of Yugoslavia No 18/1993-375.
[43] Article 12 of the ECTT and Article 15 of the EC-Directive.
[44] Article 17 (1) ECTT and Article 17 (1) item B of the EC-Directive.

BA contains rules on advertising and sponsoring in broadcasting media. These rules are basically the rewritten rules contained in ECTT and the EU Directive. However, given the fact that an expert group already prepared a special draft law on advertising, regulating the whole activity of advertising and sponsoring in a systematic manner, and that this draft has been given to the Government, it may turn out that the provisions on advertising and sponsoring in broadcasting would be superseded soon, maybe even before they come into force, since according to the Article 128 of the BA, provisions of that law related to advertising and sponsorship are not in force yet, and shall be applied only as of 1 January 2003.

e) Broadcasting standards.

There are currently no commonly adopted and used broadcasting standards in Serbia. However, Associations of Independent Broadcasting Media (ANEM) adopted its own Ethical Code for Broadcasters in February 2002. The Code may be found on the ANEM web site (http://www.anem.org.yu). On the other hand, BA enables the RBA to pass regulations on broadcasting standards and provides the basic programme standards. According to the Article 68 of the BA, all broadcasters shall abide by the following standards in respect of programme content within their programme concept:

1. Ensure the production and broadcasting of quality programme both in terms of technology and of programme content by applying international and national standards;
2. Ensure free, comprehensive and timely informing of citizens;
3. Broadcast important urgent announcements regarding threat to human life, health, security or property;
4. Contribute to raising the overall culture and awareness of the citizens;
5. Shall not broadcast programmes the content of which may impair the physical, mental or moral development of children and youth, as well as clearly mark such programmes and, if they are broadcasting them, do so only between 2400 and 0600 hours;
6. Shall not broadcast programmes containing pornogra-

phy or the content of which gives undue prominence to violence or is likely to incite violence, drug abuse or other forms of criminal behaviour, as well as programmes abusing the naiveté of the audience;
7. Broadcast foreign programmes intended for preschool children synchronised in Serbian or the languages of the national and ethnic minorities.
Additionally, all broadcasters shall keep the broadcast programme contents in keeping with regulations on public information and in keeping with regulations on the protection of cultural heritage.

f) Concentration of Ownership.

Prior to the BA there were no special rules on concentration of media ownership and on cross-media ownership. General antimonopoly legislation was applicable, but in practice the Antimonopoly Commission never used its authorities towards media companies.

BA contains a special chapter dedicated to concentration of ownership over broadcasters, and provides that the concentration of media ownership is prohibited when a broadcaster violates principles of the pluralism of opinions in the mass media in one of the following ways:

1. By participating in the founding capital of another broadcaster;
2. By participating in the founding capital of a newspaper-publishing company;
3. By participating in the founding capital of a company performing the activities of a news agency;
4. By simultaneously broadcasting both radio and television programmes in the same area as the only broadcaster; or
5. In any other way determined by the provisions of this Law.

A prohibited concentration of media ownership shall also exist when a founder of a newspaper-publishing company or of a company performing the activities of a news agency violates the principles of pluralism of opinions in mass media by taking part in the founding capital of a broadcaster.
A prohibited concentration of media ownership, i.e. prevalent influence on the public opinion, according to the BA shall be considered to exist always when:

1. A broadcaster, licensed to broadcast programme at the national level of coverage, has a share exceeding 5% in the founding capital of another broadcaster with the same type of licence;
2. A broadcaster is broadcasting more than one television and more than one radio programme in the same area;
3. A broadcaster, licensed to broadcast programme at the national level of coverage, has a share exceeding 5% in the founding capital of a company publishing a daily newspaper with a circulation of more than 30,000, and vice versa;
4. A broadcaster, licensed to broadcast programme at the national level of coverage, has a share exceeding 5% percent in the founding capital of a company performing the activity of a news agency, and vice versa;
5. A broadcaster, licensed to broadcast programme at the national level of coverage, simultaneously publishes a daily newspaper with a circulation exceeding 30,000;
6. A broadcaster, with the status of a local or regional radio or television station, has a share exceeding 30% in the founding capital of another local or regional broadcaster in the same area;
7. A broadcaster, which has the status of a local or regional radio or television station, is simultaneously publishing a local daily newspaper in the same or neighbouring area.

According to the Article 101 of the BA, the RBA shall not issue a broadcasting licence to an applicant at the public tender if it establishes that issuing the licence would result in prohibited concentration of media ownership in terms of this Law. Additionally, an applicant for the public tender shall submit together with the application form a certified statement that the issuance of the broadcasting licence would not result in prohibited concentration of media ownership. If the RBA establishes that the prohibited concentration of media ownership occurred after the granting of the licence, it shall order the broadcaster to bring its status into accordance with the provisions of the BA related to prohibited concentration of media ownership within six months, and if the broadcaster does not act in accor-

dance with such order without a justifiable reason within the set deadline, the RBA shall launch the procedure for revoking the broadcasting licence.

It is also provided that each broadcaster shall notify in writing the RBA of any change in its ownership structure prior to the change. If the RBA establishes that the planned changes in the ownership structure would result in prohibited concentration of media ownership, it shall recommend to the broadcaster to revise the changes so as to avoid prohibited concentration. If the broadcaster does not act in keeping with the RBA recommendation and proceeds with the ownership structure change whereby prohibited concentration of media ownership occurs, the RBA shall launch the procedure for revoking the broadcasting licence.

VI International Standards

Given the fact that Serbia has left the complete international isolation just two years ago, it is understandable that it has not yet adopted all the legal standards contained in international legal instruments. However, BA and the number of media legislation drafts are made in co-operation with Council of Europe and European Union, so that the full harmonisation of legislation with European standards may be expected once the complete new media legislation is passed.