



ASSOCIATION OF INDEPENDENT ELECTRONIC MEDIA



International Research & Exchanges Board

OVERVIEW OF MEDIA LEGISLATION  
IN SOUTH EASTERN EUROPE  
- From November 2003 to October 2005 -

This overview refers to the state of media legislation in South Eastern Europe, namely Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Montenegro, Romania and Serbia.

The overview is made on the basis of Stability Pact for South Eastern Europe Media Task Force's summary reports which are prepared under the auspices of the Media Task Force by the Media Plan Institute in Sarajevo, with support of IREX Media Development Division, Regional Projects. <sup>1</sup>

The overview refers to the reporting period between November 2003 and October 2005 and is focused on three categories of media legislation:

- Broadcasting legislation and regulations, including the licensing procedures and division of frequencies to broadcasters, Statute, mandate

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<sup>1</sup> The participants (persons, institutions and countries) in the project, listed in alphabetical order:

1. Albania, Albanian Media Institute, Tirana
2. Bosnia and Herzegovina, Media Plan Institute, Sarajevo
3. Bulgaria, Dr Vessela Tabakova, Sofia
4. Croatia, Davor Glavas, BBC correspondent, Zagreb
5. Kosovo, Driton Qeriqi, Pristina
6. Macedonia, Macedonian Media Institute, Skopje
7. Moldova, Angela Sirbu, Chisinau
8. Montenegro, Association of Young Journalists, Podgorica
9. Romania, Center for Independent Journalism, Bucharest
10. Serbia, Milos D. Zivkovic, lawyer, Belgrade

Project coordinator: Dusko Babic, Media Plan Institute, Sarajevo

and composition of regulatory bodies, Management of the public broadcaster and its independence, balance between private and public broadcasters and funding issues such as changes in advertising limits, remit of the public broadcaster or audience reach.

- Defamation and libel Law, including the penal and civil code changes relating to defamation, level of fines, burden of proof and special protection of public figures.
- Free Access to Information Act, including the progress or delays in adoption and implementation of Access to Information laws.

The overview is compiled by ANEM Legal Department /“Zivkovic and Samardzic” Law Office/ with support of ANEM Secretariat.

## **ALBANIA**

### ***Introduction***

In the year 1998, Albanian Parliament has passed the Law on Public and Private Radio and Television. For the sake of its implementation, same Law provided for an independent regulatory body National Council of Radio and Television (NCRT). The NCRT is composed of seven members elected by the Parliament for a maximum of two five-year terms; this body acts at the same time as a licensing authority and as a supervisor of legality in private broadcasting. By the beginning of this reporting period, i.e. November 2003, available licenses and frequencies have been allocated according to the Law.

### ***Broadcasting legislation and regulations***

Regulations in general can be considered as fair and impartial. However, some legal improvements still need to be done.

The Copyright Law came into effect on October 15, 2003 and is also known as the «law on piracy». This Law affected many TV stations. Acting according to this Law, on December 22<sup>nd</sup> 2004, NCRT revoked broadcasting license held by private TV station Shijak TV due to the repeated transmissions of unauthorized programs.

In March 2004, Member of the Albanian Parliament, Mr. Ben Blushi, former journalist, called The Commission of Laws to draft the necessary legislative amendments aiming to prevent the Albanian media from publishing and broadcasting indecent material, in the sense of bloody and hard images, damaging the psychological well-being of the public.

In July 2004, Parliamentary Committee on Media agreed on the need to amend the present Law on electronic media, due to digital TV entering the market and

the fact that the present Law does not regulate digital TV. Many companies took this legal gap as permission to start with digital TV operations without licenses from NCRT, violating in that manner copyrights regulations, while in the following months Parliamentary Committee on Media could not reach consensus regarding the proposed amendments to the Law on electronic media which would regulate the issue of digital broadcasting. The debate on the draft Law on digital broadcasting continued also during April 2005, when several debates on the draft Law were held. The forum this time was the Parliamentary Committee on Media. NCRT reproached the debated draft to be threatening for the principle of non-discrimination of the broadcasting operators and that its implementation would create a number of technical problems. Strong concerns were also expressed that the draft allows for the establishing of monopoly in the field of digital broadcasting.

The Parliamentary Committee on Media forwarded the draft law to the Parliament to decide whether to adopt the draft which had the approval of the Committee, or to take into consideration concerns of NCRT.

The draft law on broadcasting entered the voting procedure during the summer of 2005. In the last plenary session before closing for the election, it was declared that the bill did not receive the necessary votes to be approved. Even though many members of the Parliament protested over irregularities in the counting of votes, Parliament speaker, Servet Pellumbi, said that new Parliament emerging from the election shall discuss and approve the law on digital broadcasting in Albania.

### ***Statute, mandate and composition of regulatory bodies***

National independent regulatory body, National Council of Radio and Television (NCRT), is composed of seven members elected by a Parliament. According to the Law on Public and Private Radio and Television, the President proposes one

member as candidate, while the Parliamentary Committee on Information and Media proposes the others.

Chairman of the National Council of Radio and Television (NCRT), Mr. Sefedin Cela, who was heading the NCRT since its establishment in mid 1998, resigned in the last week of July 2004. Mandate of Mr. Cela was to end at mid 2005. Resignation of Mr. Cela coincided with the end of the mandate of three members of the NCRT. During the August 2004 new members were elected, and in early December, Parliament voted Mr. Halil Lalaj as the new chairman of the National Council of Radio and Television, NCRT. Mr Lalaj, a journalist by profession and former member of the Albanian Parliament, will serve a 5-year term. In his first declaration Mr. Lalaj expressed the need for the NCRT to fight piracy, which flourishes in certain television stations.

### ***Management of the public broadcaster and its independence***

In mid November 2003, there was a routine change in the Steering Committee of Public Albanian Radio and Television – ART, since their term had expired. New Committee has thirteen members chosen among representatives of the political parties, President's office, journalists associations, various NGOs and public figures.

In the beginning of 2004, acting on numerous complaints and accusations of union of ART's employees regarding the poor professional and technical state of national broadcaster, which they blamed for bad management of ART, accusing the General Director of misuse of ART's funds and stating the concerns that he stayed on that position more because of his political connections than to his professionalism, Steering Committee has more than once discussed the election of new General Director, without success though.

During May and June 2005, pressure on ART's General Director increased from different circles requesting his resignation. This was caused by the charges pressed against the General Director by the director of the State Audit Authority (SAA), which conducted an audit control of management of the public broadcaster and registered various violations, for which it held the General Director primarily responsible. In most of the cases, SAA found that the General Director had not acted against other parties when they failed to comply with their contractual financial obligations towards the Albanian public broadcaster, which had further weakened the financial situation of the public broadcaster. SAA accused the General Director of abuse of office.

### ***Balance between private and public broadcasters***

At the meeting with NCRT and Parliamentary Committee on Media held in January 2004, private broadcasters argued that they suffered heavy financial obligations towards the State, while such obligations did not apply to ART. They

also considered the annual license fee and the frequency fee too high and requested revision. The NCRT representatives and the members of Parliamentary Committee on Media agreed, but added that changes could solely be achieved through legislative amendments, and declared that the Albanian Law on Electronic Media needed substantial amendments. However, no such changes have been proposed to the Parliament yet.

***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

According to the NCRT's annual report, released in March 2004, 46% of the income of the broadcasters came from advertisement, 5% from donations or other forms of sponsorship and 49% from sources not related to the media. It is difficult to establish precisely what those other sources are. The report has been approved by the Parliament. The NCRT also released figures for the territorial coverage by the broadcasters. The two national private TV broadcasters, TV Klan and Telearberia (TVA) cover respectively only 42,68% and 30,1% of the territory of Albania. The public broadcaster ART covers only 73,3% of the territory. According to the NCRT report, by the end of 2004 the private TV channels should reach an average coverage up to 46,9 % of the country's territory. On the other hand, the two national private radio stations cover over 75% of the territory, which is more than the percentage required by the legislation.

***Defamation and libel Law***

At the beginning of this reporting period, existing defamation/libel legislation was not at all satisfactory. It is treated both in criminal and civil law, and does not offer sufficient protection against undue charges.

***Penal and civil code changes relating to defamation***

The working group established in April 2004 under the auspices of the Open Society Justice Initiative, New York, and the Albanian Media Institute, has presented in July 2004 its first draft on amendments to the Albanian Defamation Law. This draft, which contains amendments to the current Criminal Code and the Civil Code was presented and discussed in two round tables, one with lawyers and legal experts and the other with journalists. Even though both groups appreciated the amendments, legal experts were less willing to accept full decriminalization of defamation, while the journalists requested an even more detailed regulation of civil defamation.

The final draft that was to include some of the suggestions received during the round tables was expected to come out in September and presented to the parliament.

In its first months on duty after the elections, in September 2005, new Prime Minister of Albania issued an order which bans Ministries and other State institutions under the control of the Council of Ministers to file criminal charges for defamation and insult against journalists. The order was welcomed by the public in general and in specific by the media sector in Albania. However, journalists continue to plead for a full abolishment of the provisions on defamation and insult of the Albanian Criminal Code.

### ***Level of fines, burden of proof and special protection of public figures***

Nevertheless, regardless to the legislation efforts, Albanian Courts are repeatedly convicting the publishers of newspapers for defamation. In less than two months, May and June 2004, Prime Minister was twice awarded damages for defamation. European and international institutions, including The Monitoring Committee of the Parliamentary Assembly of the Council of Europe strongly protested over such abusive application of the civil defamation laws and requested legislative improvements regarding the issue.

## ***Freedom of access to information Law***

In 1998, the Albanian Constitution has recognized the right to information, and in June 1999, the Freedom of Information Act (FoIA) was adopted. In general, this Law is considered good and in accordance with European standards. It grants all citizens the right to obtain any official document that is not considered off-limits by other laws, such as the Classified Information Law. Persons that request information do not have to justify their request, and any refusal to provide information must be in a written form. However, there is a stark discrepancy between the letter and spirit of the law, and its fairly poor implementation.

One of the rare moments in which implementation of this Law was publicly discussed was on the occasion of first court ruling in this matter. By this ruling, the District Court in Tirana found the Ministry of Education to have violated its obligation deriving from the Law on Access to Information.

In June 2004, the Albanian Helsinki Committee requested the Constitutional Court to consider whether certain provisions of the new Law, enforcing officials and their families to declare their wealth, was in violation of the Constitution of the Republic and the Access to Information Act. There was a hearing and Constitutional Court is expected to give its decision in the near future.

## **BOSNIA AND HERZEGOVINA**

### ***Introduction***

Bosnia-Herzegovina still remains very specific country, hardly to be compared with other states and societies, not only in the field of news media, but in general. Complex state structure with multiple levels of governance, over-saturated media market and fact that all of the relevant legislation and regulation documents are

adopted as a result of an overwhelming pressure from the Office of the High Representative (OHR), are only some of the reasons for the present state in which the legislation works brilliant on the paper, but in practice there is no one to implement it.

### ***Broadcasting legislation and regulations***

In May 2002, the High Representative issued a package of decisions providing a legal framework for three public broadcasters in the country, officially titled the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia-Herzegovina, the Law on Radio-Television of the Federation of Bosnia-Herzegovina (RTVFBiH), and the Law on Radio-Television of Republika Srpska (RTRS). According to it, the Public Broadcasting Service, named as BHTV1, should be a nation and countrywide broadcaster, while the other two will remain as entity-based public broadcasters. Distribution of broadcasting fees formula should guarantee 58 percent of the fees to the entities public broadcasters and 42 percent to BHTV1, plus Brcko District. The PBS programming should reflect ethnic, cultural, social, religious and related pluralism and diversity. This legal framework has been highly esteemed by the Council of Europe's (CoE) media experts. However, projected formula of distribution of broadcasting fees did not work out for many reasons. Rate of subscription fee has fallen even below 35 percent.

In order to overcome the problem, the OHR tasked the BBC Consultancy team, responsible for restructuring of the PBS, with drafting of a new Broadcast Act, at the time called – "model law". This Draft prescribes that the Board of Governors of all three public broadcasters shall be appointed by the respective Parliament, as well as a new formula for collecting broadcasting fees, officially formulated as "subscription tax", via telephone bills.

In February 2004, the Executive Commission of the Board of Governors of the PBS has made a new draft of amendments to the current Law on PBS, focused in

particular on a stronger role of the civil sector in appointing members of the Board of Governors of the PBS. The so-called Model Law on PBS has been tacitly abandoned, retaining only the prescribed collecting the RTV subscription fee via phone bills. Shortly, in March 2004, new controversies emerged over the Draft Law on Public Broadcasting System, mainly over the position and competencies of the Communications Regulatory Agency (CRA), stating that the CRA would have the mandate that it does not have under the Law on Communications. Finally, in July 2004, the Parliament has passed the Law on Public Broadcasting System and Service, which lays down the structure of the broadcasting system in the country and establishes a joint legal entity – called Corporation, responsible for infrastructure, international presentation and foreign programs, regulating relations between the three public broadcasting services. A second Law, which should regulate the Broadcasting Service, its registration, activities and organization, was not adopted until September 2005, and only after concession made upon the request of Bosnian Croats for three channels in the languages of the constituent people, which was firstly rejected by OHR, OSCE, EC and CoE, but later endorsed by the international community's representatives in BH by allowing three production centers in Sarajevo, Banja Luka and Mostar. According to many media experts, journalists and politicians, this was regarded as just one step toward exclusive national channels. Bosnian Croats insisted on an exclusive Croat channel, as the only way to protect their linguistic, cultural and national identity. However, the Constitutional Court had not found any violation of so-called vital national interests in the proposed Law on PBS, as suggested by Bosnian Croats and The Law on PBS has been finally adopted by both houses of BH Parliament. This amended law regulates procedure of appointments of management bodies as well as of members of Board of Governors. The Law also prescribes collection of RTV tax, which is not a subscription fee, but a tax paid for possession of radio and TV sets. This should secure more reliable way of financing of the PBS.

In 2004, Council of Communications Regulatory Agency had passed The Rule on Media Concentration and Cross-Ownership over Electronic and Print Media and Watershed Principle on Program in Relation to Broadcast Time.

The Rule on Media Concentration and Cross-Ownership is harmonized with the best European practices in the field of media concentration and pluralism. One physical or legal entity cannot own two or more radio or two or more TV stations, which cover the same population range. Only in exceptional cases, dealing with some technical requirements, or compliance with some international obligations, the CRA can issue a license by which certain transmitters cover the same population from different locations and different frequencies. With respect to Cross-Media Ownership, a physical or legal entity that owns print media can own one broadcast media, either radio or TV, at the same time.

Watershed Principle on Program in Relation to Broadcast Time represents amendment to the Broadcasting Code of Practice, designed to protect minors from harmful programs, which can be broadcast only in the period from 10 p.m. to 6 a.m.

### ***Statute, mandate and composition of regulatory bodies***

Communications Regulatory Agency was originally established in 2001 by a Decision of the High Representative, combining the competencies of the Independent Media Commission (broadcasting) and the Telecommunications Regulatory Agency (telecommunications). In 2002, the mandate and responsibilities of CRA were finally defined.

In April 2004, the CRA Council invited tenders for new members of the Council, since their mandate was expiring. But unlike previous practice in which appointment of the Council's members had been the responsibility of the Office of the High Commissioner, selection of new members was to be a domestic responsibility. The members of the Council are appointed for four-year term.

Even though deadline for submission of applications was May 25, 2004, it was not before the April 2005 that The House of People of the Bosnia-Herzegovina Parliamentary Assembly confirmed the appointment of the new Council of CRA, previously approved by the House of Representatives, according to a proposal by the Council of Ministers. The new Council comprises the following members: Neven Tomic, Mahir Hadziahmetovic, Mehmed Spaho, Branislav Bozic, Rajko Popovic and Sead Mulabegovic. The new Chairman of the Council is Neven Tomic and Mahir Hadziahmetovic has been elected vice-president.

### ***Management of the public broadcaster and its independence***

Editorial independence of public broadcaster formally exists. Existing rules should safeguard independence but are still to be proven in practice. Discussions over new law on PBS and its reorganization were heavily politicized. Some of the proposed provisions were designed to impose political influence through the process of appointment of the PBS steering committees.

In May 2004, Milan Trivic was appointed as the new Director of the public broadcaster BHTV1. Mr. Trivic is an experienced TV journalist, from the former RTV Sarajevo. He spent last decade in London with his own independent TV production company. Before his official appointment, Mr Trivic presented his ideas on how to improve the PBS in the country.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

At the beginning of 2004, an agreement was reached over subscription fee, officially named “subscription tax”, i.e., the fee based on the possession of radio and TV sets. Starting from January 2004 in the Republika Srpska, and from March 2004 in the Federation of B-H, the subscription fee of KM 6 per month (cca. 3 EURO), has been included in the telecommunication bills of fixed phone lines without the option of separate payment.

According to the data from March 2005, BHT1 still has not reached a significant national audience. As a matter of fact, its audience share is even declining, reaching only 4.5 percent of the total audience share.

### ***Defamation and libel Law***

Bosnia and Herzegovina was one of the first countries in the region which has adopted its Defamation Law – in Republika Srpska in June 2001, and in the Federation of Bosnia and Herzegovina in November 2002. The Laws were passed separately, but basically in identical texts, allowing trials of this kind exclusively in civil cases. The laws themselves are regarded to as outstanding achievements in this field of media regulation. In brief, defamation has been fully decriminalized. Nevertheless, number of civil cases still has multiplied to several hundreds in the past years. In the Sarajevo Cantonal Court alone there are some 300 pending cases. Implementation, or it would be better to say – interpretation of this Law has been problematic and controversial, so far.

The main responsibility for such situation rests with print media. Unlike broadcast media, under close scrutiny of Communication Regulatory Agency (CRA), print media in the country should be self-regulated. But since self-regulation formula did not work so far, print media are left to do whatever they want. The striking example for such irresponsible behavior of print media outlets were 2002 October elections. Namely, the country has witnessed the restoration of hate inspiring language in the print media. Press-Council, the self-regulatory body, simply failed to perform its duty in a proper manner. Both the public and media did not benefit from it. In order to resolve such situation, courts used to issue so-called “temporary bans” until the civil case was settled. Temporary ban(s) related only to certain issue/topic not to be subject of media coverage for certain period of time. Many agree that such temporary bans mean an open censorship.

### ***Level of fines, burden of proof and special protection of public figures***

According to the Defamation Laws, both in Republika Srpska and Federation of Bosnia and Herzegovina, burden of proof is with the plaintiff. Prescribed fines are huge and according to the Federal Ombudsman's special report are having a chilling effect in the context of self-censorship. Fines determined by court rulings however amounted between 1000 and 4000 EURO, only occasionally higher.

### ***Freedom of access to information Law***

Freedom of Access to Information Law (FoIA), has been adopted in BH, but its implementation is still in its rudimentary phase. General public, journalists and civil servants – did not yet realize the full importance of this law.

Even the OSCE Mission to B-H, recognizing the problem of non-implementation of the Law, issued a leaflet explaining the importance of free access to information. The leaflet was posted online at the time of the disputes regarding Ramadan programming.

## **BULGARIA**

### ***Introduction***

The media sector has generally benefited from the positive economic and political development in the last fourteen years. Advertising market is growing rapidly. Nevertheless, for several years there is an ongoing debate regarding the public broadcasters, its transformation into the public service, its funding and the way it should be governed.

### ***Broadcasting legislation and regulations***

The Parliamentary Committee on Media started drafting amendments to the Radio and Television Law, adopted in 1998, immediately after the elections and change of the ruling majority in Parliament in 2001. The amendments however cannot be assessed unequivocally. The reduction of political interference in the licensing process and the replacement of the licensing requirements for cable operators by registration can be regarded as a step forward.

On the other hand, media lawyers and experts emphasized the lack of sufficient guarantees with respect to the independence of the regulatory body, inadequate expert knowledge and professionalism on the part of the members of the regulatory body, legally-restricted competence of the regulatory body, gaps and lack of clarity in the licensing procedures, lack of clarity in the regulation of the management and financing of the Bulgarian national television (BNT) and Bulgarian national radio (BNR). All of this leads to conclusion that there is a need for a new Law. However, drafts from November 2002 and February 2003 failed due to the strong opposition and rejection on behalf of the media and legal experts.

Debate on the broadcast legislation in Bulgaria continued during the following months, particularly regarding the position and composition of the Council of

Electronic Media, but appeared in public debate again in January 2004 due to two reasons; the first one was the Report of the Parliamentary Culture and Media Committee to the Parliamentarian Assembly of the Council of Europe which stated that the pressure over the media was exercised in Bulgaria. The second was an Agreement on exclusive rights for selling advertising on BNT, signed by the General Director with the Russian company "Video International", without the consent of Board of Governors of BNT.

During the remaining months of 2004, and beginning of 2005, working group of media lawyers and media experts, representatives of 14 media and journalist organizations, interested groups and representatives of public broadcasters (BNT and BNR) continued to discuss the Broadcasting Act Draft. Even though it was decided to finish the work on the draft by September 20, 2004, the job has never been done. During the year of 2005, adoption was several times postponed, waiting the parliamentary elections. Up to date the Law was not adopted.

### ***Licensing procedures***

Since 2002, licensing procedures have been stopped. The parliamentary majority adopted a decision to draft a Strategy on development of broadcasting. The strategy was to be drawn by the Council for Electronic Media operating on the basis of the Radio and Television Law and Telecommunications Act. After its drafting, the Strategy was to be adopted by the Parliament. However, the parliamentary majority postponed the adoption quoting various reasons and thus, in 2002 the licensing process was blocked, since under the 2001 amendments, only terrestrial broadcasters are subjected to licensing.

At the end of March 2005, there was an official announcement that the Strategy will be included on the agenda of the Parliament. There were a lot of comments about the reasons for this intention less than three months before parliamentary elections. Eventual adoption of the strategy would have meant possible licensing

procedures for some frequencies at the very end of the mandate of the ruling majority.

Nevertheless, in October 2005, adoption of the Strategy and licensing of the terrestrial broadcasters was blocked once again. Currently, there is a registration procedure in place for cable and satellite operators.

### ***Statute, mandate and composition of regulatory bodies***

After the Simeon II National Movement had won the June 2001 parliamentary elections, the new Parliamentary Committee on Media started drafting amendments to the Radio and television Law, adopted in 1998. The amendments from 2001 left the clear impression of being politically motivated and this impression was proven to be true. The amendments terminated the mandate of the existing regulatory body and replaced it with a new one, the Council for Electronic Media (CEM).

The CEM consists of nine members, of which Parliament proposed five, and the President four. Later, in the procedure of amending the Radio and Television Law, expert group reached consensus over the composition of the regulatory body in a way that three out of nine members are to be proposed by the Parliament, 3 by the President and 3 by citizens.

### ***Management of the public broadcaster and its independence***

In February 2004, after several discussions regarding the violations of the law in Bulgarian National Television (BNT) and the behavior of its General Director, The Council of Electronic Media (CEM) finally decided to dismiss the General Director. Decision was passed on a tight majority, just 5 out of nine members voted in favor of the decision.

Appointment of Emil Vladkov, a 75-year old professor in telecommunication technologies, as a new Director General of the Bulgarian National TV, raised concerns with regards to the independence of BNT. New General Director himself could not endure the pressure and resigned only a month later. Subsequently, in July 2004, provisional Executive Director of BNT was appointed, but only until the September when, after the public tender for the appointment was held, CEM appointed as a General Director Mrs. Uliana Pramova, experienced TV reporter and news anchor.

***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

Funding of the public broadcasters BNT and BNR remained one of the most controversial issues, especially the fact that they are funded from the state budget. Advertising on BNT is restricted to only 15 minutes per day.

While liberalization of advertising rules is expected in the new Media Law, the parliamentary committee on healthcare proposed and voted for restrictive measures in the Healthcare Law concerning advertising of liquor in May 2004.

In March 2005, the Association of Bulgarian Broadcasters stated in their report that the Bulgarian media earned 161 million leva (cca. 82.3 million euros) in net revenues from advertising in 2004. TV stations hold the biggest share, 53 percent, of the national advertising market, with the nationwide broadcasters' BTV, Nova Television, and Bulgarian national television (BNT) controlling most of that share. The commercial Nova Television retained second place, next to the leading commercial broadcaster BTV, but replacing the state-run BNT. Its growing success is partly attributed to the "Big Brother" reality show.

***Defamation and libel Law, Level of fines, burden of proof and special protection of public figures***

The Bulgarian Penal Code relating to defamation and libel was changed in 2000 after very long and active campaign led by the NGOs. Law was furthermore amended in 2003. The amendments restricted the possibilities for criminal prosecution. The prosecutor's office no longer had the power to initiate proceedings when insult and libel were directed towards officials in duty, or in connection to their duties. Criminal prosecution is now only possible when the affected party files a complaint.

The maximum punishment for libel and insult is now a fine of 7.000 EURO, instead of imprisonment.

The research shows, however, that the number of charges did not go down after the change of the Penal Code.

### ***Freedom of access to information Law***

The Access to Public Information Act came into force in July 2000. The Act clearly states that "no restrictions to the right of access to public information shall be permissible, unless the latter is information classified as state or other kind of protected secrecy in cases provided for by an act of Parliament." In spite of the difficulties in implementing the right to access information the situation was developing relatively smoothly.

However, some negative and dangerous developments for the media, freedom of speech and right of the citizens to be informed appeared with respect to the adoption of the Classified Information Act. Act showed the tendency towards less openness and transparency of the state government.

Pressure from the civil sector (NGO's), however, forced the parliament not to adopt changes to the Penal Code in 2003, aiming to introduce penalties of up to 15 years of imprisonment for so called "unregulated access to classified information".

In May 2004, the “Access to information program” presented its annual report on access to information in Bulgaria in 2003, saying that “information seekers continued to encounter difficulties caused by the unwillingness of the institutions to fulfill their obligations and referrals to formal, procedural reasons to withhold access to public information”. In 2003, no-motive refusals and silent refusals have been the most typical reasons why access to public information was withheld. Twenty nine court cases under the Access to Public Information Act were conducted in 2003. In 13 of the total 29 cases, court appeals have been filed by citizens. Ten cases were initiated by NGOs and 7 by journalists.

However, in general, there is a stable positive tendency related to implementation of the Access to Information Law in Bulgaria.

## **CROATIA**

### ***Introduction***

One of the rare countries in which ownership data are kept secret due to the fact that there was more than several life treating attacks, including shooting and serious beatings of media owners, is Croatia.

### ***Broadcasting legislation and regulations***

The Law on Croatian Information and News Agency was adopted in 2001. The Law on Media, the Law on Electronic Media and the Law on the Croatian Radio Television were adopted during the 2003. In April 2004, Parliament adopted the new Law on Media. Key controversies remained, however, in the field of concentration of the ownership and protection of the sources of information. The new law defines concentration as owning more than 40 percent of the market's share of daily papers or newsmagazines, while regarding the protection of the sources, new Law requires journalists to disclose the source of information "if the public interest to know the source prevails over the interest of journalist to protect it". This too unclear definition opens possibilities for arbitrary decisions and could create a potential threat, especially to investigative reporters.

In January 2005, The Government announced its desire to change the Law on the Croatian Radio Television (HRT), mostly in the part that deals with the election of the HRT Council, which would, according to the proposed changes, have 25 members, out of which 22 will be appointed by NGOs and the civil society sector. Although the proposed changes were in line with European standards, opposition parties and a large part of civil society have seen them as a well-covered attempt by the ruling party (HDZ) to control public TV and radio.

### ***Licensing procedures***

After the adoption of amendments to the Council for Radio and TV's by-laws in June 2003, licensing procedure has been more efficient and much faster than earlier. Licensing procedure is fair, unbiased and in general terms independent from political interferences.

Since the end of February 2004, Council of Electronic Media hasn't been appointed. There were 26 radio stations with expired licenses, with no competent body to renew them. The list included even the public service – HRT, which needs the Council's approval of its license to start broadcasting. New Council of Electronic Media was appointed by the Parliament in April 2004 and started its activities in late July 2004. In August 2004, Council commenced the formal procedure for opening a new tender for frequency allocation.

In November 2004, the Council of Electronic Media announced a public tender for renewal of licenses that expired in the period from June 2003 to October 2004. Applicants had to submit their applications and related documentation by December 17, 2004. After reviewing the applications, the Council's sources said that for 27 of the total 29 applicants, renewal of licenses would be "just a formality". The process was to be completed by January 2005.

In April 2005, Council of Electronic Media opened a new tender for 23 radio and TV frequencies. Most of these frequencies are for smaller cities, thus less attractive markets and almost marginal audiences, and will not change the existing market and audience share on the Croatian broadcasting scene.

### ***Statute, mandate and composition of regulatory bodies***

Since the adoption of the Law on Electronic Media in late July 2003, appointment of the new Council was not conducted. Due to the change of the Government, appointment of the new Council was postponed until the early spring of 2004.

In the meantime, OSCE Mission to Croatia, local NGO's and the Stability Pact's National Working Group (NWG) have objected and strongly recommended to the Government of Croatia to amend the Law on Electronic Media regarding the composition and appointment of the Council for Radio and TV, since in their view, much power is given to the Parliament and political parties in appointment of the Council, while civil society and NGO's have only a marginal role in selecting and appointing Council's members. Nevertheless, in April 2004, Parliament appointed a new Council of Electronic Media according to the non-amended text of the Law on the Electronic Media.

Taking seriously public's reproaches about its independence since CEM's office was in the building of the Ministry of Culture, Council of Electronic Media has moved to new premises during October 2004. Action was greeted broadly.

### ***Management of the public broadcaster and its independence***

Local NGO's and international watchdog organizations (including OSCE and CoE) have complained about the visible and to a certain degree decisive role of Parliament in appointing members of HRT Council, which could seriously affect Council's independency and impartiality. After months of delay, the HRT (PBS) Council was formed and gathered for the first session in December 2003.

In February 2004, Stability Pact's NWG, local NGO's, CoE and OSCE experts suggested to the Government to amend the Law on HRT, primarily regarding the procedure of appointing HRT's Council members and securing its independence. Amendments go for direct appointment of representatives of civil society to the Council, bypassing the Parliament and Government's interference. In order to secure normal completion of the procedure of electing of the new General Director, an agreement was reached to enable the current Council to complete its mandate in the present form. In March 2004, the HRT Council elected and appointed Mirko Galic as the HRT's General Manager. Election of Mr Galic, previously "temporary General Manager", was widely expected. Only a month

later, HRT Council accepted the list of candidates proposed by the general manager, Mirko Galic, and appointed new sector managers and key editors.

### ***Balance between private and public broadcasters***

The new Law on Electronic Media (adopted in late July 2003) defined more precisely the balance between public and commercial broadcasters. For the first time, the new Law introduces allocation of 3% of the mandatory subscription for TV service to the commercial TV stations, while until July 2003 the whole subscription was used exclusively by HRT. Approximately 3 million EURO per year will be used only for productions of the public interest of commercial stations, i.e. news production, documentaries, broadcasting on the languages of national minorities and ethnic groups, etc. It was expected that this change would stimulate higher-quality production of commercial broadcasters (both radio and TV) and offer better public service to the audience. However, The Council of Electronic Media allocated the first installments for supporting pluralism in broadcasting after more than two years, to 93 radio and 17 TV stations. Radio stations received financial support in the range of 1.200 to 35.000 EURO, and TV stations from 35.000 to 110.000 EURO.

CME (Central European Media Enterprises) bought Nova TV, the first commercial TV station in Croatia with national coverage. Total financial package is reportedly worth 24 to 26 million EUROS. Nova TV's audience reach and its advertising market share have been seriously damaged by the internal feud between two factions of the shareholders. With a new owner and a substantial investment in programming acquisition, it is to expect raise of Nova TV's audience and advertising market share, both against HRT and RTL Croatia. Some of the HRT's higher profile journalists and editors have accepted transfer to Nova TV (program director, editor-in-chief of the news production, etc) thus creating a more competitive labor market.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

The new Law on Electronic Media, adopted in late July 2003, defined more strictly advertising limits on HRT and monitoring of the potential breaches of these regulations.

The Association of Commercial TV Stations filed in July 2005 lawsuit at the Zagreb Municipal Court against HTV, claiming “constant breaches of the limits of minutes of commercials per hour as defined by the Law on Electronic Media in HTV 1 and HTV 2 programming”. HTV’s management did not deny the accusations, but considered the breaches as “only occasional” and “irrelevant both for the commercial income of HTV and the market share of commercial TV stations”. HTV accused the Association of Commercial TV Stations that by filing the lawsuit, the Association would in fact like to amend the Law on Electronic Media and the Law on HTV, making them more favorable to commercial TV stations.

### ***Defamation and libel Law***

As a result of a joint action of local NGO’s and international institutions that raised a pressure on the Government to change provisions that criminalized defamation, amendments to the Penal Code adopted by the Parliament in June 2003, decriminalized defamation. In the meantime, an objection was filed with the Constitutional Court. In January 2004, the Constitutional Court invalidated Amendments to the Penal Code, and the old pre-June 2003 Penal Code is effective again. In the current Croatian legal system, attack on reputation and dignity may be treated either as a civil law offense or a criminal offense. Croatian Penal Code still prescribes prison sentence of up to one year for defamation. The media community is requesting complete decriminalization of defamation.

A group of prominent Croatian lawyers and experts have started an initiative to amend this legislation and to bring it closer to European standards. Stability Pact's NWG, local NGO's, CoE and OSCE experts have urged the Government to amend the Penal Code and move to decriminalization of defamation.

In April 2004, the Ministry of Justice completed the new Draft Penal Code. After the Government's approval, draft was supposed to go into the parliamentary adoption procedure; however it has not been adopted yet.

According to the data from March 2005, there are close to 1.000 pending defamation/libel cases against journalists in backlogged courts.

### ***Level of fines, burden of proof and special protection of public figures***

Current Croatian Criminal Code allows prison sentence up to one year for defamation or libel.

On the occasion of the confirmation by the Supreme Court of two-month suspended sentence for defamation to the reporter Ljubica Letinic, the Croatian Justice Ministry supported the sentenced reporter, saying that after changes were made to the Penal Code, defamation in journalism has been decriminalized *de facto*, but not yet *de jure*.

### ***Freedom of access to information Law***

The Croatian Parliament adopted the Access to Information Law in 2003. It was, unfortunately, known from the beginning that the adoption procedure did not follow the rules strictly, even though Access to the Information Law defined the matter according to the highest professional standards. Shortly, objection was filed to the Constitutional Court to review adoption procedure, and the Law was annulled in January 2004.

In March 2005, New York-based Committee to Protect Journalists (CPJ), in its annual report, section dealing with Croatia, stated that improving regarding the access to the public information is needed: “Government press offices routinely withhold information and ignore journalists’ requests for official records”, reads the CPJ’s “Attacks on the Press in 2004”, a worldwide survey.

The current regulation stipulates that government and public services have the right to deny access to a «certain type of information». This wording is broad and may be subjected to different interpretations. Journalists and their professional organizations are looking for more precise wording, so that access to information may be restricted only for «confidential documents of significant importance to national security».

## **KOSOVO**

### ***Introduction***

Most certainly, no other field of Kosovo society went through more dynamic post war development than the media scene. Aware of the fact that the freedom of speech was one of most important democracy principles, and supported by governmental and non-governmental donors who arrived to Kosovo, media scene in Kosovo experienced development boom.

### ***Broadcasting legislation and regulations***

United Nations Interim Administration Mission in Kosovo (UNMIK) decided, after it took the administering of Kosovo, to declare applicable laws that were in force before 1999. However, after the strong protest, Special Representative of the Secretary General (SRSG), Bernard Kushner decided to reintroduce laws existing before Kosovo was striped of its autonomy in 1989. Due to the impossibility to apply such obsolete media laws, it was clear that something was needed to be done.

On June 17<sup>th</sup> 2000, SRSG Bernard Kushner announced Regulation no. 2000/36 on the licensing and regulation of the broadcast media in Kosovo, and Regulation no. 2000/37 on the code of conduct for the print media in Kosovo.

First one regulated the licensing procedures and establishment of the Temporary Media Commissioner (TMC) who was responsible for the development of independent and professional media. Second one, known as the Print Code of Conduct, prescribed that the print media shall be self-regulated. However, TMC was supposed to be competent until Press Council is established. The Press Council exists since August 2005 and now, print media are indeed self-regulated.

In July 2005, SRSG Soren Jessen Petersen promulgated the Law on Independent Media Commission and Broadcasting, which the Kosovo Parliament adopted in April. This Law has set in motion transition period for the Office of the Temporary Media Commissioner, which evolved into the Independent Media Commission (IMC), as the regulatory body. The IMC was projected to be a fully independent regulatory agency, and it is now in charge of the licensing and regulation of broadcast media in Kosovo.

Regarding the other laws and regulations important for the media, in August 11<sup>th</sup>, 2004, the Central Election Commissions of Kosovo issued Electoral Rule No.10/2004 entitled Media during the Electoral Campaign, which regulates media performance during electoral campaign from 22<sup>nd</sup> September until 22<sup>nd</sup> October 2004.

The Kosovo Parliament adopted a Law on Copyright on September 27. Nevertheless, in a race to complete the legislation before the end of the parliamentary mandate, the Law was adopted without holding public hearings. The TMC, broadcasters' association (AMPEK) and all three Kosovo-wide television stations filed a complaint.

### ***Licensing procedures***

Untill the end of 2003, the Temporary Media Commissioner (TMC) completed three rounds of licensing proceures. In December 2003, the office of TMC issued a Revised Policy on Radio and Television Licensing, preserving the current moratorium on granting of new licenses for radio and TV stations, but allowed limited exceptions for two categories of applications: (1) applications for areas currently not covered, or not served at all by local media, and (2) applications for multi-ethnic stations. The deadline for applications for a new license ended on 30 June 2004. The TMC received 59 applications for licenses in two above stated categories.

As of 25 April, the TMC has begun replacing existing licenses of all Kosovo radio and television stations with a package of new license documents. Noting that existing licenses were in many respects unclear or contradictory in the terms and conditions applicable to all broadcasters and failed to address a number of common issues, the TMC said the new licenses would bring broadcast regulation in Kosovo in line with general European practices. By the end of June 2005, almost 97 percent of the 112 Kosovo broadcasters signed a new license package prepared by the Office of the Temporary Media Commissioner (OTMC), which would replace existing licenses. For the first time a license was issued to the nationwide public broadcaster Radio Television Kosovo (RTK). The existing licensing regime was in many aspects unclear and even contradictory and the new one will brought broadcast regulation in Kosovo more in line with general European practice.

### ***Statute, mandate and composition of regulatory bodies***

According to the UNMIK's Regulation no. 2000/36 on the licensing and regulation of the broadcast media in Kosovo, and Regulation no. 2000/37 on the code of conduct for the print media in Kosovo, the Office of Temporary Media Commissioner was in charge of both broadcast and print media. Media Hearing Board and Media Appeals Board are two instances established by TMC to consider the complaints against media or any other dispute in this field. The local and international judges compose these Boards.

In September 2005, the Law on Independent Media Commission and Broadcasting entered into force, and TMC was substituted by Independent Media Commission (IMC). The IMC consists of three parts: a) the Council – composed by 7 members (two internationals and five domestic members), b) the Media Appeals Board - consisting of two Kosovo judges and one international judge, which hears appeals regarding the licensing and enforcement of the decisions made by the IMC Council and c) the Chief Executive and IMC staff of 24 people – which has the role of the secretariat of the IMC Council and Media Appeals Board. During September and October 2005, the Office of the TMC called the open competition for the “civil society” candidates to be nominated for the members of the Council of the Independent Media Commission. According to the Law on Independent Media Commission and Broadcasting, any person or organization with headquarters legally registered in Kosovo is accepted to submit nomination.

As for the print media, it was supposed to be self regulated from the beginning, even though the Office of the TMC was endorsed to regulate it at the start. In February 2004, the Office of the TMC and the OSCE Mission to Kosovo initiated the creation of a self-regulatory body for print media in Kosovo, following the B-H model of the Press Council. The Press Council of Kosovo was established in August 2005. On October 25, 2005, the Office of the TMC officially announced

that it would no longer accept complaints against print media in Kosovo, due to the establishment of the Press Council of Kosovo.

### ***Management of the public broadcaster and its independence***

The public broadcaster in Kosovo is the Radio Television of Kosovo established by UNMIK's Regulation No. 2001/13 on 15 June 2001. It has two Bodies in its composition: the Board of Directors and Broadcasting Operations. The Board of Directors has nine members, three internationals and six from Kosovo.

Adem Demaci, Chairman of the Board of Radio Television of Kosovo (RTK), resigned from his duty in a letter written to RTK on January 5<sup>th</sup>, 2004. On April 13<sup>th</sup>, the RTK Board of Directors elected Ms. Vjosa Dobruna as a new Chairman.

In April 2004, the Office of TMC issued an Inquiry of the Performance of Kosovo-Wide Television during March 2004 riots in Kosovo. In regard of RTK performance, the Office of TMC recommended: "RTK requires urgent and sustained expert guidance in news management, pertaining especially to coverage of domestic conflict situations, and more generally to introduce explanatory, issue-oriented journalism to its news coverage. An international adviser would also increase confidence in the fairness of election coverage. We therefore recommend the prompt return of a senior international adviser to RTK at least for the remainder of this year. This position requires an individual with an unassailable reputation for journalistic integrity and experience with public broadcasters in this region". Acknowledging this recommendation, in August 2004 RTK Board of Directors appointed Dr. Uros Lipuscek as an International consultant for news and current affairs to RTK. Selection of the candidate and financial support for this position is enabled from OSCE Mission to Kosovo.

### ***Balance between private and public broadcasters***

According to the every survey made, the public broadcaster RTK is the most trusted television in Kosovo, while the most watched television is RTV 21. Index Kosovo and Gallup International conducted a survey on audience ratings. The survey was organized from February 23 to March 1 2005, with 1,024 respondents. Survey results show that the most watched TV is RTV 21 with 51.2%, RTK follows with 29.1% and KTV with 12.5%. The public broadcaster (RTK) is still the most trusted media outlet. The results of the survey show that RTK has the trust of 49.4 percent of the audience, while two commercial broadcasters, RTV 21 and KTV, have 33.1 and 10.5 percent respectively.

According to the results of the survey, as a source of information for the audience, televisions are in the lead with 87.5%, newspapers have 6% and radio stations have 5.7%.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

In November 2003, RTK signed a contract with Kosovo Electric Corporation to collect the subscription fee. Starting from December 2003, Kosovo citizens are paying the amount of 3,5 Euro of monthly subscription fee for the purpose of funding the public broadcasters. But, in March 2005, Sean McGoldrick, the executive director for commercial affairs of Kosovo Electric Corporation (KEK) notified RTK that KEK wished to terminate the present contract with RTK for collecting the public broadcasting fee. However, KEK managers indicated that their notice of termination was intended to signal a desire to renegotiate certain parts of the contract.

According to the Electoral Rule, radio and television stations were permitted for the first time to sell time for paid political advertising during the electoral campaign 2004.

### ***Defamation and libel Law***

On July 6<sup>th</sup> 2003, the SRSG Michael Steiner promulgated the Provisional Criminal Code and Provisional Criminal Procedure Code of Kosovo. These Codes entered into force on April 6<sup>th</sup> 2004 and derogated former Yugoslav laws. Criminal Code provides special provisions on criminal liability for criminal offences committed through the media. Article 28 provides criminal liability of chief editors, publishers, printers or manufacturers, article 29 provides protection for the news sources, while the articles 187 and 188 are prescribing the insult and defamation as criminal offences, punishable up to three months imprisonment.

### ***Penal and civil code changes relating to defamation***

On March 1<sup>st</sup> 2005, the London-based media watchdog ARTICLE 19, Advocacy Training and Resource Centre (ATRC), and the Association of Professional Journalists of Kosovo (AGPK) wrote an open letter to the Kosovo Prime Minister in relation to the Provisional Criminal Code of Kosovo. The letter reads: “We understand that negotiations about the future status of Kosovo will begin in mid 2005 and that the outcome depends, among other things, on whether Kosovo has satisfied human rights standards set by the international community. We urge you to take this opportunity to address the issue of Kosovo’s criminal defamation provisions which breach international standards of freedom of expression”. There has been no public response from the Office of the Prime Minister.

### ***Level of fines, burden of proof and special protection of public figures***

The Provisional Criminal Code of Kosovo, which entered into force on 6 April 2004, contains penal sanctions of up to three months imprisonment for insult (Article 187) and defamation (Article 188).

### ***Freedom of access to information Law***

In June 2003, Kosovo Parliament adopted the Law on Access to Official Documents. Even though Serbs’ representatives in the Parliament submitted the motion challenging this law, in November 2003 SRSG office promulgated the same Law with some minor changes.

In January 2004, IrexProMedia and Professional Journalists Association of Kosovo organized a seminar for journalists on how to benefit from this law. It was stated at the seminar that the Law alone is not sufficient; the journalists should still conduct legal battles in order to gain full freedom of information.

## **FRY MACEDONIA**

### ***Introduction***

Main characteristic of current media sector in Macedonia, besides characteristics provided by transition, is rather fragmented media market which is split between Macedonian and Albanian language media.

### ***Broadcasting legislation and regulations***

At the beginning of this reporting period, i.e. November 2003, broadcast legislation rested on two laws – Law on broadcasting and Law on telecommunications. Both of them were considered obsolete, and it was clear that it was time to replace them. The drafting of the new Law on Broadcasting was entrusted to the Stability Pact's Media Task Force auspices, while the drafting of the Law on telecommunications was responsibility of the Ministry of transport, telecommunications and construction.

Followed by a lot of controversies, drafting and the enormously complicated adoption procedure of the Law on broadcasting lasted almost two years, and the law was finally adopted and came into force during the September and October 2005. A new Law on Electronic Communication entered this procedure in February 2005, and it has not been adopted yet.

It is to be expected that the implementation of the new Law on Broadcasting will improve whole media scene in Macedonia. The Law introduces changes in the process of elections of the Broadcasting Council's members and enhances its authorities. Changes of the regulations regarding the Public broadcasting service, MRTV are also estimated as adequate. The new Law introduces new procedure for the appointment of the management board of MRTV and substantial advertising limits, as well. Non-profit or community media is the third media segment that is established for the first time in Macedonia.

### ***Licensing procedures***

Despite the fact that the work on new legislation was in place, in January 2004 the Broadcasting Council of Macedonia (BCM) announced and started the process for granting four new licenses for national TV broadcasters. This information created a fierce debate. Besides the public broadcaster MRTV, two private national TV stations (SITEL and A1) opposed the idea very strongly, as well. International organizations have also objected to the issuing of four new licenses in the middle of a process of adoption of a new legal framework for the broadcast media.

Disregarding these objections, the Broadcasting Council of Macedonia announced in June 2004 its decision to grant three new national licenses, instead of the planned four. Two local TV stations from Skopje, TELMA and KANAL 5, and Mr. Vebi Velija (the owner of AL-SAT in Albania and a citizen of Macedonia) are recommended by the BCM to the Macedonian Government for a national

television broadcast license. Government accepted this recommendation in September 2004.

### ***Statute, mandate and composition of regulatory bodies***

The Broadcasting Council of Macedonia (BCM) is the sole regulatory body responsible for the broadcast media. Before the new Law on Broadcasting came into force, BCM's independence was considered only as declarative by critics.

With the implementation of the new Broadcasting Law, there will be changes in the composition of Broadcasting Council. The term of the actual members of the Council was terminated by new Law coming into force and the new members would be appointed according to the new principle of authorized nominators. The competencies of the BCM are enhanced and this body would be completely independent from the Government policy.

### ***Management of the public broadcaster and its independence***

Again in this sector of general media scene in Macedonia, situation before the new law on broadcasting was not satisfying at all. Appointment of the MRTV top management was always political, done by Parliament and changed after each election. Such practice was widely criticized and the last election campaign gave the best examples of such government's influence.

According to the report from March 13<sup>th</sup> 2005, MRTV dedicated 45% of the broadcast time to Government interests. The second report issued on 27 March showed little improvement and only 27% of time dedicated to Government representatives. According to the Macedonian Albanian-language weekly "Loby", MRTV programs determine the fate of this broadcasting house, which is not even remotely a public service. In addition to its poor financial and technical situation, the broadcaster is particularly biased in the election period, offering favorable media coverage of those holding political power.

Implementation of new Law on broadcasting will reflect changes in the management of the public broadcaster. Law prescribes that the Independent council of MRTV will consist of 25 members, appointed according to the new principle of authorized nominators from civil society. It is expected that this will increase editorial independence of the public broadcaster.

### ***Balance between private and public broadcasters***

According to the data from September 2004, there are 6 TV broadcasters in Macedonia; public broadcaster MRTV (with three channels), and 5 private broadcasters: A1, SITEL, KANAL 5, TELMA and Vebi Velija.

Regarding the Government's approval of the three new licenses, the Macedonian Albanians, the biggest ethnic group in Macedonia, stated that they believed there were too many 'Macedonian' broadcasters in comparison to Albanian broadcasters. Currently, the state-run, public Macedonian Radio and Television (RTVM) has three channels - two in Macedonian and one in the languages of other ethnic communities (Albanian, Turkish and Serbian). There are also four private TV stations in Macedonian language and one in Albanian.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

One of the many drafts of the new Law on Broadcasting prescribed that the advertising on MRTV, the public broadcaster, should be eliminated, or at least reduced. MRTV strongly objected to the provision. Nevertheless, having in mind the primary purpose of public broadcaster, final version of the Law contains such limit. Advertising is forbidden on MRTV during the prime-time, i.e. between 19.00 and 22.00 hours.

Another issue regarding the advertising and the MRTV raised a lot of controversies, even came to the discussion in the Macedonian Parliament. According to the one of the MRTV's self-regulating decision from July 2004, MRTV journalists are encouraged to look after commercial and advertising opportunities. Journalists are paid a commission for their commercial services. Such behavior is considered as unethical pursuant to the Code of Ethics of Macedonian Journalists. However, officials at MRTV reiterate that they consider such practices both legal and ethical.

### ***Defamation and libel Law***

In Macedonia defamation is subjected to both penal and civil legislation. In late 2003, the Government proposed even harsher punishments, but the initiative was abandoned under the pressure of the Association of Journalists of Macedonia, which publicly requested decriminalization of libel and defamation. The fact that defamation is still a criminal offence in many Western countries was often used by the Government officials as an argument against the decriminalization.

In March 2004, the Parliament non-transparently adopted the new version of the Penal Code that was tabled only a week earlier. Defamation and libel were not decriminalized.

### ***Level of fines, burden of proof and special protection of public figures***

According to the current legislation in Macedonia, defamation is both a criminal offence, punishable by a prison sentence, and ground for a damage claim in a civil case.

### ***Freedom of access to information Law***

For several years now, non-government organizations have been working on the Access to Information Law. After several drafts and approval of the Government and the Parliament, but still not adopted, it is obvious that the Law will have to wait some better times.

## **MOLDOVA**

### ***Introduction***

Moldova is the country in which the media are not understood in market terms. Media are in service of the ruling majority in the country - the Communist party. What is even more considerable is that there are no significant efforts to change such a situation. Ruling Communist Party does not permit any changes.

### ***Broadcasting legislation and regulations***

The Law on the National Public Broadcaster was adopted in the summer of 2002, but its implementation was delayed. Firstly, this Law meant transformation from state owned and editorially pro-state oriented and bias programs into the genuine public broadcaster, completely independent in its editorial policy. Even though it was announced that this process should start immediately after the new Law was adopted, it can not be said that there are any significant changes. On the contrary, editorial policy and composition of Council of Observers established by the Law on the Local Public Broadcasting Institution offers a bleak media picture, i.e., indicates strong state and political control over public broadcasters.

In November 2003, Moldovan Parliament adopted the amendments to the Law on the National Public Broadcaster, without offering clear and strong arguments for it. These amendments prescribed liquidation of the state-run company Tele Radio Moldova. All staff members were to be laid off, which the authorities claimed to be a necessary pre-requisite for transformation of the company into a public institution. Opposition politicians criticized the decision to liquidate the company, claiming it was an attempt to get rid of "disloyal" journalists. Problem of Tele Radio Moldova got rather large proportions; from the protest of the laid-off staff, to the street rallies in August 2004.

The Law which started a lot of controversies and protests is, however, the Law on the Local Public Broadcasting Institution (LPBI), adopted in December 2003, only two weeks after being proposed. Even though the media development organizations called on President Vladimir Voronin not to promulgate the Law, it came into force in early 2004. Moldova Media Working Group stated that “such an important Law, given the opportunity it provides for the development of local public broadcasting, needed more time not only to be developed but also to be subjected to public discussions in a transparent manner, with the aim of improving it and assuring its functionality”. The Law also limits participation of civil society representatives in bodies monitoring the activity of public broadcasting, and does not satisfy the needs of local communities; it also fails to regulate relationship between public institutions and their founders and does not provide for financial independence of broadcasters, allowing the authorities to control their management bodies.

### ***Statute, mandate and composition of regulatory bodies***

Moldovan state level regulatory body for the broadcast media is called the Audiovisual Coordinating Council (CCA). CCA acts upon the legal framework set by the Audiovisual Law. Even so, many complaints about fairness and transparency were filed after the licenses were granted, and are still being filed, challenging its objectivity and impartiality. In February 2004, CCA revoked the broadcast licenses of the Antena C Radio and Euro TV on the grounds that they had not been registered as legal entities and functioned under the auspices of the city council public relations department. Many observers regarded this as an attempt to gag opposition media in the run-up to the general elections of 2005.

In December 2003, Law on the Local Public Broadcasting Institution (LPBI) was adopted. According to the Article 6 of the Law, the Local Public Broadcasting Institution “has to reflect regularly, impartially and objectively the activity of the local public authorities and the institutions of local public administration”. The Law states that the Council of Observers is the Local Public Broadcasting

Institution's autonomous body, empowered to monitor the way the Local Public Broadcasting Institution follows legislation and its bylaw, should ensure editorial independence of the institution and citizens' right to complete, truthful and operative information. The Council of Observers will be nominated for the 4 year term and will have between 7 members, in case of municipality, and 5 members, in case of a small city or a village.

### ***Management of the public broadcaster and its independence***

The Council of Observers is in charge of appointing and dismissing the General Director of the Moldovan public broadcaster. It is also authorized to force certain programs, in simple words, to edit the program. The Observers Council consists of 15 members, nominated for 4 years term. Members are proposed by the Government, Parliament, and Presidency, 2 each, along with those delegated by the Superior Magistrates' Council, the staff of Tele Radio Moldova, the Moldovan trade unions confederation, arts and writers unions, media development organizations, veterans' associations, as well as representatives of cultural and national minority groups.

Even though the provision, that gave the Parliament the mandate to confirm the appointment of the members of the Observers Council, was excluded, there are still certain indications that the authorities influence the selection of the majority of the Council members and its activities. The Observers Council exercises broadly its competence to remove and appoint the chiefs of public broadcasters. In February 2004, the Observers Council removed the director of the public broadcasting company Tele Radio Moldova, Artur Efremov, and appointed the former National Radio director Ilie Telescu. Five other candidates for the position had challenged the appointment. In April 2004, the Observers Council elected the 60-year-old Victor Tabirta as a new director of TV Moldova 1, whereas Sergiu Batog, 27 years old, his junior, got the job as head of Moldovan National Radio. Tabirta has been working at the national broadcaster since 1966. Batog has held a

variety of posts at Tele Radio, the state news agency Moldpres, and, most recently, at the press office of Moldovan president Vladimir Voronin.

As for the impartiality of the public broadcaster, monitoring of the Public Broadcaster Tele Radio Moldova, published in December 2004 by the Independent Journalism Centre, showed devastating bias in favour of the ruling parties. While the authorities and their representatives were referred to 32 times a day, the opposition was present twice a day. The situation in public radio is even more imbalanced: 109 times versus 0.7 times in average. Experts of the Independent Journalism Centre said that transformation did not change the imbalance in the broadcaster's programming and that, two years after the transformation to the public service broadcaster has started, the company still had not met the criteria necessary for the functioning of a public broadcaster.

Recognizing this situation and protesting against their inability to deal with the situation and the suppression of freedoms they were witnessing, by the end of 2004, five members of the Observers Council nominated by the parliamentary opposition, resigned. "It seems like it is known in advance what or for whom the Council will vote. What upsets me is the fact that the Observers Council is mimicking democratic instruments" said one of the resigning members of the Observers Council.

In 2005, the independency of Tele Radio Moldova improved, but only a little; it has not yet become an authentic public broadcaster, in particular with respect to its editorial policy and programming content requirements. Namely, burning social issues, such as poverty, high unemployment rates, child care, etc., largely remained undercover, but prime-times news mostly relates to high-ranking politicians.

### ***Balance between private and public broadcasters***

Mass media were not included in the process of privatization characteristic for the whole commercial sector in the post communist period in Moldova. Not a single periodical or broadcast outlet that existed before 1990 was privatized. Most of them disappeared, and those who survived are still state owned.

In the end of July 2005, at the round table "Privatization of State Media", which was organized by the Association of Independent Press (API) in partnership with the Independent Journalism Center (IJC), majority of participants called for the privatization of local state media. In a declaration made public at the end of discussions, 22 signatories called on the authorities to stop preferential treatment of government-funded publications. The declaration states that the competition between independent and state-owned periodicals is unfair. The authorities routinely issue ordinances to public bodies for subscription to government-funded print media and channel advertising towards these periodicals. Private outlets, on the other hand, often face pressure from local authorities and their journalists are openly harassed. The declaration signatories welcomed a decision of the central Government to withdraw as founder of "Nezavisimaia Moldova" and "Moldova suverana" national newspapers and called on the authorities to adopt a Law on privatization of local media that would ensure equal conditions for professional activity of all outlets. Currently, ca. 30 print outlets are owned or funded by the state.

***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

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***Defamation and libel Law***

The Penal Code which stipulated a prison term of up to five years for libel was passed and in effect since 2003. On March 30<sup>th</sup>, 2004, at the meeting held with

the media managers President Vladimir Voronin promised to propose an amendment to the country's Penal Code that would decriminalize libel.

Only a month after, in April 2004, Moldovan Members of the Parliament unanimously voted to exclude article 170 from the country's Penal Code which stipulated a prison term of up to five years for libel.

Although the libel was decriminalized, Civil Code, which came into effect in June 2003, allows for any amount of money to be sought for "moral damages." Various media watchdog groups have called on Voronin to come up with an amendment that would set a limit to compensation for moral damages, since the absence of a ceiling on pecuniary compensations for moral damages curtails freedom of expression and could cause many media organizations to go bankrupt.

In July 2004, President Vladimir Voronin promised to propose an amendment to the country's Civil Code that would set a ceiling on pecuniary compensations for moral damages. This statement was given just at the moment when two opposition newspapers were ordered to pay heavy fines for alleged libel and two access-to-information cases brought by journalists were dismissed. Nevertheless, after the elections in 2005 situation was still the same. Some of the public assessed this only as a pre-election campaign of the Voronin, since after the election he forgot what he had promised.

### ***Level of fines, burden of proof and special protection of public figures***

Defamation/libel is decriminalized. Liability still exists in Civil Code, which prescribes no ceiling on pecuniary compensations that could be awarded for moral damages.

### ***Freedom of access to information Law***

The Law on Access to Public Information was adopted in 2000, but its implementation remains a serious problem in Moldova. Despite many seminars and workshops organized by NGOs and media development organizations, no positive changes were made. Work on the new draft, which aims to replace the current Law, is underway.

In July 2005, eleven media development organizations signed a declaration criticizing the draft elaborated by the Ministry of Information Development. According to the declaration signatories, the draft was in contravention of the country's constitution, as well as with most of international legal acts. It "sanctions the maximum level of concealment of information of public interest," and would eventually limit freedom of expression and stimulate corruption among authorities. The proposed Law is too general, allows for loose interpretation of its provisions, and absolves the authorities of any concrete responsibilities to provide information to the public, the declaration says. Of special concern is the notion of "information owner" that the draft introduces. The declaration signatories have called on the authorities to work on boosting the level of institutional transparency rather than to try to "monopolize official information." Up till present, it has not yet been decided whether the draft would be changed, or it would go to the Parliament in present version.

## **MONTENEGRO**

### ***Introduction***

From only one daily newspaper, one state-run radio and one influential state-run TV channel in 1990, the number of media outlets has significantly increased in past fifteen years.

### ***Broadcasting legislation and regulations***

At the very end of 2002, the Montenegrin Parliament adopted three laws regulating the media sector: the Media Law, the Broadcasting Law and the Law on Transformation of State Television into a Public Service Television. The laws were prepared in co-operation with the Council of Europe and OSCE, and in line with the European media standards.

However, the question still remains how to bridge the gap between media legislation and regulations, and its strict implementation.

During this reporting period there were no significant changes regarding the adopted media laws, apart from the decisions made by the Broadcasting Agency, of which one of the most progressing was the final version of programming standards prepared in April 2005. These standards are prepared by Broadcasting Agency's experts and also include advertising regulations, as well as quality of programming and rules protecting the interest of viewers.

### ***Licensing procedures***

At the beginning of 2004, the Broadcasting Agency announced that both new Frequency plan and Broadcasting Strategy were being prepared. Both documents were to serve as a basis for the tender for frequency allocation.

In April 2004, the Broadcasting Agency published a Draft on Broadcasting Strategy and organized a public debate about it. The issue was how to deal with influence of Serbian media over Montenegrin media market. The IREX expertise has criticized the politicized approach of the debate instead of emphasizing cultural and socio-economic interests of the citizens of Montenegro.

Two months later, in June, the Broadcasting Agency presented the Draft of the frequency plan, produced by domestic experts in co-operation with foreign media experts. The Plan sets up basic criteria for allocation and conditions for the use of frequencies, as well as specific allocation of frequency ranges by all radio services and activities. It also considered introduction of the new digital technologies.

In October the Broadcasting Agency brought a number of acts regulating procedures for license application. And in December, the official tender was announced.

By the expiry date for the submission of applications, in May 2005, 41 radio and 16 TV stations applied. There are 11 new radio stations and three new TV stations. Two TV applicants were not from Montenegro, TV Pink from Serbia and TV Adriatik from Split in Croatia, and Deutsche Welle and RFI among applicants for radio licenses. Final decision was made in June 2005, and all the applicants were granted licenses, except Radio Free Montenegro, which was denied a license due to a failure to submit all of the required documents.

### ***Statute, mandate and composition of regulatory bodies***

The Broadcasting Agency is the independent regulatory body in Montenegro. Governing bodies of Broadcasting Agency are Council and Director.

The Broadcasting Council consists of five members, nominated by Government, University, broadcasting association, NGOs for human rights and media. Members are voted by the Parliament, and appointed for five years term.

Members of the Council appoint the Director of the Broadcasting Agency after the open competition. The Director is appointed for the period of four years and he is allowed to serve consecutive terms.

### ***Management of the public broadcaster and its independence***

Regardless of the fact that the Law on Transformation of State Television into a Public Service Television was passed in late 2002, it was not until February 2004 that Radio Televizija Crne Gore (RTCG), the public broadcaster, had successfully completed the normative changes by putting all relevant bodies in place: the RTCG Council, Management Board and Director General. In September 2004, the management adopted Rules of procedures with regards to the internal organization of RTCG. It was regarded as an important step to the final transformation of Montenegrin public broadcaster, starting the organizational reform by streamlining and cutting costs. Shortly after, in May 2005, the management of RTCG announced a process of reduction of work posts, based on a new systematization made by international experts. Systematization of working posts assessed that more than 300 out of 1,000 employees would leave their posts.

Ostensible editorial independence of the RTCG is widely criticized by the society, especially by various NGO's and other organizations established with the purpose of monitoring the activities of the Public Broadcasting Service, such as Friends of the Public Service Broadcasting RTCG. This organization publishes reports on RTCG operations on regular bases.

Reports show that the RTCG is not reporting in a professional and balanced manner; further, that the reporting is bias and pro-Government oriented. Advertisement in the eve at the expense of the prime time news, which timing has been reduced, is also assessed as not professional. Friends of PSB also stated in their report that financing from the state budget is incorrect and that there is a

lack of procedures in these cases, and that even though 6% of Albanians are paying the RTV fee, RTCG is not producing enough program for minorities and that it is not playing a fair role by trying to get money for that program from the state budget.

### ***Balance between private and public broadcasters***

According to the Law, 10 % of the subscription fee, i.e. TV tax, goes to private broadcasters. The Broadcasting Agency is authorized to decide on allocation of these funds.

In May 2004, the Broadcasting Agency published criteria for distributing funds derived from TV tax, collected via telephone bills, to the private broadcasters, and officially opened public competition for these funds.

A whole year after, the Broadcasting Agency brought a final decision and allocated the first installments of the money to the commercial broadcasters.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

National public broadcaster RTCG is in catastrophic financial situation, experiencing huge financial crisis and claiming to have strong financial problems (does not have even enough money for salaries). They claim that incomes from TV taxes that are paid through phone bills by all Montenegrin citizens, is not even close to what is really needed. According to the data from July 2004, announced by the General Director Radovan Miljanic, RTCG has reached a deficit of 7 million euros. It became obvious that the RTCG cannot survive this transition period from state-like to a genuine public broadcaster without stronger financial support by the state.

Management of the RTCG blames the state for this situation. By constantly reducing funds from the budget and by irregular inflow of money coming from RTV subscription fee, the Government brought RTCG to the brink of survival. Additionally, the ruling of the Montenegrin Constitutional Court, from June 2004, relates to the model of collection of RTV subscription fee via phone bills as unconstitutional, will even worsen financial situation of RTCG.

In June 2005, the Broadcasting Agency adopted a new regulation dealing with advertising on both public and commercial broadcasters. Advertisements are limited to 9 minutes per one hour for public broadcasters and 12 minutes for commercial stations. It is also prohibited to broadcast scenes of explicit sex, pornography, violence and hate inspired speech.

### ***Defamation and libel Law***

Libel has been decriminalized in Montenegrin legislation. On December 17<sup>th</sup>, 2003, Montenegrin Parliament adopted the new Penal Code of Montenegro. Appendix of this law in its draft version, dealing with criminal acts against honor and reputation (Chapter 17), was prescribing imprisonment sentences (Article 196) ranging from three months to three years. However, recommendations by Brussels and Strasbourg were accepted and acts of libel and defamation were decriminalized, i.e., harmonized with the European human rights standards. Only financial penalties remained in place for libel and defamation. Many journalists and media experts are concerned over the financial penalties, claiming that it would have chilling effects.

The Association of Independent Electronic Media, (UNEM) has appointed a pool of lawyers assigned to protect journalists and media in potential court cases dealing with defamation and libel issues.

### ***Level of fines, burden of proof and special protection of public figures***

The Montenegrin Media Institute recently published a new research dealing with defamation and libel issues in the country. In this research, entitled “Defamation and Media”, the opening remarks state that despite defamation being decriminalized in Montenegro, it is still a criminal offense in effect, and journalists may face huge fines. There are currently 13 cases for libel and defamation brought before Montenegrin courts, while 95 are pending.

Interestingly, out of those 13, there are no broadcasters, but only print media: five cases against the daily Dan, three cases against CKL, (Crnogorski knjizevni list, or Montenegrin Writers Paper), three cases against the daily Vijesti, and two cases against the weekly Monitor.

The average fine for defamation in previous cases was 8,000 euros, and the average time for processing cases was 124 days, or four months.

### ***Freedom of access to information Law***

In February 2004, the process of drafting the Freedom of Access to Information Law, initiated by the Association of Young Journalists in the Stability Pact Media Working Group, was completed. The draft Law was submitted to the Government in March and it was promised to be adopted soon.

London-based Organization Article 19 and Montenegrin Helsinki Committee commented the draft law, saying that it represented positive changes in the media law developments in the Montenegro, but at the same time voiced their deep concern about the scope of exceptions which specified the reasons to legitimately deny access to information and potential for press freedom abuses, in the context of possible broad interpretation and discretionary like application. Organizations proposed six amendments to the Free Access to Information Law before it entered the parliamentary procedure. The crucial point related to the list

of exemptions, which should exclude any possibility that these could be extended by other laws.

In September 2004, the working group that was drafting the Law accepted these suggestions, and after consultations with Secretary of Legislation and Ministry of Justice, sent the official answers to the Government. However, the Ministry of Culture made further changes related to the definition of exceptions. Most members of the working group that prepared the Law regretted the changes and tried to convince the Ministry to revert to the original version. Some members of the working group even considered the possibility for civil society to submit its own version of the draft to the Parliament, by collecting 6,000 signatures from citizens.

The current draft, changed by the Ministry of Culture, fails to provide a narrow and well defined exemption to the right to access to information. Also, it does not adequately formulate a harm test for each exemption, and it omits the public interest override.

## **ROMANIA**

### ***Introduction***

Amazing fact that there are currently more than 1,500 publications in Romania, leads to the false conclusion that, due to the variety of sources, reliable informing is guaranteed. As the independent media analysts say, the only problem is that out of those 1,500, you can count the reliable ones on the fingers of one hand.

### ***Broadcasting legislation and regulations***

Relevant broadcasting laws have not been changed during this reporting period, apart from the recommendations and regulations passed by the National Broadcast Council.

In December 2003, The National Broadcast Council (NBC) issued the decision which forbade certain categories of people, representatives of the public or presidential administration, people holding important positions in a political party or those designated by the parties as candidates, as well as people who had publicly announced their intention to run in the next elections, to work as radio or TV producers or hosts.

In September 2004, the National Broadcast Council adopted a decision that regulated the radio programs carried by local stations. According to this decision, starting from January 1, 2005, radio stations were allowed to carry programs lasting at least 6 hours per day.

The National Broadcast Council was very active during the electoral campaign, carefully watching the electoral materials which this time were broadcast free of charge. The NBC fined several radio and TV stations for not complying with their obligations during election campaigns. They prohibited any kind of entertainment programming with electoral connotations immediately before the

elections. In March 2004, the NBC also fined Prima TV Channel with 12.500 euros for the alleged pornographic images broadcast during the Big Brother Reality Show.

After the electoral campaign it was more than obvious that the legislation which regulated the activities of public radio and television should be amended. Three drafts in total were submitted to the Legislation Committee; two of them were withdrawn and the third one, submitted by the Union of the Hungarians in Romania, is at the moment under discussion in the Senate.

### ***Licensing procedures***

According to the amendments to the Broadcasting Law, instead of the independent regulatory body, the Ministry of Telecommunications became competent for the allocation of the frequencies and licensing procedures. At the end 2003, in November, bids for frequencies were resumed and licenses were awarded. Out of 109 applications for TV licenses, 7 companies received 19 licenses. Out of approximately 282 applications for radio licenses, 15 companies received 22 licenses.

Bids were contested by some bidders and a member of the National Broadcast Council, Mr. Rasvan Popescu.

In April 2004, according to the decision No.80/27, the National Broadcast Council extended the number of licenses for low power radio and TV stations in about 14 cities and towns.

### ***Independent regulatory body***

Under the Law, the independent regulatory body which regulates and monitors the broadcasting scene is the National Broadcast Council.

The National Broadcast Council appears to be truly independent and uninfluenced by those in power. Its independence was confirmed during the elections when NBC criticized the Public broadcaster for supporting the party in power at the time. Moreover, NBC suggested that the legislation regarding the two public broadcasting institutions should be amended, so as to avoid any political interference that might influence the activity of these institutions in the future.

### ***Management of the public broadcaster and its independence***

Romanian state owned media are in the process of transformation.

As in every country in transition, the most reliable test of the public broadcasting service's independence is the election campaign coverage. After the elections in November 2004, pressure and accusation of bias and politically motivated censorship on both national radio and TV were so strong that in March 2005 special parliamentary ad hoc Commission was formed to investigate these accusations. The president of the public television protested against the setting up of the Commission, claiming at the time that its only aim was to dismiss him. Shortly after, he resigned.

In April, the Investigative Commission concluded the hearings. More than 100 people from the public radio and television testified before the Commission in order to expose the mechanisms of political influence on the editorial content of programs. The investigation also touched upon the use of funds of public media institutions. However, there are serious doubts whether the activity of the Commission can have any results, since some of its members are exactly those people who have used and abused these mechanisms and they have done everything in their power to discredit the people testifying. The report was sent to the Parliament, but no official comments were available.

Even though the editorial independence is formally guaranteed by the Law, the Parliament found the way to exercise pressure over the Management Board of the public broadcasters. In May 2005, since the Parliament rejected the annual reports of both National Public Television and National Radio, legislation allowed the Parliament to appoint new Boards of the public broadcasters. This was assessed by the public as a way to deal with the Management accused for supporting the former government during the election campaign.

In July 2005, at the invitation of the chief of the Mass Media and Culture Commission of the Deputy Chamber, about forty members of the Parliament, journalists and NGO representatives attended a debate on the new draft Law regarding the public broadcaster. As a part of the process aimed at reforming the national television, a contest for the position of news director was held in August. The winner is a reputed journalist with solid experience with national and international media outlets.

### ***Balance between private and public broadcasters***

Public television in Romania consists of four channels: TVR 1 and TVR 2, smaller TV Cultural and TVR international broadcasted via satellite. By the end of 2003, 6 privately owned TV stations emerged on the Romanian media scene. At the moment, two public stations, RTV 1 and 2, and four private are competing for the national TV market.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

Advertising limit in the TV programs is set as maximum of 12 minutes per one hour of the broadcast program.

Monitoring the preparations for the electoral campaign, the European Commission informed the Romanian National Broadcast Council that electoral

advertising could not be considered as 'advertisements of public interest' which can be broadcast free of charge. Political advertising should comply with the general regulations regarding advertising and should not exceed 12 minutes per hour.

By analyzing the nationwide television coverage, we get rather different results in rural and urban areas. Private TV stations usually reach between 50 and 68%, which can hardly be compared with the 99% coverage of the public station RTV 1. Regardless of such a wide coverage, two public programs have audience share of 36% in total; however, in urban areas they have only half of that.

### ***Defamation and libel Law***

In July 2004, the President of Romania promulgated the new Penal Code, previously discussed for more than six months in the Parliament, Senate and Legislation Committee. It was to enter into force in one year time.

The new Penal Code does not prescribe the insult as a criminal act. It maintains, however, the libel as a crime, punishable by fine. However, following an amendment of the opposition, the minimum level of the fine has been reduced to approximately 25 euros. The initial minimum level was 50 euros. The maximum fine is approximately 3000 euros.

In September 2005, new debate on the Penal Code emerged in the Parliament. Surprisingly enough, among many others, the amendment of the Minister of Justice to fully decriminalize defamation was rejected.

### ***Freedom of access to information Law***

Free Access to Information Law was adopted in October 2001. Numerous requests were made, officials were being trained, but the implementation of the Free Access to Information Law is still to be improved.

Pro Democracy Association, an NGO, publishes reports on annual basis on the implementation of Romanian FOI Law.

Improvements in implementation of the FOI Law were rather visible after the elections in November 2004, for which one court case could serve as an example, at the time seen as a huge step forward in implementation of the Law.

In August 2004, Center for independent journalism (CIJ) filed a request of information based on the Romanian FOI Law requiring the government to reveal the list of government advertising contracts. The request followed the publication of a memo issued by the Government showing that state institutions were not allowed to sign any advertising agreements without prior approval of the Prime Minister. CIJ also requested the minutes of the Government meeting that reached the decision. No actual document and information was released following the request. CIJ filed also an administrative complaint and sued the Government for not releasing the required information. CIJ won the case against the Government. The Bucharest Municipal Court decided at the first hearing, in the absence of the Government's representatives. Government appealed. However, On March 14, the new Government and CIJ officially announced that the court case had ended. The Government agreed to release the information regarding the advertising from the public money.

In May 2005, a draft aiming to amend the existing Free Access to Information Law entered the legislation procedure. It is currently under debate.

## **SERBIA**

### ***Introduction***

Legal framework for the operation of media has been completely changed since the ousting of Milosevic's regime in October 2000. However, the new legal framework is yet to be fully implemented.

### ***Broadcasting legislation and regulations***

The Serbian Broadcasting Law that was passed in July 2002, has been amended two times already; first time in August 2004, in order to solve the huge controversy over the disputed appointments of three members of the Broadcast Council, and a year later, when the deadline for privatization of local public broadcasters was extended, state controlled RTS was allowed to collect subscription prior to its transformation into a public service broadcaster, and the current Broadcast Council members' term of office extended.

The new Broadcast Council, appointed in 2005, initiated its work on the Broadcasting Development Strategy and other regulations required for the public tenders for broadcasting licenses in the second half of the year.

### ***Licensing procedures***

Licensing procedure in Serbia is regulated by the Broadcasting Law, which was passed in 2002, but has not been implemented still. According to the Broadcasting Law, the Republic Broadcast Agency is competent to issue a license for broadcasting program via terrestrial, cable or satellite transmission, either digital or analogue. The only exceptions are the republic and provincial broadcasting institutions that are established by the Law, which are enabled to broadcast its program on the entire territory of the Republic of Serbia *ex lege*. The Broadcast Agency of Republic of Serbia is yet to pass necessary by-laws that

should contain technical, organizational and programming terms for program production and broadcasting which the applicants on the tenders are to fulfill. In addition to this, the Republic Broadcast Agency is yet to pass a Broadcast Development Strategy in the Republic of Serbia, wherein it shall determine the number and types of broadcasters, proposed service areas and other parameters for which a public tender shall be called.

In August 2005, Chairman of the Broadcast Agency announced that the Agency was preparing the Draft Broadcast Development Strategy, which should be sent to the Government for adoption after public discussion. According to the Draft, there would be five commercial TV networks in Serbia that could get national coverage, beside the first and second channels of the future public service. The number of local broadcasters, currently 585 of them, would be "cut down by more than half".

### ***Statute, mandate and composition of regulatory bodies***

The Broadcast Council of Republic of Serbia consists of nine members, voted by the Parliament. Members of the Council are nominated by a key; the Parliament's Culture and Information Committee nominates three members, Parliament of the Province of Vojvodina, rectors of the universities, religious communities, non-governmental organizations and professional associations nominate one member, respectively. The ninth member, who has to live and work in the Province of Kosovo, is nominated by eight appointed Council members.

After the appointment of the Council in April 2003, the contested appointment of three members and subsequent resignation of two others, in February 2005, the Serbian Parliament voted a new composition of the Broadcast Council. Few months later, Nenad Cekic, whose appointment was disputed in 2003, was elected Chairman of the Council and Aleksandar Vasic his deputy.

In August 2005, the Serbian Parliament passed the amendments to the Broadcasting Law. Adopted changes extended the terms of office of already appointed members of the Broadcast Council and enabled members to serve consecutive terms. Current Broadcast Agency Council members nominated by the Parliament's Culture and Information would have 6-year terms, members nominated by the Vojvodina Parliament, universities and churches 5-year terms, while representatives of non-governmental organizations and professional associations 4-year terms.

The second independent regulator with competences over broadcasting is the Telecommunications Agency. The Telecommunications Agency co-operates with the Broadcast Council in establishing the terms and conditions and the ways of using broadcast frequencies. The Broadcast Council conducts a public tender for broadcast licenses and grants broadcast licenses on the basis of the Assignment Plan which should be made by the Telecommunications Agency and which contains the main technical parameters (transmitter locations, effective radiated power, service zone, etc.).

Members of the Telecommunications Agency Managing Board were appointed in May 2005 to the Parliament, and demanded its treatment under urgent procedure. The Government proposed Jovan Radunovic, Ph.D. in electronics and telecommunications, as the Chairman, while the other proposed members include Grozdan Petrovic, Ph.D. in electronics and telecommunications; Milenko Ostojic, Ph.D. in electronics; Zoran Arsic, Ph.D. in law; and Vlada Milicevic, Ph.D. in economy.

### ***Management of the public broadcaster and its independence***

In March 2004, the Serbian Government dismissed Aleksandar Crkvenjakov and appointed Aleksandar Tijanic as General Director of Radio Television of Serbia. Prior to this decision, Culture Minister Dragan Kojadinovic criticized RTS over the coverage of the March 2004 crisis on Kosovo. Tijanic's appointment was

made pursuant to the Law on Public Enterprises, although according to the Broadcasting Law, the competent body for the appointment was the Managing Board of the public broadcaster. The old Managing Board, appointed by the former Government, resigned in protest over Tijanic's appointment. Former chairman of the Managing Board said that the least Managing Board expected was a public competition to be launched for the vacancy, and that even though appointment might not be in breach of the Law on Public Enterprises it certainly went against the RTS by-laws.

In April, the Serbian Government appointed a new Managing Board of Radio Television of Serbia. According to the statement issued by the Government, the newly appointed Managing Board was an interim solution that would hold the tenure until the new Broadcast Council appointed new Managing Board in accordance with the Broadcasting Law.

In August 2005, the Serbian Parliament amended the Broadcasting Law, obliging the Government to found a Transition Fund in order to support the operations of RTS until the expiration of the term for its transformation into a public service, which was extended to April 30<sup>th</sup>, 2006.

After the awaited transformation into two public service broadcasters, republican and provincial, which would cover the Province of Vojvodina, both broadcasters would have managing boards with 9 members, appointed by the Broadcast Council.

### ***Balance between private and public broadcasters***

According to the Article 96 of the Broadcasting Law, local public radio and/or television stations, set up by municipal or city assemblies, are obliged to privatize within four years from the day the Broadcasting Law came into force, i.e. in 2006. Until that moment, as long as they have the status of a public company, they are obliged to comply with provisions of the Law which relate to special obligations of

a public service broadcaster with respect to program production and broadcasting.

In August 2004, the rules for the privatization of the radio and television stations operated by local and regional communities have been passed by the Culture and Information Minister Dragan Kojadinovic. However, the Privatization Agency stated that was impossible to conduct the privatization pursuant to such rules, and required a new set of rules to be adopted. This was finally done in August 2005. Also in August, the Serbian Parliament passed the amended Broadcasting Law in which the deadline for privatization was moved to December 31<sup>st</sup>, 2007.

In December 2004, the Council of Ministers of Serbia and Montenegro adopted a Draft Agreement in order to coordinate the operation and status of existing media owned by the State Union. According to the Draft Agreement, the Council of Ministers decides on the change of status and change of ownership of state capital within the mentioned media, while the procedure of changing the status and ownership will be implemented in compliance with regulations of the Member State that holds the headquarters of such media on its territory. Revenue raised through the privatization process will be divided on a ratio of 93.3 percent to Serbia and 6.7 percent to Montenegro.

As for the print media, its privatization deadline expired in April 2005, with literally only one out of a number of print media being privatized. The Parliament extended the privatization deadline until April 2006.

### ***Funding issues /advertising limits, remit of the public broadcaster or audience reach/***

According to the Amended Broadcasting Law, Radio Television of Serbia (RTS) is entitled to collect obligatory subscription fee, even before its transformation into a public service broadcaster. Subscription fee in amount of 300 dinars (approximately 3.5 euros) will be collected together with the power bills, starting from November for legal entities, and December 2005 for households.

In September 2005, the Serbian Parliament adopted the Law on Advertising. Advertising limits are set at 20 % of the total broadcast program and maximum of 12 minutes per hour for the commercial TV stations, while the public broadcasting service is entitled to half of that, i.e. 10 % of the total broadcast program and maximum of 6 minutes per hour.

### ***Defamation and libel Law***

First Draft of the Penal Code adopted by the Serbian Government in March 2005, similarly to the existing legislation at the time, envisaged criminal libel and defamation, with up to three year prison sentences. The Government officials and lawyers that were drafting the Code stated that despite requests made by journalist and media associations, complete decriminalization was not an option. However, the Serbian Justice Minister Zoran Stojkovic kept his promise to propose an amendment to the Parliament which would take out imprisonment as an option for punishment for defamation and insult. Finally in September 2005, the Serbian Parliament passed new Penal Code in which defamation is not longer punishable by a prison sentence. New Penal Code prescribes only fines, but in rather huge amounts. Provisions of the new Code will be applicable as of January 1, 2006.

### ***Level of fines, burden of proof and special protection of public figures***

New Penal Code of Republic of Serbia prescribes only fines for criminal acts of insult and slander, but in rather huge amounts.

Insult is punishable by fine from approx. 460 EUR up to 5.200 EUR, while the slander is punishable by fine from 1.150 EUR up to 11.500 EUR.

Both insult and slander are prosecuted only by a private charge.

### ***Freedom of access to information Law***

Free Access to Information of Public Importance Law lies within the competences of the Ministry of Culture and Media. The Draft Law was in debate for almost a year, until October 2004. In November 2004, the Serbian Parliament adopted the Free Access to Information of Public Importance Law.

Under the Law both journalists and members of the public do have equal access to information from state bodies through information officers. The law defines information of public importance as anything in which anyone has a legitimate interest, particularly information concerned with threats to health and the environment such as epidemics or natural disasters. The principle of equality in the right to public information prohibits any discrimination on the grounds of racial, religious, national or other grounds. State bodies are also prohibited from giving privileged status to any individual journalist or media outlet.

In December 2004, Rodoljub Sabic was appointed Commissioner for Information of Public Importance by the Serbian Parliament. The Commissioner, under the new legislation, is in charge of implementing the Law and processing complaints by citizens to whom information is denied. The Law provides for the appropriate state authorities to organize training of employees and an introduction to their obligations in relation to the rights guaranteed by the Law. This procedure is also under supervision of the Commissioner.

The "Access to Public Information Law Guidebook" was officially presented on 15<sup>th</sup> April 2005. The Guidebook was prepared by an expert team of the Coalition for Free Access to Public Information, consisting of ten of the most influential non-governmental organizations in Serbia, and with the aim of securing efficient implementation of the right to obtain public information.