[SI] Effects of the new Media Act on Content Restrictions for Programming

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The Slovenian Media Act which is the essential legislative tool for the content regulation of television programming, was amended in May 2006. The proposal for an amendment of Article 84 on the protection of children and minors against potentially harmful materials was formulated by the Peace Institute of Ljubljana at the request of the Ministry of Culture. Also, an additional non-governmental proposal was made by NGOs involved in the field of social care for children and women and involved in the framework of the project on pornography regulation. The non-governmental group proposed a formulation of the Article in question which included the regulation of pornographic content on mobiles.

The government parties and the main oppositional party generally accepted the proposal of the Peace Institute but changed the first paragraph of Article 84. In this paragraph the meaning of Article 22 of the Directive Television without Frontiers (Article 22 para. 1: “member states shall take appropriate measures to ensure that the television broadcasts ... Do not include any programmes which might seriously impair physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence”.) was subjected to the relativism of the potential harm. In practice the potential harm should be proved by the evidence in judicial procedures. The NGOs protested against this retroactive procedure but did not prevent the parliamentary decision.

The second critical aspect of the amended Article is that the clear distinction between pornographic and sexual materials which was characteristic of the NGOs’ proposal was not maintained. The ambiguity of the Article is intended to be solved by guidelines for the codes of broadcasters. Namely, the amended Article 84 obliges the broadcasters to write and promote an ethical and aesthetical codex for the appropriate scheduling of potentially harmful materials. The guidelines for this self-regulatory document were formulated by the agencija za po□to in elektronske komunikacije (Independent Agency for Post and Electronic Communications) and confirmed by the svet za radiodifuzijo (Broadcasting Council). But, as there is no instance of examining the correspondence between a future code adopted by the broadcaster and the guidelines, the ambivalences of the Article on the protection of minors may still have effect on the formulation of a code, i.e the wording of a broadcaster's code might disregard the true meaning of Article 22 para. 1 TWF, which is based on the assumption that certain

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pornographic sub-genres are potentially harmful per se. It is equally important to state that the ambiguities of the law render the activities of the Inspector for Media and Culture more difficult. The stipulation of Article 84 para. 1 could be understood to the effect that the proof of potential harm is to be given by the inspector. But therewith, the only instance of controlling and sanctioning the transgressions of the media act is placed in one person for whom it is not possible to provide evidence of the potential harm in proceedings of a selected case. The notion of potential harm is rather based on the approved psycho-sociological knowledge and is related to specific socio-cultural environments and its values. It is independent of the analysis of specific cases of pornographic materials and the (potential) exposure of the specific child or children to its (potentially) harmful effects.

Zakon o spremembah in dopolnitvah zakona o medijih

http://zakonodaja.gov.si/rpsi/r05/predpis_ZAKO4285.html

Act on the amendment to the Media Act

Smernice za vsebinsko oblikovanje internih etičnih in estetskih pravil (kodeksov) izdajateljev televizijskih programov

http://www.sigov.si/srd/smernice_seksualnost.pdf

Guidelines for the content of the internal ethical and aesthetical rules (codex) of broadcasters

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