[BA] Penalty for Unauthorised Distribution of a TV Channel Confirmed

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This case emerged after a lawsuit was lodged by the Mostar-based cable operator MONET CATV with the aim of annulling a decision issued by the Council of the Communications Regulatory Agency (RAK). The Council had confirmed an initial RAK decision from 2005 whereby a financial penalty in the amount of BAM 18,000 (around EUR 9,000) was imposed on MONET CATV due to unauthorised distribution of the Zagreb-based commercial network's Nova TV channel.

On two occasions, the Court of Bosnia and Herzegovina has concluded that the RAK decisions were correct and legitimate and that no violations of the law had taken place, which would influence the regularity of the decisions. The Council thereby confirmed the main findings of the RAK, i.e. that cable distributors are responsible for obtaining the copyright licences for channels distributed at any time. It also emphasised that the Law on Copyright relates exclusively to the protection of rights of authors and other holders of copyrights, which is under the exclusive jurisdiction of regular courts.

The Court's ruling confirmed RAK's discretion to apply executive measures and to issue sanctions as prescribed by the Law on Communications. It also confirmed that the amount of the fine was appropriate with respect to the severity of the breach of the law.

Furthermore, the second instance Court denied allegations made by the cable distributor that RAK had abused its legislative, judicial and executive authorisations. RAK has no legislative and judicial powers, but only executive authority as derived from the Law on Communications.

Regarding the background, the general legal framework relating to the communications sector was completed in May 2005 when the Parliament of BiH ratified the European Convention on Transfrontier Television designed to facilitate transmission and retransmission of television channels between the Council of Europe member countries, and establishing basic rules related to programme requirements, including copyright issues.

Any further moves to appeal the findings of this case would be before the Constitutional Court of Bosnia and Herzegovina.

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