

[BA] State Court rejects action initiated by former religious leader against regulator's decision

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In a Decision of 7 April 2014 (not publicly available), the Sud Bosne i Hercegovine (Court of BiH) rejected the action initiated by a former religious leader in an administrative dispute against the Decision of the Regulatorna agencija za komunikacije BiH (Communications Regulatory Agency of Bosnia and Herzegovina - CRA) of 13 November 2012. This is the Court's second ruling on the case, but with a different outcome.

In January 2009, the former religious leader, the then Reis-ul-ulema, Grand Mufti of Bosnia and Herzegovina, filed a complaint against a broadcaster for the alleged use of vulgar and inappropriate language in a commentary about some of his public statements. Initiated by the complaint, the CRA conducted its regular procedure in which it found no breach of the broadcasting code and consequently suspended the procedure on 12 May 2009. In the course of the procedure, the complainant requested that he be granted the status of a party to the case with the view of protecting his rights, claiming that his reputation, honour and dignity have been violated by the inappropriate and malicious language used in the programme. The complainant's request was rejected by the CRA - and confirmed by the CRA Council in second instance - for the lack of legal standing. It should be noted that granting the status of party to a complainant, though possible in theory, is not usual in cases concerning programme content. Administrative procedures concerning potential violation of CRA rules and regulations are conducted ex officio with the view of protecting public interest and not individual rights. To this end, the complainant was informed of the possibility of filing a defamation case against the broadcaster.

This Decision was challenged before the Court of BiH. The plaintiff argued that protection of one's reputation, honour and dignity constitutes a legitimate interest to be granted the status of a party in the administrative procedure. In August 2011, the Court returned the case to the Agency for another procedure in which the complainant would be treated as a party, with the reasoning that essentially stated that protection of reputation, honour and dignity certainly merited enough interest to be resolved in an administrative procedure. The Court had not referred to the Defamation Law. By deciding on the status of the complainant, the Court in effect ruled on the programme, so its action was not limited to the legality of the administrative act, but was based on the merits of the case as well.

Acting upon the Court's ruling, the CRA reopened the case. Again, no breach was found and the previous conclusion was confirmed. The complainant appealed the Conclusion, which CRA rejected as unfounded by means of the abovementioned Decision of 13 November 2012.

The matter was brought up before the Court again. This time, the Court, before examining the merits of the case, examined procedural conditions and found that the reviewed CRA's decisions had not violated any of the complainant's rights or interests and as such cannot be reviewed by the Court.

Sud Bosne i Hercegovine, 7/04/2014

Decision of the Court of BiH, 7 April 2014

