[RO] Modifications of the Audiovisual Code

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On 14 February 2017, the National Audiovisual Council (Consiliul Naţional al Audiovizualului, CNA) adopted Decision no. 63 for the modification and completion of the CNA Decision no. 221/2011 with regard to the Audiovisual Code for audiovisual content (see inter alia IRIS 2006-4/33 and IRIS 2014-5/28). The main goal of the modification to the Audiovisual Code was to afford better protection to minors. The Decision will enter into force 30 days after its publication in the Official Journal of Romania Part I, except the new Article 117 a1), which will enter into force in 6 months' time.

In the Code, the reference to children up to 14 years of age was modified to refer to minors.

The definition of obscene audiovisual productions was extended to trivial, vulgar or obscene productions, and definitions for physical violence, psychological violence and violent language were introduced in Article 1 (1). The situations in which minors shall not be exposed to audiovisual productions was extended to social campaigns, except regulated public interest messages - new Article 3 (4). According to the new Article 5 (3), the providers of audiovisual media services shall not broadcast interviews and statements of minors about intimate family problems or problems exceeding its power of judgment.

Article 11 on discrimination was enforced. The interdiction of defamatory references in connection with origin, race, nationality, religion, potential disability (and, as a new provision, the appearance of someone) was added to the interdiction of pejorative and discriminatory reference.

The prohibition to broadcast programmes, other than fiction products and documentaries, which include descriptions, reconstructions or representations of homicides/suicides, mutilations/self-mutilation, murder techniques, occult practices, domestic violence or rape was extended from 6 a.m.-10 p.m. to 6 a.m.-11 p.m., in Article 17 (1).

According to the amended Article 18 (1), it is forbidden to broadcast productions between 6 a.m.-11 p.m. which present repeated, intense or extreme physical or psychological violence or violent language, or people in degrading situations, even if they have given their consent. The new Article 18 (2) regulates the exceptions from paragraph (1): feature films, series and documentaries, if they

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observe Article 12 (viewing is restricted by a conditioned access control system or is possible only between the hours allowed under the programmes classification).

According to the amended Article 32 (2), not every interest of the public should be satisfied: the mere invocation of the right to information cannot justify the violation of the rights to dignity, to self-image and to privacy as they are recognized and protected by the Civil Code, and reference to the person's prior consent cannot justify the violation of the rights and freedoms of others, public order or morals and cannot remove the responsibility of the supplier of audiovisual media services for content.

According to Article 40 new paragraph (11), the audiovisual media service provider must observe the principle of audiatur et altera pars (right to be heard), if during an audiovisual programme accusations are made against a person for illegal or immoral acts or behaviour. The provider must ensure the accused person's right to express himself or herself until the end of that programme. If the person concerned refuses to present a point of view, this should be stated. The new paragraph (12) provisions that any pre-recorded product which entails accusations against a person for illegal or immoral acts or behaviour must include the opinion of the accused person. If the person concerned refuses to present a point of view, or could not be contacted after repeated attempts, this should be stated.

The amended Article 44 (2) regulates that the identity of persons who are victims of sexual offenses shall not be disclosed in any manner, except in cases where the victim has given written consent prior to broadcasting. The prior agreement cannot justify violations of rights and freedoms of others, public order or morals, nor can it remove the responsibility of the audiovisual media service provider for the content of the programme.

Article 47 on the prohibition of anti-semitic and xenophobic content and the interdiction of discrimination based on race, religion, nationality, sex, sexual orientation and ethnicity was significantly extended; now, it includes the prohibition of incitement to commit genocide, crimes against humanity and war crimes, as well as the prohibition to discriminate based on age, citizenship, level of education, social status and physical or medical conditions.

Article 79 was amended and now regulates that the audiovisual media service providers will ensure accessibility for persons with impaired hearing as provided in Article 421 of the Audiovisual Law.

Article 93 on advertisement and commercial communication was extended and enforced: (1) commercial communications are not allowed to use unfair, misleading or aggressive trade practices; (2) it is prohibited to show sexual content prejudicial for the respect of human dignity, affecting the image of a

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person or groups of individuals in the public and/or private domain; (3) in advertising it is forbidden to use gender stereotypes, and to show situations where people, regardless of their gender affiliation, are shown in degrading, humiliating and pornographic attitudes.

Article 117 refers to food advertising and the new paragraph a1) of Article 117 regulates that food advertising shall not encourage food consumption by using minors aged from 3 to 15.

In Article 120, the syntagma „foodstuffs intended for particular nutritional uses" was replaced with „products and food supplements". A new paragraph (11) regulates that advertising and teleshopping for dietary supplements may contain exclusively information from the leaflet of the product, endorsed by legal bodies.

Decizia nr. 63 din 14 februarie 2017 pentru modificarea şi completarea Deciziei Consiliului Naţional al Audiovizualului nr. 220/2011 privind Codul de reglementare a conţinutului audiovizual

http://www.cna.ro/article8230,8230.html

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