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Committee of Ministers: Guidelines on Protecting Freedom of Expression and Information in Times of Crisis

At its 1005th meeting (26 September 2007), the Committee of Ministers of the Council of Europe adopted Guidelines on protecting freedom of expression and information in times of crisis. The guidelines reflect the concern of the Committee that crisis situations, such as wars and terrorist attacks, may tempt governments to unduly restrict this right. The text is an extension and complement to the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002.

The guidelines emerged from the work of a Group of specialists on freedom of expression and information in times of crisis (MC-S-IC) set up by the Steering Committee on the Media and New Communication Services (CDMC). Following the Political Declaration and the Resolution on freedom of expression and information in times of crisis adopted at the 7th European Ministerial Conference on Mass Media Policy (Kiev, March 2005), the MC-S-IC was asked to examine whether additional European standards should be set out in order to guarantee this freedom.

The specialists concluded that, in broad terms, Article 10 of the European Convention on Human Rights, the relevant case-law of the European Court of Human Rights, and other Council of Europe texts based on these, are sufficient to safeguard freedom of expression and information in times of crisis. There is no obvious and pressing need to significantly amend these standards or to elaborate major new ones. The emphasis needs to be placed on the

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practical problems linked to their implementation. The guidelines propose concrete steps in this direction.

As used in the guidelines, the term "crisis" includes, but is not limited to, wars, terrorist attacks, natural and man-made disasters, i.e. situations in which freedom of expression and information is threatened (for example, by limiting it for security reasons). The term "times of crisis", however, is not the equivalent to "time of war or other public emergency threatening the life of the nation" as formulated in Article 15 of the European Convention on Human Rights. While a declared national state of emergency might justify some temporary restrictions of certain rights and liberties, a crisis situation should not serve as an excuse for imposing limitations on freedom of expression and information beyond those prescribed by Article 10, paragraph 2, of the European Convention on Human Rights.

In the guidelines, member states are asked to assure, to the maximum possible extent, the safety of media professionals. On the other hand, the need to guarantee safety should not be used by states to limit unnecessarily the rights of media professionals, their freedom of movement or access to information. The guidelines also recommend that the authorities investigate promptly and thoroughly any killings or attacks on journalists and that they bring the perpetrators to justice.

The guidelines reiterate that member states should protect the right of journalists not to disclose their sources of information – in practice and by including it in national law – and should not oblige media professionals to hand over information or material, such as notes, photographs and video recordings.

Two other provisions are also notable. One asks that member states not use vague terms when imposing restrictions of freedom of expression and information in times of crisis. Incitement to violence and public disorder should be adequately and clearly defined. The other requests that the states consider criminal or administrative liability for public officials who try to manipulate, including through the media, public opinion, hence exploiting its special vulnerability in times of crisis.

The guidelines also address media professionals, inviting them to adhere to the highest professional and ethical standards, keeping in mind their responsibility in crisis situations to make available to the public timely, accurate, factual and comprehensive information. The Committee of Ministers supports self-regulation as the most appropriate and effective mechanism for ensuring that the media act in a responsible way in times of crisis. ■

Ivan Nikoltchev
Media Division, Council of Europe

● Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies), available at:
http://merlin.obs.coe.int/redirect.php?id=10968
EN-FR

Committee of Ministers: Declaration on the Protection and Promotion of Investigative Journalism

In a Declaration adopted on 26 September 2007, the Committee of Ministers called on member states to protect and promote investigative journalism. Behind this declaration stands the Committee's conviction that genuine investigative journalism helps to expose legal or ethical wrongs that might have been deliberately concealed. Therefore, this kind of journalistic work makes an essential contribution to the "watchdog" function of the media in a democracy.

The Declaration calls on member states to guarantee the personal safety of media professionals, their freedom of movement, access to information and right to protect their sources of information. It also stresses that deprivation of liberty, disproportionate pecuniary sanctions, prohibition to exercise the journalistic profession, seizure of professional material or search of premises should not be misused to intimidate media professionals and, in particular, investigative journalists.

The Declaration draws special attention to the recent case law of the European Court of Human Rights (case of Dammann v. Switzerland, Application no 77551/01, see IRIS 2006-6: 4) which has interpreted Article 10 of the European Convention of Human Rights as protecting not only the freedom to publish, but also journalistic research - an essential stage for investigative journalism. The Committee of Ministers calls on member states to take into consideration this development and to incorporate it into domestic legislation where appropriate.

The Committee also expresses its concern over the increasing limitations on freedom of expression and information in the name of protecting public safety and fighting terrorism, lawsuits against media professionals for acquiring or publishing information of public interest, cases of unjustified surveillance of journalists and legislative measures to limit the protection of "whistle blowers".

The Ministers also invite the media, journalists and their associations to encourage and support investigative journalism while respecting human rights and applying high ethical standards. ■

Ivan Nikoltchev
Media Division, Council of Europe

● Declaration by the Committee of Ministers on the protection and promotion of investigative journalism (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies), available at:
http://merlin.obs.coe.int/redirect.php?id=10980
EN-FR

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European Court of Justice: Final Motion by the Advocate General in Case C-244/06

In the proceedings relating to the issue referred by the regional court in Koblenz for an intermediary decision (case C-244/06; see IRIS 2006-9: 5), Advocate-General Mengozzi has presented his final proposal. He proposed that the ban, established in §12 para. 3 No. 2 of the German Protection of Young Persons Act, on mail-order sales of video material that has no reference to their having been given clearance for access by young persons under national arrangements, is compatible with community law. The ban, described as "terms of sale" is not a measure of equivalent effect to that under Art. 28 EC Treaty, inasmuch as it impinges equally on goods brought into circulation from Germany and goods brought into circulation from other member countries. In addition it would be justified at least in accordance with Art. 30 EC Treaty.

In the initial proceedings, two companies were in conflict over the admissibility of the sale of video material over the Internet in Germany. The material in question (videos and DVDs) had not been reviewed and classified in terms of the protection of young persons by the German competent authority. Such review and classification was undertaken solely by a British assessment agency. The plaintiff company asserted that the sale via mail order of video material imported from the United Kingdom should be forbidden due to the absence of German assessment and age classification features.

The Advocate General began by making the point that the review and classification of the video material by the German competent authority did not represent an obligation under §12 para. 1 of the Protection of Young Persons Act but was rather a task for the supplier. The marketing restrictions set out in §12 para. 3 of the Act allowed the performance of this function in respect of non-controlled recorded material to be omitted The Advocate General went on to state that the national regulations were to be considered in relation to primary law, i.e. Articles 28 and 30, as neither Directive 2000/31/EC (E-Commerce Directive) nor Directive 97/7/EC (on the protection of consumers in respect of distance contracts) exhaustively harmonised national provisions on the protection of young persons in the mail-order business. Moreover, this Directive could only be of significance to the extent that the ban also covered economic operators established in other member countries. The question submitted referred, however, only to companies established in Germany.

The ban on "non-controlled" mail-order business in video material, in the view of the Advocate General, did not represent a regulation with respect to the features of the goods but a regulation on the terms of sale; that is to say there was no complete ban on marketing video material not subjected to classification by the German competent authority; sale to adults in salesrooms or on "controlled" mail-order terms was still possible. The regulation had more to do with "how", "where" and "to whom" – i.e. the terms of sale covering some, but not all, categories of video material. Accordingly, it should be viewed in terms of the principles established in the Keck and Mithouard judgments. As this regulation was applicable to all businesses operating in the area of the member state concerned, it would represent no quantitative import limitation or measure of equivalent effect within the meaning of Art. 28 of the EC Treaty, inasmuch as it would impinge in the same way on the circulation of goods from Germany as from other member states. The evidence before the Advocate General was not sufficient in order to make any definitive statement on this issue. This would be a matter for the national court. The court might find that a measure of equivalent effect can be seen to be justified, on grounds of public safety, public order or the protection of public health as under Art. 30 EC Treaty. This would also hold true if the video material had been subjected to review for young persons and corresponding classification in another member country.

The German regulation at issue was intended for the protection of young persons, which was a legitimate concern justifying a restriction on the free movement of goods. In the view of the Advocate General this German regulation was in line with the principle of proportionality. In the absence of harmonisation on standards of protection for young persons, each member state was free to make its own appraisal in accordance with its own value system in reviewing and classifying the content of video material. Hence, the review carried out in the exporting country did not necessarily diminish the danger that the use of the video material might infringe the rules concerning the public interest in Germany. ■

Anne Baranowski
Institute for European Media Law, Saarbrucken/Brussels

● Final motion of the Advocate General on 13 September 2007 in case C-244/06, available at:
http://merlin.obs.coe.int/redirect.php?id=10951 (DE)
http://merlin.obs.coe.int/redirect.php?id=10952 (FR)

ES-CS-DE-EE-FR-IT-PT-FI-SV

European Commission: Treaty Violation Proceedings against Germany Discontinued

The European Commission announced on 17 October 2007, that it has suspended the breach of contract proceedings pending against Germany since April 2006. At issue in these proceedings were the provisions concerning the issue of broadcasting licences outlined in the Schleswig-Holstein broadcasting law and the Lower Saxony media law, according to which the appraisals on the issue of broadcasting licences should additionally include whether

the studio production of a programme should be carried out in the actual state concerned, and to what extent the application should contain the requirement to produce, or have produced, programme components in that state. According to the European Commission, both states had, thus, in the law given preference to candidates from their own state if, in the issue of licences, the transmission frequencies were insufficient. Accordingly, it was the opinion of the Commission that such regulations were contrary to the principles of freedom of establishment and free movement of services (see IRIS 2004-6: 9).

The obstacles to the issue of broadcasting licences in Lower Saxony and Schleswig-Holstein have now, however, been removed by amendments to the law, according to the Commission, and hence the treaty violation proceedings have been terminated.

The amendment to the Schleswig-Holstein provisions is based on the regional treaty on media law that came into effect on 1 March 2007 in Hamburg and Schleswig-Holstein (Media Treaty HSH, see IRIS 2006-7: 10). In Lower Saxony an amendment to the regional media law was brought in on 7 June 2007. ■

Nicola Lamprecht-Weißenborn
Institute for European Media Law, Saarbrucken/Brussels

- **Regional Treaty on Media Law in Hamburg and Schleswig-Holstein dated 13 June 2006 as First Regional Treaty amending the Regional Media Law in Hamburg and Schleswig-Holstein, available at: http://merlin.obs.coe.int/redirect.php?id=10973**
- **Lower Saxony Media Law of 1 November 2001, as amended on 7 June 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10974**
- **Commission press release of 17 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10953**

DE

European Commission: UK List of Events of Major Importance to Society Confirmed

In 1997 the Television without Frontiers Directive, originally drafted in 1989, was amended to include a major innovation in the form of a new article 3a which has had a significant impact on the viewing of major events (and especially sports events) within the European Union. The underlying idea was to prevent such events as the recent England v. South Africa Rugby World Cup Final or the 2002 wedding of the Dutch crown prince from being monopolised by the holders of the exclusive rights to such events and withheld from the general public by way of encrypted transmission. Article 3a states: "each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television". This entails that events considered by a Member State as being of major importance for society will be broadcast free-to-air despite the exclusive rights held by pay-TV stations. The article lays down the procedural conditions for the listing of each Member State's set of events of major importance for society and establishes a principle of mutual recognition (Member States must ensure that broadcasters under their jurisdiction respect the lists notified to the Commission by other Member States).

On 15 October 2007, the European Commission adopted a decision on the UK list of events of major importance for society to be broadcast free-to-air, either live or deferred. The list includes such events as the Rugby World Cup Final, the Olympic Games, The Wimbledon Tennis Finals, The Open Golf Championship and Six Nations Rugby Tournament matches involving Home Countries. In taking this decision, the Commission is abiding by a Court of First Instance ruling of 15 December 2005 (see IRIS 2006-2: 5): a Commission decision, based on Article 3a paragraph 2 TVwF, on the compatibility of measures taken by a Member State, i.e. the list of events of major importance for society, has binding legal effects. Such decisions therefore have to be taken by the Commission college. ■

Mara Rossini
Institute for Information Law (IViR), University of Amsterdam

- **"Commission confirms UK-list of major events to be televised free-to-air", press release of 15 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10983**
- **List of major events published by EU countries, available at: http://merlin.obs.coe.int/redirect.php?id=10986**

EN-FR-DE

NATIONAL

AT – Fresh Approach to Digitisation Plan

The communications authority in Austria (KommAustria) has published a fresh version of the digitisation plan from 2003 and 2005 developed jointly by the "Digital Platform Austria" Association and the Ministry for Women, Media and the Public Service.

In the new plan, emphasis is placed upon making provision for DVB-T transmission for local and regional programme producers. With the developing digitisation of analogue frequencies over the last few years, viewers have drifted towards receiving the digital version of TV broadcasts. The producers of regional TV programmes, all of whom transmit in analogue, may consequently lose out in terms of technical reach. To provide these TV producers with access to digital broadcasting, multiplex platforms for regional TV are to be opened for applications. This is also the case with local TV programmes broadcast, up until now, only over cable networks.

Robert Rittler
Gassauer-Fleissner Attorneys at Law, Vienna

The second facet is the introduction of mobile terrestrial television in the DVB-H standard. The legal requirements for mobile terrestrial TV have, in the meantime, come into force. TV broadcasters and mobile operators are looking forward to a rise in demand thanks to mobile TV in the DVB-H standard. This technology means that higher image quality can be delivered with technical stability irrespective of the number of users. The authors of the digitisation plan expect that this offering will be available by the beginning of the final round of the 2008 European football championship. ■

● **Digitisation plan 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10954

DE

BA – Draft Changes and Amendments to the Broadcasting Code of Practice

Dusan Babic
Media researcher and analyst, Sarajevo

The Council of the Communications Regulatory Agency (RAK), at its September session, has decided to hold public consultations on draft changes and amendments to the Broadcasting Code of Practice.

The original version of the Broadcasting Code of Practice was adopted in 1998 and has since been changed and amended in 1999, 2000, 2001 and 2004. The new draft brings substantial changes in line with the basic principles of the EU with regard to the broadcasting sector. Unlike the existing Code which comprises only five brief chapters and a dozen paragraphs and sections, the new Draft consists of 35 paragraphs. Most attention was paid to requirements and standards prescribed by the European Convention on Transfrontier Television and the EC Television without Frontiers Directive. Both the Convention and the Directive create a mechanism that provides an international framework for the unhindered cross border circulation of television programmes.

The main novelty in the Draft Code is the protection of minors, in particular regarding reporting on crimes involving minors. The Draft Code also includes, for the first time, regulations on the protection of privacy, on drug abuse, on tobacco products and alcohol beverages, regarding the portrayal of violence, sex and nudity, as well as an obligation on the broadcasters to inform their viewers prior to the broadcast of certain sensitive content. It further contains regulations on the reporting of court procedures, and on European audiovisual works.

Since transparency is required in the performance of the national regulatory authorities, including public debates on important documents and instruments, the RAK has decided to hold public consultations on this draft Code. The closing date for the submission of comments, recommendations or suggestions is 5 November 2007. ■

● **Draft Code, available at:**
http://merlin.obs.coe.int/redirect.php?id=10734

BS

BE – Cooperation Agreement on Broadcasting between the Federal State and the Language Communities in Belgium Can Enter into Force

François Jongen
Catholic University of Louvain

Following the Federal State Act (Act of 27 December 2006, published in the *Moniteur Belge* of 28 December 2006), the Flemish-speaking Community Decree (Decree of 4 May 2007, published in the *Moniteur Belge* of 2 July 2007) and the German-speaking Community Decree (Decree of 25 June 2007, published in the *Moniteur Belge* of 6 August 2007), the French-speaking Community has now adopted its Decree of 2 July 2007, published in the *Moniteur Belge* on 19 September 2007, assenting to the agreement on cooperation in electronic communications concluded on 17 November 2006. The agreement could therefore enter into force immediately.

The agreement – which has as its full title the "cooperation agreement concerning mutual consultation at the time of drawing up legislation in respect of electronic telecommunications networks, at the time of exchanging information and of exercising the competences in respect of electronic communication networks by the regulatory authorities with responsibility for telecommunications or radio and television broadcasting" – had been urgently suggested by the Court of Arbitration (since renamed the Constitutional Court). The Court, in suggesting this agreement included, a number of legal provisions adopted by both the federal State and the separate Communities in violation of the rules for the allocation of areas of competence. The issue of conflicting competences has become increasingly acute in recent years in Belgium with the growing convergence of telecom networks (for which the State has competence) and cable networks, which were initially intended solely for broadcasting (and are the responsibility of the Communities).

The cooperation agreement, which came into force on 19 September 2007, provides more specifically for the setting up of a conference of regulators in the electronic communications sector (*Conférence des Régulateurs du Secteur des Communications Electroniques* - CRC) that brings together the national IBPT, the French-speaking Community's CSA, the Flemish-speaking Community's VRM, and the German-speaking Community's *Medienrat*. ■

● **Decree of 2 July 2007 assenting to the cooperation agreement of 17 November 2006 between the Federal State, the Flemish-, French- and German-speaking Communities concerning mutual consultation when drawing up legislation on electronic communications networks, when exchanging information, and when exercising competences in respect of electronic communications networks by the regulatory authorities responsible for telecommunications or radio and television broadcasting, concluded in Brussels on 17 November 2006, available at:**
http://merlin.obs.coe.int/redirect.php?id=10979

DE-FR-NL

BG – Opinion of the Council for Electronic Media Regarding the Media Coverage of the 2007 Local Elections Campaign

On 11 September 2007, the Council for Electronic Media (CEM), in accordance with its powers pursuant to Art. 33 item 3 of the *Закон за радиото и телевизията* (Radio and Television Act - *Zakon za Radioto i Televiziata* – see IRIS 2002-2: 3), adopted recommendations for fair, balanced and impartial media coverage of the 2007 local elections in Bulgaria (see IRIS 2007-9: 7). The CEM opinion is intended to create a favourable working environment in which the election campaign is covered by television and radio operators, and to ensure the observance of the universal, equal and direct right to vote of all eligible Bulgarian citizens.

According to the opinion of the CEM the major principles that shall be observed during media coverage of the 2007 local elections campaign are as follows:

1. The principle of political pluralism regarding the sharing of opinions in the programmes of public and commercial radio and television operators.
2. The independence of editors in the programmes of public and commercial operators shall be in compliance with the effective regulatory framework.
3. The election chronicles (discussions, interviews, political debates), which shall be clearly indicated in the programmes of public and commercial radio and television operators, shall be separated from the news and the commentary/discussion programmes by using audiovisual means.
4. The programmes of the public and commercial operators shall be balanced in terms of possible influence on the public vote.
5. There shall be no privileges for state and municipal authorities during the election coverage.
6. The right of reply shall be observed during the entire election period (pursuant to Art. 18 of the Radio and Television Act).
7. The public and commercial operators shall allocate time for the broadcast of paid political messages of all political parties, coalitions and independent candidates under equal terms and conditions.
8. The provisions of the Act governing time restrictions on advertising shall be observed.
9. The operators shall allocate time to inform their audiences about the results of election surveys providing information on the methodology used by the respective sociological agency, the time period of the survey, the coverage of the survey and the possible margin of error in the survey.
10. The operators shall not announce any statistical data about the results of the elections on Election Day, before the Central Election Commission has declared the official end of the Election Day. ■

Rayna Nikolova
Council for Electronic Media, Sofia

CH – Audiovisual Pact Films Available as Video-on-demand

In April 2007, the Swiss radio and television broadcasting company (SRG SSR) and the partner associations in the Audiovisual Pact concluded a test agreement defining the principles of a new video-on-demand offer on the Internet. The Audiovisual Pact was for the first time in 1996 and regularly renewed since then, and is intended to guarantee the continuity of production activities by reinforcing collaboration between SRG SSR and the Swiss cinematographic and audiovisual industry (see IRIS 2005-8: 10). The resources of the Audiovisual Pact are allocated to financing the production of fictional films, documentaries, animated films and short films. In return for its financial participation, SRG SSR acquires co-production and television exploitation rights in Switzerland for a 15-year period.

The VoD agreement is aimed at promoting the co-productions produced under the Audiovisual Pact, as it adapts the access of these works to digital and interactive consumption modes. Thus, Audiovisual Pact films offered on the Internet sites of the TV business units of SRG SSR (*Télévision Suisse Romande*, *Schweizer Fernsehen* and *Radiotelevisione Svizzera di Lingua Italiana RTSI*) can be downloaded and viewed for a 48 hour period beginning with the start of the first viewing. During this period, the films ordered may be viewed any number of times, but only on the computer used for ordering.

This new offer, in principle, only concerns films that have already been shown on SRG SSR's television channels. Also, a geo-location system only allows access to Audiovisual Pact co-productions to addresses in those territories for which VoD rights have been acquired. Lastly, a differential rate has been defined in order to take into account the type and length of the works concerned (fiction, documentary, and animation).

The purpose of the test period, with a duration of six months starting from 1 August 2007, is to pool experience with regard to technical, legal, editorial and financial issues, and to assess demand and interest on the part of the general public for this type of interactive offer. Depending on the result of this initial period, SRG SSR and the Audiovisual Pact partner companies will agree on the definitive rules for using co-productions in a video-on-demand context. ■

Patrice Aubry
Télévision Suisse Romande (Geneva)

• Agreement between SRG SSR and the Audiovisual Pact partner associations on making co-productions available on the Internet on demand

FR

CZ – Amendment of Broadcasting Law with a View to Digitisation Approved

In view of the impasse in the Czech Republic with regard to the switchover in broadcasting transmission from analogue to digital (see IRIS 2007-5: 5), it became clear that a new law on the digitisation of television would be necessary. The existing law was no longer suited to the needs of digital broadcasting.

The bill was drafted by the government and passed by the Chamber of Representatives on 27 September 2007 and must now go before the Senate and be counter-signed by the President of the Republic. No further major modifications are expected.

The deadlines, conditions and procedures for the development of the electronic communications network for digital terrestrial television transmission and the switch-off of analogue terrestrial broadcasting in the Czech Republic are to be determined in a "technical transition plan". This technical plan for the switch-over from analogue to digital television terrestrial broadcasting is to be drawn up by the government and will then become mandatory. The date scheduled for the complete switch-off of analogue terrestrial television broadcasting is 31 December 2012.

In 2006 the broadcasting council had issued six digital television licences (to TV Barrandov, Febio TV, TV Pohoda, Z1, Ocko and RTA). As a result of a complaint made *inter alia* by TV Nova and Prima TV against this decision by the broadcasting council, the Prague district court cancelled the licences on the grounds of administrative deficiencies. These withdrawn licences are now, under the law, to be made valid again until the end of the transitional period. The licences of the largest private broadcasting companies, TV Nova and Prima TV, are also to be valid in the digital regime and are being extended by eight years. Both broadcasters can obtain a further (bonus) licence when they give up their analogue capability.

Licences for terrestrial digital transmission will, in the future, be issued basically to anyone fulfilling the personal and programme-related requirements. Consequently there will be no selection or competition procedure. Anyone with a licence can enter into contracts with electronic network operators in order to broadcast their channels.

The possibility to advertise on public service television, which in the original proposals was almost completely done away with, remains in place under the present bill until the end of the transitional period. ■

Jan Fučík
Broadcasting Council, Prague

● ***Zákon, kterým se mění některé zákony v souvislosti s dokončením přechodu zemského analogového televizního vysílání na zemské digitální televizní vysílání. Tisk PS 262*** **(Law amending laws in connection with the completion of the changeover from analogue to digital terrestrial television), available at: http://merlin.obs.coe.int/redirect.php?id=10957**

CS

DE – Federal Constitutional Court Arbitrating between Artistic Freedom and Right to Privacy

In a recently published ruling of 13 July 2007 (Az. 1 BvR 1783/05), the Federal Constitutional Court (BVerfG) took a decision on the issue of the limits of artistic freedom, a right guaranteed under the constitution.

In the case before the court, a novel ("Esra") depicted intimate details of a love relationship between the Esra character and the first-person narrator, a writer, together with the associated family surroundings. The sometime girlfriend of the author and her mother have recognised themselves in the characters portrayed in the novel and instituted proceedings against the publication and circulation of the work. Subsequently the Federal High Court confirmed the prohibition issued by the lower court against the publisher. The BVerfG found for the constitutional complaint in relation to certain aspects of the case.

The Court began by confirming that the novel was indeed a work protected in terms of artistic freedom under Art.5 §3 S.1 GG, referring at the same time to the fact that the protection enjoyed by artistic freedom was not unlimited and that the boundaries were to be found in the other provisions of the constitution, including the general right to privacy enshrined in Art. 2 § 1 in conjunction with Art. 1 § 1 GG. However, whether artistic freedom should give way to other rights needed to be judged in relation to the degree of invasion of the general right to privacy.

In its arbitration the BverfG emphasised that a literary work was firstly to be seen as fiction without laying claim to being based on factual reality, although artistic freedom included the use of real persons as models. The more real the representation of persons and events, however, the more heavily the impairment of the privacy of those represented would weigh.

In the context of assessing these principles, the Court regretted the fact that the civil court dealing with the case, in its decision on the mother's suit, had focused only on the negative representation of the person in the novel as grounds for the invasion of privacy. Far more crucial was the evidence that the reader was urged to assume these portrayals to be factual. The BVerfG assessed the pleadings related to the suit of the author's former girlfriend differently, she being clearly recognisable as the actual intimate partner of the author. Her right to privacy had been particularly seriously invaded by the realistic and detailed portrayal of events. In particular, the portrayal of the most intimate details represented an invasion of her right to privacy, indeed an area of personal privacy constituting the inviolable core of human dignity. In view of the special protection for children and the mother-child relationship, the BVerfG confirmed the assessment of the lower court that the depiction of the actual life-threatening ill-

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ness of the main character's young daughter, also unambiguously identifiable to those around her in real life, alongside the fact that the relationship between mother and child was highlighted in this way, did not belong in the public domain.

Although the constitutional complaint was found to be only partially justified, the complete prohibition of the novel in its present form was nonetheless confirmed. ■

- **Ruling of the BVerfG of 13 June 2007 (Az. 1 BvR 1783/05), available at: http://merlin.obs.coe.int/redirect.php?id=10959**
- **Press release from the BverfG No. 99/2007 dated 12 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10960**

DE

DE – Judicial Review of the Ban on the Merger between Springer and ProSiebenSat.1

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In a ruling of 25 September 2007, the Federal Court of Justice (BGH) decided that a judicial review should be carried out on the decision by the Federal Cartel Office (BkartA) to ban the planned merger between Axel Springer AG and ProSiebenSat.1 Media AG. The BGH thereby quashed a decision by the Düsseldorf Regional Appeal Court (OLG), which had ruled that the appeal by Springer against the ban by the BKartA was inadmissible (see IRIS 2006-4: 10).

The OLG took the view that the subject of dispute had been settled, inferring this from the fact that the Springer publishing house and the investors group then holding the majority in ProSiebenSat.1, who had arrived at an agreement with Springer about the acquisition of the television company, had stated that they no longer wished to pursue the issue. Nor was there any desire to verify *ex post facto* whether the merger had been banned improperly.

The ruling of the BGH negated this decision to deem the application to be inadmissible, thereby referring the matter back to the OLG. In particular cases, the potential purchaser affected by this prohibition might have a considerable interest in clarifying the factual and legal positions that had emerged. This would be the case, for instance, if he had to face the possibility, in future acquisition projects, of having arguments from an earlier decision held against him, threatening him with a further ban. In the case at issue this could apply to Springer, were ProSiebenSat.1 or another broadcaster up for sale. ■

- **Ruling of the BGH of 25 September 2007 (Az.KVR 30/06) available at: http://merlin.obs.coe.int/redirect.php?id=10958**

DE

DE – ProSiebenSat.1 and RTL Accept Heavy Fines from the Federal Cartel Office

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The Federal Cartel Office (BKartA) has imposed fines on ProSiebenSat.1 Media AG and the RTL Group in the amount of EUR 120 million and EUR 96 million respectively. The German guardian of competition accused the broadcasting groups of vertically sealing-off the advertising market. The two media concerns have accepted severe penalties, whereupon the BkartA subsequently, on 5 October 2007, discontinued the current procedure.

Vertical restriction of advertising was apparent in the "share-deals" offered over many years by the marketing firms of the broadcasters: SevenOne Media and IP Deutschland. Such agreements imply that media agencies or advertisers commit a given percentage of their advertising budget to the broadcasters; in return the agencies or major customers get discounts in the shape of free advertising slots. Large parts of advertising budgets were placed with these broadcasting groups. The BKartA saw smaller advertising competitors, such as branch broadcasters, as being placed at a direct disadvantage in the competition for advertising accounts. With the two broadcasting groups taking a market share of 80%, these concerns jointly held a dominant position on the market.

The imposition of the fine stems in the first place from the newly established § 81 para. 4 S.2 of the law on restriction of competition (GWB) that came in with the 7th amendment to cartel law in July 2005, in conjunction with BKartA guidelines on fining. The upper limit of the fine, § 81 para. 4 S.2 GWB provides for 10% of the previous year's turnover for each company for this violation of competition. According to the turnover figures for 2006, these upper limits for ProSiebenSat.1 Media AG would have stood at EUR 210 million and for the RTL Group at EUR 564 million.

The two broadcasting groups intend, in future, to bring into effect a new tariff model to be agreed with the media agencies and the advertising industry in line with cartel law and to give up their "share deals". ■

- **Press release from the RTL Group, available at: http://merlin.obs.coe.int/redirect.php?id=10961**
- **Press release from ProSiebenSat.1 Media AG, available at: http://merlin.obs.coe.int/redirect.php?id=10962**
- **BKartA fine guidelines, available at, http://merlin.obs.coe.int/redirect.php?id=10963**

DE

DE – "Second Basket" of Copyright Reform Approved

On 21 September 2007, the German parliament approved the second law on the settlement of copyright in the information society. In so doing, it followed the recommendation of the coordinating legal committee i.e. not to establish a mediating committee.

With this law that will presumably come into effect on 1 January 2008, the long-running discussions on the "second basket" of copyright reform (see IRIS 2006-5: 11 and IRIS 2006-3: 11) will come to a temporary end.

The new law contains amendments of particular relevance to the field of unknown forms of use, provision of access to works through libraries, private copies and blanket deliveries.

The contractual granting of user rights for still unknown forms of use will, in future, be valid because of the deletion of the previous invalidity rule §31 para.4 of copyright law (UrhG) and the introduction of a new §31a. The author is thus entitled, so long as he makes no use of his right to object under § 31a para. 1 (new version), to an appropriate separate remuneration. Furthermore, for contracts entered into before the coming into force of the new law, and after 1 January 1966, under which an author has granted all essential user rights exclusively to another without limitation on time or place, the user rights will be extended to forms of use unknown at the time the contract was concluded, §1371 UrhG (new version). The author has the possibility to object to this arrangement within a given time-frame.

Under a newly added §52b UrhG, it is to be possible for public libraries, museums and archives to show public works from their stocks at electronic reading stations in the reading rooms. Furthermore, under the new §53 UrhG libraries will be authorised, subject to certain terms and conditions, to prepare and send out copies (including digital) of copyright protected works, made to order.

§53 para. 1 UrhG is supplemented by a reference to exchange arrangements. Private copies are indeed basically admissible but not when they are produced by a "clearly illegally produced or publicly accessible copy".

Lastly the regulations related to lump-sum copyright remunerations have been supplemented. According to the anticipated amendments in the Law on copyright safeguard in Art. 2, it should, in future, be a matter for the exploitation company to negotiate rates of remuneration with the hardware and storage media manufacturers' associations. The law provides for appropriate mediation and conciliation procedures. ■

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- **Parliamentary resolution dated 21 September 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10955**
- **Parliamentary resolution dated 5 July 2007 with text of the amendment law, available at: http://merlin.obs.coe.int/redirect.php?id=10956**

DE

ES – Row Over Football TV Rights

Two companies that hold the football television rights of the Spanish *Liga* (League), MediaPro and Audiovisual Sport, are embroiled in a legal battle over who holds the rights to broadcast which games.

Audiovisual Sport is jointly owned by the Catalan public broadcaster TV3 (20%) and the multimedia group Sogecable (80%), which in turn, is partly owned by PRISA (the main radio and press company in Spain), Telefónica and Vivendi/Canal Plus. Sogecable owns Digital +, the main digital pay-TV platform in Spain. Each week, Digital + broadcasts one match on its premium pay-TV channel "Canal Plus", and then offers the rest of the matches via pay-per-view, with the exception of one match per week that, according to Act 21/1997, must be broadcast free-to-air.

Audiovisual Sport previously held all of the football TV rights, and in the past it had an agreement with regional public broadcasters that involved selling them the right to broadcast a free-to-air match per week, as established in the Act 21/1997.

However, in 2006, the Catalan television production company Mediapro was awarded (together with other companies) a TV concession to broadcast a new free-to-air terrestrial TV channel - La Sexta - and it decided to compete for the acquisition of football TV rights. Mediapro was able to secure the rights to 40% of the first division team matches until 2007.

In July 2006, Audiovisual Sport and Mediapro reached an agreement to jointly exploit their rights through Audiovisual Sport, who would manage their commercialisation. MediaPro's "La Sexta" would show one free-to-air match per week, one match would be shown on Canal Plus, and the rest would be offered as pay-per-view programmes on several digital pay-TV platforms, including Digital+.

However, the situation changed when Mediapro was able to obtain more TV rights for 2008 (60% of first division team games) and for 2009 (100% of the current first division teams and 90% of the current second division teams).

Last August, just before the *Liga* started, Mediapro argued that in this new context it was necessary to change the initial conditions of its agreement with Audiovisual Sport (AVS), as the latter no longer held the TV rights mentioned in their agreement. They also claimed that AVS owed them EUR 30 Million. AVS denied this, insisted on enforcing the July 2006 agreement, and claimed, in turn, that Mediapro owed them EUR 58 Million.

When the *Liga* kicked off, AVS declared it would not provide Mediapro with the TV signal to broadcast any of the matches. Mediapro decided to produce the broadcast itself and, as it considered that AVS was in breach of its contracts and the law, proceeded to broadcast more than one free-to-air match per week, including matches that Digital + was advertising as pay-per-view programmes.

AVS requested, as an interim measure, that the Courts block Mediapro both from entering the stadiums to produce its own coverage of the matches, and from broadcasting them. It also claimed a EUR 200

Million payment from Mediapro in damages. The Court ruling rejected this request: it held that the situation was not clear enough to adopt such an interim measure, and that if taken, it could adversely affect the right of the public to receive a free-to-air match per week, as stated in Act 21/1997. The Court shall now review the case in more detail.

In the meantime, each week there is much uncertainty as to who is going to broadcast which matches and Mediapro is broadcasting, through La Sexta, more than one free-to-air match per week, including matches advertised as pay-per-view by AVS. This row is also affecting the international broadcasts of the *Liga*. The problem has been further complicated by disagreements between partners of the AVS, TV3 (who has accepted an agreement proposal from Mediapro), and Sogecable (who has not accepted it). The governing body of the League, *la Liga de Fútbol Profesional* (the Professional Football League), has recently stated that if no agreement is reached, it will take charge of the production of the coverage of the matches in order to guarantee their transmission. ■

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● ***Auto del Juzgado de Primera Instancia Nº 36 de Madrid, Audiovisual Sport vs Mediapro, 29.08.2007*** **(Ruling of the Court of First Instance Nº 36 of Madrid, Audiovisual Sport vs. Mediapro, 29 August 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10947**

ES

ES – Government Approves an Order Regulating the Management of Digital Terrestrial TV Multiplexes

In July 2007, the Spanish Government approved a Ministerial Order to regulate certain aspects of the management of digital terrestrial TV multiplexes, and which creates and regulates a Registry of Service Information parameters for digital terrestrial TV broadcasts.

Regarding the management of the digital terrestrial TV multiplexes, the Order establishes that the entities managing these multiplexes shall be registered at the Operators Registry of the Telecommunications Market Commission. These entities shall coordinate technical aspects of digital broadcasting, shall generate the Service Information established by DVB standards, shall provide the technical means to broadcast the TV channels and the associated data, and shall be in charge of the statistical multiplexing of the signal in order to improve efficiency in the usage of the available bandwidth (provided it reaches an agreement on this issue with the digital TV broadcasters who share the multiplex).

Concerning the Registry of Service Information parameters for digital terrestrial TV broadcasts, the aim is to ensure that multiplex providers, broadcasters and DTTV services are adequately identified, so that navigation systems of TV receivers/decoders can recognise the different networks, providers and services.

For this purpose, the Telecommunications Market Commission shall create a new Registry, and shall provide Service Information parameters, which will provide data for the numbering of services. The Telecommunications Market Commission shall coordinate its activity in this field with that of the Autonomous Communities (Spanish regions), in relation to those digital terrestrial TV broadcasts which only affect an Autonomous Community.

The Ministerial Order also includes some additional provisions dealing with implementation of digital terrestrial TV services, which should substitute analogue broadcasts by 2010. At the beginning of September, the Government announced the approval of a new deployment plan for digital terrestrial TV, which has yet to be published in the Official Journal. ■

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● ***Orden ITC/2212/2007, de 12 de Julio, por la que se establecen obligaciones y requisitos para los gestores de multiples digitales de la televisión digital terrestre y por la que se crea y regula el registro de parámetros de información de los servicios de televisión digital terrestre, BOE n. 173, 20.07.2007, pp. 31566-31584*** **(Ministerial Order ICT/2212/2007, of 12 July 2007, which establishes obligations for managers of digital terrestrial TV multiplexes, and creates and regulates the Registry of Service Information parameters for digital terrestrial television, Official Journal n. 173, 20 July 2007, pp. 31566-31584), available at: http://merlin.obs.coe.int/redirect.php?id=10948**

ES

ES – Recent Developments Regarding Cinema Law

On 1 June 2007, the Spanish Government approved the definitive draft of the Bill on General Audiovisual Law (known as the "Law on Cinema"). After extensive negotiations and discussions with industry players, the following outlines some of the final changes introduced in the final text:

- as regards investments of TV channels: the amount that private television channels must invest in the production of European films is 5% of their gross income (not of their profits). Following much criticism, the Government has chosen not to increase the percentage to 6%, as originally planned;
- concerning the measures to protect Spanish and EU films from American competition: exhibitors must comply with fixed screen quotas entailing that at least 25% of the sessions per year must exhibit European films. The Government's first proposal was set to calculate the percentage of screen quotas per day and not per session, as now decided;
- with regard to independent market players: the Bill has recognised the category of independent producers and distributors, creating for them both rights and obligations;
- where tax measures are concerned: acknowledging the fact that cinema not only represents culture but also an industry, the Bill is introducing tax measures in order to attract capital to the industry; as a result it will be possible to claim tax relief of

up to 18% on investments made;
- as regards film authors: according to the Spanish Copyright Law, the authors of the film are the director, the composer and the scriptwriter. The Bill also recognises the photography director as an author of the film;
- The Bill creates a new *Registro de Bienes Muebles* (Registry of Personal Property) to register and protect film works and other audiovisual works.

The text is currently in parliament. It is being discussed by the different political parties that make up the Congress of Deputies, and each political party may present a partial or total amendment to the text.

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During the first week of October, the nationalist and independent political parties of the Autonomous Community of Catalonia withdrew the amendments they had presented upon reaching an agreement with the Ministry of Culture for the creation of a specific fund for cinema in languages different from Spanish, and which are recognised as official languages in Spain (Catalan, Basque and Galician).

Once all the amendments are presented, the Congress shall open the debate and the amendments will be retained or rejected in order to produce the definitive text, which will need to be approved by the Senate. ■

FR – No Exception for Private Copying for Peer-to-peer Users

The court of appeal in Aix en Provence, designated as the court for referral following cassation in the "Aurélien D." case, has recently delivered its decision. Aurélien D., a student, was being prosecuted for having downloaded and copied 488 films from CD-ROMs that he had borrowed from friends. He had been discharged after judgements on the merits of the case (regional court in Rodez - see IRIS 2004-10: 10, and court of appeal in Montpellier - see IRIS 2005-4: 10) on the grounds that "the films at issue had only been for the private use of the defendant, and were not intended for collective use". On 30 May 2006 the Court of Cassation overturned the appeal judgment, criticising the lack of response to the submissions of the plaintiffs that were claiming damages, claiming that, in order to be taken into account, the exception allowed for making a private copy assumed that the source was lawful (see IRIS 2006-7: 11). This question thus remained unanswered, particularly as the attempt by the legislator to make the downloading of protected works a minor offence has been censured by the Constitutional Council (see IRIS 2006-8: 13).

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In the decision it delivered on 5 September 2007, the court for referral reached the following conclusion – the defendant could not exempt himself from liability by claiming the exception allowed for making a private copy provided for by Articles L. 122-5 1 and 2 of the Intellectual Property Code. Thus, by borrowing CD-ROMs from friends in order to copy them, the defendant "manifestly placed himself outside the family circle and the private use of the copy provided for in the legislation". The Court also clearly stated that the same applied to works that were copied and then made available to a wide public using peer-to-peer type software. In establishing the defendant's guilt, the court noted that he was a student in computer studies and was therefore bound to be particularly aware of the issues regarding royalties for intellectual works raised by making copies of these works onto media such as CD-ROMs, particularly by downloading them from the Internet. In addition to the payment of almost EUR 5,000 in damages to the plaintiff companies that were claiming damages, the court fined the defendant EUR 15,000 (of which EUR 12,000 was suspended) and ordered the confiscation of the disputed 488 CD-ROMs. The position adopted by the court was in line with the circular on 3 January 2007 from the Minister of Justice on the implementation of the criminal provisions of the DADVSI Act, a document addressed to judges, according to which "the exception allowed for making a private copy should not be permitted" in cases of unlawful downloading. ■

● Court of appeal in Aix-en-Provence, (5th chamber), 5 September 2007, Buena Vista Home entertainment et al. v. Aurélien D.; available at: http://merlin.obs.coe.int/redirect.php?id=10970

FR

FR – Television over ADSL - Conflict of Exclusivity among Operators

The current conflict between Canal+ and Neuf Cegetel highlights the sometimes tense relationship that exists between owners of encrypted channels and Internet access providers (IPs) concerning television broadcast over ADSL. On the one hand, the IPs would like to be able to market channels in the capacity of a digital television services distributor as they see fit. On the other hand, companies such as Canal+, a satellite television group that has a quasi-monopoly in the market for pay television, wish to retain their exclusivity for broadcasting their channels.

It is in this context that, in a marketing agreement the company Eurosport gave Canal+ France exclusivity for marketing its sports channel on satellite, ADSL and, non-exclusively, via terrestrial broadcasting. In a press release on 30 August 2007, Neuf Cegetel announced the conclusion of an agreement enabling it to distribute Eurosport solely over terrestrially broadcast digital television, but at the same time announced that it was going to offer this channel to its ADSL subscribers equipped with the "Neuf TV HD" decoder as part of a multi-theme package, which was to be launched in the near future. In a letter sent on the same date, Canal+ protested this, claiming that by making this channel available to its ADSL subscribers, even if it used a sep-

arate distribution medium, Neuf Cegetel was violating the exclusivity deal that Canal+ had been granted. Canal+ therefore called on Neuf Cegetel to cease marketing Eurosport under these conditions. Eurosport held that the marketing methods actually used by Neuf Cegetel did not correspond to agreed the level of capacity they had as a digital television distributor, and revealed on their part a desire to deliberately circumvent the exclusivity enjoyed by Canal+ for marketing the channel over ADSL. It therefore notified Neuf Cegetel that is was suspending the signal from the following day, 11 September 2007, and that it would be terminating the contract. Neuf Cegetel, considering that abruptly suspending the signal to its subscribers without prior notification caused it a nuisance that was manifestly unlawful, referred the matter to a court sitting to hear urgent applications so that Eurosport could be ordered to re-establish the signal in accordance with the contract, subject to a fine for each day of its delay in doing so. On 17 September 2007, the presiding judge of the regional court of Paris turned down the application and the IP launched an appeal.

In its decision delivered on 1 October 2007, the court of appeal noted that it was not for a judge sitting to hear urgent applications to say whether or not the complaints brought by Eurosport were founded, or whether or not Neuf Cegetel was indeed failing to observe its obligations, but rather to judge whether or not Eurosport could withdraw the signal with immediate effect and suspend performance of the contract without this causing a manifestly unlawful nuisance to the IP. The court held that, even if it used terrestrially broadcast digital technology, Neuf Cegetel was supplying Eurosport to its ADSL subscribers using the decoder and it was much to be feared that this infringed the exclusivity rights enjoyed by Canal+. Furthermore, inasmuch as Neuf Cegetel did not justify proposing to its subscribers any terrestrially broadcast digital television offer in which the channel was included, could the assumption could be made that they had concluded the contract without intending to develop a genuine activity as a distributor of terrestrially broadcast digital television on a paying basis, but rather to be able to include an attractive channel in the package aimed at their ADSL clients. The court could therefore only note the channel's debatable marketing conditions in terms of the letter of the contract. It concluded that the nuisance complained of by Neuf Cegetel was not by nature manifestly unlawful, and the order delivered in the urgent proceedings was upheld.

Neuf Cegetel had initiated these urgent proceedings in order to be able to re-establish the channel quickly in the middle of the rugby world cup. It will be the judicial proceedings on the merits of the matter that will establish whether the IP's action was lawful as regards the exclusive rights conceded to Canal+, and there will be no outcome on that for several months yet. ■

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● **Court of appeal in Paris, 14th chamber, 1 October 2007, Neuf Cegetel v. Canal+ France**

FR

FR – Serious Consideration of the Relationships between Producers and Broadcasters of Audiovisual Material

On 8 October 2007, the French Minister for Culture, Christine Albanel, took advantage of the MIPCOM international programmes market in Cannes to announce "the updating and amendment of the framework of regulations set up in 1986", which will be combined with "measures to ensure better quality". She said that the future of French fiction lay in a rapidly changing context, and that this called for new resources and tools to better stimulate the revival of the programme industry in France. The launch of three complementary expertises were announced. The first covers the definition of the "economic sub-set" in the contribution made by broadcasters to the programme industries. In accordance with the Act of 5 March 2007 on the television of the future, it is in fact necessary to consolidate the proportion of economic works (works of fiction, animated works, creative documentaries, music videos and the recording or re-creation of live performances) in the investment obligations incumbent on television channels in both the public and private sectors.

Professionals have already been consulted, in September, concerning two draft Decrees. The first lays down an 85% sub-quota for the investment obligations incumbent on analogue television channels in respect of audiovisual works. The second amends the technical specifications of France 2, France 3 and France 5, increasing the rate of contribution to 95%. The Minister announced that she would be examining the feed-back she had received and would ensure that "the setting up of this sub-set would take place gradually, taking into account more particularly the criteria for defining the concepts of 'documentary' and 'creation'". The second area of consideration involves the "Tasca Decrees" adopted in 2001 and 2002 that lay down the framework for relations between broadcasters and producers, particularly regarding the matter the possession of economic rights.

The Minister felt the regulations were "complex" and "no longer truly encouraged the circulation of works on television services". Specifically, under these texts, the terrestrial broadcast channels were only allowed to produce one-third of the works originally made in the French language that they themselves broadcast. For the other two-thirds (series, television films and documentaries that they co-produced), the money they invest only guaranteed them limited exclusivity of broadcasting. Hence a consultation with professionals in the sector, with the purpose of proposing amendments to these Decrees, has been entrusted to Mr Kessler and Mr Richard, acknowledged experts in the audiovisual sector. The

first specific proposals, which ought to obtain the widest possible consensus among the professionals concerned, are expected by 15 December and the final propositions early in 2008.

Thirdly, the Minister announced that priority would be given to aid for writing and innovation. To this end, in 2008, the selective support of the national cinematographic centre (*Centre National de la Cinématographie* - CNC) in favour of audiovisual production will increase by 17.7%, with priority for aid upstream of production, including the audiovisual innovation fund and aid for creative work. Thus, "although we should not be cloning the American series", the Minister said, "we could take inspiration from the work of their teams of screenwriters (…); we need to look to a new concept for creative work".

Lastly, the Minister promised that these initiatives should be supplemented by the commitment of public-sector television to the same objectives, with significant efforts in terms of investments and exposure for audiovisual creation, and a 3.6% increase in the budget for public-sector audiovisual work in 2008. ■

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● Mission of consultation with professionals in the audiovisual sector aimed at proposing amendments to the 2001 and 2002 Decrees organising relationships between producers and broadcasters; mission statement available at: http://merlin.obs.coe.int/redirect.php?id=10972

FR

FR – First Results of the "Olivennes Mission"

On 12 October 2007, Denis Olivennes, who has been in charge of a mission "to combat illegal downloading" since 5 September 2007 (see IRIS 2007-9: 14), submitted a progress report to the Minister for Culture. The members of the mission have interviewed representatives of economic beneficiaries, Internet access providers (IPs), consumers and distributors of content, and all have confirmed their desire to achieve a common solution that would make it possible to both prevent piracy, and further develop the level of offer of lawful content.

More specifically, the positions set out during these talks converged on three points of consensus. In the first instance this involved the implementation of a warning system in the event of unlawful downloading (inspired by examples in other countries, particularly the USA and the UK), and penalties in proportion to the gravity of the acts committed in the event of further infringements. However, the actual ways in which these mechanisms are implemented, and more particularly the distribution of responsibilities between the representatives of the economic beneficiaries, the IPs and the public authorities, still need to be decided upon.

The IPs have already made it known that they refuse to "police" their subscribers (although the representatives of the economic beneficiaries are in favour of this) and are calling for the creation of a dedicated public body for this purpose. The second point of consensus concerned the search for greater flexibility, in favour of consumers, in the methods for the lawful downloading of files, particularly in terms of interoperability and the rapidity of making works available (media chronology). On this point, Denis Olivennes stated that the economic beneficiaries, in contrast to the IPs, were still divided as regards the measures and the appropriate point in time for introducing them. Lastly, the third point of agreement concerns the need to take the work further in respect of the issue of filtering unlawful content, which appears to be a promising way forward although it still involves substantial technical and legal uncertainties.

The Minister for Culture has already welcomed the initial results of this consultation. She hoped that it would be possible to reach an agreement as soon as possible, which would satisfy all the parties concerned. At the same time, she called on the Internet provider, Free, to be more active in combating piracy. The file-sharing service, dl.free.fr has, has for some time, offered the possibility of carrying much larger files, hence reducing the time taken to download a film to just a few minutes. The Minister commented that, even it was not set up with this purpose in mind, the service provided by Free did in fact enable Internet users to download pirated content anonymously and on a massive scale on dl.free.fr, and she called for the effective restriction of access to this service to closed communities, or even for its closure. "Unless basic protective measures are taken, then these services are tools offered to Internet pirates free of charge", the Minister concluded. ■

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● Christine Albanel welcomes first results of the "Olivennes mission", 12 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10971

FR

GB – Competition Commission Finds that BSkyB Acquisition of 17.9% of ITV Restricts Competition

The British Competition Commission has issued a provisional finding that the pay-TV operator BSkyB's acquisition of a 17.9% share in the largest commercial free-to-air broadcaster, ITV, would be likely to lead to a significant lessening of competition by giving it the opportunity to influence ITV's strategy. A final report is expected in December, and the minister will then decide what action to take (which could include requiring divestment of the stake or restrictions on behaviour, such as on the exercising of voting rights).

The Secretary of State for Trade and Industry referred two questions to the Competition Commission for investigation under the Enterprise Act 2002. The first was whether there was a "relevant merger

situation" between BSkyB and ITV, and whether it would be likely to result in a significant lessening of competition. The second was whether this would affect media plurality.

On the first question, the Commission found that BSkyB would be able to block special resolutions proposed by ITV management. The latter's future strategy would require substantial investment, and BSkyB could limit ITV's strategic options through restricting its ability to raise funds. BSkyB could influence investment in content production and commissioning, restrict the ability to purchase additional spectrum for high-definition TV services, and in other ways weaken the constraint that free-to-air services would otherwise place on BSkyB's pay-TV service. This would result in a loss of rivalry in the all-TV (both pay TV and free to air) market between ITV and BSkyB. However, the Commission felt that there would be no substantial lessening of competition in joint bidding for sports rights or in the advertising market as a result of the acquisition, nor on the supply of national news services.

On the plurality question, the Commission decided that there was insufficient evidence to suggest that BSkyB would exert editorial influence over ITV's news output, nor that the acquisition would result in the favouring of Sky News over the ITN service. The regulatory mechanisms, together with a strong culture of editorial independence within television news production, were likely to be effective in preventing BSkyB from prejudicing the quality and independence of ITV news. Thus, the acquisition was unlikely to have an adverse effect on the sufficiency of plurality, and so would not operate against the public interest. ■

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- **Competition Commission, "CC Provisionally Finds BSkyB/ITV Acquisition Restricts Competition", 2 October 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10966
- **Acquisition by British Sky Broadcasting Plc of 17.9 per cent of the Shares in ITV Plc, Provisional findings report, 4 October 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10967

EN

GB – Regulator Fines Broadcaster Following Abuse of Premium-Rate Phone Competitions

The Office of Communications (Ofcom), the British communications regulator, has imposed a fine of GBP 2 million (approx. EUR 3 million) on GMTV, the commercial public service breakfast-time broadcaster. The fine is for its serious failure to ensure compliance with Ofcom's codes on premium-rate phone competitions between 2003 and 2007.

From 2003 GMTV employed the telecommunications operator, Opera, to manage the competition entry systems and to provide telecommunications services. After complaints and an investigation carried out in a programme by the BBC, Ofcom found that there had been four types of misconduct; "early selection" by which competition finalists were decided up to three hours before phone lines closed (between 2003 and 2005); the "15/5 method" by which fifteen out of twenty finalists were selected before lines closed; "final five" by which the final five were selected up to three minutes before lines closed, and "early selection" under which finalists were selected an hour before lines closed (between 2005 and 2007). The effect was to disenfranchise those who had entered the competition after the closure, but at the same time their entries were still accepted. In the period of the investigation, 62 million entries had been made to the various competitions, of which 25 million might be eligible for refunds due to the early selection procedure. The broadcaster had earned GBP 63.6 million worth of revenues from the competitions during the period investigated.

The deception had been carried out by Opera; however, Ofcom decided that the failure of GMTV to operate any reasonable compliance procedure, verification, oversight or management of the arrangements over four years amounted to gross negligence. It was in breach of the provisions in Ofcom's Programme Code and Broadcasting Code requiring that the broadcaster must retain control of, and responsibility for, the service offered (including all content) and that competitions must be conducted fairly.

In view of the seriousness of the breaches, Ofcom imposed a fine of GBP 2 million on the broadcaster (equal to the highest fine previously imposed, which had involved deceptive practises in programme making). The fine would have been even higher had GMTV not taken a number of steps including: the resignation of its Managing Director and its Head of Competitions; and organising and publicising refunds.

In separate proceedings, Opera was fined a record GBP 250,000 by ICSTIS, the regulator of premium phone services. ■

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- **Ofcom Content Sanctions Committee, "Consideration of Sanction Against GMTV in Respect of its Service the National Channel 3 Service", of 29 September 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10965

EN

GB – Ofcom Consults on Licensing the Use of Mobile Phones On Board Planes

The UK communications regulator Ofcom has opened a consultation on proposals concerning licensing the right to use mobile telephones on commercial aircraft. The consultation opened on 18 October 2007 and it closes on 30 November 2007. The consultation follows a discussion document published in 2006.

Ofcom's responsibility is limited to spectrum regulation and the problem of potential intereference with terrestrial networks. Accordingly, the use of such equipment would be licensed only above 3000 metres.

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deeJgee Reasearch/Consultancy

Such onboard networks should not be, in Ofcom's opinion, "licence-exempt" because of the "…uncertainty surrounding the performance of these systems in operation and the substantial risks to terrestrial networks if they were the victims of interference."

Whether such licensed use of the spectrum would involve possible fees is also being discussed.

Ofcom states that the matter of equipment safety is not its responsibility, but falls under the European Aviation Safety Agency. In addition, each European country has its own national authority, which deals with such matters, e.g. in the UK, it is the Civil Aviation Authority (CAA). Ofcom also believes that consumer concerns – e.g., passenger comfort and concerns about the use of mobile phones - are also the responsibilty of the CAA. ■

- **"Mobile services on aircraft", executive summary, available at: http://merlin.obs.coe.int/redirect.php?id=10976**
- **"Enabling mobile phone use on Aircaft", press release of 18 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10977**
- **"Mobile Communications onboard Aircraft, Consultation on the introduction of mobile services on aircraft", 18 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10978**

EN

HR – Rulebook on Content and Process of Public Tenders for Radio and/or Television Concessions

Following the entry into force of the *Izmjene i dopune Zakona o elektroničkim medijima* (Law Amending the Act on Electronic Media, see IRIS 2007-6: 13 and IRIS 2007-9: 15) on 7 August 2007, the Council for Electronic Media is obliged to adopt secondary legislation for the implementation of the new regulations. In order to enable the Council to launch tenders for concessions for radio and television the adoption of a Rulebook on the Content and Process of a Public Tender for Radio and/or Television Concessions was necessary.

The new Rulebook prescribes that the Council launch tenders on the technical basis set up by the *Hrvatska Agencija za telekomunikacije* (Croatian Agency for Telecommunication). The public tender may include any free radio frequency or radio frequencies under special conditions, e.g. free broadcasting capacities for digital radio and television within a multiplex. A concession can be granted for a period of eight years or up to a maximum of fifteen years.

The criteria for the granting of a concession for the performance of radio and television activities are as follows:

- the broadcaster's compliance with programme requirements according to the Act on Electronic Media, principally the volume of own production, European audiovisual works and independent producers' works;
- the quality and diversity of programme content;
- the fulfilment of special technical, spatial, financial (the level of recourses and financial guarantees) and personnel conditions;
- the compliance with further provisions of the Act on Electronic Media, and with legislation regulating tax, and other liabilities of legal and natural persons paid to the State Budget and the budgets of local and regional government units, as well as to the legal entities owned by those units.

Nives Zvonarić
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Both the content of a decision to announce a public tender, and the public tender procedure have been prescribed. Accordingly, the deadline for the submission of a request for the tender documentation to the Council may not be longer than 30 days from the date of publishing of the Decision to announce the public tender. The deadline for the submission of a bid to the Council may not be longer than 60 days after the date of publishing the Decision to announce the public tender. The final deadline for the Council to reach its decision on the concession up for tender may not be longer than 30 days from the date of the public launch of the bids.

Regarding written requests for the explanation of tender documents, which participants in the procedure may submit to the Council up to 10 days before the expiry of the tender deadline, the Council is obliged to reply within a seven day period starting from the date of receiving the written claim. The Council is obliged to deliver this response to all participants in the tender without identifying the party who submitted the request.

After the closure of the tender the Council decides on the most favourable offer by examining, comparing and evaluating all offers, and then grants the respective concession. In its decision the Council determines the date within which the applicant is obliged to submit a request to the Croatian Agency for Telecommunications for a technical examination on the basis of which spatial and technical conditions shall be determined. If this time period is not adhered to, it is considered as a withdrawal of the applicant from the given concession. In this case, the Council can grant the concession to another applicant who has participated in the same tender or it can cancel the tender.

The Croatian Agency for Telecommunications is obliged to process requested technical inspections within a period of thirty days. If it is not capable of doing so, it is obliged to inform the Council in written form.

The Council decision on the granting of a concession can only be appealed by an administrative procedure. ■

- ***Izmjene i dopune Zakona o elektroničkim medijima* (Law on Electronic Media), *Narodne novine* (Official Gazette) No. 122/03 and 79/07), available at: http://merlin.obs.coe.int/redirect.php?id=9658**
- ***Pravilnik o sadržaju i postupku javnog natječaja za davanje koncesije za obavljanje djelatnosti radija i/ili televizije* (Rulebook on content and process of public tender for the concession giving for radio and/or television), *Narodne novine* (Official Gazette) No. 98/07, available at: http://merlin.obs.coe.int/redirect.php?id=9658**

HR

LV – Administrative Court Requires National Broadcasting Council to Provide Substantive Responses to Complaints

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On 3 October 2007 the *Administratīvā rajona tiesa* (Administrative County Court) of the Republic of Latvia adopted a judgement, in which it recognised an action of the National Broadcasting Council as being inconsistent with the law, and requested that the Council review the substance of the matter. The judgement is particularly interesting because for the first time the way in which the Council should react and respond to complaints of the public with respect to activities of broadcasting companies has been discussed.

The brief facts of this particular case are as follows: LNT, one of the major private broadcasting companies of Latvia, had broadcast information about a person R. The person considered this information to be false and defamatory, and requested that LNT revoke it and broadcast a respective counterstatement. After this request was fulfilled by LNT, R. asked the broadcaster to provide him with a copy of the counterstatement that had been broadcast. LNT agreed, however, demanding that R. cover the expenses for the copy in the amount of LVL 1,253.04 (around EUR 1,782.91). R. considered this sum to be unreasonably high and submitted a complaint to the Council, requesting that it determine that LNT should provide him with the copy of the broadcast and ensure that LNT requests a compensation not exceeding its administrative expenses, and to also set up penalties provided by law for the failure of LNT to fulfil the aforementioned duties. The Council replied that it had examined the facts mentioned in R.'s complaint and that it did not find a breach of the Radio and Television Law. In addition it noted that the law does not require LNT to issue a copy of the broadcast upon R.'s request. R. considered that the reply of the Council did not provide a motivated substantial response and submitted the application to the Court.

The Court was of the opinion that R.'s application has a legal basis and that the Council had failed to fulfil its duties as required by the Radio and Television Law, and the Administrative Procedure Law.

At first, the Court underlined that the Council, being a public institution, was obliged to initiate administrative proceedings as a consequence of R.'s complaint in order to determine whether there was a basis to apply any administrative penalties on LNT. The Court assessed that an administrative procedure had been initiated. However, secondly, the Court noted that the Council was obliged to adopt its decision within these administrative proceedings. The Court stated that the case file of the Council did not provide evidence that the Council had performed any examination of the facts mentioned in the complaint and that according to the documents the Council had not decided on the complaint in its substance. Therefore, the failure of the Council to adopt a decision within the administrative proceedings and to provide motivated substantial answers was considered as a breach of the law.

In addition, the Court indicated that R.'s claim to be provided with copies of the broadcast in return for a certain price has no legal basis, and that therefore the refusal does not constitute any administrative violation. Therefore the Council would not have been able to request LNT to issue a copy of the broadcast to R. for a certain price.

As a result of the judgement, the Court requested that the Council adopt a substantiated decision with respect to R.'s complaint within one month after the date of the judgement, or to provide R. with a well-founded answer within 15 days after the date of the judgement.

The judgement is not final and may be appealed by either of the parties. ■

● Judgement of the *Administratīvā rajona tiesa* (Administrative County Court) of the Republic of Latvia of 3 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10975

LV

MT – Medicinal Products and Medical Treatments Consultation Document

The Broadcasting Authority has launched a consultation process on the formulation of new Requirements as to standards and practice regulating programmes involving the participation of certain health care professionals in the broadcast media, and on advertisements, methods of advertising, and directions applicable to medicinal products and medical treatments. An Advisory Committee was set up by the Broadcasting Authority to draw up a consultation document, and is composed of one representative each of the Broadcasting Authority, the Consumer Affairs Council, the Medical Council, the Pharmacy Council, the Council for the Professions Complementary to Medicine, the Health Directorate General, and the Medicines Authority.

Briefly, the Requirements deal with the advertising of medicinal products, medicinal products and children, and medicinal claims. A definition of what constitutes a medicinal product and a medical treatment is afforded in the proposed Requirements. Various provisions are then made with regard to the detailed regulation of medicinal products and medical treatments, advertisements concerning female hygiene products, health promotion campaigns, and nutrition and health claims made with regard to food. Another aspect of the draft Requirements addresses the participation of certain health care professionals (that is, medical practitioners, dental surgeons, pharmacists, pharmacy technicians, nurses and midwives, but not including professions complementary to medicine as these are permitted to advertise in the broadcast media). The proposed rule here is that it should continue to be considered as contrary to the public interest, and discreditable, for certain health care professionals to advertise or canvass, directly or indirectly, for the purpose of obtaining patients or promoting his or her professional advantage. Indeed, careful consideration must be given to the ethical and legal implications of endorsements by certain health care professionals of a commercial product or service as is the case when new services are introduced about which patients are not well informed. Certain health care professionals must never overtly and publicly endorse advertisements for health-related services, such as

nursing homes and private clinics.

On the other hand, certain health care professionals may participate in any programme on the broadcast media that discusses medical, semi-medical, dental or veterinary topics; listeners and viewers are entitled to be provided with information as to the professional academic qualifications of a practitioner who writes a book or article or gives a talk on radio and television; no information will, however, be provided that implies any unique or outstanding qualities or any greater experience in a particular field. Furthermore, all health care professionals are to refrain from discussing a medicinal product on the broadcast media. However, such professionals should, when discussing a therapeutic method, refer also to its side effects and when discussing a medical treatment refer to the need for the viewer or listener to contact a registered health care professional for advice, prior to receiving such treatment. The ill effects of such treatment should also be stated.

In so far as programmes involving medical matters are concerned, such programmes should not be of an advertising nature but of an informative and educational nature. These programmes will not be considered in breach of advertising regulations if several treatments provided by various hospitals and/or clinics are presented during the same series of the same programme. It is permitted to refer to a medical treatment provided that both its positive and negative aspects are mentioned, but it will not be acceptable to mention only the positive aspects of such treatments. The programme producer must also ensure that the programme is balanced when dealing with such positive and negative features. A member of staff of a hospital or clinic, which sponsors or advertises in that programme, will no longer be permitted to present themselves during the programme as the person who is administering a particular treatment.

Rules regulating sponsorship by undertakings involved in the manufacturing or sale of medicinal products and medical treatment and teleshopping of medicinal products and medical treatments, on the basis of the Television Without Frontiers Directive, are also referred to in the draft Requirements. Provision will also be made with regard to health warnings: all advertisements of medicinal products or medical treatments will have to contain wording to the effect that prior to purchasing the medicinal product or taking the medical treatment in question, the advice of a competent health care professional should be sought, as such medicine or treatment might have ill effects on one's health and well-being. This health warning applies to all medicinal products, which do not need a prescription, and which may be bought over the counter, as well as to any type of medicinal treatment.

After the Advisory Committee discusses the feedback received, the Requirements will be revised accordingly and will be formally approved by the Broadcasting Authority. It is envisaged that these Requirements will become binding on 1 January 2008. ■

Kevin Aquilina
Malta Broadcasting Authority

● **Consultation Document - Requirements as to Standards and Practice on Programmes involving the Participation of Certain Health Care Professionals in the Broadcasting Media and Requirements as to Advertisements, Methods of Advertising and Directions Applicable to Medicinal Products and Treatments, available at: http://merlin.obs.coe.int/redirect.php?id=10964**

EN

NL – Dispute over Broadcasting Time Between Muslim Organisations Resolved

A long-standing dispute, involving several Muslim organisations, over broadcasting time has finally been resolved by the Dutch Media Authority (see IRIS 2007-6: 14). Article 39f of the Dutch Media Act sets out the rules concerning religious broadcasting time and has enabled several different faiths existing in the Netherlands to reach out to their followers by airing programmes by means of allocated broadcasting time.

Different organisations representing Dutch Muslims had been vying for air time since 1 September 2005. That date marked the beginning of the Dutch Media Authority's reshuffling of air time allocated to ecclesiastic organisations and groupings representing spiritual currents (scheduled every five years). According to Article 39f of the Dutch Media Act, each faith can organise representation of itself and claim broadcasting time. However, in practice, only one organisation, deemed to be the most representative of the faith's followers, is eligible for the air time.

Several organisations aspired to represent Muslim religious interests and no consensus could be reached between them to put forward a single organisation. This divisiveness has now come to an end thanks to the recently agreed cooperation between two organisations which have decided to merge into a single one: *Stichting Verzorging Islamitische Zendtijd* (Foundation for Islamic Airtime – SVIZ). The Dutch Media Authority is satisfied with this cooperation and has duly allocated broadcasting time to this new organisation. The new foundation will be responsible for the supervision and attribution of time slots to two entities which will each be responsible for their own programming. This arrangement is based on the same model which brought together the different currents of Dutch protestants into a single organisation. ■

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● ***Commissariaat wijst moslimzendtijd toe aan SVIZ* (Media Authority allocates airtime to SVIZ), press release of 4 October 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10982**

NL

PL – Constitutional Tribunal Judgement on the Act on Disclosing Documents of the State Security Service from 1944-1990

On 11 May 2007, after three days of deliberations, the Constitutional Tribunal of Poland issued its judgement on the illegality of several provisions of the Act on Disclosing Documents of the State Security Service from 1944-1990 (see IRIS 2007-5: 17), and presented its reasoning. The Tribunal found a substantial part of the Act to be inconsistent with the Constitution's provisions and rules. However, the

judges were not entirely of the same opinion; nine submitted dissenting opinions on different specific issues dealt with in the judgement.

According to the very wide definition of the term "journalist" used in the Act, thousands of people involved in various ways in media activities, from both the public and commercial media sectors, became subject to the so-called lustration procedures. As a consequence, like all other professional groups enumerated in the Act, they were obliged by the law to file a "vetting declaration" and to answer the question as to whether or not they collaborated with the so-called special services (intelligence services) of the former regime. All were obliged to submit such declarations before 15 May 2007. According to the Tribunal's verdict, the lustration of journalists, in general, was deemed to be unconstitutional. Hence, the Tribunal stated, that the journalists who had not send their declarations up until the date mentioned above, were no longer obliged to do so; and that the declarations already submitted should be immediately returned.

The Tribunal is of the opinion that journalists (excluding the authors of commentary programmes in the public radio and television stations) and owners and chiefs of the private (commercial) media, are not, and should not be subject to lustration procedures, according to the respective provisions of the Constitution, and to binding instruments and standards of international law. The Tribunal recognises that subjecting private subjects (i.e. the private/commercial media sector) to the lustration process is not justified and illegal. As a constitutional requirement, limitations introduced by acts of law on the exercise of fundamental constitutional freedoms, in particular the freedom of expression and the media as well as the constitutional rights of individuals based upon these, may be imposed only when absolutely necessary in a democratic state, e.g. for the protection of the state security, the public order or health, etc., and when such limitations do not violate the essence of these freedoms and civil rights (Art. 31.3 of the Polish Constitution). Regarding the private media sector, such a case does not exist, according to the final opinion of the Tribunal; therefore, imposing such restrictions would infringe the proportionality rule.

Moreover, "private media" journalists do not belong to the legal catalogue of persons holding so-called "public functions" (a term which the Tribunal found to be far too broad). However, the Tribunal stated that the managing staff of the public electronic broadcast stations, and the programme managers and their deputies, editors and authors of commentary and information programme services of the channels, as well as managers of the regional programmes of the radio and television public stations may, and should be, subject to the lustration procedure. Only those categories of persons that evidently belong to the group of "public functionaries", strictly connected with state and public authorities within the sense of "*imperium*" ("empire") *or "dominium",* shall be subject to the lustration procedure. This is why, according to the Court, such exclusion does not apply to the audiovisual public media sector.

The distinction between the public and the commercial media sector has evoked much legal doubt. Some of the judges did not share this opinion and stressed that journalists from neither the commercial nor from the public sector should be subject to the lustration procedure. Although they are "public persons", having an enormous influence on public opinion, they cannot use legal and other "powerful" instruments characteristic of the state authority, i.e. they do not issue legal acts or administrative decisions.■

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● **Judgement, published in the Journal of Laws on 15 May 2007**

PL

RS – SBA Ordered Live Broadcasts of Parliament Sessions to RTS

On 24 September 2007, the Council of the Serbian Broadcasting Agency (SBA) passed a mandatory instruction by which it ordered the public service broadcaster RTS to broadcast all sessions of the Serbian Parliament in specific time schedules, according to the Bylaw on the Procedure of the Serbian Parliament, i.e. to broadcast these sessions live from 10 a.m. to 6 p.m. each day that the Parliament holds a session. The SBA also stated that for the sessions of the Parliament taking place outside the ordinary time schedules, it will issue specific instructions.

The instruction followed a gentlemen's agreement between the speaker of the Parliament, the heads of all parliamentary groups, the editor-in-chief and other members of the management of RTS, and representatives of the SBA. The agreement was reached after opposition parties in the Parliament had protested the fact that some sessions in the past had not been broadcast live, but rather with some delay and in a shortened form. The RTS general manager conceded to this arrangement, however, at the same time claiming that it does not seem to be European practice to have the public service broadcaster transmitting all parliamentary sessions, live. Many professionals and NGO's have contested the fact that such an agreement was transformed into a mandatory instruction from the SBA. They claimed that the SBA had no authority to issue such mandatory instructions to the public service broadcaster, and that it violates the independent position, which the RTS has under the 2002 Broadcasting Act of Serbia.

For political reasons, the Constitutional Court of Serbia is not yet constituted in accordance with the 2006 Constitution of Serbia (judges have still to be appointed), so there is no independent authority, which could decide on the legality of the SBA's mandatory instruction; no such procedure has been initiated yet. Until an eventual ruling of the Constitutional Court on the illegitimacy of the mandatory instruction, the public service broadcaster will have to provide live broadcasts of the parliamentary sessions. ■

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