OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS

Legal Observations
of the European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Jon Gaunt v. the United Kingdom

A recent decision of the European Court of Human Rights (ECtHR) clarifies that journalistic freedom of expression does not encompass the right to insult and offend an interviewee during a radio interview, including a politician. It also confirms the competence of a media regulatory body to interfere with a journalist's or a radio station's freedom of expression in a proportionate way. In the case at issue Ofcom, the independent regulator and competition authority for the United Kingdom communications industries, had launched an investigation into a radio interview about which it received a series of complaints. Ofcom concluded that the broadcast had breached the Broadcasting Code, as it had amounted to gratuitous and offensive insult without contextual content or justification. No sanction or penalty was imposed either on the radio station or the journalist, other than the publication of the decision by Ofcom.

The case concerns an interview on Talksport, a speech-based radio station on which Jon Gaunt presented a programme which covered a broad range of news issues, often with a combative and hard-hitting interview style. In 2008 Gaunt conducted a live interview with M.S., the Cabinet Member for Children's Services for Redbridge London Borough Council. The interview concerned the Council's proposal to ban smokers from becoming foster parents on the ground that passive smoking could harm foster children. Gaunt showed a specific interest in the issue, as he spent some of his childhood in the care system himself. In a newspaper column he had expressed his appreciation for his foster mother who lavished love and care, although she "smoked like a chimney". The first part of the interview was reasonably controlled, giving M.S. the opportunity to explain his Council's policy. The rest of the interview, however, degenerated into a shouting match from the point when Gaunt first called M.S. "a Nazi", an insult that was repeated several times. The journalist also called the interviewee an "ignorant pig", while the whole interview style became gratuitously offensive and could be described as a rant. Within ten minutes of the end of the interview, Gaunt apologised to the listeners, accepting that he did not "hold it together", that he had been "unprofessional", and that he had "lost the rag". One hour after the end of the broadcast, he made a further apology for having called M.S. a Nazi. The same day Gaunt was suspended from his programme and a short time later Talksport terminated his contract without notice.

Following the broadcast, Ofcom received 53 complaints about Gaunt's conduct during the interview. In a response to Ofcom, Talksport stated that it regretted what had happened and accepted that the interview "fell way below the acceptable broadcasting standards which it expected and demanded". It regretted that Gaunt's language had been offensive, and that the manner in which the interview was conducted had been indefensible. Subsequently Ofcom concluded that the broadcast had breached Rules 2.1 and 2.3 of the Broadcasting Code as it fell short of the generally accepted standards applied to broadcast content and included offensive material which was not justified by the context. In reaching this conclusion, Ofcom took into account the extremely aggressive tone of the interview style and the seriousness which the broadcaster attached to the incident, as demonstrated by its prompt investigation and dismissal of the journalist, as well as Gaunt's two on-air apologies. Gaunt applied for a judicial review of Ofcom's decision on the ground that it disproportionately interfered with his freedom of expression and infringed his rights under Article 10 of the European Convention on Human Rights. After the national courts dismissed Gaunt's complaint (see IRIS 2010-8/30), he lodged an application before the ECtHR.

Although the ECtHR would not exclude the possibility that Ofcom's finding was at least capable of interfering with the journalist's freedom of expression (while Ofcom's finding was only directed to Talksport), it finds Gaunt's complaint manifestly ill-founded and therefore inadmissible. The Court found that the interference with Gaunt's freedom of expression was prescribed by law and was justified and proportionate. The ECtHR agrees that the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law. In assessing Gaunt's Article 10 complaint, the national courts took properly into account that the interview was with a politician and involved political speech on a matter of general public interest, before concluding that his freedom of expression did not extend to what had amounted to gratuitous, offensive insult and abuse without contextual content or justification; "hectoring" and "bullying"; and a "particularly aggressive assault on M.S. and his opinions". The ECtHR reiterates that a degree of exaggeration, or even provocation, is permitted, while it has repeatedly held that this does not extend to "manifestly insulting language" or a "gratuitous personal attack". In the Court's view, the content of the interview with M.S. certainly came close to being a "gratuitous personal attack" without any appreciable contribution to the subject being discussed. In deciding what is capable of offending a broadcast audience, weight must be given both to the opinion of the domestic courts and, to an even greater extent, to that of a specialist regulator of broadcast standards - such as Ofcom - which has considerable experience of balancing the param-

eters of potentially offensive content with the fluctuating expectations of contemporary radio audiences. Hence, the ECtHR shows reluctance to substitute its view on whether or not the interview amounted to a "gratuitous personal insult" for that of the specialist regulator, which has been confirmed by the domestic courts at two levels of jurisdiction. The Court is of the opinion that the publication of the Ofcom finding was proportionate to the legitimate aim of the protection of the rights of others. There has been accordingly no violation of Gaunt's right to freedom of expression under Article 10 of the Convention.

• Decision by the European Court of Human Rights, First section, case of Jon Gaunt v. the United Kingdom, Application no. 26448/12 of 6 September 2016
http://merlin.obs.coe.int/redirect.php?id=18214 EN

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Committee of Ministers: A revised Convention on Cinematographic Co-Production

On 29 June 2016, a new Convention on Cinematographic Co-production (the "Convention") was adopted by the Committee of Ministers on at the 1261st meeting of the Ministers' Deputies. This instrument contains rules of international law for relations between States when cinematographic co-productions involving producers from at least two States are undertaken.

The scope of the Convention is limited to cinematographic works. According to the Explanatory Report of the Convention (the "Explanatory Report"), audiovisual works are excluded because their production is rarely made by co-production agreements and the evolution of technologies makes it difficult to find a proper definition of them.

The definition of "cinematographic work" under the Convention does not distinguish between length or media used, and includes works of fiction, animation, and documentaries which are intended to be shown in theatres. Furthermore, the Explanatory Report clarifies that, when a work is not screened in a cinema, it will not lose the co-production status.

The aim of a co-production agreement is to confer the nationality of each of the partners in the co-production. By this, the co-produced works may benefit from national aids and tax exemptions, among others. Nevertheless, the access to those aids is subject to the conditions and limits provided for by the legislative and regulatory provisions in force in each State and in accordance with the provisions of the Convention.

According to the Explanatory Report, the range of 10% to 70% of contribution for multilateral co-productions has been proved difficult to apply in countries with an undeveloped cinematographic industry. Furthermore, the report recalls that participation of cinematographic industry professionals from smaller countries in higher budget co-productions with experienced partners would grant them valuable expertise and helpful financial and creative input. Given this, the Convention broadens the range to 5% to 80% of contribution.

The Convention also establishes that the co-production contract must guarantee joint ownership of the property rights of the film for each of the co-producers. This instrument also takes account logistic measures of co-production by establishing that each party must facilitate entry and residence to the technical and artistic personnel from those who participate in co-productions. Moreover, work permits in the territory of the party must be granted and the temporary import and re-export of equipment required for the production and distribution of cinematographic works has to be permitted.

According to the Convention, each state party must designate a competent authority for applying the Convention. Moreover, a list of those authorities, which has to be regularly updated, must be submitted by the state parties to the Secretary General of the Council of Europe.

The Convention has two appendixes. The first of them provides the procedure for awarding co-producing status. The second one establishes the conditions for a work to qualify as an official co-production.

The Convention will be opened for signature by the member states of the Council of Europe and the other state parties to the European Cultural Convention at a later date, to be decided by the Committee of Ministers. The Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention.

This instrument follows years of work by different entities and persons who received, since 2008, the mission to revise the first version of the same convention, adopted in 1992 (IRIS 1995-1/44). Moreover, the preamble of the Convention has regard to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005) (see IRIS 2005-10/1), which strives to strengthen activities related to cultural expressions around the world.

• Council of Europe Convention on Cinematographic Co-production (revised), adopted by the Committee of Ministers on 29 June 2016 at the 1261st meeting of the Ministers' Deputies
http://merlin.obs.coe.int/redirect.php?id=18244 EN FR

• Steering Committee for Culture, Heritage and Landscape, Council of Europe Convention on Cinematographic Co-production (revised) - Explanatory Report, 1 July 2016
http://merlin.obs.coe.int/redirect.php?id=18246 EN FR

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EUROPEAN UNION

European Commission: Proposals for new telecoms package

On 14 September 2016, the European Commission published a set of proposals in order to "overhaul" European Union telecoms rules, and "meet Europeans' growing connectivity needs". These reforms all form part of the Commission's Digital Single Market Strategy (see IRIS 2015-6/3). First, the Commission published a draft directive on establishing the European Electronic Communication Code, which seeks to create a legal framework to ensure the freedom to provide electronic communications networks and services. The draft directive would amend the four current directives that form part of a regulatory framework for electronic communications networks and services, namely the Access Directive (2002/19/EC), Authorisation Directive (2002/20/EC), Framework Directive (2002/21/EC), and Universal Service Directive (2002/22/EC) (see IRIS 2002-3/5).

The current framework was last revised in 2009 (see IRIS 2010-1/7), and "due to the convergence of the telecommunications, media and information technology sectors", it is proposed that "all electronic networks and services should be covered by a single European Electronic Communication Code". Thus, all four current directives, in addition to the amendments, should be recast into one directive, "in the interests of clarity".

The 258-page proposal contains a number of notable provisions, including the expansion of the definition of "electronic communications service" to include the new concept of "interpersonal communications service", which is a "service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons". In this regard, the directive proposes "that new online players who provide equivalent communications services to those provided by traditional telecoms operators are covered by similar rules, in the interest of end-user protection." Additional rules applicable to such "over-the-top communications services" will include ensuring that servers and networks are secure, disabled users have equivalent access to their services, and users can reach the EU emergency number 112. Further notable amendments include: (a) an obligation for member states to ensure affordable access of all end-users to functional broadband internet access services and voice communications at least at a fixed location; (b) strengthen the role of independent national regulators by establishing a minimum set of competences for those regulators across the EU and enhance their independence requirements; and (c) in relation to the assignment of spectrum to electronic communications, establish common principles and EU instruments to fix assignments deadlines and a minimum 25-year licence duration to ensure return on investment and predictability for all market players.

Second, the Commission also published a draft regulation on establishing the Body of European Regulators for Electronic Communications (BEREC). BEREC was established in 2010 under Regulation (EC) No 1211/2009 (see IRIS 2010-3/4), and under the proposed regulation; it would gain new powers such as playing a greater role in the consultation mechanism for market regulatory remedies, providing guidelines for NRAs on geographical surveys; developing common approaches to meeting transnational end-user demand; delivering opinions on draft national measures on assignments of rights of use for radio spectrum (the radio spectrum 'peer review'); and setting up one register of the extraterritorial use of numbers and cross-border arrangements, and another on providers of electronic communications networks and services.

Third, the Commission published a draft regulation on the promotion of Internet connectivity in local communities. These amendments encourage entities with a public mission, such as public authorities and providers of public services, to offer free local wireless connectivity in the centres of local public life (e.g. public administrations, libraries, health centres and outdoor public spaces). To this end, it provides financial incentives in favour of those entities who want to provide free, high capacity local wireless connectivity in public spaces within their jurisdiction or at their sites of service.

Fourth, the Commission also published a Communication entitled Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, designed to set out a "vision for a European Gigabit society, where availability and take-up of very high capacity networks enable the widespread use of products, services and applications in the Digital Single Market". The 17-page Communication details a number of initiatives that will be taken in this regard, including (a) "5G for Europe: Action Plan": a plan for the establishment of a common timetable and a set of enabling actions for the coordinated launch of 5G networks in Europe; (b) a plan for the Commission, in cooperation with the European Investment Bank, to launch a Broadband Fund by end of 2016, and (c) a plan for the Commission to set up a Wi-Fi voucher

scheme for public authorities to offer free Wi-Fi connections in the centres of community life. A 55-page Commission Staff Working Document was also published alongside the Commission's Communications.

Finally, in relation to the proposed Directive on European Electronic Communications Code, and the Regulation on establishing the Body of European Regulators for Electronic Communications, the Commission states in its Communication that the European Parliament and the Council will "proceed swiftly with the legislative discussions with a view to reaching political agreement by the end of 2017, and implementation in the Member States well before 2020."

• European Commission, "State of the Union 2016: Commission paves the way for more and better internet connectivity for all citizens and businesses", Press Release, 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18216 DE EN FR

• European Commission, Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast), 2016/0288 (COD), 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18249 EN

• European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications, COM(2016) 591 final, 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18217 EN

• European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities, COM(2016) 589 final, 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18218 EN

• Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, COM(2016) 587 final, 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18219 EN

• Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society, SWD(2016) 300 final, 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18220 EN

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UNITED NATIONS

Human Rights Committee: New resolution on the safety of journalists

On 29 September 2016, the United Nations Human Rights Council adopted a new resolution on the safety of journalists ('the Resolution') (for a recent Council of Europe Committee of Ministers Recommendation on the safety of journalists, see IRIS 2016-5/3). Shortly after its adoption, the Council of Europe and the human rights organisation Article 19 welcomed the new Resolution as "ground-breaking" and "comprehensive".

The Resolution builds upon multiple prior resolutions and decisions of the United Nations (UN) entities that focus on the safety and protection of journalists specifically or more generally on the right to freedom of expression, the right to privacy in the digital age, and human rights on the Internet (see IRIS 2011-10/1). The Resolution reiterates the previously expressed unequivocal condemnations of all attacks and violence against journalists and media workers, and the prevailing impunity for such attacks and violence, and calls upon states to implement more effectively the applicable legal framework for the protection of journalists and media workers. Likewise, the Resolution urges states to do their utmost to prevent violence, threats and attacks against journalists and media workers, and to create and maintain, in law and practice, a safe and enabling environment for journalists to perform their work independently and without undue interference.

In addition to focusing on general issues of physical safety and integrity of journalists in peacetime and during armed conflicts, the Resolution draws particular attention to a number of specific issues that the UN has not yet sufficiently addressed. First, the Resolution specifically and unequivocally condemns specific sexual and gender-based attacks on women journalists, both online and offline. Second, it calls for the immediate and unconditional release of journalists and media workers who have been arbitrarily arrested or detained. Third, the Resolution calls upon States to pay particular attention to the safety of journalists during the periods surrounding elections. Fourth, the Resolution emphasises the vital importance in the digital age of encryption and anonymity tools for journalists to exercise freely their work and their enjoyment of their rights to freedom of expression and to privacy. Accordingly, it calls upon states not to interfere with the use of such technologies unless the restrictions used comply with international human rights law.

The Resolution concludes by requesting the High Commissioner for Human Rights to prepare, in consultation with the states, a report with an overview of available mechanisms concerned with ensuring the safety of journalists and to submit it to the Human Rights Council at its 39th session.

• Resolution of the United Nations Human Rights Council on the safety of journalists, A/HRC/33/L.6, 26 September 2016
http://merlin.obs.coe.int/redirect.php?id=18215 EN

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NATIONAL

BA-Bosnia And Herzegovina

Still without digital TV - release of the digital test signal postponed

Although, it was planned that the digital TV signal would start being delivered by the three public TV services in Bosnia and Herzegovina (BA) on 29 September 2016, the beginning of this process has been postponed. The public broadcaster Radio-Television of Republika Srpska (RTRS) has asked that the deadline be prolonged until mid-October. The reason for the request is unknown. Representatives of the three public broadcasters and the Ministry of Communication and Transport stated that the reasons are technical and procedural and will soon be resolved. A Ministry statement states, "all technical and organizational preconditions for this event have been provided, but a memo arrived from RTRS suggesting that the date may be postponed until the middle of October".

Bosnia and Herzegovina is the only country in Europe that does not have digital TV broadcasting. It even missed a deadline set by the International Telecommunication Union (ITU) and the United Nations (UN) for 15 June 2015 as the final date for the switch to digital broadcasting worldwide. Activities for the switch to digital broadcasting in BA started in 2009. The Communications Regulatory Agency (CRA) set up an expert forum composed of representatives of public services, media experts, and broadcasting experts, as well as government representatives, who produced the "Strategy for Transition from Analogue to Digital Terrestrial Broadcasting", adopted by the Council of Ministers (the national government) in 2010. The Strategy stipulated the creation of two multiplexes, one for public TV services and the other completely commercial. It even set a date for the switch to digital broadcasting, 31 December 2011, a year earlier than the date set by the European Union for its member states. However, due to numerous technical, procedural, and political problems, the deadline has been missed by nearly five years. For example, just the implementation of a tender for the procurement of digital transmission equipment, lasted around a year and a half, due to complicated tender procedures and applicants' complaints. Similarly, a dispute about equipment ownership among the three public services lasted more than a year, stalling the whole process. It is interesting that funds for digitalization were not a problem as they were provided by the Council of Ministers from revenues generated by CRA, which collects license fees from broadcasters as well as telecom operators.

Test broadcasting is supposed to cover only the three biggest cities in BA - Sarajevo, Banja Luka, and Mostar, while achieving coverage for the whole country and shutting down the analogue signal will take more than a year. However, clients of telecom and cable operators have HD signal for a large number of televisions.

• *STRATEGIJA DTT* (Strategy for Transition from Analogue to Digital Terrestrial Broadcasting)
http://merlin.obs.coe.int/redirect.php?id=18228 BS

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Revocation of the license of 'TV Seven' EAD

On 13 September 2016, the Council for Electronic Media (CEM) decided that the licenses of 'TV Seven' EAD for the provision of audio-visual media services 'TV7' and 'Super 7' shall be revoked. Sofia City Court had opened bankruptcy proceedings for 'TV Seven' EAD and announced the initial date of the bankruptcy by way of resolution no 522 on 17 March 2016. According to CEM, the Radio and Television Act (RTA) envisages that when a media service provider is in bankruptcy proceedings it does not meet the requirements of the law and the CEM shall revoke the license.

CEM decided to admit a preliminary execution of its decision on the grounds of the defence of important state and public interests. The provider is not able to execute its assumed programme obligations related to the development of contents, where there must be broadcasts in the information, education, cultural, and entertainment sphere, designated for the major part of society. Regardless of the must-carry right of 'TV7', an enterprise which has received permission to use an individually identified radio-frequency spectrum for a land digit radio broadcasting of national scope, the financial problems of 'TV Seven' EAD required suspension of its broadcasting in the beginning of December 2015. The 'SUPER 7' programme has never been broadcast in the network of the multiplex. The insolvency of the company, on the other hand, impedes them paying the annual fees for supervision and this reflects on the receipts in the state budget.

The reason for the financial problems of the media is that it was funded by Corporate Commercial Bank, which became bankrupt in the summer of 2014. The television has many creditors like the Corporate Commercial Bank, National Revenue Agency, organizations for collective management of copyright: 'MUSICAUTOR' and PROPHON, NURTS, which are/and producers which have created its contents.

In 2009, the television received its broadcast license thanks to amendments in the Law on Electronic Communications (See: IRIS 2009-5/12). In 2010, it received its digital licenses (See: IRIS 2010-7/10).

• Решение за отнемане на индивидуални лицензи , издадени на „442422 Седем " ЕАД за доставяне на аудио - визуални услуги с наименования „*TV7*" и „*Super 7*" (Decision for revocation the licenses of 'TV Seven' EAD for provision of audio-visual media services 'TV7' and 'Super 7')
http://merlin.obs.coe.int/redirect.php?id=18229 BG

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Promotion of diversity of film offers on the Internet

The Swiss Confederation's cinematographic policy aims to encourage the creation of films as well as to enhance the diversity and quality of what is on offer. Because of the country's linguistic and cultural pluralism, the cinema market in Switzerland is fragmented; it is not big enough to develop in a standard market economy. Measures aimed at promoting cinematographic diversity therefore ensure that a variety of films are on offer throughout the country. To achieve this, Article 19 (2) of the Cinema Act (Loi sur le Cinéma - LCin) requires those companies wishing to screen a film for the first time in a cinema theatre to acquire the rights for all language versions shown in Switzerland. Under this clause guaranteeing diversity, the films are available in all the country's linguistic regions, thereby preventing the fragmentation of the cinema market in Switzerland and preventing the supply coming solely from sources in the neighbouring country concerned.

Until now, however, the obligation only applied to screenings in cinema theatres. Films nowadays are now largely viewed on online offers available on the Internet (VoD), significantly reducing the effectiveness of the clause guaranteeing diversity. Swiss distributors are in fact often unable to acquire rights for use outside cinema theatres covering all the linguistic regions. This renders the diversity of the offer in the country more fragile, and to remedy the situation the addition of Article 19 (2) of the LCin now extends the clause guaranteeing diversity to include the new ways of watching films.

Since 1 January 2016, then, a company may only show a film, whether in a cinema theatre or in any other way, if it holds rights covering the entire territory of Switzerland for all the language versions used in the country. Thus the change in the regulations makes it possible to adapt the legal framework to technological developments; it applies to both films on physical media (DVDs) and non-linear digital use (VoD). The rule applies to Swiss or international purchasers of the rights to show films intended for the cinema and shown in Switzerland. As a result, these rights can no longer be divided between a number of holders. On the other hand, the single distribution clause does not require the joint acquisition of rights to show a film both in cinema theatres and by non-linear means, nor does it apply to the broadcasting of television programmes.

Furthermore, starting on 1 January 2017, companies which hold rights or show films other than in cinema theatres will be required to notify the Federal Statistics Office each year of their operating results for each linguistic version (Article 24 (3)bis of the LCin). This obligation applies to films lasting more than 60 minutes which are designed for cinematographic use, and also applies to companies showing films on digital platforms.

Implementation of the clause guaranteeing diversity will be monitored constantly by the Federal Office of Culture. It is important to take account of the rapid evolution in the ways in which films can be shown by digital means, in order to ensure that the legal provisions do indeed make it possible to achieve the desired aims.

• *Loi fédérale sur la culture et la production cinématographique (loi sur le cinéma)* (Federal law on culture and cinematographic production (Cinema Act - LCin))
http://merlin.obs.coe.int/redirect.php?id=18257 DE FR IT

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Increase in proportion of licence fee allocated to local radio stations and television channels

On 14 June 2015 the Swiss population approved a change in the Federal Law on Radio and Television (LRTV) with a view to introducing a new system of collecting the licence fee (see IRIS 2015-7/5). The purpose of this revision of the legislation was to replace the former licence fee, based on possession of a radio or television, by an audiovisual licence fee now payable by all households and certain companies. The audiovisual licence fee makes it possible to adapt the legal framework to technological developments, since radio and television programmes can now be received almost anywhere at any time, particularly by using a mobile phone, tablet, or PC. Moreover, 92% of Swiss homes and nearly all businesses have Internet access.

The result of the introduction of the new fee system is a significant drop in the amount paid by most households: since financing is assured by a larger number

of people, the price of the new licence fee has fallen from CHF 462 to about CHF 400 per household per year. For businesses, the fee is graduated according to turnover; businesses with an annual turnover of less than CHF 500 000, however, are exempt (this represents nearly 75% of Swiss businesses).

The major part of the radio and television licence fee is handed over to the Swiss National Radio and Television Broadcasting Corporation (Société Suisse de Radiodiffusion et Télévision - SSR). A further 4-6% of the yield of the licence fee is allocated to the 21 local radio stations and 13 local television channels that fulfil a public-service mandate. A proportion of the licence fee may also be paid to local broadcasters whose radio or television programmes cover political, economic and social reality, and contribute to the cultural life of the region in which they are broadcast. A further proportion of the licence fee may also be allocated to those radio channels that broadcast additional programmes on a not-for-profit basis in urban areas.

The new collection system also makes it possible to improve the economic situation of those local radio stations and television channels with a public-service mandate. Previously, the proportion of the licence fee allocated to them amounted to a total of CHF 54 million annually; they may now receive up to an extra CHF 27 million and receive better support for the initial and continuous training of their staff, and for digitising their programmes.

On 25 May 2016, on the basis of these new provisions, the Federal Council decided to allocate more financial resources to local radio stations and local television channels, increasing from 4 to 5% the proportion of the licence fee allocated to them; this represents an additional CHF 13.5 million per year. In all, these broadcasters will now receive a total of CHF 67.5 million. On 15 August 2016, the Federal Department of the Environment, Transport, Energy and Communication (DETEC) laid down the proportions allocated to each of the beneficiary radio stations and television channels. The payments will be made retroactively from 1 July 2016.

• *Loi fédérale sur la radio et la télévision (LRTV)* (Federal law on radio and television (LRTV))
http://merlin.obs.coe.int/redirect.php?id=18259 DE FR IT

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FR-France

Court of Cassation's view of humour, politics and freedom of expression on TV

In two decisions delivered on 20 September 2016, the criminal chamber of the Court of Cassation deliberated on two cases between the leader of the Front National political party, Marine Le Pen, and France Télévisions, after the broadcasting of two humorous sequences during the programme 'On n'est pas couché' that she had considered to be insulting. The Court appeared not to share her appreciation of where the limits of the freedom of expression lay.

In the first case, the sequence at issue showed on-screen a number of posters parodying candidates for election as president which had been published three days earlier by the magazine 'Charlie Hebdo'. One of the posters bore the slogan "Le Pen - the candidate who is just like you" above a pile of excrement. Ms Le Pen brought a case against the president of the company France Télévisions and the presenter of the programme on the grounds of insult. The case was thrown out by the court of first instance, and Ms Le Pen lodged an appeal. The court had noted that although the poster at issue was particularly vulgar in its reference to the complainant, it did not constitute a personal attack intended to offend her dignity, but rather a jibe directed at a candidate for election as president, and also that humour ought to be broadly tolerated when - as in the present case - it was directed at a politician. The Court of Appeal had agreed that the presenter had been careful to indicate the satirical context in which the drawings presented were to be understood, thereby clearly manifesting his intention to be humorous and not to present a degrading image of the complainant. Ms Le Pen contested the decision, and appealed to the Court of Cassation. In its decision delivered on 20 September 2016, the Court found that the drawing and the phrase at issue, which offended the dignity of the complainant by associating her with a pile of excrement, even if it was in her capacity as a politician during a satirical sequence during the broadcast, went beyond the bounds of acceptability in terms of freedom of expression. The Court therefore overturned the decision of the Court of Appeal, which had disregarded Article 33 (2) of the Act of 29 July 1881 (insult directed at a private person) and Article 10 of the European Convention on Human Rights, and referred the case to a different composition of the Court of Appeal in Paris.

In the second case, another broadcast of the same programme had presented the family tree of Marine Le Pen in the form of a swastika during a humorous sequence on the genealogy of a number of politicians. Ms Le Pen had lodged a complaint of public insult di-

rected at a private person and asked for a civil action to be joined. In clearing the defendants, the Court of Appeal specifically noted the register of satire and buffoonery characteristic of the sequence at issue, the aim of which was to cause laughter by mocking the characters represented in them, without delivering any vindictive, disrespectful message about them. The manifestly outrageous and frivolous nature of the drawing could not be interpreted as creating an image of Ms Le Pen that in any way reflected the reality of her political positioning or her guiding ideology. Ms Le Pen then appealed to the Court of Cassation. Unlike in the first case discussed, however, the Court rejected the appeal. It found that the drawing at issue, although it offended the complainant, presented, in a satirical fashion and in a context of political controversy, the ideology thought to be the inspiration of the leader of a political party and therefore did not exceed the bounds of acceptability in terms of freedom of expression.

• *Cour de cassation, (ch. crim.), 20 septembre 2016, M. Le Pen c/ L. Ruquier et a.* (Court of Cassation, (criminal chamber), 20 September 2016, M. Le Pen v. L. Ruquier and others) FR

Amélie Blocman
Légipresse

Contested classification licence for 'La Vie d'Adèle': Conseil d'Etat decides

The Minister for Culture had appealed to the Conseil d'Etat to overturn the decision delivered by the Administrative Court of Appeal on 8 December 2015 which, in response to an application from a traditionalist Roman Catholic association, cancelled the classification licence that included a ban on the film being shown to anyone under 12 years old and required the warning "Contains numerous realistic sex scenes likely to be disturbing to young audiences". The warning and the ban had been issued by the French Classification Board in July 2013 for the film 'La vie d'Adèle: Chapitres 1 et 2' (English title: 'Blue is the Warmest Colour'), which won the Palme d'Or at the Cannes Film Festival in 2013.

In its 28 September 2016 decision, the Conseil d'Etat recalled that, after considering the theme of the film, the Administrative Court of Appeal in Paris had found that it contained a number of scenes in which sexual acts were presented in a realistic fashion and that the conditions under which one of these scenes in particular had been filmed made it impossible for anyone watching, particularly those in the younger age bracket, to distance themselves from what they were being shown. The Court of Appeal had deduced that the effects of the film on the sensitivities of young audiences meant that the film should be even further restricted.

According to Article R. 211-12 (4) of the Cinema Code, "The [Classification] Board may also propose that the Minister with responsibility for Culture order a ban on showing works to minors under 18 years of age if they include scenes of non-simulated sex or extreme violence (...)". In the case at issue, the Conseil d'Etat found that the elements submitted indicated that, although the sex scenes at issue were simulated and were undeniably very realistic, they were not at all violent, nor were they filmed with the intention of being degrading. The scenes formed a coherent part of the overall narrative thread of the work, which in all lasted nearly three hours, the aim of which was to depict the passionate nature of a love affair between two young women. The Minister for Culture had also attached a warning to the licence granted, intended to inform young audiences and their parents. In the circumstances, the Conseil d'Etat, as the highest administrative jurisdiction in the country, found that the Administrative Court of Appeal had been wrong in qualifying the facts of the case on the basis of the film being likely to be disturbing for young audiences, and consequently deducing that the Minister had committed an error of appreciation in deciding to issue a classification licence that included a ban on showing the film to minors under 12 years old. The Minister was therefore founded in requesting the cancellation of the decision at issue. The case was referred to the Administrative Court of Paris.

• *Conseil d'Etat, (10e et 9e sous-sect.réunies), 28 septembre 2016, Ministère de la Culture c/ Association Promouvoir et a.* (Conseil d'Etat, (10th and 9th sub-sections together), 28 September 2016, Ministry of Culture v. the association 'Promouvoir' and others) FR

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CSA orders TF1 to stop cross-promoting LCI

In a decision issued on 21 September 2016, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) ordered the company TF1 to comply with the ban on cross-promotion included in the agreement, which is concluded with the CSA on 8 October 2001 by virtue of a codicil agreed on 17 February 2016. If TF1 fails to comply forthwith, the CSA has indicated that a sanction procedure may be instigated.

Under Article 3-1 of the Act of 30 September 1986, the CSA "ensures equality of treatment (...) and makes every effort to promote unrestricted competition (...)." In December 2015, the CSA authorised the continuous news channel LCI, which owns the TF1 group, to switch to Freeview, subject to the signature of a codicil to its agreement with the CSA. The codicil was to incorporate all the undertakings entered into by the TF1 group in support of its application to switch to Freeview. More particularly, the group undertook to

"refrain from any cross-promotion on the TF1 channel of the programmes carried on the channel LCI" and to "refrain from broadcasting on the channel TF1 any advertising intended to promote the programmes broadcast on the channel LCI". In February 2016, these undertakings were set out in a codicil to the channel's agreement with the CSA. They were made in order to preserve competition between the news channels based solely on their respective merits, because of the TF1 group's position in the publicity market and the channel's large audiences.

In September 2016, however, and more particularly during a number of news broadcasts, TF1 announced the guests and themes of LCI programmes, and broadcast a message or banner inviting the audience to follow "the continuous news on LCI" and indicating the identification number of the channel on DTTV.

The CSA considered that the references to specific broadcasts or the general theme of the channel had had the effect of promoting the programmes of the channel LCI which were devoted to covering the news. The same applied to associating the phrases "all the news" or "continuous news" with the name of the channel. Furthermore, merely referring to the LCI service ought to be considered as constituting a promotion of its programmes if such reference attracted viewers.

Since the TF1 television service had promoted programmes on the channel LCI to the public in this way, in contravention of the stipulations of its agreement with the CSA, it was ordered to comply with the agreement.

The channel's managers expressed surprise that all the channels of France Télévisions and all the stations of Radio France had been used for cross-promoting the new public-sector news channel launched in late summer, and called on the CSA to allow TF1's agreement with it to be amended on this issue.

• *Décision n°2016-726 du 21 septembre 2016 mettant en demeure la société Télévision française 1* (Decision No. 2016-726 of 21 September 2016 ordering the company Télévision Française 1 to comply with the terms of its agreement with the CSA) FR

Amélie Blocman
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Signature of interprofessional agreement on sustained exploitation of works

On 11 October 2016, after six months of intense negotiation, the representative organisations of professionals in the cinema and audiovisual sectors signed an agreement with the Ministry of Culture and the National Centre for Cinema and the Animated Image (Centre National du Cinéma and de l'image animée - CNC) undertaking to achieve the sustained exploitation of audiovisual and cinematographic works. The agreement is based on the desire to facilitate access to iconic works of the French cinematographic and audiovisual heritage - masterpieces that are sometimes impossible to find and incomplete filmographies that constitute "so many sources of discontent and frustration, for both the public and professionals, and more particularly for writers". Specifically, the agreement should allow wider access to works for everyone, in every possible way: in cinema theatres, on television, on DVD, and even online, whether the works are films or series, documentaries, short films, etc.

Incorporated in the 1985 Act and continued in the 'Creation and Heritage' Act of 7 July 2016, the principle of the sustained exploitation of works had not previously been applied to audiovisual and cinematographic works.

Under the terms of the agreement, the producer must retain all the elements that were used to produce the work and keep up with current standards for showing it. The obligation to seek to achieve sustained exploitation concerns all distribution channels (cinema theatres, TV, digital platforms) and is described as an obligation of means, not of result. The agreement also provides for obligations aimed at informing writers of efforts made to ensure that the work is shown, and laying down certain deadlines for presuming the obligation has been met. The agreement will remain valid for three years; it includes a clause providing for the option of revision after eighteen months, when a report on its application will be drafted.

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CSA study on digital platforms and the stakes for audiovisual regulation

On 23 September 2016, the national audiovisual regulatory authority in France (Conseil Supérieur de l'Audiovisuel - CSA) published a study on the place of digital platforms in access to audiovisual content, their economic model, and the stakes for the sector. 'Digital platforms' refers to the social networks, video-share websites, app stores and search engines which offer new services that challenge the value chain and the usual legal categories of the audiovisual sector. The CSA study is based mainly on a series of hearings of stakeholders in the audiovisual, digital and advertising sectors and law and economics experts; they were asked four major questions: what place do these platforms occupy today in terms of access to audiovisual content; what place does audiovisual content occupy in the platforms' economic model; how have the audiovisual media services adapted to this new environment; and what are the stakes involved in terms of

exposure and the monetisation of content? The incursion of these platforms on the audiovisual landscape, their concentration, and their market power raise a number of questions and constitute a number of issues that audiovisual regulation must face, such as the preservation of cultural diversity, media diversity, and the protection of both minors and consumers.

The CSA has identified ten aspects sector regulation must address. Firstly, there is the matter of the neutrality of the networks, and the means of ensuring non-discriminatory access to audiovisual services from the distribution networks and a balanced access for suppliers of content to the platforms. Secondly, there is the issue of how to improve the referencing conditions applied by the platforms, and how to reconcile the personalisation of content and the general aim of cultural diversity. The CSA also draws attention to the trend towards uniformity of content, the moderation of content, and the question of whether new methods of moderation could ensure a better balance between consumer protection and freedom of expression. The CSA also raises the question of respect of copyright, which constitutes the foundation for the financing of creative work, and innovations in advertising, both of which have to be able to reconcile the stakes and the expectations of all the players concerned. Lastly, one crucial aspect identified in the study is the distribution of value among the platforms and the traditional audiovisual stakeholders.

At present, the platforms are not required to invest in production, and are not generally involved in the pre-financing of works, as is the case for traditional stakeholders. Moreover, the national framework can only deal with these issues in part since the platforms are present in a number of countries, most of which are not subject to even the basic rules laid down under Community regulations. This raises the question of whether the mechanisms for financing the creation of new works should be adapted. In concluding its study, the CSA notes that "the response that must come from the various authorities and jurisdictions to unprecedented development in the sector must be, firstly, measured and take into account all the parameters that influence the sector and, secondly, consistent at the European or even international level".

Speaking on 27 September 2016 at a CSA study day entitled 'The audiovisual sector in the digital space - platforms and data', the Minister for Culture confirmed that "the second act of the cultural exception to the digital age must be European, otherwise it is bound to fail", referring to the report on the issues facing the cultural industries in the digital universe, submitted by Pierre Lescure in 2013 to the French President and the Minister for Culture at the time. The Minister also recalled that the French authorities have supported extending the scope of application of the AVMS Directive to include video-sharing platforms. The Minister went on to propose that the platforms should also be required to combat the non-respect of human dignity, incitement to racial hatred, and the glorification of terrorism. Thus "we cannot continue to allow the major audiovisual platforms to hide behind a host status that has ceased to correspond to the reality of the services they offer".

• *CSA, « Plateformes et accès aux contenus audiovisuels - Quels enjeux concurrentiels et de régulation », septembre 2016, 99 pages* (CSA , "Platforms and access to audiovisual content - the stakes in terms of competition and regulation", September 2016, 99 pages)
http://merlin.obs.coe.int/redirect.php?id=18261 FR

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GB-United Kingdom

Draft BBC Charter is presented to UK Parliament

On 15 September 2016 the Secretary of State for Culture, Media and Sport presented to the House of Commons the draft Royal Charter (the Charter) for the British Broadcasting Corporation (BBC) and its accompanying Framework Agreement, setting out the objectives and governance of the BBC. The Charter reflects many of the proposals described in the White Paper presented to Parliament on 12 May 2016 (see IRIS 2016-7/21). The draft Royal Charter will replace the eighth Charter, which expires on 31 December 2016. The core tenets of the new Charter are the BBC's Mission and Public Purposes described below.

The Charter is to ensure the public transparency, accountability, and impartiality of the BBC, with the BBC's Mission being to act in the public interest, serving all audiences through the provision of impartial, high-quality, and distinctive output and services which inform, educate, and entertain.

The draft Charter defines the BBC's Public Purposes, which are to provide impartial news and information to help people understand and engage with the world around them; to support learning for people of all ages; to show the most creative, highest quality and distinctive output and services which should be distinctive from those provided elsewhere and should take creative risks, even if not all succeed, in order to develop fresh approaches and innovative content; to reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions and, in doing so, support the creative economy across the UK; and to reflect the UK, its culture and values to the world.

The BBC must act in the public interest, having particular regard to the effects of its activities on competition in the UK. In order to assist with this aim under the Charter, the BBC must work collaboratively and

seek to enter into partnership with other organisations (commercial and non-commercial), particularly in the creative economy, where to do so would be in the public interest.

The Charter engages the communications regulator Ofcom to regulate the BBC. Ofcom's principal functions will include preparing and publishing an Operating Framework detailing the provisions it considers appropriate to secure the effective regulation of the BBC's activities. The Framework provisions include ensuring the BBC functions in a way that does not affect free and effective competition in the UK. Ofcom will have enforcement powers to ensure compliance by the BBC with the Framework standards, including the issue of penalties. Ofcom will publish an annual report, and the Secretary of State may undertake a mid-term review, not before 2022, focussing on the governance and regulatory arrangements, with such review being completed by 2024.

The BBC will be governed by a new board of 14 directors instead of the current Trust. The Board will be a mix of public appointments and BBC-appointed directors. The BBC will appoint nine board members including five non-executive directors. The remaining five non-executive members will be Nation Members representing Scotland, Northern Ireland, Wales and England, whilst the fifth will be the Chair who will be appointed by full, fair, and open competition.

Further, the National Audit Office will become the BBC's financial auditor and its remit will include assessing whether the organisation is providing value for money.

The BBC will continue to be funded by a publicly-funded licence fee, but the BBC must exercise rigorous stewardship of public monies. This will include the organisation disclosing in an annual report the identity of all senior executives paid by the BBC more than GBP 150,000 per year and detail how their pay is determined as well as the names of all other staff paid more than GBP 150,000 per financial year from the licence fee. 'Staff' shall include persons working under a contract for services and thus may include self-employed talent.

Finally, pursuant to the Charter, the BBC must promote technological innovation and maintain a leading role in research and development that helps fulfil the organisation's Mission and Public Purposes.

The draft Charter will be discussed by the various UK parliaments and assemblies. The Government will present the Charter and Agreement to the Privy Council so it comes into force on 1 January 2017, with full effect from 3 April 2017. The Charter will expire on 31 December 2027.

• Draft Royal Charter for the Continuance of the British Broadcasting Corporation, September 2016, CM 9317
http://merlin.obs.coe.int/redirect.php?id=18251 EN

• A Draft Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, September 2016, Cm 9332
http://merlin.obs.coe.int/redirect.php?id=18252 EN

Julian Wilkins
Blue Pencil Set

HR-Croatia

Recommendations for the protection of children and the safe use of electronic media

After concluding consultations with stakeholders and the interested public, the Council for Electronic Media on 8 September 2016 adopted Recommendations for the protection of children and the safe use of electronic media.

The document stems from the obligation of developed societies to provide children and adolescents with conditions that enable them to achieve their full potential. The role of institutions is to help systematically parents and others who take care of children in their daily efforts to provide a secure, supportive and healthy environment for the development of children and young people. Bearing in mind that today this developmental environment is to a large extent shaped by electronic media, the appropriateness of media contents to which children are exposed should be continuously monitored and analysed. The fundamental objective of this document is to provide recommendations for the devising, categorisation, and use of media contents in order to provide a better environment for the development of children and adolescents growing up in Croatia.

Children and young people are neither mere consumers of media messages, nor passive recipients of formative influences, but instead subjects who actively choose media contents and, in transmitting and interpreting them, also create new messages. Therefore, encouraging critical thinking in children and adolescents towards media images of life and the world is just as important as the endeavour to minimise and eliminate inappropriate media contents. The essential prerequisite for creating an autonomous and individual critical attitude in children and adolescents is specifically the development of media literacy, as a set of skills and tools that enable an understanding and analysis of media messages, thus reducing the risk of accepting contents of socially questionable value in an uncritical manner.

The art of critically reading and interpreting media messages is essential primarily for parents and educators, who can then help children and young people develop an open, active, and critical attitude towards

media and media contents. The development of media literacy is also necessary for media professionals, editors, and journalists, to strengthen their own professional position. This is especially important in terms of the fierce market competition to which media are exposed today and for the purpose of facilitating recognition of their social importance and responsibility, and thereby the huge impact that media products have on children and young people, as well as on society as a whole.

• *Vijeće za elektroničke medije usvojilo Preporuke za zaštitu djece i sigurno korištenje elektroničkih medija* (Recommendations for the Protection of Children and the Safe Use of Electronic Media)
http://merlin.obs.coe.int/redirect.php?id=18253 HR

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IE-Ireland

High Court refuses orders directing Facebook Ireland to remove allegedly defamatory posts

The High Court has ruled on the liability of internet intermediaries for defamatory posts by third parties on their platforms in the case of Muwema v Facebook Ireland Ltd. The plaintiff, Fred Muwema, a Ugandan lawyer, took issue with three allegedly "highly offensive and defamatory publications" posted on a Facebook page in March 2016. The publications were posted by a person identified only by the pseudonym 'Tom Voltaire Okwalinga' ("TVO"). Justice Donald Binchy in the High Court granted the order for disclosure of the identity and location of the person(s) operating the impugned page. However, he refused the injunctions sought under s. 33 of the Defamation Act 2009 directing Facebook to "takedown" the material already posted and to prevent its further publication, on the basis that Facebook Ireland Ltd had "available to it a statutory defence" of "innocent publication" provided for under s. 27(2)(c) of the 2009 Act.

The plaintiff had written to Facebook seeking the removal of the "Reported Content" from its site and also sought disclosure of the IP address of TVO. Following Facebook's refusal of the plaintiff's request, the plaintiff sought a number of orders in the High Court. This included an order directing Facebook to identify the person or persons behind the pseudonymous account and their location ("Norwich Pharmacal order"). The plaintiff also sought injunctions pursuant to s. 33 of the 2009 Act, requiring Facebook to "takedown" the material already posted on the defendant's website platform, and to prevent TVO and others from re-posting the same material.

S. 33 of the 2009 Act provides that the High Court may make an order prohibiting the publication or further publication of the statement if "(a) the statement is defamatory, and (b) the defendant has no defence to the action that is reasonably likely to succeed" (for a recent judgment, see IRIS 2016-4/18). Justice Binchy accepted that the statements made against the plaintiff were prima facie defamatory for the purposes of paragraph (a), but stated that Facebook could rely on two defences for the purposes of paragraph (b).

The first defence is provided by s. 27 of the 2009 Act, which provides a defence of innocent publication, where "a person shall not be deemed to be the author, editor or publisher of statement to which an action relates if, in relation to any electronic medium on which the statement is recorded or stored, he or she was responsible for the processing, copying, distribution or selling only of the electronic medium or was responsible for the operation or provision only of any equipment system or service by means of which the statement would be capable of being retrieved, copied distributed or made available." According to Justice Binchy, this appeared "to capture the circumstances giving rise to the proceedings." Justice Binchy acknowledged that there were articles "elsewhere on the internet" concerning Muwema, including articles about him "concerning the very matters concerned in these proceedings." Justice Binchy accepted that those articles arose from interviews that Muwema himself gave "in order to deny the very allegations" with which the proceedings concerned. Justice Binchy stated that Muwema was "perfectly entitled to give such interviews to defend his reputation but having chosen to do so, he himself became "a participant in the publication of the allegations, so that anybody conducting the most rudimentary Google search04046 will be presented with articles which repeat the same allegations." Justice Binchy stated that there was "significant merit" in the argument made by the counsel for Facebook that "the genie was out of the bottle" and "injunctive relief would be in vain."

Justice Binchy stated that the jurisdiction of the Court to make the orders (save for the "Norwich Pharmacal order") is "subject to the limitations prescribed by parliament in s. 33 of the 2009 Act. He stated that this section "makes it clear that such orders may only be granted in circumstances where it is clear that the defendant has no defence that is reasonably likely to succeed". In Justice Binchy's view, this applies as much to a "takedown" order as it does to a prior restraint order. Moreover, the judge held the application "should also be refused because it would service no useful purpose, having regarding to the availability of publications containing the same and other damaging allegations" about Muwema "elsewhere on the internet".

Finally, Justice Binchy held that Regulations 15-18 of the E-Commerce Directive 200/31/EC, as transposed into Irish law by European Communities (Directive 2000/31/EC) Regulations (SI No 68 of 2003), also

provided Facebook with "another line of defence", namely the "hosting defence", which grants intermediaries an exemption from liability for only hosting.

• Muwema v Facebook Ireland Ltd [2016] IEHC 519
http://merlin.obs.coe.int/redirect.php?id=18222 EN

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Broadcaster's handling of interviewee's unplanned criticism of political party was fair and objective

On 16 September 2016, the Compliance Committee of the Broadcasting Authority Ireland (BAI) rejected by a majority two complaints concerning comments made in a live interview about a political party and some of its voters. The complaints concerned an edition of RTÉ's long-running chat show The Late Late Show, broadcast on 19 February 2016, one week before the Irish parliamentary elections.

The show included an interview with a well-known journalist, Paul Williams, on the subject of crime in Dublin, with most of the interview concerning two feuding crime families. However, toward the end of the interview, the journalist began discussing the Irish Special Criminal Court, a non-jury court which tries certain terrorism and serious-crime offences. The journalist then criticised the election manifesto of the Irish political party Sinn Féin, which sought to abolish the Special Criminal Court. The journalist commented that "the only people who will vote for Sinn Féin, in regard to that part of their manifesto are the drug dealers, the killers and the kidnappers and the terrorists".

The BAI considered two complaints about the programme, both claiming there had been violations of the Broadcasting Act 2009 and the BAI's Code of Fairness, Objectivity & Impartiality in News and Current Affairs, in particular the rule that "the broadcast treatment of current affairs 04046 is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner" (section 39(1)(b) of the 2009 Act). The complainants argued that the journalist was "freely allowed to malign Sinn Féin voters as criminals", "the presenter allowed him to condemn and vilify those who vote for Sinn Féin", and the journalist's comments "were an attempt to harm Sinn Féin in the then forthcoming General Election". In response, RTÉ argued that the interview, "for legal and editorial reasons, had been strictly rehearsed and planned in advance", but that the journalist "unexpectedly started discussing the Special Criminal Court". RTÉ added that the presenter "attempted to cut him off but Mr. Williams continued and made the accusation that the complainant and several others have found offensive", but it was "unplanned, unscripted and the opinion solely of Mr. Williams".

The Compliance Committee, by a majority, decided to reject both complaints. First, the Committee noted that "Mr. Williams' comments about the position of Sinn Féin in respect of the Special Criminal Court and their proposal to abolish it were factually correct". Second, in relation to the comments on some Sinn Féin voters, the Committee stated that it "did not agree that it amounted to a comment on supporters of this party as a whole", but only to "some segments of the electorate, in particular those engaging in criminal activities". Crucially, the Committee held that (a) the broadcaster had taken steps to ensure the legality of the programme, in particular, by undertaking a rehearsal of the item in advance; (b) the programme was live; and (c) the comments by the guest about the Special Criminal Court were unplanned. However, the Committee did remark that "while audiences would have benefited from a more forthright response from the presenter to the remarks of his guest", it also stated that the political party's proposals on the Special Criminal Court "were not relevant to the discussion and also noted that the party, had it been in studio, would disagree with Mr. Williams' analysis". Taking into account all the circumstances, and "the right to free expression", the Committee concluded that "on balance" the show did not infringe the fairness, objectivity, or impartiality rules.

• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, September 2016, p. 45
http://merlin.obs.coe.int/redirect.php?id=18221 EN
• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, September 2016, p. 48
http://merlin.obs.coe.int/redirect.php?id=18221 EN

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BAI decision on political advertisement by wind-energy association

The Broadcasting Authority of Ireland (BAI) has upheld a complaint regarding a television advertisement coordinated by the Irish Wind Energy Association (IWEA) as being in breach of Section 41(3) of the Broadcasting Act 2009, which provides that "a broadcaster shall not broadcast an advertisement which is directed towards a political end" (see IRIS 2009-10/18). A similar ban in the UK was found to be consistent with Article 10 of the European Convention on Human Rights by the European Court of Human Rights in 2013 (see IRIS 2013-6/1).

The complaint concerned an advertising campaign entitled "The Power to Power Ourselves", which was broadcast by both public service broadcaster RTÉ One and commercial television channel TV3 in January and April 2016. The television advert ended with the text "Why do we import 85% of Ireland's energy needs,

producing only 15% domestically, when we're surrounded by a resource that could move us towards energy independence."

The complainant submitted inter alia that the campaign co-ordinated by IWEA, the national body representing the wind energy sector in Ireland, "are a special interest lobby group" and "are supported by State and semi-State organisations". The complainant stated that at the time of the broadcast, wind energy was a matter of "significant political dispute" and that campaigns were underway "to oppose the further development of wind energy within Ireland." The complainant asserted that the IWEA "were targeting what their CEO described as 'a concerning escalation in false and misleading information about wind energy from some quarters.'" The complainant was of the view that this dispute was also linked to the ongoing review of the wind energy guidelines which were being undertaken by the Government, particularly on the issue of "safe setback distances / noise limits between homes and wind farms", something which the IWEA has "vehemently opposed." The complainant asserted that, taking into account the content of the advert, the context in which it was broadcast and the aims and objective of the IWEA and of the advertising campaign, the advertisement was an attempt to influence government policy and contravened the ban on political advertising as prescribed under s. 41(3) of the Broadcasting Act 2009 and reflected in Section 9 of the BAI's General Commercial Communications Code dealing with "Prohibited Communications".

In response to the complaint, TV3 stated that it did "not accept that the advert was a political message or advertisement" and contended that political advertising is merely restricted for "political parties, trade unions and charities". RTÉ stated that the advert "promotes, generally, the contribution which wind energy could make to Ireland's energy requirement" and "that potential is not a matter of political debate or controversy". RTÉ was of the view that the complainant did not "substantiate his claim that wind energy is currently a matter of significant political dispute."

In reaching its decision, the BAI Compliance Committee had regard to the statutory prohibition on advertisements directed towards a "political end", provided for in the Broadcasting Act 2009 and reflected in Section 9 of the BAI General Commercial Communications Code. The Committee also took into account the content of the advert, the context in which it was broadcast, and the aims and objectives of the advertiser and the advertising campaign. The Committee also had regard to the definition of a "political end" as set out in the 1998 case of Colgan v. IRTC (see IRIS 1998-9/9). In that case, the Irish High Court found that "a political end is not limited to adverts aired by or on behalf of political parties" but also "encompasses ... an advertisement which has the objective of procuring changes in the law of Ireland or countering suggesting changes in those laws and or advertising which has an objective of procuring a reversal of government policy or of particular decision of governmental authorities in this country or countering suggested reversals thereof."

In respect of the "content of the advert" the Committee held that the advertisement amounted to an "implicit criticism" of energy policy in Ireland. The Committee noted "that an objective of the advertiser, the IWEA", was to "lobby government with a view to supporting the development of wind energy and renewable energy sources in Ireland." In respect of the context in which the advert was broadcast, the Committee observed that it "was aired in the immediate run-up to a General Election" where "planning and other issues related to wind energy ... were live and contentious issues in a range of constituencies". The Committee considered that "while wind and renewable energy are businesses, they are ones which generated current public debate in the country during the period in which the advertisement was aired."

Having regard to all these elements as a whole, it was the view of the Committee that, "on balance", these elements "were such that the advert met the criteria as one having the objective of being directed towards a 'political end', specifically one intended to influence government policy in respect of energy", and accordingly, "had the nature and characteristics of an advert prohibited by the Broadcasting Act 2009."

- Broadcasting Authority of Ireland, Broadcasting Complaints Decisions, September 2016, p. 5
http://merlin.obs.coe.int/redirect.php?id=18221 EN
- Broadcasting Authority of Ireland, Broadcasting Complaints Decisions, September 2016, p. 9
http://merlin.obs.coe.int/redirect.php?id=18221 EN

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IT-Italy

Decree on charges for the exploitation of digital terrestrial TV frequencies

On 4 August 2016, the Ministry of Economic Development (Ministero dello sviluppo economico - "MISE") issued a decree which sets forth the contribution to be paid by digital terrestrial television network operators for the exploitation of frequencies (the "Decree"). The Decree has been published in the Official Journal on 21 September 2016, numbered 221.

According to s. 208 of the Stability Law 2016, MISE is in charge of determining the amount of the contribution, to be paid by both national and local network

operators. According to the law, such amount shall be determined in a transparent, non-discriminatory and objective way, based also on (i) the geographical extension of the exploitation authorised; (ii) the market value of the frequencies; (iii) the use of innovative technologies; and (iv) a reward mechanism aimed at fostering competition.

The Decree stated the rates to be paid by national and local network operators for each digital terrestrial television multiplex, with the relevant criteria for the calculation of the amount due. The abovementioned contribution shall be paid by 31 July every year by the network operators holding the right to use the frequencies, regardless of the technology used for the provision of television broadcasting services. National network operators shall pay roughly EUR 2,000,000 per multiplex; this amount is equal to 7% of the average turnover from the provision of bandwidth capacity to broadcasters.

The contribution will be discounted by 20% if the national multiplex is at least 80% of its capacity operated with an innovative technology, like DVB-T2. In addition, further discounts will apply if the national network operator provides bandwidth capacity of the relevant multiplex to TV channels which are operated by third parties (i.e., by broadcasters not belonging to the same group): 20% discount if more than 30% of the bandwidth is provided to third parties, 40% discount if more than 50% of the bandwidth is provided to third parties, and 60% discount if more than 75% of the bandwidth is provided to third parties.

The Decree concerns only contributions to be paid for 2014, 2015, and 2016. Pursuant to section 4 of the Decree, MISE will establish the amounts due for 2017 with another decree, based on updated figures of the network operators' incomes.

• *MINISTERO DELLO SVILUPPO ECONOMICO DECRETO 4 agosto 2016 Determinazione dei contributi per i diritti d'uso delle frequenze digitali per gli anni 2014, 2015 e 2016. (16A06812) (GU Serie Generale n.221 del 21-9-2016)* (Decree of 4 August 2016, contribution for the right to use the digital frequencies to be paid for 2014, 2015 and 2016)
http://merlin.obs.coe.int/redirect.php?id=18223 IT

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Court of Appeal rejects copyright infringement claim over television series

On 20 September 2016, The Court of Appeal of Arnhem-Leeuwarden rejected the appeals of the author Robert Moszkowicz for copyright infringement of his autobiography. The Court stated there is no reasonable suspicion, or threat, of an infringement by the television drama "De Maatschap" of Dutch Mountain Film (DMF) and the Dutch broadcaster VPRO.

While the drama series tells the story of the Meyer family, it is inspired by the life of the Moszkowicz family. According to Moszkowicz, the drama series is based on his autobiography, "De Straatvechter". Moszkowicz started proceedings in the District Court of Noord-Nederland to seize the script, scenario, and synopsis of the drama series. Further, Moszkowicz demanded access to these documents. To assess possible copyright infringement, an expert was assigned by the Court to investigate whether there was a specific bedroom scene in the scenario of the drama series. The District Court dismissed the demand of access after it was established that there was no such scene.

Moszkowicz appealed the decision, stating that the book was a source for the scenario. At least nine elements in his book were argued to have been copied by the drama series. These included the scene discussed at the District Court, the time-span of the story, the central position of the father-son relationship, and other elements and passages. The Court found that at least two of these elements and passages could not have been obtained from any other source. The respondents DMF and VPRO countered the allegations by stating that the elements and passages constitute facts, which are not protected by copyright. Furthermore, the respondents stated that they did not copy protected elements of the work, and argued that they have expressed the events in their own manner.

The Court of Appeal dismissed the claims. First, the Court stated that the book is protected by copyright, and that DMF and VPRO used the book as a source. However, the use as a source does not in itself constitute copyright infringement. In order for a copyright infringement to be found, the similarity should be such that adaptation into a television series would constitute an unauthorised reproduction. According to the Court, five of the elements contain general facts and are not protected. The other four elements are more detailed passages of the book, such as the bedroom scene. The Court concluded that the makers of the television drama did not copy the creative details in these passages, and it was only apparent that they adopted the (actual) events on a global level. The Court of Appeal further stated that infringement would be unlikely: the television series is about the entire Moszkowicz family, while the book is only about the life of Robert Moszkowicz.

The Court of Appeal denied the demand for access to the script, scenario and synopsis due to the lack of a reasonable suspicion of infringement. It then confirmed the judgment of the District Court, and made an order against Moszkowicz for full payment of the costs of the proceedings.

- *Hof Arnhem-Leeuwarden, 20 september 2016, ECLI:NL:GHARL:2016:7612 (Moszkowicz / RAAF-VPRO)* (Court of Appeal Arnhem-Leeuwarden, 20 September 2016, ECLI:NL:GHARL:2016:7612)
http://merlin.obs.coe.int/redirect.php?id=18225 NL
- *Rechtbank Noord-Nederland, 27 mei 2016, ECLI:NL:RBNNE:2016:2521* (District Court of North-Holland, 27 May 2016, ECLI:NL:RBNNE:2016:2521)
http://merlin.obs.coe.int/redirect.php?id=18226 NL

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Court holds PowNed liable for infringing former mayor's right to private life

On 31 August 2016, the District Court of Amsterdam held broadcasting organisation PowNed liable for broadcasting private conversations between former Dutch mayor Onno Hoes and a 24-year-old man he was romantically involved with (for the preliminary decision, see IRIS 2015-10/25).

Hoes, at that time the mayor of the Dutch city Maastricht and married for several years, met the man, Robbie Hasselt, a few times during the autumn of 2014. Hoes had been involved in a scandal in 2013, when he was seen kissing another man. For a short period of time, his position as mayor seemed to be in danger, but the case was settled - Hoes stayed mayor of Maastricht, and the media storm about the events came to an end.

In 2014 however, broadcasting organisation PowNed learned that Hoes had contact with Hasselt on the Internet and that they had arranged to meet each other. Two meetings between Hoes and Hasselt were secretly recorded, one by PowNed and one by Hasselt, who was equipped by PowNed with a hidden camera. The conversations between the two, during which explicit sexual language was used, were broadcast. As a result of the incident, in the summer of 2015, Hoes' position became untenable and he resigned from his job. Hoes started a procedure against Hasselt and PowNed in which he claimed they were liable for both the material and immaterial damage he said he had suffered and possibly will suffer in the future. Hoes stated both PowNed and Hasselt infringed his right to a private life. Moreover, he wanted PowNed to keep the material removed from the Internet and never use it again. Hoes had already sought removal of the material earlier, during the preliminary proceedings in 2015. On this second claim the request was then granted.

The Court noted that it had to balance two fundamental rights, namely Hoes's right to private life (Article 8 of the European Convention on Human Rights (ECHR)) and PowNed's right to freedom of expression (Article 10, ECHR). The Court then examined the recording and broadcasting of the material separately.

According to the Court, the recording of the conversations was allowed. As Hoes had been involved in a scandal before, and as it was known that repetition of his past behaviour could affect his position as mayor of Maastricht, the meetings between Hoes and Hasselt were a subject of public debate. The Court stated that is the task of the media to report on matters like these. The usage of hidden cameras and microphones was found proportionate by the Court, as it was the most effective and least severe method to achieve the result sought: if Hoes would have known that his statements were recorded, he probably would not have spoken freely.

Broadcasting the material, however, was found disproportionate by the Court. Hasselt had already blogged about his meetings with Hoes, and therefore the matter was already known to the public. Moreover, PowNed had manipulated the broadcasted material by adding sound recordings of statements made by Hoes only later that day, outside of the restaurant where the meetings took place. The Court stated that this was important because the setting of the conversation was relevant.

Therefore, PowNed was held liable and was prohibited from using the recorded material. The Court did not hold Hasselt liable, because he had not been involved in the broadcasting of the conversations.

- *Rechtbank Amsterdam, 31 augutus 2016, ECLI:NL:RBAMS:2016:5438* (District Court of Amsterdam, 31 August 2016, ECLI:NL:RBAMS:2016:5438)
http://merlin.obs.coe.int/redirect.php?id=18227 NL

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Dutch broadcaster acted in good faith when covertly interviewing refugee

In December 2015, the District Court of Amsterdam ordered the Dutch public broadcaster PowNed to prevent further broadcasting of a video item. The item featured a Syrian refugee who seemed to express an aversion to homosexuality and talked about a medical problem with his testicles (IRIS 2016-2/21). On 16 August 2016, the Court of Appeal in Amsterdam overturned parts of the judgment.

The Court of Appeal separately assessed whether PowNed lawfully broadcasted the video fragment concerning homosexuality next to the fragment about the man's medical issues. The Court also distinctly evaluated whether PowNed lawfully obtained, and subsequently broadcasted, the information. Central to

the District Court's decision was the fact that the PowNed reporter and her cameraman had not introduced themselves to the plaintiff as correspondents for PowNed. The District Court found that PowNed's conduct was a tortious act against the plaintiff. By contrast, the Court of Appeal considered that obtaining the man's view on homosexuality served a debate of general interest, so that the reporter not acting openly was justified (see the criteria in Axel Springer AG v. Germany, ECtHR, 7 February 2012, IRIS 2012-3/1). The Court took into account that the Dutch Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers - COA) refused PowNed all access to a temporary reception location for refugees. In view of the Court, this refusal constituted an unacceptable interference with press freedom. The Court concluded that the reporters acted in good faith while covertly obtaining the video material regarding homosexuality, and that PowNed had showed it lawfully.

Nonetheless, the Court of Appeal ruled that PowNed broadcasted the video fragment regarding the medical issues unlawfully. The Court considered that this fragment was indeed aired in the context of a debate of general interest, namely the attitude of (male) refugees towards women's rights and sexuality. However, the Court found that in this case broadcasting the fragment did not serve the public debate. The Court observed that the fragment aimed to close the broadcasting episode in a not-so-serious and lighthearted manner. In those circumstances, the right to freedom of expression did not outweigh the plaintiff's right to protection of his private life. The Court concluded that, even though the reporters had obtained the video material in good faith, the subsequent broadcasting of the material was unlawful.

The Court of Appeal overturned the part of the District Court's judgment concerning homosexuality, but reinforced the claim of damages for the video fragment regarding the plaintiff's medical problems.

• *Gerechtshof Amsterdam, 16 augustus 2016, ECLI:NL:GHAMS:2016:3286* (Court of Appeal in Amsterdam, 16 August 2016, ECLI:NL:GHAMS:2016:3286)
http://merlin.obs.coe.int/redirect.php?id=18224 NL

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RO-Romania

Modification of the Cinematography Law

On 26 May 2016, the President of Romania promulgated the Act no. 110/2016 for the completion of Article 13 of the Government Decree no. 39/2005 on Cinematography. The draft law, initiated by 63 members of the Parliament from almost all the political spectrum, had been approved by the Romanian Senate (the upper Chamber of the Romanian Parliament) on 28 October 2015 and by the Chamber of Deputies (the lower Chamber) on 10 May 2016 (see IRIS 2003-2/23).

The initiators argued that cultural work is constantly underfinanced in Romania and that the Government Emergency Decree no. 77/2009 on the organization and operation of gambling repealed the transfer of a percentage of the profits of companies operating in the field of the Film Fund. The Government Emergency Decree no. 77/2009 lead to a sharp decrease of the Film Fund, meaning a yearly loss of 1.5 million EUR. The Law 110/2016 was intended, according to the initiators, to correct the situation and to restore the financing of the Film Fund with money from businesses that organize and exploit gambling.

According to the new law, in Article 13 (1) of the Government Decree no. 39/2005 on Cinematography, approved with modifications and completions through the Law no. 382/3006, with further modifications and completions, a new provision e1) was introduced regarding the sources of the Film Fund, the provisions of which as follows:

e.1) 2% of the sums collected for the state budget from the firms operating in the field of gambling will be anually directed to the Film Fund, in order to encourage and support the cinema industry. The amount will be transferred until 31 May of the curent year for the previous year and it is not subject to regulation according to Article 66(1) of the Finance Act no. 500/2002, with further modifications and completions.

Article 66(1) of the above-mentioned Act stipulates that the surplus in the budgets of public institutions financed by mixed resources (own revenues, state budget, special funds etc.) shall be settled at the end of the year with the budgets from which their funding comes, up to the amounts received from those budgets, unless the law provides otherwise.

• *Legea Nr.110 din 26.05.2016 pentru completarea art. 13 din Ordonanța Guvernului nr. 39/2005 privind cinematografia* (Act no. 110/2016 for the completion of Article 13 of the Government Decree no. 39/2005 on Cinematography)
http://merlin.obs.coe.int/redirect.php?id=18254 RO

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Modification of Audiovisual Law underway

The Chamber of Deputies (the lower Chamber of the Romanian Parliament) tacitly approved two draft laws

intended to modify the Audiovisual Law no. 504/2002 with further modifications and completions. The final decision belongs to the Senate (the upper Chamber), but the actual Parliament's term will come to an end in mid-December 2016 and the above-mentioned draft laws are not high on the agenda, so there is little chance they will be discussed by the Senate in the present legislature (see inter alia IRIS 2013-6/27, IRIS 2014-1/37, IRIS 2014-1/38, IRIS 2014-2/31, IRIS 2014-6/30, IRIS 2014-7/29, IRIS 2014-9/26, IRIS 2015-8/26, IRIS 2015-10/27, IRIS 2016-2/26, IRIS 2016-3/27).

The Chamber of Deputies tacitly adoped on 15 June 2016 the Draft Law on the repealing of the Article 29.1 of the Audiovisual Law no. 504/2002. The Article 29.1 refers to the possibiliy for the beneficiaries to buy television advertisment slots from the broadcaster directly or through an intermediary (an agency or administration).

The initiators argued that after the modification of the Audiovisual Law through the Government Emergency Decree no. 25/2013, approved with modifications and completions through the Law no. 181/2015, the advertising agencies lost significant amounts of money, because the advertisment was mainly bought directly from the broadcasters. Moreover, the state budget would have lost significant revenues from unpaid taxes due to the substantial contraction of the profits of the advertising agencies. Additionally, the intiators considered that the broadcasters continued to report losses, even though their incomes increased through direct advertising sales.

On the other hand, the Chamber of Deputies tacitly adopted on 28 June 2016 the Draft Law on the modification and completion of the Law no. 148 of 26 July 2000, on the publicity, as well as of the Audiovisual Law no. 504/2002. According to Article II of the draft Law, in Article 29, after paragraph (8) of the Audiovisual Law no. 504/2002, a new paragraph (9) will be inserted, as follows: (9) Audiovisual commercial communications for gambling are prohibited.

The initiators considered that, due to the accelerated development of the gambling industry in Romania, the consumers should be better protected in order not to become addicted to the phenomenon. The Romanian legislation is not clear on this matter, therefore it is necessary to regulate strictly any means of promoting this kind of commercial activity, the initiators argued.

• *Propunere legislativă pentru abrogarea articolului 29.1 din Legea audiovizualului nr. 504/2002 - forma adoptată de Camera Deputaților*
(Draft Law on the repealing of the Article 29.1 of the Audiovisual Law no. 504/2002 - form adopted by the Chamber of Deputies)
http://merlin.obs.coe.int/redirect.php?id=18233 RO

• *Propunere legislativă pentru modificarea şi completarea Legii nr. 148 din 26 iulie 2000, privind publicitatea, precum şi a Legii nr. 504/2002 a audiovizualului - forma adoptată de Camera Deputaților*
(Draft Law on the modification and completion of the Law no. 148 of 26 July 2000, on the publicity, as well as of the Audiovisual Law no. 504/2002 - form adopted by the Chamber of Deputies)
http://merlin.obs.coe.int/redirect.php?id=18235 RO

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Audiovisual rules for the 2016 parliamentary elections

On 18 October 2016, the National Audiovisual Council (Consiliul Național al Audiovizualului) adopted a decision on the rules for the audiovisual coverage of the electoral campaign for the parliamentary elections, scheduled in Romania on 11 December 2016 (see IRIS 2004-3/33, IRIS 2005-1/34, IRIS 2008-10/27, IRIS 2009-1/29, IRIS 2009-6/28, IRIS 2009-10/24, IRIS 2011-3/29, IRIS 2011-9/31, IRIS 2012-6/30, IRIS 2014-5/27, and IRIS 2014-10/30).

The electoral campaign in audiovisual media starts on 11 November 2016 and ends on 9 December 2016 at 07.00 a.m. local time, 24 hours before voting starts. The decision is very similar with the previous CNA decisions on presidential, parliamentary, European, and local elections held in Romania.

The campaign should serve the following general interests: a) of the electorate, to receive accurate information so they can knowingly vote; b) of the electoral competitors, to make themselves known and to submit platforms, political programmes and electoral offers (Article 3 (1)). The public and private broadcasters are required to conduct a balanced and fair reporting of the election campaign for all electoral competitors (Article 3 (2)).

The private radio and television broadcasters are obliged to communicate to the Council no later than 10 November 2016 their involvement in the campaign, the list of electoral programmes they will perform, and the hours of those programmes broadcast (Article 4 (1)). The private radio and television stations with national coverage have to offer airtime to electoral competitors proportional to the airtime offered by the public stations with national coverage (Article 4 (4)). For the regional and local private stations, the airtime offered to electoral competitors will be proportional to the number of final candidacies in the geographical area covered by the station (Article 4 (5)). The prices per issue and per unit of time of each private radio and television station will be made public and will be the same for all competitors (Article 4 (6)).

The broadcasters can make and broadcast only the following types of electoral programmes: news bulletins (Monday-Sunday), electoral programmes, in

which the competitors can make their electoral offer and activities known (Monday-Friday), and electoral debates (Monday-Sunday) (Article 5 (1)). During the electoral campaign, the candidates and their representative only have access to the following journalistic products: electoral programmes and electoral debates (Article 6 (1)). They cannot produce, host, or moderate broadcasts during the electoral campaign (Article 6 (2)).

News programmes are subject to mandatory requirements of objectivity, fairness, and providing correct information to the public (Article 7 (1)). Candidates who hold public office may appear in informative programmes only exercising their public function; the facts have to be presented in a balanced and pluralistic manner (Article 7 (3)).

Broadcasters must ensure that all electoral competitors enjoy fair conditions in terms of freedom of expression, pluralism, and fairness of opinions (Article 8 (1)).

Private broadcasters can broadcast electoral commercials only during the electoral programmes and debates (Article 10 (1)). Public radio and television services can broadcast electoral commercials during electoral programmes and debates, if they fit in the total airtime granted to electoral competitors (Article 10 (4)). At the end of commercial breaks of electoral advertisements, informative spots regarding the electoral legislation made available by the Ministry of Internal Affairs and the Permanent Electoral Authority will be inserted, with the agreement of the CAN (Article 10 (5)).

Broadcasters must enforce the right to rectification or, where appropriate, to reply (Article 12).

48 hours before voting begins and until the end of voting the following is prohibited: a) the presentation of opinion polls, surveys, or 'voxpops' made on the street; b) the broadcasting of election advertising; c) inviting or having as presenters candidates and/or representatives of electoral competitors in radio and television broadcasts; and d) comments on the campaign, as well as on candidates and electoral competitors (Article 13).

On Election Day the following is prohibited: a) the activities provided in Article 13; b) the presentation before the end of voting of surveys and exit polls; c) comments on the electoral competitors before the end of voting; and d) exhortations to vote or not vote for a candidate or candidates submitted by the electoral competitors (Article 14).

Broadcasters are obliged to provide the data requested by the CNA control staff with regard to the electoral campaign, under the communicated terms and conditions (Article 15 (3)). Failure to comply with the Decision shall be sanctioned according to the Audiovisual Law no. 504/2002, with further modifications and completions (Article 16).

• *Decizia nr. 592 din 18 octombrie 2016 privind regulile de desfăşurare în audiovizual a campaniei electorale din anul 2016 pentru alegerea Camerei Deputaţilor şi a Senatului* (Decision no. 592 of 18 October 2016 on the rules for the audiovisual coverage of the 2016 electoral campaign for the election of the Chamber of Deputieis and of the Senate)
http://merlin.obs.coe.int/redirect.php?id=18232 RO

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Agenda

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