



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media**

BRIEF ANALYSIS AND COMMENTS

on

LAW ON CROATIAN RADIO-TELEVISION

ADOPTED BY THE CROATIAN PARLIAMENT

(February 2003)

by

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February 12, 2003

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INTRODUCTION

As noted in my previous comments on drafts of the Law on Croatian Radio-Television, what Croatia needs first of all is a new Law on Electronic Media which should:

- Provide for democratic organization of broadcasting in Croatia;
- Transpose into Croatian law the provisions of the European Convention on Transfrontier Television;
- Achieve a satisfactory level of alignment with the EU “Television Without Frontiers” directive and other EU regulation;
- Create legal conditions for introduction of digital terrestrial broadcasting into Croatia.

This is an indispensable condition Croatia must meet if its European aspirations are to be advanced. A proper regulatory framework for public service broadcasting is only one part of a much broader effort required to bring Croatia’s broadcasting regulation into alignment with European standards and the Community acquis.

GENERAL COMMENTS

The present brief assessment seeks to address a few general issues concerning the Law on Croatian Radio-Television.

The first thing to note is the considerable progress achieved in the course of consultations concerning the draft law, due to the Croatian Government’s willingness to consider, and act upon, many of the comments and proposals made in the process. Over the period of a few months, the draft has been fundamentally revised, with changes generally signifying improvement and a desire to bring the draft law into line with European standards.

HRT has been given a great deal more autonomy than in the past, but it is to be regretted that one of the few commendable features of the previous law - direct appointment of members of the HRT Broadcasting Council by civil society organizations – has now been replaced with a system which, in a worst-case scenario, may result in far-reaching subordination of the entire HRT to political control by the parliamentary majority. This effect may be mitigated, however, by the requirement of staggered terms for HRT Broadcasting Council members (according to Art. 21.3, half the Council’s members are to be replaced every other year).

In assessing the present law, we will apply criteria specified in Recommendation No. R (96) 10 of the Council of Europe Committee of Ministers on the Guarantee of the Independence of Public Service Broadcasting.

DETAILED COMMENTS

HRT remains an integrated broadcasting organization with a holding-type structure, composed of three units: Croatian Television, Croatian Radio, HRT Music Production, and general and joint business affairs, presumably serving the Director General and the Directorate (composed of the directors of the three units, and a representative of the HRT employees’ council).

Though it is still described as a “public institution”, the provision of Article 1 that it is regulated by the present law alone may protect it against being regulated also by the Law on Institutions, which would directly subordinate it to government control.

The programme obligations of HRT seem to be defined properly, though it is hard to understand why the obligation to “broadcast objective, accurate, comprehensive, impartial and independent information” has been removed from Article 7.

The highest governing body of HRT is the HRT Broadcasting Council which on the basis of public competitions appoints all the ranking managerial personnel: Director General, Directors of organizational units (upon a proposal of Director General), and Heads of Programmes and Chief Editors of News in Croatian Radio and Croatian Television (upon the proposal of the appropriate Director, and with the opinion of journalists working for each of those organizations).

Previously existing or proposed Boards of Management, appointed directly by Parliament, are no longer envisaged. This is a major improvement.

The main causes for concern are as follows:

- “founders’ rights”
- Manner of appointment and dismissal of HRT Broadcasting Council;
- The State’s supervisory powers vis-à-vis HRT.

Founders’ Rights

According to Article 1.2, the Republic of Croatia and the Government of the Republic of Croatia “shall have the founders’ rights” (Article 1.2). The concept of the “founder” is not defined in this law, nor is that of the “founder’s rights”. This may leave the door open to unspecified infringements of HRT’s autonomy and interference into its operation, by unspecified bodies, claiming “founders’ rights”.

Appointment and Dismissal of HRT Broadcasting Council

The procedure laid down in Article 18 provides for a “public tender”, with everyone (“institutions, associations and citizens”) entitled to put forward candidates. They must be “citizens of Croatia representing various groups of the Croatian society (young people, pensioners, employers, trade unions, national minorities, religious communities, universities, civil society associations and others)”. “Only” such individuals are “eligible for membership in the Council”. In short, anyone may nominate anyone, since no formal requirements concerning verification of whether candidates do actually “represent” the groups listed above have been specified.

Members of Parliament are not barred from being nominated, though “state officials” are.

Once nominations are in, the parliamentary Committee for Information, Computerization and the Media, based on the criteria which it will determine (they are not specified in the law) will forward lists of nominated candidates meeting those criteria to parliamentary clubs for “harmonization”. “Harmonization” will most likely take the form of political deals arrived at between political parties as to who should be appointed to HRT Broadcasting Council.

If parliamentary clubs fail to “harmonize” a full final list of candidates, it will be up to the Committee to determine the “remaining number of candidates, taking into consideration

equal representation of candidates proposed by clubs of parliamentary majority and parliamentary minority”. This requirement of balance between the majority and minority applies only if the full list has not been harmonized. No requirement of balanced representation applies if parliamentary clubs to manage to “harmonize” the full list. In an extreme case, HRT Broadcasting Council may consist of MPs alone.

This list is then submitted to a vote by the House.

In short, this procedure potentially opens the way to a purely politicised manner of appointing HRT Broadcasting Council. If that happens, all the other appointments of ranking managers within HRT by the Broadcasting Council may also result in political appointees holding all positions of importance in management and programming.

Additionally, members of HRT Broadcasting Council may be dismissed by the Croatian Parliament for a number of reasons specified in Article 20:

1. at the member’s own request,
2. if, outside the prescribed way of work of the Council by his/her requests the member tries to influence the broadcasting of programme contents
3. if the member acts contrary to the law and other regulations governing the operation of the HRT
4. if he/she is sentenced to prison without parole for a criminal act
5. if he/she does not attend meetings during a period longer than six months

The procedure of dismissal may be initiated by HRT Broadcasting Council itself (presumably by a simple majority) or by HRT Director General. Parliament takes the decision by a simple majority.

Items 2 and 3 above are vague enough to serve as justification for a motion of dismissal under any pretext.

Let us note that any ranking manager within HRT enjoys a higher level of protection, since the procedure of dismissal by the HRT Broadcasting Council must be initiated by a two-thirds majority of its members.

In short, these procedures of appointment and dismissal of HRT Broadcasting Council fail to meet several crucial tests defined in the part of the CoE Committee of Ministers Recommendation on the Guarantee of the Independence of Public Service Broadcasting dealing with supervisory bodies of public service broadcasting organizations:

III. Supervisory bodies of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should define clearly and precisely the competences of their supervisory bodies.

The supervisory bodies of public service broadcasting organisations should not exercise any a priori control over programming.

2. Status

The rules governing the status of the supervisory bodies of public service broadcasting organisations, especially their membership, should be defined in a way which avoids placing the bodies at risk of political or other interference.

These rules should, in particular, guarantee that the members of the supervisory bodies:

- *are appointed in an open and pluralistic manner;*
- *represent collectively the interests of society in general;*
- *may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;*
- *may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions;*
- *may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body.*

The State's supervisory powers vis-à-vis HRT.

In addition to the “founders’ rights” discussed above, which may be used to justify action to supervise or interfere with HRT, Article 58 contains the following provisions:

- 1 Supervision over the legality of work of the HRT as well as of their general provisions shall be carried out by the appropriate line ministries, unless stipulated otherwise by this Law.
- 2 Supervision over the legality of work of the HRT Council shall be carried by the Croatian Parliament.

These broad and vague provisions again fail to meet the test laid down in the Recommendation of the CoE Committee of Ministers’ :

The provisions relating to the responsibility and supervision of public service broadcasting organisations and their statutory organs should be clearly defined in the governing legal framework.

It has to be admitted that, given high political culture and self-restraint on the part of the authorities of the State and parliamentarians, the potential dangers outlined above need not necessarily materialize. Experience from many post-Communist countries, including the past history of implementation of successive HRT laws, shows, however, that there is a high risk that they will.

CONCLUSIONS

1. With one reservation (appointment of the HRT Broadcasting Council), the law clearly represents very considerable improvement over the one previously in force;
2. In a consolidated democracy, this law would be acceptable. However, given long-standing political conflicts concerning HRT, the risk that some of the fundamental conditions of HRT independence, as specified in the Recommendation of the CoE Committee of Ministers, may not be met must be considered quite high. Therefore the law must be assessed as potentially failing to meet international obligations on some crucial points of PSB independence.
3. Future work on the law should remove the shortcomings of the law listed above, as well as eliminate some other deficiencies which could be analysed in a longer and more detailed appraisal.