



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

Council of Europe
European Commission



Conseil de l'Europe
Commission européenne

ATCM (2004) 7

In co-operation with the Ministry of Culture of the Republic of Croatia

**Expertise mission on the amendments to the Law on Croatian Radio Television, the Law on
Electronic Media and the Law on the Media**

Zagreb, 26-27 February 2004

**MISSION REPORT
(2 March 2004)**

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The expert visit is organised in the framework of the Stability Pact for South Eastern Europe

A group of European media experts met Croatian government officials, lawmakers and civil society representatives in Zagreb on 26-27 February 2004. The mission, arranged at the request of the Croatian government, was jointly organised by the Council of Europe (CoE), the European Commission (EC) and the Organization for Security and Co-operation in Europe (OSCE). The programme of the mission can be found in appendix 1.

The following experts travelled to Zagreb:

- Prof. Sandra Bašić-Hrvatín, Faculty of Social Science of the Ljubljana University and Chairperson of the Slovenian Broadcasting Council,
- Dr. Karol Jakubowicz, Advisor to the Chairman of the National Broadcasting Council of Poland, Vice-Chairman of the Council of Europe Steering Committee on the Mass Media,
- Mr Gavin Millar, QC, Barrister, London.

The experts were accompanied by Dr Mario Oetheimer, Programme Adviser, Media Division, Directorate General of Human Rights, CoE, Dr Martin Mayer, Political Adviser, Delegation of the EC to the Republic of Croatia and Mr Alessandro Fracassetti, Head of Media and Public Affairs, OSCE Mission to the Republic of Croatia. The meetings were also partially attended by Ambassador Peter Semneby, Head of Mission, OSCE Mission to the Republic of Croatia and Ms Snežana Đokić-Marković, Legal Adviser, Delegation of the EC to the Republic of Croatia.

The purpose of the visit was to review four Croatian pieces of legislation related to the media: the Law on Croatian Radio and Television, the Law on Electronic Media, the Law on Media and the provisions of the Criminal Code concerning criminal offences against honour and reputation (Chapter 15 of the Criminal Code). The Law on Telecommunications was also referred to in the course of the discussions.

This document summarises the content of the discussions that took place during the expertise mission. It does not in any way recap the full comments expressed during the discussions.

Mission Background

Shortly after the parliamentary elections, the newly appointed Croatian Government expressed the wish to amend the **Law on Croatian Radio and Television** (hereinafter Law on HRT) in order to fully incorporate the expert's recommendations submitted during the preparation of the draft law on HRT at the end of 2002 and beginning of 2003. The Government's amendments are planned to be adopted by the end of March 2004.

Further to a Constitutional Court's decision which repealed the **Law on the Media**, the Croatian Government is supposed to pass a new Media Law by 30 April 2004.

The Constitutional Court also repealed the July 2003 amendments to the **Criminal Code**, which, amongst others, related to Chapter 15 and the Ministry of Justice is currently working on a new draft Criminal Code.

The **Law on Electronic Media** has been considered on several grounds in contradiction with relevant European standards and does not fully incorporate the European Convention on Transfrontier Television, to which Croatia is a Party.

Against this background, the Croatian government requested the experts to analyse these pieces of legislation in order to suggest possible amendments which would secure their full alignment with European standards.

The Law on HRT

The experts worked on a preliminary draft law which is supposed to form the basis of the new Law on HRT which the Government wishes to adopt by the end of March 2004. No English translation of this document was provided to the experts; however, a description and oral translation of the suggested amendments by the drafters enabled the experts to comment, in general terms, on the reform.

General remarks

It was underlined that after 11 modifications of the Law on HRT since the beginning of the nineties, HRT needs stability in order to function in an increasingly competitive environment. For this reason, the suggested changes should not be to the detriment of the development of HRT and should avoid, as much as possible, disrupting HRT's work. At the same time, the experts welcomed the Government's willingness to further align the law with accepted European standards. In this context, the reform had to take into account the fact that the Law on HRT of 2003 has only recently started to be implemented with the establishment of the HRT Council in November 2003. The Council started to function and will, in due course, elect a director-general as well as senior staff in HRT. At the same time, the shortcomings of the existing law were demonstrated by the protracted parliamentary negotiations on the appointment of the HRT Council members.

Reference was made to the fact that the Government's wish to reform the Law on HRT by the end of March 2004 was connected with the finalisation of the *avis* on Croatia's accession to the European Union. However, it was clearly stated that, although a reform of the Law on HRT would be expected, no formal adoption of this particular Law by the end of March was expected by the European Commission.

Selected expert's suggestions

- **on founder's rights:** referring to past comments, it was stressed that the current draft was not fully securing HRT's autonomy, nor did it prevent interference into its operation. The drafters were suggested to rephrase the current articles related to or influenced by this concept.¹
- **on the nomination and dismissal of the HRT Council:** the suggested new procedure was generally welcomed (i.e. only civil society representatives nominating the Council's members). However, this procedure should be improved and more detailed in order to avoid any undue delay in the process or politically motivated interference.
- **on the HRT Council's power:** it was noted that several powers which should be given to the HRT Council were not within its competences. The drafters should therefore reconsider the separation of tasks between the Parliament, the Council on Electronic Media and the HRT Council.

Recommendations

1. **Time should be given to the drafters to prepare the amendments to the Law on HRT.** As far as possible, the fast-track procedure to reform this Law should

¹ See for details, K. Jakubowicz's analysis and comments of November 2002, and February 2003, Doc. OSCE – The Representative on Freedom of the Media.

not be used. This would enable further consultation on the reform of the Law on HRT, both within Croatia and with the experts. Upon submission of a revised draft in English, the experts could provide additional written comments.

2. In order to secure the stability and legal certainty needed by HRT, **the current HRT Council should continue** to elect the Director-General and senior staff members. Their mandates should not be disrupted by the adoption of the new Law on HRT. The Council's members should be affected by the new nomination procedure only at the end of their current mandate (Article 21 of the Law on HRT of 2003), with the exception of the 11th member of the current HRT Council, whose election should follow the procedure of the current Law. Specific **transitional provisions** should be drafted in order to organise a smooth transition between the current HRT Council's composition and the new HRT Council to be nominated according to the new Law. This is also to avoid the perception that these changes are made by the new Government for political reasons.

The Law on Electronic Media

After its adoption in July 2003, **this Law was criticised** on two major grounds: firstly, the nomination procedure of the members of the Council on Electronic Media's members (incompatible with the European standards in this field) and secondly, on the lack of transposition of certain provisions of the European Convention on Transfrontier Television, to which Croatia is a Party.

Besides these two important shortcomings, **concerns were expressed by the experts regarding the overall functioning of the future Council of Electronic Media**. The current Law would therefore need to be amended in order to secure the necessary financial and administrative resources which should be made available to the Council. Furthermore, the current Law does not provide enough power to the Council in order to perform its tasks. This is especially true as regards the monitoring of broadcasters.

In addition, the relations between the **Telecommunications Agency** (set up under the Law on Telecommunications) and the Council are not clearly defined and might lead to deadlocks in the work of the two bodies. **An urgent reform in this area is therefore needed**. This essential reform will affect also the current Law on Telecommunications.

Finally, the drafters should reconsider **Section V on the protection of pluralism and diversity of electronic media**. A detailed research on the Croatian media market should be conducted in due course in order to develop a policy instrument which would lead to the adoption of anti-concentration measures in the media field, in order to guarantee of media pluralism and media diversity. This research would also have an impact on the relevant articles included in the Media Law (see below).

Recommendations

1. A **significant political initiative should be taken in order to promote a rapid reform of this legislation**. This reform should be conducted as soon as possible in order to secure a stable and environment in the broadcasting field in Croatia. It was agreed that the current Law would neither provide a secure legal framework for broadcasters nor enable the functioning of a strong and independent broadcasting regulator. It would therefore be pointless to appoint the Council of

Electronic Media under the current Law. In this context, the Croatian Government should consider the reform of this Law as a matter of **high-priority**.

2. Article 74 of the Law on Electronic Media should be applied in order to enable the **Council for Radio and Television** to perform, as far as possible, its tasks until a new Law on Electronic Media is adopted.
3. The drafters should fully **align the revised Law with the European Convention on Transfrontier Television**.
4. The new Council on Electronic Media should be guaranteed enough **funding and administrative support** in order to enable it to perform its tasks properly. The Government should dedicate a special fund for the first year of the establishment of the Council of electronic media in order to secure a speedy start of its work. In addition, the Council of Electronic Media should be given competences to issue **secondary regulation**.
5. The drafters should promote the completion of a **thorough research on the Croatian media market** in order to develop anti-concentration measures adapted to the current situation.

The Law on the Media

While drafting the revised Media Law, the drafters should take full account of Article 10 of the European Convention on Human Rights (ECHR) as well as other relevant Recommendations adopted by the Committee of Ministers of the Council of Europe. Article 10 of the ECHR and the case law on the European Court of Human Rights should be used as a general benchmark in order to assess whether the articles of the Media Law can be considered compatible with the European standards.

Taking into consideration the willingness expressed by the Croatian authorities to reform the Media Law by 30 April 2004 and the comments expressed by representatives of the professional organisations during the mission, the experts suggested that the drafters should take into consideration the latest comments produced by the experts at the drafting stage of the Law on Media.² Both clear references to Article 10 of the ECHR and the past comments should enable the drafters to harmonise the future Law on Media with accepted European standards.

In addition, the above-mentioned study on the Croatian media market should provide the drafters with suitable solutions to address media concentration and to promote media pluralism in Croatia.

Recommendations

1. In the drafting process, Article 10 of the ECHR and the related case law should serve as guidelines in order to define a draft legislation which is both in line with European standards and adapted to be current media situation in Croatia. Additional technical assistance in a written form could be provided to the drafters by the experts.

² See J. Pegado Liz & G. Millar, Additional comments on the draft Law on the media of the Republic of Croatia, Doc. ATCM(2003)020 of 27 August 2003, available on www.coe.int/media.

2. The articles concerning the promotion of media pluralism should be drafted on the basis of a thorough research on the Croatian media market.

Criminal protection of honour and reputation

In November 2003, the Constitutional Court invalidated on procedural grounds the changes which had been made to the Criminal Code adopted by Parliament in July 2003. As a result, new amendments to the Criminal Code are currently being discussed within the Ministry of Justice. Its representative was not able to precisely explain to the experts whether or not defamation would be dealt with by the Criminal Code.

The experts recalled the “chilling effect” that these Articles, even rarely applied, have on the daily work of media professionals. Additional assistance was offered to the Ministry of Justice in order to analyse and comment the overall protection of reputation and honour in the Croatian legal system.

Recommendations

- Take the opportunity provided by the need to resubmit the Criminal Code to Parliament to remove provisions criminalising libel.

Appendix I

PROGRAMME

26 February 2004

Meetings with the Drafters, Ministry of Culture, (Runjaninova 2, Zagreb)

Participants:

- Min. Bozo Biskupic, Minister of Culture
- Peter Semneby, Head of OSCE Mission
- Jadran Antolovic, Ministry of Culture, State Secretary and experts
- Vesna Alaburic, member of working group on HRT Law
- Ivan Zvonimir Cicak member of working group on HRT Law
- Representative of Ministry of Justice
- Mario Oetheimer, Media Division, Council of Europe
- Karol Jakubowicz, Expert
- Gavin Millar, Expert
- Sandra Bašić Hrvatinić, Expert
- Martin Mayer and Snezana Djokic, Delegation of the European Commission to Croatia
- Alessandro Fracassetti, Head of Media and Public Affairs, OSCE Mission to Croatia
- Interpreter(s), OSCE Mission to Croatia

9:00

Opening statements

Min. Bozo Biskupic, Minister of Culture
 Amb. Peter Semneby, Head of the OSCE Mission to Croatia
 Dr. Mario Oetheimer, Media Division, Council of Europe
 Dr. Martin Mayer, Political Officer, Delegation of the European Commission to the Republic of Croatia

SESSION 1

The Law on Croatian Radio Television (HRT)

09:30

Presentation of the amendments / reform

Representative(s) of the Croatian working group on the HRT Law

10:00

Comments by the Council of Europe experts

Including on the independence of the program council

10:30

Break

10:45

Exchange of information, discussion and analysis of the amendments

12:00

Lunch: to be organized by the Croatian Ministry of Culture

SESSION 2

The Law on Electronic media

Also attending a representative from the Association of Local and private radios

- 13:30 **Presentation of the amendments / reform**
Representative(s) of the Croatian Ministry of Culture
- 14:00 Comments by the Council of Europe experts
Including on the implementation of the European Convention on Transfrontier Television and on the independence of the broadcasting regulator
- 14:40 Exchange of information, discussion and analysis of the amendments
- 15:30 Break

SESSION 3 The Media Law and relevant aspect of the Criminal Code
Also attending representative(s) from the Croatian Journalist Association

- 15:45 **Presentation of the amendments / reform**
Representative(s) of the Croatian Ministry of Culture
- 16:00 Comments by the Council of Europe experts
Including on compliance with Article 10 of the ECHR and the guarantee of media pluralism and the regulation of media concentrations
- 16:30 Exchange of experiences/information, practical questions
- 17:45 End of session
- 20:00 Dinner hosted by Amb. Peter Semneby, Head of the OSCE Mission to Croatia, with experts, members of working group, representatives of the Ministry of Culture and European Integration and Parliament.

27 February 2004

- 8:30 Meeting with representatives of Parliamentary Committees (Parliament building)
Participants:
- Zelika Antunovic, President of the Parliament's Committee on Information Dissemination, Information Management Systems and the Media (SDP)
- Vladimir Kurecic, Representative of the Committee for European Integration, (HDZ)
- 10:30 Meeting with selected media professionals [OSCE Mission premises]:
Participants:
- HRT Director, Mirko Galic;
- HRT Council Chairman, Zdenko Ljevak
- Vice-President of Journalist Association (HND), Zdenko Duka;
- Representative of Croatian Helsinki Committee, Media Council, Omer Rak
- Stability Pact for South East Europe National Co-ordinator for Media, Davor Glavas.