



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

BRIEF ANALYSIS AND COMMENTS

on

DRAFT LAW ON CROATIAN RADIO-TELEVISION (2002)

Of THE CROATIAN GOVERNMENT

(received December 11, 2002)

by

Karol Jakubowicz

December 14, 2002

Karol Jakubowicz, Ph.D. is Vice-Chairman, Steering Committee on the Mass Media, Council of Europe; Adviser to the Chairman, National Broadcasting Council of Poland; Head of Strategic Planning and Development, Polish Television

INTRODUCTION

Following my November 2002 analysis of the draft Law on Croatian Radio-Television, I received on December 11, 2002, from the OSCE Office in Zagreb, the English translation of a successive version of this draft.

Though not formally commissioned to undertake an expertise of this new draft, I have decided to write a brief analysis and comments in the hope of assisting further discussion of this draft and of doing so in a way that will prevent any misinterpretation or misrepresentation of my assessment.

As noted previously, 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 directive “On Television Without Frontiers” 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.

Public service broadcasting is a necessary element of the democratic organization of broadcasting. The previous draft seemed to be intended to turn the clock back in this respect. The current draft seems to offer more hope. By comparison, it represents considerable progress. With further effort, Croatia may finally put an end to a long history of creating public service broadcasting on paper, while in reality maintaining a system of close and direct political and State control over the ostensibly “independent” and “public” HRT.

Comments made below supplement many of the comments and recommendations formulated in the previous Analysis and Comments and should be considered alongside them.

Public service broadcasting is not created by law alone. Respect for its independence depends to a great extent on the general political culture and on restraint exercised by power elites on the one hand, and on non-partisanship, impartiality and dedication to public service on the part of the managers and staff of HRT. One is a precondition of the other.

Implementation of recommendations made below, if it happens, will begin to create only the necessary legal and administrative conditions for true public service broadcasting to be created in Croatia.

I. RELATIONS OF HRT WITH THE CROATIAN PARLIAMENT

The Croatian Parliament's role is described in the draft law as follows:

1.

The Croatian Parliament is to appoint (on the basis of public tender) and dismiss members of the HRT Broadcasting Council by a simple majority (art. 18, 20¹)

COMMENT

As noted in the Analysis and Comments on the previous version of this draft, the present system of appointing the HRT Broadcasting Council should be retained. Art. 18 speaks of a "public tender", but describes it in such a way that Parliament will have entirely a free hand in the choice and appointment of members of the HRT Broadcasting Council, destroying the democratic gains achieved under the law currently in force.

The law could possibly provide for a solution in which Parliament formally appoints individuals nominated (designated) by civil society organizations in the current procedure. In this solution, Parliament's role would not be to determine the composition of the HRT Broadcasting Council, but to put its seal of approval upon the selection made by civil society, thereby enhancing the Council's status. That should not imply any subordination of the Council to, or any supervision of the Council by, Parliament

One could thus merge Article 17 of the law currently in force with Article 18 of the current draft in more or less the following way:

RECOMMENDATION

The system of appointing the HRT Broadcasting Council could be as follows:

Article 18

- 1 Members of the HRT Broadcasting Council shall be appointed and relieved of duty by the Croatian Parliament.
- 2 Only citizens of the Republic 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) are eligible for membership in the Broadcasting Council .
- 3 Members of the Council should be publicly known persons who have distinguished themselves in public life by advocating respect of democratic principles and the rule of law, the building and promotion of the highest values of the constitutional order of the Republic of Croatia development of civil society, the defence of the human rights and freedoms and the protection of freedom of expression.
- 4 Subject to Article 21 and Art. **[see below – K.J.]**, the following organizations shall designate one person each for membership in the HRT Broadcasting Council:

¹ Because of a mistake in article numbers, in reality this is Article 19.

- Croatian Academy of Science and Arts,
- Association of Universities,
- Central Croatian Cultural and Publishing Society,
- Croatian Emigration Institute,
- Croatian Writers' Guild,
- Croatian Journalists' Association,
- Croatian Olympics Committee,
- national minorities in the Republic of Croatia,
- Catholic Church in the Republic of Croatia,
- other religious communities in the Republic of Croatia,
- trade union associations,
- employers' associations,
- film professional associations,
- drama professional associations,
- fine arts professional associations,
- musical professional associations,
- associations from the Homeland War,
- pensioners' associations,
- civil and ecological initiatives,
- associations of consumers
- youth associations,
- peasants' associations.

- 5 The above associations shall appoint their representatives into the HRT Council pursuant to the procedure stipulated by law and their statutes for the election of members of their management bodies.
- 6 Subject to Art. 21 and Art ... **[see below – K.J.]**, three persons from among the respectable non-party public officials shall be designated into the HRT Broadcasting Council by the Speaker of the Croatian Parliament, with previously obtained opinion of a competent working body of the House of Representatives, by the Prime Minister and by the President of the Republic of Croatia.
- 7 The HRT Council shall initiate the procedure of appointing the members of the HRT Council by addressing a public invitation at least three months prior to the expiration of mandate, compile the list of the designated persons from the associations listed in para 4 and the officials listed in para 6, and forward it to the Speaker of the Croatian Parliament.
- 8 The Croatian Parliament then appoints all the designated persons as members of the HRT Broadcasting Council by simple majority. If the motion is not carried, a new list of designated persons, as provided for in paras 4-6, must be presented to the Croatian Parliament.
- 9 New members of the HRT Council must be appointed before the expiration of the mandate of the HRT Council members from the prior composition.
- 10 Deputies of the Croatian Parliament and other state officials shall not be eligible for membership in the HRT Broadcasting Council from paragraph 1 of this Article.
- 11 HRT employees shall not be eligible for membership in the HRT Broadcasting Council.
- 12 The following persons shall not be eligible for membership in the HRT Broadcasting Council: persons employed by or performing jobs for rival companies, i.e. companies engaged in radio and television broadcasting, members of their management boards or supervisory boards, and persons engaged in activities which may cause a conflict of interests.

There should be no provision about dismissing of HRT Broadcasting Council members ², or at least this should be treated as a last resort.

RECOMMENDATION

In Art. 20 para 2, modify the second sentence to read: “The Croatian Parliament shall make the decision on the termination of the mandate by a two-thirds majority.”

Because of the provision of Art. 21 in the current draft instituting staggered terms for HRT Broadcasting Council members, the chapter “Transitional and Final Provisions” should contain a new article (this is the article for which an empty space was left in Art. 18, para 4 and 6 above) specifying which members of the first composition of the Council will be elected for 2 years, so as to make the system possible. This is why we propose for Art. 18 para 4 to begin with the words “Subject to Art. 21 and Art.”, since not all associations and officials will be designating new members every time.

If, as suggested in the previous Analysis and Comments, the number of HRT Broadcasting Council members is reduced to 21, then the list of associations in Art. 18 para. 4 should be changed accordingly.

2.

The Croatian Parliament receives an annual report by the HRT Broadcasting Council, or can request such a report at any time, concerning the work of the work of HRT Broadcasting Council and implementation of programme principles and obligations of HR and HTV (art. 19 ³).

COMMENT

There can be no objection in principle to an annual report to Parliament by the HRT Broadcasting Council. However, once a proper broadcasting regulatory authority is created under a new Law on Electronic Media, it should be the body supervising HRT and any such report should be addressed to this authority. In turn, that authority will no doubt be under an obligation to make an annual report to Parliament.

Parliament’s ability to request a report by the HRT Broadcasting Council at any time in practice gives Parliament a supervisory function over HRT. This should be seen in conjunction with art. 59. In other words, this creates legal uncertainty for HRT because the forms, procedures and consequences of supervision over the HRT Broadcasting Council have not been spelt out (leaving Parliament considerable freedom of manoeuvre). Therefore, provisions of art. 15 concerning the independence of HRT in the performance of its activities, appear to be seriously weakened.

RECOMMENDATION

Delete the words “or upon request” from Art. 19, para. 3.

² The Polish Broadcasting Act does not provide for such a possibility. When there were attempts to dismiss members of the Supervisory Boards of Polish public radio and Polish public television, the Constitutional Court ruled that in the interest of the independence of public service broadcasting, there should be no possibility of their dismissal

³ In reality, this is Article 20.

3.

The Croatian Parliament is to receive a separate report from the HRT Directorate (which is also sent to the HRT Broadcasting Council) at least once a year (art. 26);

COMMENT

It is not clear why Parliament should receive another report from the HRT Directorate. Parliament should uphold the role and importance of HRT Broadcasting Council as the main governing and supervisory authority of HRT. The intention to give it such a role is clear from the draft, and this is to be supported. Since members of the Directorate are appointed by the Council, they should be accountable to the Council alone.

RECOMMENDATION

Delete this provision

4.

The Croatian Parliament must approve the institution of any bankruptcy proceedings against HRT (art. 53);

COMMENT

The requirement that Parliament should approve bankruptcy proceedings against HRT is not objectionable. If it decides HRT should remain, it can act to relieve any financial difficulties HRT might have.

5.

The Croatian Parliament must take a decision concerning the supervision of the legality of the work of the HRT Broadcasting Council (art. 59);

COMMENT

The introduction of supervision of the HRT Broadcasting Council in accordance with a decision by Parliament, in addition to the supervision of the legality of the work of HRT by appropriate ministries, signifies a desire to intensify political control of HRT.

RECOMMENDATION

Delete this provision.

6.

The Croatian Parliament's consent is required for a change in the "status of the HRT or an organizational unit from Article 4" (art. 63).

COMMENT

The provision of Art. 64 is another form of weakening the autonomy of HRT Broadcasting Council. Under Article 19, it is the Council which adopts the HRT Statute. However, “changes” in that Statute require the previous consent of the Croatian Parliament. This gives Parliament another form of interference into the operation of HRT.

This provision is unnecessary in any case, since the law describes HRT and its organizational units with sufficient precision, so that any real changes would in any event require a change of the law, i.e. would be subject to parliamentary approval.

RECOMMENDATION

Delete this provision.

II. RELATIONS OF HRT WITH THE CROATIAN GOVERNMENT

1.

Under art. 5, “The Government of the Republic of Croatia and the HRT shall contractually regulate their mutual rights and obligations concerning programmes listed in paragraph 2, subparagraphs 4 and 5 of this Article. This contract must not in any way limit the application of programming principles on the contents of those programmes”.

RECOMMENDATION

This should be supplemented by adding: “ ... of those programmes, or the programming independence of HR and HTV”.

2.

Under Article 56 “The Government of the Republic of Croatia may issue a decree regulating concessions and exemptions from payment of the licence fee provided it refunds the corresponding amount from the state budget”.

COMMENT

This is not objectionable.

3.

Under Article 59, “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”.

This and other forms of potential government involvement in the work of HRT result from HRT’s status as a public institution, making it subject to the Law on Institutions. The previous draft contained Art. 81, stating that “all relations not regulated by this Law shall be

subject to the provisions of the Law on Institutions”. In this draft, this provision has been removed, potentially paving the way for a collision of this law with the Law on Institutions, should the same matters be regulated differently in the two laws.

RECOMMENDATION

The following reproduces verbatim the recommendation made in the previous Comments and Analysis:

It would be best if the legal status of HRT could be changed. Failing that, a new Law on Croatian Radio-Television should clearly state which provisions of the Law on Institutions do not apply to HRT. This should include, but not be limited to, Articles 8, 36, 38, 44, 54, 57, 64 and 71 of the Law on Institutions. Without this, the current attitude on the part of some representatives of the political establishment that “we own HRT, we control it” will not disappear.

III. HRT: STRUCTURE, ORGANIZATION AND GOVERNANCE

The current draft provides for one HRT with three organizational units (HR, HTV, GP HRT). Thus, the idea of dividing HRT into two or three public institutions joined into an “association” has been abandoned. This is a welcome decision.

The proposed management structure is as follows:

Body or top managerial position	Manner of appointment, powers
HRT Broadcasting Council	11 persons appointed by Croatian Parliament by public tender
HRT Directorate	Composed of HRT Director General, Directors of HR, HTV, GP HRT, representative of HRT employees’ council, <u>manages</u> HRT
HRT Director General	Appointed by Broadcasting Council by a 2/3 majority, by public tender, “ <u>governs</u> ” HRT
HR, HTV, GP HRT Directors	Appointed by HRT Broadcasting Council by 2/3 majority by public tender, upon a proposal of HRT Director General, “ <u>govern</u> ” HR/HTV/GP HRT
Head of Programmes, HR Head of Programmes, HTV	Appointed by Broadcasting Council by public tender, upon the proposal of the respective Director, sole responsibility for programming, propose candidates for editors of individual programmes for appointment by Director
Chief Editor of News and Current Affairs. HR Chief Editor of News and Current Affairs. HTV	Appointed by Broadcasting Council by public tender, upon the proposal of the respective Director, “autonomously run and organize news and current affairs broadcasts”, propose candidates for editors of individual programmes for appointment by Director

The method of appointment of the Broadcasting Council should be changed as described above. It should have real decision-making powers on strategic issues, as provided for in Art. 36 of the Law on Institutions.

Two features distinguish this structure from that proposed in the previous draft:

1. There is no Board of Directors appointed directly by the Croatian Parliament, either at the top of the organization, or within each of the three public institutions, as proposed in the previous draft;
2. Once appointed, the HRT Broadcasting Council makes all the other major appointments within the organization.

Both features are a very welcome change from the approach adopted over the past few years.

The appointment of each ranking manager made upon the proposal of his/her immediate superior (e.g. of HR Director upon the proposal of HRT Director General, and of HR Head of Programmes upon the proposal of HR Director, and finally of editors of individual programmes of HR upon the proposal of HR Head of Programmes or Chief Editor of News and Current Affairs.

Directors of HR, HTV, GP HRT are members of the HRT Directorate, capable of participating in running the entire organization.

It is difficult to understand the difference between “managing” HRT (as the competence of HRT Directorate is described), and “governing” HRT, HR, HTV and GP HRT as the competence of the appropriate Director General and Directors is described. It is to be hoped that this does not mean that the Directorate is the only body which truly manages the organization and the role of the different directors is subservient to the role of the Directorate. That would mean, in effect, excessive powers for the Director General, all the more so that the draft provides for a hierarchical managerial structure.

RECOMMENDATION

Every precaution should be taken to ensure that there is no excessive concentration of powers and authority at the top.

As noted previously, the system whereby managers are appointed by the HRT Broadcasting Council “by public tender” and “upon the proposal of” HRT Director General or a Director, leaves unanswered the question of who organizes the tender. If the tender is to be organized by the Broadcasting Council itself, there is no room for the Director General or Director to step in and “propose” a candidate who was judged by the Council to have won the tender.

RECOMMENDATION

The Council should conduct public tenders for the posts of Directors and Heads of Programmes of HR, HTV and GP HRT and appoint them directly.

It is not clear why the draft law proposes to create the positions of Chief Editors of News, and what is meant by the provisions that they should “autonomously run and organize news and current affairs programming” in HR and HTV. This would contribute to fragmenting management of programming within the two organizations, depriving the Head of Programmes of any influence over a key area of programming. Such solutions are applied in some broadcasting organizations, but one of the consequences of this provision could be to leave the Chief Editors exposed to direct external political influence and interference. This would weaken and not strengthen his/her position, and therefore weaken the independence of HRT.