

# **DIRECTIONS FOR DEVELOPMENT OF BROADCASTING LEGISLATION**

The Broadcasting Council has pointed out the necessity to redefine certain provisions in the Broadcasting Law in the regular reports on the implementation of the Law that it submitted to the Parliament of the Republic of Macedonia. The necessity for changes also arises from the obligations of the Republic of Macedonia to harmonize its broadcasting legislation with the EU's "Television Without Frontiers" Directive and the Agreement for Stabilization and Association.

In that context, the Council - in cooperation with representatives of the competent state bodies, public and private electronic media, media organizations and institutions, NGOs and civic associations, the Journalists' Association and other international media foundations, and coordinated by the National Media Group of the Stability Pact - has actively participated in the activities directed at changing and amending the Law, in all forms and stages of the work. The Government of the Republic of Macedonia, in January 2003, commended the participation of that great number of interested parties and entities in the implementation of this legal project.

As pursuant to Article 22 of the Broadcasting Law, the Broadcasting Council has adopted the *Directions for development of the broadcasting legislation*, and in accordance with the principle of transparency of operations, as defined in the Book of Rules and Regulations of the Council and the Recommendation of the Council of Europe R(2000)23, presents the *Directions* to public scrutiny.

## **1. Existing situation**

### *1.1. Legislation*

Broadcasting activity in the Republic of Macedonia is regulated in three laws: (1) the Broadcasting Law, (2) the Law on Telecommunications, and (3) the Law on Concessions. Special laws regulate the status of the Macedonian Radio-Television and Macedonian Broadcasting as public broadcasting enterprises.

The Broadcasting Law, which entered into force on May 8, 1997, was the first normative act that set the legal framework for establishing and operation of the electronic media in the Republic of Macedonia, in pluralist set-up. It determined the basic conditions and requirements to pursue broadcasting activity on the basis of principles of freedom of expression, freedom of reception and access to information, freedom to establish institutions of public information, guaranteed in Article 16 of the Constitution of the Republic of Macedonia and Article 10 of the European Convention for Human Rights.

The Law also contains several general principles, rules and obligations which result from the international documents ratified and accepted by Macedonia, and which arise from the acts adopted by the Council of Europe and the European Union.

The Law was adopted in a situation when Macedonia has already established a factual plurality, i.e. over 250 broadcasters were already present in the aether, spontaneously developing since 1990.

The Law created the legal basis for formal constitution of the entities and sectors of broadcasting activity. Deciding to accept the European model of public and commercial broadcasting sector, the Law provided that:

- Macedonian Radio and Television shall continue to operate as public service that will pursue broadcasting on the whole territory of the Republic of Macedonia;
- Public competitions may be held, concessions granted and commercial broadcasting companies may be established, i.e. provided for formal legal framework for the private broadcasting sector;
- The constituting of the commercial broadcasting companies and the normative regulation of the public broadcasting enterprises – Macedonian Radio-Television and Macedonian

Broadcasting – and provided formal legal plurality in the field of electronic media in Macedonia;

- The Law established the Broadcasting Council as the first independent regulatory body which represents the interests of the citizens in broadcasting.

### *1.2. Broadcasting entities and sectors*

#### Terrestrial broadcasters

In Macedonia, radio and television programmes are broadcast by 157 entities, 30 of which are in the public sector, while 127 are in the private sector. In the public sector, programmes are broadcast by: the Macedonian Radio-Television (three TV channels on three terrestrial networks and five radio programmes on three terrestrial networks) and the 29 local radio stations, of which 12 also broadcast television programmes. In the private sector, programmes are broadcast by 127 commercial broadcasting companies, five of them on national level (three radio stations and two television stations), and 122 on local level (69 radio stations and 53 TV stations).

#### Cable operators

In addition to the terrestrial broadcasters, there are 65 commercial broadcasting companies – cable networks operators that have won concessions to distribute radio and television programmes over cable networks. The number of channels distributed on the cable networks varies between 20 and 50 channels per network.

#### Satellite broadcasting

Currently, only the Macedonian Radio-Television broadcasts programmes over the satellite. The existing legislation does not regulate the conditions for issuing permit for satellite broadcasts to other entities.

### *1.3. Experiences from the implementation of the Law and the necessity for harmonization with the European legislation*

The Broadcasting Law and the other laws implemented in the field have provided the expected positive effects in the regulation of broadcasting. However, the legislation does not provide sufficient legal propositions for a future positive development of broadcasting in Macedonia, and especially in the overall situation of its convergence with the telecommunications, information science and creation of new markets.

The experiences from the practical implementation of the existing legislation in the field of broadcasting point out to several shortcomings: (1) there are important issues that are incompletely regulated, or are not regulated at all; (2) insufficient definitions for the obligations of the public service in terms of the programming it should offer; (3) competencies of the Broadcasting Council do not correspond to the European standards for the regulatory bodies; (4) supervision and control provisions are inefficient; (5) certain provisions are not harmonized, i.e. collide with the solutions contained in other legislation related to broadcasting, etc.

Some of the listed shortcomings were pointed out during the procedure for adoption of the Law by the Experts' Group appointed by the Council of Europe. Opinions, remarks and recommendations on certain provisions of the Law were also expressed by Macedonian and foreign experts that were engaged by the Council during the concession allocation procedure, as well as other international institutions ("Article 19", OSCE, and others).

The Broadcasting Council emphasized the necessity to redefine some legal solutions in its first report submitted to the Parliament of the Republic of Macedonia in 1998. In all annual reports, the Council summed up the experiences from the implementation of the Law and pointed out the need

for changes in the legislation and, in cooperation with the Council of Europe, organized a Workshop in 2000 that discussed that problem.

The need for changes of legislation also arises from the obligations taken by Macedonia to harmonize its legislation with the European legislation, and especially with the Stabilization and Association Agreement. Since the Law was adopted, the European Union and the Council of Europe adopted several acts (directives, recommendations, etc.) that cover the media, i.e. broadcasting, and Macedonia is obligated to implement those provisions in the national legislation. The “Television Without Frontiers” Directive of the European Union and the Cross-border Television Convention of the Council of Europe are particularly important. The two documents represent the basis of the European broadcasting legislation. The new legal framework, in the context of the European broadcasting standards, is related to the Macedonian aspirations for sooner association with the European Union.

The quick technical changes in broadcasting and telecommunications, digitalisation and multimedia approach, also, demand the proper framework, which would not only correspond to the changes, but also to anticipate them in terms of regulation.

## **2. Proposals for changes**

It is expected that the changes, amendments and the additions to the existing legal framework would primarily include the following questions:

### *2.1. Harmonization of the Broadcasting Law with the Law on Telecommunications and Law on Concessions*

The broadcasting activity should be completely regulated with a single law. The regulation with several acts has negative practical implications, especially having in mind that the listed regulations treat separate legal solutions in different manners (for instance, according to the Law on Concessions and the Broadcasting Law, the decision to allocate concession is made by the Government of the Republic of Macedonia, while the Law on Telecommunications says that the decision is made by the Minister, acting on a proposal submitted by the Telecommunications Directorate).

### *2.2. Broadcasting Organizations*

According to the Broadcasting Law (Articles 5, 9 and 12), broadcasting activity in Macedonia may be pursued by legal entities and physical persons through establishment of broadcasting organizations (public enterprises on national and local level and commercial broadcasting companies).

- The model of public and private (commercial) broadcasting sectors, in principle, should not be questioned. However, the existing legal framework that regulates the public broadcasting service should be harmonized and developed in agreement with the principles contained with the documents of the European Union and the Council of Europe (in particular the Resolution No. 1 – the Future of Public Broadcasting, and the Recommendation No. 96/10 that guarantees the independence of the public service). It is necessary to define its tasks of public interest, as well as to secure a system of financing which will provide for successful implementation of those tasks.
- To establish procedures which will provide strong and solid basis for the future of the public broadcasting service, which shall, at the same time, guarantee free entrepreneurship and competition in the market.
- Finally, it should determine the status and that functions of the public broadcasting enterprises on the local level, i.e. to complete the transformation of the existing local radio stations (the Council has adopted a special document dedicated to the public broadcasting on local level:

“The Local Public Broadcasting – Situation and Directions for Future Development”, which contain the proposals for possible solutions for transformation of the existing 29 local public radio stations) including possibility for privatisation and mixed structure of capital.

- If the Public Enterprise Macedonian Broadcasting maintains its status of public technical service, its technical role in the functioning and the modernization of the private broadcasting network should be clearly defined, as well as the procedure for that national and international accreditation for projects, certificates, etc.
- The status of the commercial broadcasting company should be more clearly defined in relation to the other commercial companies (company for production and broadcasting of programmes and company for production of programmes).
- The possibility for establishment and operation of the other entities that are not motivated by profit. It is necessary to work out the model of the so-called non-for-profit radio, i.e. the model of community radio.
- Closer definition of the status of the independent producers which should be primarily engaged in production of radio and television programmes.

### *2.3. Ownership and measures for prevention of media concentration*

The existing provisions of the Law which regulate the ownership of the electronic media (Articles 10, 11, 17 and 64 paragraph 4) need to be finalized in terms of making them more precise, as well as implementation of the rules of plurality and restriction of ownership of the media listed in the latest international documents (Recommendation No. 99/1 of the Ministerial Committee to the member states on the measures to improve the plurality of the media) from January 1999.

### *2.4. Allocation of concessions or permits*

The procedure for allocation of concession (Articles 13 through 21 of the existing Law) should be more clearly defined in the future regulation:

- To determine precise criteria that will be used to allocate concessions (permits) and to set the amount for compensation for the concession (permit); the procedure to be adapted to the nature of each separate broadcasting service (terrestrial network, satellite and cable network), to provide to all participants equal and non-discriminatory treatment in accordance with the principles of equal terms and transparency.
- To re-evaluate the purposefulness of the legal provision from Article 21 that prohibits the transfer of concession, in order to promote greater mobility of capital in the field.
- To level out the procedures and the regime of this Law with the Law on Telecommunications, which states that the concession may be transferred with prior agreement of the Minister of Telecommunications.
- To clearly regulate the administrative and judicial procedure for the protection of the rights of the participants in the concession (permit) competition.

### *2.5. Competencies of the Council*

The existing legal competencies of the Council (Articles 22 and 83) are not at the status level and the competencies available to the similar regulatory bodies (authorities) in other countries. In terms of the most important issues (allocation and abolition of concessions, supervision and

sanctioning, etc), the Council has not authority to bring decisions. This controversy was pointed out during the procedure of adoption of the Law, by the experts' group of the Council of Europe.

The Broadcasting Council, in accordance with the European standards, should receive competencies, decision-making capacities and responsibilities in terms of:

- Allocation of frequencies, i.e. decision-making power in the allocation, revocation and renewal of the concessions (permits) for operation of the broadcasting organizations, under conditions determined by the Law;
- Following the situation in the audiovisual sector and its development, as well as the quality and variety of programs, because of its role of mediator between the listeners/viewers and broadcasters, as well as broadcasters and public authorities;
- Fulfilment of the legal obligations by the broadcasters in terms of satisfying the audience requests, plurality of information, protection of minors, implementation of the right of response and correction, provision of the cultural obligations in broadcasting and production quotas, as well as the other legal obligations;
- Regulating the activity by providing authorization to determine and adopt binding rules and other acts on separate issues in the field of broadcasting;
- Appointing or giving agreement for nomination of members of the managing bodies of the public broadcasting enterprises;
- Sanctioning the broadcasters that do not follow the provisions of the Law and the concession (permit) agreement, with the right for the broadcaster to have an appropriate judicial protection from the decisions of the Council;
- Authorization to conduct economic control of the behaviour of the entities in the market, competition and advertising, to monitor the ownership of the commercial broadcasting companies and changes in the capital, i.e. ownership structure, and to give approval for the changes;
- Distribution of the funds from the broadcasting fee intended for financing of radio and television projects of public interest, produced by the broadcasting companies and independent producers (if the current legal solution is maintained).

## *2.6. Radio and Television Programs*

The Law lists the basic principles for the radio and television programmes and the independence of the broadcasting organizations, as well as provisions on the minimal length of broadcasts, the participation of the in-house production in the overall amount of broadcast programmes, the language of the broadcasts, the right of response and correction, access to information, as well as general rules on advertising, tele-shopping and sponsorship (Article 8, Articles 31 to 64 of the Law).

The future legislation should more precisely define and regulate the following:

- The concrete programming demands and restrictions for the public broadcasting service, which have to differ from the demands and restrictions for the private sector, i.e. to precisely define the obligations of the public service in terms of production of programmes of public interest, especially related to its educational, cultural and informative function;
- Protection of the cultural identity through the radio and television programmes;

- Basic characteristics of the programmes of the so-called non-for-profit broadcasting organizations;
- Specific programming obligations of the radio and television as special media;
- The possibility for existence and operation of broadcasting organizations with profiled programming offer (thematic radio and TV channels);
- Measures to be taken by the broadcasters in order to protect the children and youth from programming contents that may seriously damage their physical, mental and ethical development;
- Retransmission of domestic and foreign programmes through the terrestrial, i.e. cable networks;
- Precise definitions for the conditions for access to information and protection of the confidentiality of the source of information;
- Obligations of the broadcasting organizations in terms of coverage of elections and electoral campaigns, and the competence of the Broadcasting Council to adopt binding rules for the electronic media during elections;
- Public access to important events;
- Obligation of the broadcasters to dedicate part of their programming time to original domestic works, to the European productions and works produced by independent producers, as well as the obligation not to broadcast cinematographic works outside the schedule agreed with the holders of the rights;
- The rules for advertising, sponsorship and teleshopping;
- Obligations of the broadcasters to respect the rights of intellectual property.

#### *2.6. Financing of the Broadcasting Activity*

The financing of the public broadcasting service from a fee or public duty paid by the citizens is in accordance with the European standards and provides the grounds for independence of the public service.

The provisions of the Law that regulate this issue (articles 70 to 81) should be addressed with special attention from the following aspects:

- The existing system of collection of the fee through the electricity bills should be review from the aspect of the eventual privatisation of the “Elektrostopanstvo na Makedonija” (Electric power supply company);
- Categories of users that will be excepted form the obligation to pay the fee and the obligation to compensate the funds lost on these categories from the State Budget;
- To specify the paragraph 1, line 3 of Article 77 of the Law (in terms of the development fund of 7.5%, to whom it does belong, i.e. which percent goes to MRT, which to Macedonian Broadcasting);
- Regarding the issue of distribution of funds collected from the broadcasting fee dedicated to the financing of radio and television projects of public interest by the commercial

broadcasting companies and independent producers (10%), in addition to the existing legal solution, the possibilities for other options should also be considered (return of the funds to the Macedonian Radio and Television with the obligation to have 10% of the planned annual production produced by independent producers on the basis of public competition);

- To determine the percentage of the broadcasting fee which will determine the funds for financing of a part of the operational costs of the Council. The work of the Council is financed from the income generated from the concession/permit compensation fee;

#### *2.7. Economic operations of the electronic media and creation of a media market*

In order to improve the economic operations of the electronic media, i.e. to promote the development of the new media market, it is necessary, in addition to the changes in the broadcasting legislation, with the regulation that define the economic-financial operations, and in particular in terms of change of the taxation treatment of the services of advertising and sponsorship, to provide better working conditions for the media.

- Regular annual definition of the total funds to be spent for advertising and sponsorship, through changes of the accounting plans in terms of the analytical positions;
- The funds dedicated by the companies and other entities for advertising and sponsorship in the electronic media to be taxed at a privileged rate;
- The companies that will invest directly into the production of radio and television projects, to be exempted from the obligation to pay the revenue tax;
- The revenue generated from the concession compensation fees and the other dues paid by the broadcasting entities should return to be used in the field;
- Tax relief for the electronic media on the revenue (re)invested in the field; and
- Customs privileges and relief on imports of digital equipment for the electronic media.

#### *2.8. Supervision and sanctions*

The experiences from the practical implementation of the legal provisions for supervision and control (articles 82, 83 and 84 of the Law) demonstrate great inefficiency, which has had negative effect on the overall implementation of the Law. The Broadcasting Council has no legal authority or competencies to participate in the administrative and judicial procedure, neither it can sanction measures against the broadcasters that do not follow the legal and contractual obligations.

Using the authority of the regulatory bodies to allocate working permits/concessions as a starting point, it is logical that they should have an obligation and competence to monitor and supervise the broadcasters in terms of whether they fulfil their legal obligations, as well as the obligations listed in the working permit, i.e. the concession agreement. It means that the regulatory bodies ought to have the ability to monitor the behaviour of the broadcasters, the fulfilment of their legal and contractual obligations should be submitted to constant scrutiny and re-evaluation. The regulatory bodies must have possibility to react to the complaints submitted by the viewers and listeners, as well as legal authority to sanction the violations of the Law and the other obligations.

The future legislation should provide the Council with authority to sanction and decided on measures, which will mean that the European standards of supervision over the implementation of the Law have been applied in Macedonia.