IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2007 - 3

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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Case of Leempoel & S.A. Ed. Ciné Revue v. Belgium

In a judgment of 9 November 2006, the European Court of Human Rights found no violation of freedom of expression in a case concerning the withdrawal from sale and ban on distribution of an issue of the Belgian weekly magazine Ciné Télé Revue. On 30 January 1997, the magazine published an article containing extracts from the preparatory file and personal notes that an investigating judge, D., had handed to a parliamentary commission of inquiry. The article was advertised on the front cover of the magazine via the headline, which was superimposed on a photograph of the judge. The disclosures received substantial press coverage, as the issue was related to the "Dutroux case" and the manner in which the police and the judiciary had handled the investigations into the disappearance, kidnapping, sexual abuse and murder of several children.

Following a special judicial procedure for urgent applications before a judge in Brussels, investigating judge D. obtained an injunction for the magazine editor and its publisher to take all necessary steps to remove every copy of the magazine from sales outlets and the prohibition of the subsequent distribution of any copy featuring the same cover and the same article. The court order was based on the grounds that the published documents were subject to the rules on confidentiality of parliamentary inquiries and that their publication appeared to have breached the right to due process and also the judge's right to respect for her private life.

In an application before the European Court of Human Rights, the applicants complained that the ruling against them infringed Article 10 of the Con-

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• **Marketing Manager:** Markus Booms

• **Typesetting:** Pointillés, Hoenheim (France)

• **Print:** Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Germany)

• **Layout:** Victoires Éditions

ISSN 1023-8565

vention and they maintained that Article 25 of the Belgian Constitution, which forbids censorship of the press, afforded a greater degree of protection than Article 10 of the Convention and that its application should accordingly have been safeguarded by Article 53 of the Convention (the Convention's rights and freedoms being "minimum rules").

The Court noted that although the offending article was related to a subject of public interest, its content could not be considered as serving the public interest. Moreover, the parliamentary commission's hearings had already received significant media exposure, including via live broadcasts on television. The Court found that the article in question contained criticism that was especially directed against the judge's character and that it contained in particular a copy of strictly confidential correspondence which could not be regarded as contributing in any way to a debate of general interest to society. The use of the file handed over to the commission of inquiry and the comments made in the article had revealed the very essence of the "system of defence" that the judge had allegedly adopted or could have adopted before the commission. The Court is of the opinion that the adoption of such a "system of defence" belonged to the "inner circle" of a person's private life and that the confidentiality of such personal information had to be guaranteed and protected against any intrusion. As the Court found that the article in question and its distribution could not be regarded as having contributed to any debate of general interest to society it considered that the grounds given by the Belgian courts to justify the ban on the distribution of the litigious issue of the magazine were relevant and sufficient and that the interference with the applicants' right to freedom of expression was proportionate to the aim pursued. The Court considered that such interference could be seen as "necessary in a democratic society" and did not amount to a violation of Article 10.

With regard to the alleged negligence to apply Article 53, the Court referred back to its finding that the interference in question had been "prescribed by law" and further observed that the decision to withdraw the magazine from circulation did not constitute a pre-publication measure but, having been taken under the special procedure for urgent applications, sought to limit the extent of damage already caused. As such interference was not considered by the Belgian Court of Cassation as a form of censorship, the European Court did not consider it necessary to examine separately the complaint under Article 53 based on an alleged breach of Article 25 of the Belgian Constitution. ■

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● Judgment by the European Court of Human Rights (First Section), case of Leempoel & S.A. Ed. Ciné Revue v. Belgium, Application no. 64772/01 of 9 November 2006, available at:
http://merlin.obs.coe.int/redirect.php?id=9237

FR

European Court of Human Rights: Case of Radio Twist v. Slovakia

In a judgment of 19 December 2006, the European Court of Human Rights considered the sanctioning of a radio station to be a violation of freedom of expression as guaranteed by Article 10 of the Convention. The applicant, Radio Twist is a radio broadcasting company that was convicted for broadcasting the recording of a telephone conversation between the State Secretary at the Ministry of Justice and the Deputy Prime Minister in a news programme. The recording was accompanied by a commentary, clarifying that the recorded dialogue related to a politically influenced power struggle in June 1996 between two groups which had an interest in the privatisation of a major national insurance provider. Mr. D., the Secretary at the Ministry of Justice subsequently filed a civil action against Radio Twist for protection of his personal integrity. He argued that Radio Twist had broadcast the telephone conversation despite the fact that it had been obtained in an illegal manner. Radio Twist was ordered by the Slovakian courts to offer Mr. D. a written apology and to broadcast that apology within 15 days. The broadcasting company was also ordered to pay compensation for damage of a non-pecuniary nature, as the Slovakian courts considered that the dignity and reputation of Mr. D. had been tarnished. This was, in particular, related to the broadcasting of the illegally tapped conversation, which was considered an unjustified interference in the personal rights of Mr. D., as the protection of privacy also extends to telephone conversations of public officials.

The Strasbourg Court however disagreed with these findings of the Slovakian Courts. Referring to the general principles that the European Court of Human Rights has developed in its case law regarding freedom of expression in political matters, regarding the essential function of the press in a democratic society, and regarding the limits of acceptable criticism of politicians, the Court emphasised that the context and content of the recorded conversation was clearly political and that the recording and commentary contained no aspects relevant to the concerned politician's private life. Furthermore, the Court referred to the fact that the news reporting by Radio Twist did not contain untrue or distorted information and that the reputation of Mr. D. seemed not to have been tarnished by the impugned broadcast, as he was shortly afterwards elected as a judge of the Constitutional Court. The Court points out that Radio Twist was sanctioned mainly due to the mere fact of having broadcast information that had been illegally

obtained by someone else who had forwarded this to the radio station. The Court was, however, not convinced that the mere fact that the recording had been obtained by a third person contrary to the law could deprive the broadcasting company of the protection afforded by Article 10 of the Convention. The Court also noted that it was, at no stage, alleged that the broadcasting company or its employees or agents were in any way liable for the recording or that its journalists transgressed criminal law while obtaining or broadcasting it. The Court observed that there was no indication that the journalists of Radio Twist acted in bad faith or that they pursued any objective other than reporting on matters which they felt obliged to make available to the public. For these reasons, the Court concluded that by broadcasting the telephone conversation in question, Radio Twist did not interfere with the reputation and rights of Mr. D. in a manner that could justify the sanction imposed upon it. Hence the interference with its rights to impart information did not correspond to a pressing social need. The interference was not necessary in a democratic society, thus it amounted to a violation of Article 10 of the Convention. ■

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● Judgment by the European Court of Human Rights (Fourth Section), case of Radio Twist S.A. v. Slovakia, Application no. 62202/00 of 19 December 2006, available at:
http://merlin.obs.coe.int/redirect.php?id=9237
EN

European Court of Human Rights: Case of Mamère v. France

On 11 October 2000, the Paris Criminal Court found Mr. Noël Mamère, a leading member of the ecologist party *Les Verts* and Member of Parliament, guilty of having publicly defamed Mr. Pellerin, the director of the Central Service for Protection against Ionising Radiation (SCPRI). Mr. Mamère was ordered to pay a fine of FRF 10,000 (app. EUR 1,525). The Paris Court of Appeal upheld the conviction considering that Mr. Mamère's comments during a television programme were defamatory as they had compromised Mr. Pellerin's "honour and reputation" by accusing him of repeatedly having "knowingly provided, in his capacity as a specialist on radioactivity issues, erroneous or simply untrue information about such a serious problem as the Chernobyl disaster, which could potentially have had an impact on the health of the French population". The Court found that Mr. Mamère had not acted in good faith, as he had not adopted a moderate tone in insisting forcefully and peremptorily that Mr. Pellerin had repeatedly sought to lie and to distort the truth about the consequences of the Chernobyl nuclear accident (the latter occurred in the spring of 1986). Mr. Mamère had also attributed "pejorative characteristics" to Mr. Pellerin by using the adjective "sinister" and by saying that he suffered from "the Asterix complex". In May 2006, following a complaint by certain individuals suffering from thyroid cancer, the Commission for Research and Independent Information on Radioactivity (CRIIRAD) and the French Association of Thyroid Disease Sufferers (AFMT) recognised that the official services at the time had lied and had underestimated the contamination of soil, air and foodstuffs following the Chernobyl disaster.

In its judgment of 7 November 2006, the Strasbourg Court observed that the conviction of Mr. Mamère for aiding and abetting public defamation of a civil servant had constituted an interference with his right to freedom of expression as guaranteed in the Freedom of the Press Act of 29 July 1881. It also considered that it had pursued one of the legitimate aims listed in Article 10 § 2, namely the protection of the reputation of others (in this case the reputation of Mr Pellerin). The Court, however, considered the interference as not necessary in a democratic society, as the case obviously was one in which Article 10 required a high level of protection of the right to freedom of expression. The Court underlined that the applicant's comments concerned topics of general concern, namely the protection of the environment and of public health. Mr. Mamère had also been speaking in his capacity as an elected representative committed to ecological issues, so that his comments were to be regarded as being a political or "militant" expression. The Court reiterated that those who have been prosecuted on account of their comments on a matter of general concern should have the opportunity to absolve themselves of liability by establishing that they have acted in good faith and, in the case of factual allegations, by proving that they were true. In the applicant's case, the comments made were value judgments as well as factual allegations, so the applicant should have been offered both those opportunities. As regards the factual allegations, since the acts criticised by the applicant had occurred more than ten years earlier, the 1881 Freedom of the Press Act barred him from proving that his comments were true. While in general the Court could see the logic of such a prescription, it considered that where historical or scientific events were concerned, it might on the contrary be expected that over the course of time the debate would be enriched by new information that could improve people's understanding of reality. Furthermore, the Court was not persuaded by the reasoning of the French Court as to Mr. Mamère's lack of good faith and the insulting character of some of his statements. According to the Strasbourg Court, Mr. Mamère's comments could be considered sarcastic but they remained within the limits of acceptable exaggeration or provocation. Furthermore, the question of Mr. Pellerin's personal and

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"institutional" liability was an integral part of the debate on a matter of general concern: as director of the SCPRI he had had access to the measures being taken and had on several occasions made use of the media to inform the public of the level of contamination, or rather, one might say, the lack of it, within the territory of France. In those circumstances, and considering the extreme importance of the public debate in which the comments had been made, Mr. Mamère's conviction for defamation could not be said to have been proportionate and hence "necessary in a democratic society". The Court therefore held that there had been a violation of Article 10. ■

● Judgment by the European Court of Human Rights (Second Section), case of Mamère v. France, Application no. 12697/03 of 7 November 2006, available at: http://merlin.obs.coe.int/redirect.php?id=9237

FR

European Court of Human Rights: Case of Österreichischer Rundfunk v. Austria

In a judgment of 7 December 2006, the European Court of Human Rights found that the Austrian authorities had acted in violation of the right to freedom of expression. The case concerned a reaction to a news item on the Austrian public television channel *Österreichischer Rundfunk* (ORF). In a news programme broadcast by ORF in 1999, a picture was shown of a person, Mr. S, who had been released on parole a few weeks earlier. Mr. S. was convicted to eight years imprisonment in 1995 because he had been found to be a leading member of a neo-Nazi organisation. At the request of Mr. S., the Austrian courts prohibited ORF from showing his picture in connection with any report stating that he had been convicted under the *Verbotsgesetz* (National Socialist Prohibition Act) either once the sentence had been executed or once he had been released on parole. The courts found that the publication of Mr. S.'s picture in that context had violated his legitimate interests within the meaning of both Section 78 of the Copyright Act and Section 7a of the Media Act ("right to one's image").

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The ORF complained in Strasbourg that the Austrian courts' decisions violated its right to freedom of expression as provided in Article 10 of the European Convention on Human Rights. Despite its being a public broadcasting organisation, the European Court of Human Rights was of the opinion that ORF does not qualify as a governmental organisation and hence may claim to be a "victim" of an interference by the Austrian authorities in its right to freedom of expression, within the meaning of articles 34 and 35 of the Convention (see IRIS 2004-5: 3). Referring *inter alia* to the guarantee of the ORF' s editorial and journalistic independence and its institutional autonomy as a provider of a public service, the Court was of the opinion that the ORF does not fall under government control. As to the question of the prohibition to show Mr. S.'s picture in the context of his conviction under the Prohibition Act, the Court took into account several elements: the Court referred to the position of the ORF as a public broadcaster with an obligation to cover any major news item in the field of politics, to Mr. S.'s position as a well-known member of the neo-Nazi scene in Austria and to the nature and subject-matter of the news report, the latter being of relevance to the public interest. The Court furthermore underlined the fact that the injunction granted by the domestic courts was phrased in very broad terms and that the news item on ORF referred to persons recently released on parole after having been convicted of crimes with a clear political relevance. Taking into account all these elements the Strasbourg Court found that the reasons adduced by the Austrian courts to justify the injunction were not relevant and sufficient to warrant the interference in ORF' s right to freedom of expression. Thus, there had been a violation of Article 10. ■

● Judgment by the European Court of Human Rights (First Section), case of Österreichischer Rundfunk v. Austria, Application no. 35841/02 of 7 December 2006, available at: http://merlin.obs.coe.int/redirect.php?id=9237

EN

Committee of Ministers: Declaration and Recommendations in the Field of Media

On 31 January 2007, the Committee of Ministers adopted a series of important texts pertaining to the media. These are: a Declaration on protecting the role of the media in democracy in the context of media concentration, a Recommendation on media pluralism and diversity of media content, and a Recommendation on the remit of public service media in the information society.

The Declaration opens with a statement reiterating the vital importance of media freedoms and pluralism for democracy. It notes the media landscape is changing as a result of globalisation and concentration. Though this phenomenon carries positive consequences such as market efficiency, consumer-tailored content and job creation, it also poses a challenge as it can undermine the diversity of media outlets in small markets, the multiplicity of channels and the existence of spaces for public debate. In particular, due to the concern that media concentration can place a handful of media owners or groups in a position to control the agenda of public debate, the Declaration alerts Member States to the risk of abuse of the power of the media where strong concentration exists and its potential consequences for democratic processes. Thus: it underlines the desirability to sep-

arate the control of media and the exercise of political authority; draws attention to the necessity of guaranteeing full transparency of media ownership through appropriate regulatory measures; highlights the usefulness of regulatory and/or co-regulatory mechanisms for monitoring media markets and media concentration; stresses that adequately equipped and financed public service broadcasting can contribute to counterbalancing the negative consequences of strong media concentration; and stresses that policies encouraging the development of not-for-profit media can be another way to promote a diversity of autonomous channels for the dissemination of information.

The two other texts are Recommendations, the first of which concerns media pluralism and diversity of media content. It re-affirms that media are essential for the functioning of a democratic society as they foster public debate, political pluralism and awareness of diverse opinions. It recommends that Member States consider including in national law or practice a number of measures that are detailed in the body of the text of the Recommendation. These measures vary from rules concerning ownership regulation to rules relating to the allocation of broadcasting licences and must carry/must offer obligations. It further recommends Member States evaluate at national level, on a regular basis, the effectiveness of existing measures to promote media pluralism and content diversity, examining the possible need to revise them in the light of economic, technological and social developments. Lastly, it recommends that Member States exchange information about the structure of the media system, domestic law and studies regarding concentration and media diversity.

The second Recommendation, on the remit of public service media in the information society, focuses on the implications of the new digital environment and the specific role of public service broadcasting in the information society. It notes that younger generations favour the new communication services over traditional ones and states the public service remit is all the more relevant in the digital era and can be offered via diverse platforms resulting in the emergence of public service media (which exclude print media for the purposes of the Recommendation). The text recommends that Member States; guarantee the fundamental role of the public service media in the new digital environment; include provisions in their legislation/regulations specific to the remit of public service media, covering in particular the new communication services; guarantee public service media the financial and organisational conditions required to carry out the function entrusted to them in the new digital environment, in a transparent and accountable manner; enable public service media to respond fully and effectively to the challenges of the information society, respecting the public/private dual structure of the European electronic media landscape and paying attention to market and competition questions; and ensure that universal access to public service media is offered to all individuals and social groups. Member States should also widely disseminate the Recommendation, and the guiding principles for implementation included in the text. ■

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- **Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration, 31 January 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10627**
- **Recommendation Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10629**
- **Recommendation Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10631**

EN-FR

Committee of Ministers: Media-specific Provisions in New Resolutions on Minorities

At the beginning of 2007, the Council of Europe's Committee of Ministers (CM) adopted five country-specific Resolutions in the context of the Second Monitoring Cycle of the Framework Convention for the Protection of National Minorities (FCNM). The Resolutions contain a number of provisions concerning the (audiovisual) media (for similar provisions in earlier country-specific Resolutions, see IRIS 2006-2: 4).

In respect of Finland, the CM notes that radio programmes in minority languages, "while limited in their scope, have become important tools in the promotion and protection of minority cultures". It also notes that there is "a need to develop further the minority language public service broadcasting in order to accommodate the existing demand, *inter alia*, for children's programmes in the Sami languages". By way of concrete recommendations, it invites the Finnish authorities to "encourage further development of minority language media and review the current subsidy system with a view to ensuring that it takes into account the specific situation of minority language print media".

In respect of Malta and San Marino, the CM does not make any comments or recommendations relating specifically to the (audiovisual) media.

In respect of Germany, the CM flags the provision of radio broadcasts for the Frisians of Lower Saxony as a positive development and the frequent occurrence of discrimination against, and stigmatisation of, the Roma/Sinti in the media as an issue of concern. Furthermore, it recommends that the authorities "pursue efforts to improve the access to, and representation in, the media of persons belonging to national minorities, particularly in the public service media".

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In respect of Armenia, two main recommendations concerning the media are addressed to the authorities, *viz.*, to "further increase awareness-raising measures among the public, politicians and the media regarding national minorities" and to "find ways to increase the participation of minorities in the media and remove legislative obstacles to broadcasting in minority languages on public radio and television".

The implementation of the FCNM by States Parties is monitored by the CM and the Advisory Committee on the FCNM. A system of periodic State reporting forms the basis of the monitoring process. The Opinions adopted by the Advisory Committee are, by their nature, much more detailed than the subsequent Resolutions adopted by the CM. ■

- **Resolution ResCMN(2007)1 on the implementation of the Framework Convention for the Protection of National Minorities by Finland, 31 January 2007**
- **Resolution ResCMN(2007)2 on the implementation of the Framework Convention for the Protection of National Minorities by Malta, 31 January 2007**
- **Resolution ResCMN(2007)3 on the implementation of the Framework Convention for the Protection of National Minorities by San Marino, 31 January 2007**
- **Resolution ResCMN(2007)4 on the implementation of the Framework Convention for the Protection of National Minorities by Germany, 7 February 2007**
- **Resolution ResCMN(2007)5 on the implementation of the Framework Convention for the Protection of National Minorities by Armenia, 7 February 2007**

all available at:
http://merlin.obs.coe.int/redirect.php?id=8778
EN-FR

EUROPEAN UNION

Council of the European Union: Adoption of the Services Directive

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On 12 December 2006, the European Parliament and the Council signed the Directive on Services in the Internal Market (see IRIS 2006-9: 2, IRIS 2006-4: 8 and IRIS 2005-4: 3). The adoption of the Services Directive ends nearly three years of debate in, and between, the EU institutions since the presentation of a proposal of the European Commission in early 2004 setting out a general legal framework to reduce barriers to cross-border provision of services within the European Union.

Apart from some procedural amendments, the final version of the Directive corresponds to the common position of the Council, which is largely based on the changes adopted by the European Parliament in first reading. It includes the broad exclusion of audiovisual services ("... including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;"), the introduction of a cultural safeguard clause seeking to secure measures taken at Community or national level to protect or promote cultural or linguistic diversity or media pluralism, as well as the recognition of the *lex specialis* rule (with an explicit reference to the Television without Frontiers Directive). Furthermore, it also confirms the introduction of a social safeguard clause, the replacement of the country of origin principle by a pragmatic principle as the regulatory basis for cross-border service provision in the EU, and the exclusion of services of general economic interest from major parts of the Directive.

Member States need to ensure the transposition of the Directive by 28 December 2009. Within the same deadline, they will have to engage in a major screening process for all national establishment schemes and requirements as well as national provisions governing the temporary provision of services, and report this to the European Commission. ■

- **Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market, available at:**
http://merlin.obs.coe.int/redirect.php?id=10614
CS-DA-DE-EL-EN-ES-ET-FR-HU-IT-LV-LT-MT-NL-PL-PT-FI-SK-SL-SV

European Commission: Promoting Safer Use of the Internet by Combating Illegal and Harmful Content on Global Networks

The European Commission has presented to the Council and the European Parliament its final evaluation of the implementation of the multiannual Community Action Plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (SIAP) for the period 2003-2004. The report presented conclusions with respect to the effectiveness, efficiency, sustainability, utility and impact of the programme, and it formulated recommendations.

The SIAP was designed to promote safer use of the Internet and to encourage at European level an environment favourable to the development of the Internet industry. The original programme's main line of action was the creation of a safer environment through the promotion of hotlines, the encouragement of self-regulation and codes of conduct, the development of filtering, labelling and rating systems and the raising of awareness. In the period 2003/2004, EU funding concentrated on hotlines and awareness while the programme's scope was expanded so as to include new technologies primarily with the aim of enhancing the protection of children and minors. In general, the SIAP was appraised by all stakeholders as a relevant and effective programme that should continue. The European Union was seen as being a pioneer in having identified at an early stage illegal and harmful content on the Internet as a serious and important political question of a global dimension.

More particularly, the launching of national hot-

lines was considered as one of the major achievements of the SIAP while their services were evaluated as useful, relevant and effective. Nevertheless, it was recommended that the visibility of the hotlines be increased and cooperation between the hotlines and other stakeholders, in particular the police and ISPs, be enhanced. With regard to the development of "awareness nodes" – the necessity of which was strongly underlined – they were seen as remaining at an early stage of development and as failing to reach a wider number of target groups, while being given a low priority on the public policy agendas. In this respect, the evaluation pointed to the need for focusing the awareness-raising on specific target groups (particularly children, parents or teachers) and of improving outreach. The report further suggested involving children and young people in identifying problems and designing solutions. In the field of filtering technologies, knowledge of the relevant software at the end-user level was found to be limited. An increase in the end-users' awareness of the options available was recommended.

Although certain positive developments in industry self-regulation, codes of conduct and best practices were noted and their encouragement recommended, the progress in the area of labelling and rating systems was considered unsatisfactory despite their fundamental relevance to Internet safety. The importance of harmonising national legislation, particularly relating to illegal and harmful content and youth protection, was highlighted together with the new problems emerging as a result of the future diffusion of new Internet enabled end-user devices (e.g. next generation mobiles) and new practices (e.g. social networking, Internet Blogging and File Sharing). It was therefore recommended that the possibilities of new technologies and user options be mapped.

The Commission stated that it will take account of the recommendations in implementing the SIAP and planning a future follow-up programme, while declaring that support will be given to hotlines producing joint lists of illegal content to be communicated to Internet Service Providers. Furthermore, in the light of its responses to the evaluators' report, the Commission invited the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions to take note of the successful implementation of the SIAP and to assist it in making it future-proof. ■

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● Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, final evaluation of the implementation of the multiannual Community Action Plan on promoting safer use of the Internet by combating illegal and harmful content on global networks, 6 November 2006, COM (2006) 663 final, available at:
http://merlin.obs.coe.int/redirect.php?id=10624
CS-DA-DE-EL-EN-ES-ET-FR-HU-IT-LV-LT-MT-NL-PL-PT-FI-SK-SL-SV

European Commission: Three-Step Approach to Maintain Media Pluralism

A plan for media pluralism, dubbed the "Reding-Wallström" approach, was unveiled in mid-January. This approach, presented by Commissioner Reding and Vice-president Wallström, consists of three steps and is intended to safeguard democratic processes by reinforcing media pluralism in the face of new technology and global competition. The three steps involve the following: a Commission Staff Working Paper on media Pluralism, an independent study on media pluralism in EU Member States and a Commission Communication on the indicators for media pluralism in the EU Member States. The first of these steps, the Commission Staff Working Paper, has already been presented. It contains a survey of efforts that have been deployed to promote media pluralism by third parties and organisations (notably the Council of Europe) and gives insight into Member States' audiovisual and print media markets, including information on national media ownership regulations and general regulatory models. Issues such as freedom of information, the interrelation between politics/economic interests and the media, media concentration, cross-border concentration, media content, internal/external pluralism and technological developments such as the internet and digital television are discussed in the Working Paper. The second step, an independent study on media pluralism, will be completed in 2007 and is intended to define concrete indicators for assessing media pluralism in the EU Member States. The third and final step is the Commission Communication which will be ready by 2008 and entails a public consultation. ■

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● "Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe's media landscape" press release of 16 January 2006, IP/07/52, available at:
http://merlin.obs.coe.int/redirect.php?id=10637
BG-CS-DA-DE-EL-EN-ES-ET-FI-FR-HU-IT-LV-LT-MT-NL-PL-PT-RO-SK-SL-SV

● The Commission Staff Working Paper on Media Pluralism, 16 January 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10640
EN

Over EUR 700 Million for Europe's Film Industry

The EU's new Media 2007 programme, launched mid-February of this year (see IRIS 2004-9: 5 and IRIS 2005-10: 6), will be allocating EUR 755 million to the European film industry over the next seven years. After reaching a partial political agreement on the text establishing the programme mid-November 2005 (see IRIS 2006-1: 4), the Council of the European Union was able to adopt a Common Position in the summer of 2006 following an agreement on the EU's financial perspectives for 2007-2013. Parliament's

approval of this Common Position in October 2006 concluded the procedure and on 15 November 2006 the Decision of the European Parliament and of the Council concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) was adopted.

The funding focuses on the phases before and after film production: training (7%), development (20%), distribution (55%), promotion (9%), horizontal actions - intended to make it easier for SMEs to access funding and to increase the presence of European films on digital platforms - (5%) and pilot projects experimenting with new technologies for film development, production and distribution (4%).

The MEDIA programme seeks to increase European films' market share in Member States other than the one where they were produced and promote European cultures' visibility on the world stage. ■

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- **"MEDIA 2007: EUR 755 Million boost for Europe's film industry", press release of 12 February 2007, IP/07/169, available at: http://merlin.obs.coe.int/redirect.php?id=10641**

BG-CS-DA-DE-EL-EN-ES-ET-FI-FR-HU-IT-LV-LT-MT-NL-PL-PT-RO-SK-SL-SV

- **Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10644**

BG-CS-DA-DE-EL-EN-ES-ET-FI-FR-HU-IT-LV-LT-MT-NL-PL-PT-RO-SK-SL-SV

NATIONAL

AT – Short Reporting Rights May Not Be Restricted

The *Verfassungsgerichtshof* (Constitutional Court - VfGH) recently brought a temporary conclusion to a series of legal disputes over the right to broadcast short reports on *Bundesliga* football matches during the seasons 2004/2005 to 2006/2007 (see IRIS 2005-1: 7 and IRIS 2006-3: 10). The *Bundeskommunikationssenat* (Federal Communications Office - BKS) granted a request from *Österreichische Rundfunk* (Austrian Broadcasting Corporation - ORF) that it be allowed to broadcast short reports, but described in detail what kind of incidents could, as a rule, be shown under the right to short reporting (see IRIS 2006-4: 7). Reporting would be restricted to 90 seconds per match. The ORF must pay a fee to Premiere, who owns the exclusive rights, of EUR 1,000 per minute broadcast.

The BKS based its decision to restrict short reporting on Art. 5(3) of the *Fernsehexklusivrechtegesetz* (Exclusive Television Rights Act), which states that "short reporting of an event is limited to short reporting appropriate for a news broadcast. The admissible duration of a short report depends on the length of time needed to convey the news content of the event and should be no longer than 90 seconds". This provision is intended to transpose Art. 9 of the European Convention on Transfrontier Television.

In the recent proceedings, the Constitutional Court had to decide whether the BKS had breached ORF's freedom to broadcast by stipulating which incidents it could show. The VfGH decided in ORF's favour: "However, under Art. 10 of the European Convention on Human Rights, the television broadcaster alone may decide which incidents are of sufficient interest to show to its viewers. If the authority were allowed to determine the content of short news reports and dictate which incidents of a football match could be broadcast, this would constitute a breach of Art. 10 ECHR, which would be neither justified by the public interest nor necessary for the protection of the rights of third parties".

The VfGH also ruled that, when determining the fee to be paid to the exclusive rights holder, the BKS should have taken into account the fact that the value of each minute broadcast could be different when 90-second reports on each match were shown rather than 90 seconds on each round of matches.

The court therefore quashed the decision on the grounds that it breached broadcasting freedom and the principle of equality. ■

Robert Rittler
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- **Ruling of the VfGH, 1 December 2006 (case no. B 551/06, 567/06), available at: http://merlin.obs.coe.int/redirect.php?id=10601**

DE

BE – Deregulation of Advertising and Sponsoring Rules for Flemish Commercial Broadcasters

On 24 January 2007, the Flemish Parliament approved new modifications of the *Decreten betreffende de radio-omroep en de televisie* (Audiovisual Media Decree 2005). Aside from broadening the possibilities for alliances between regional and national private radio stations and abolishing some administrative obligations for private radio and television broadcasters, the new provisions deregulate some of the restrictions and limitations that commercial broadcasters have had to observe since 1991 regarding advertising and sponsoring.

In essence, the Flemish Community is abandoning its policy of imposing more detailed and stricter rules on television advertising and sponsoring than those in the TWF Directive 89/552/EEC. The possibility to advertise during audiovisual works such as feature films and films made for television is now aligned with Art. 11.3 of the TWF Directive. Also the provision that television advertising shall be readily recognisable as such and kept separate from other parts of the programme by optical and/or acoustic means is now

aligned with Art. 10.1 of the TWF Directive. Displaying, mentioning, showing or revealing products or services with the intention of making them available as a prize in a programme, will from now on be less restricted. With regard to sponsoring, the time limitations imposed on mentioning sponsors (five seconds per sponsor and ten seconds in total) have been abolished.

The most controversial and debated modification is the abolition of the so-called five-minute rule. Flemish broadcasting law prohibits advertising in the immediate proximity of children's programmes (under 12 years) since 1991. "Immediate proximity" meant within a period of five minutes before or after the children's programmes. Sponsoring of these programmes was also prohibited. The new Act has abolished these provisions for commercial broadcasters. The prohibition to introduce advertising in children's programmes however has not been modified. In Art. 111 of the Audiovisual Media Decree an amendment is introduced stating the code of advertising and sponsoring contains provisions regarding advertising and sponsoring that specifically target children and youngsters. With this new Act, the Flemish legislators aim to put an end to the stricter rules on advertising and sponsoring that reduce the income of commercial broadcasters in comparison to that of other EU broadcasters available on the Flemish television cable networks.

The de-regulation with regard to sponsoring of children's programmes is not applicable to the public broadcasting organisation VRT, which may in any case not broadcast advertising on television (apart from self-promotion). According to the new Act, the VRT is not allowed to have its children's programmes sponsored, as it may not mention the sponsor five minutes before or after children's programmes. The time limitations for sponsoring messages (five seconds per sponsor and ten seconds in total) also remain applicable to the VRT. ■

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● ***Decreet houdende wijziging van sommige bepalingen van titel III en titel IV van de decreten betreffende de radio-omroep en de televisie, gecoördineerd op 4 maart 2005,* (Act modifying the Audiovisual Media Decree 2005), approved by the Flemish Parliament on 24 January 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10608
NL

BG – Strengthening the Supervisory Functions of the Council for Electronic Media regarding Aerial Transmitting Broadcasters

At the end of 2006 amendments of the *Zakon za Radioto i Televiziata* (Bulgarian Radio and Television Act– IRIS 2002-2: 3) were passed by the Parliament (State Gazette, No 105 [2006]). The amendments introduced more efficient supervisory powers for the Council for Electronic Media as regards the monitoring of the activities of all licence-holders – radio and television broadcasters (broadcasting via terrestrial transmitters). The new powers cannot be used, however, in relation to the registered media operators transmitting via cable or satellite, which represent the majority of the television organisations in Bulgaria.

The new act establishes special duties for the officers of the Council for Electronic Media who are responsible for the monitoring of the broadcasters (Art. 117, para. 2 of the Radio and Television Act). By virtue of the new act, special powers were also given to the chairperson of the Council for Electronic Media (Art. 117, para. 3). Two new paragraphs were added to Article 117, and the previous text of Article 117 is now replaced by paragraph 1 of the provision. The current text of the provision is as follows:

Art. 117 (1) Supervision of the compliance with this Act and verification of compliance with the licence requirements shall be exercised by the competent officers of the Council for Electronic Media.

(2) In performing their duties the officers, according to paragraph 1, shall:

1. have access to all documents, which are directly or indirectly related to infringements of this act or to infringements of the legislation of the Member States of the European Union implementing the requirements of Council Directive 89/552/EEC concerning the pursuit of television broadcasting activities, last amended by Directive 97/36/EC of the European Parliament and the Council, regardless of the form of the document;
2. request from each person the delivery of any information, they may be aware of, regarding the infringements under point 1;
3. perform on-site inspections.

(3) The Chairperson of the Council for Electronic Media shall:

1. order the perpetrator in writing to cease the infringement under para. 2, point 1;
2. require from the perpetrator that he/she declares that he will cease the infringement under para. 2, point 1, and, if necessary, to oblige him to publish this declaration ;
3. order the suspension or ban of each infringement under para. 2, point 1, and, if necessary, to publish the order for suspension or ban of the infringement.

The fulfilment of these new provisions is ensured by the following new sanctions:

Art. 126b (1) Any violation of Art. 117, para. 2, point 2 and para. 3 shall be punishable by a pecuniary penalty from BGN 500 to BGN 2,000.

(2) Any repeated violation shall be punishable by a pecuniary penalty of a double amount."

The amendment also introduced a definition of the term "repeated violation" of the act, by creating an additional provision – paragraph 1, point 33 of the supplementary provision to the Radio and Television Act:

"33. "Repeated violation shall mean an infringement committed within one year after the entry into force of the penalty act imposing the sanction for the same infringement". ■

Rayna Nikolova
Council for Electronic Media, Sofia

BY – Statute to Counteract Extremism Adopted

Andrei Richter
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On 4 January 2007, President Aleksandr Lukashenko signed into force the statute "On Counteraction of Extremism", adopted by the House of Representatives (parliament) on 14 December 2006.

Extremism (extremist activity) is understood in the Statute, *inter alia*, as being the activity of an organisation or citizens that: publicly encourages actions such as the humiliation of national honour and dignity; and/or calls for hooliganism and vandalism on political and ideological grounds; or publicly displays Nazi symbols, etc. (Art. 1).

The Prosecutor-General of the Republic has the right to suspend all activity of an organisation that engages in extremism with an immediate appeal to the Supreme Court to recognise the organisation as an extremist one, ban its activity and close its offices (Art. 11 and 12). Informational materials can be recognised as extremist materials only by a decision of the court of law after a written request from the state security, interior ministry or prosecutor's offices. Dissemination of extremist materials in the mass media is banned. As such they should be destroyed (Art. 14).

Similar statutes have already been adopted in Russia, Moldova, Kazakhstan and Kyrgyzstan (see IRIS 2002-8: 15 and IRIS 2005-8: 17) in 2002-2005. ■

● *Закон Республики Беларусь "О противодействии экстремизму"* **(Statute of Republic of Belarus "On Counteraction to Extremism"), available at: http://merlin.obs.coe.int/redirect.php?id=10605**

RU

CZ – Merger of the Two Largest Cable Network Operators

Jan Fučík
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Liberty Global, which owns the Czech Republic's largest cable network operator UPC Česká republika, has bought the second largest cable network operator in the Czech market, Karneval, for EUR 322.5 million. The new company therefore has 800,000 customers. Karneval previously had 310,000 customers, 253,000 for cable television and 57,000 for the Internet, while UPC had 300,000 for cable TV, 100,000 for satellite TV and 100,000 for the Internet. The company also has customers in the telephone services sector.

The Czech cartels authority approved the merger of UPC and Karneval, subject to five conditions being met.

For example, the merger was only approved after UPC promised not to abuse its dominant position in the Czech market. It must also provide other operators with access to its services under non-discriminatory conditions.

UPC has also agreed to freeze its prices until the end of 2007; price increases had previously been expected.

Another condition is that the range of channels should be maintained in its current form so that it does not suffer as a result of the merger.

The new company must also offer its services to other channels. This measure is designed to prevent the providers of these channels from being ousted from the market and to protect the plurality of channels available.

Finally, UPC is required to keep separate accounts for expenditure and income in order to show clearly that it is not practising so-called "cross-subsidisation"; satellite television, for example, should not be financed through income from cable services.

The Czech broadcasting regulator has also already approved the merger of the country's two largest cable network operators. ■

● **Decision of the *Rada pro rozhlasové a televizní vysílání* (Broadcasting Council) no. 2006/942/Zem/Kar of 7 November 2006 (not published)**

● **Decision of the *Úřad pro ochranu hospodářské soutěže* (Cartels Authority) no. S/271/06-22601/720 of 22 December 2006**

CS

DE – Court Upholds Rulings that TV Programmes Breached Human Dignity and Youth Protection Provisions

On 6 February 2007, the *Verwaltungsgericht* (VG) Hannover (Hanover Administrative Court) rejected two appeals by broadcaster RTL against decisions of the *Kommission für Jugendmedienschutz* (Commission for the Protection of Youth in the Media - KJM) (case nos. 7 A 5469/06 and 7 A 5470/06).

In decisions reached in July and October 2005, the *Niedersächsische Landesmedienanstalt* (Lower Saxony *Land* Media Authority - NLM) had ruled that various TV programmes broadcast by *RTL* in 2004 had been unlawful. These decisions had been based on rulings of the KJM, a body jointly set up by the German *Landesmedienanstalten* (*Land* media authorities) to monitor compliance with the provisions of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on protection of youth in the media - JMStV) (see IRIS 2002-9: 15). The KJM's decisions on infringements and punitive measures are implemented by the *Landesmedienanstalten*.

The first programme criticised by the KJM was an episode of a so-called "docu-soap" called "*Die Autohändler*" (the car dealers), which had been shown during the afternoon. The programme had contained scenes in which the main characters had treated females who had applied for cleaning jobs in their company in a derogatory manner. One male character, for example, had suddenly thrown an attaché case at one of the women, called her «*Toastbrot*» (a piece of toast)

and, referring to her appearance, asking if she had previously worked on a ghost train. RTL had argued before the court that the KJM's decision-making procedure was not correct. It claimed that the KJM had, despite the clearly differing opinions of its members concerning the programme, taken its decision via the so-called "circulation procedure", under which votes could be cast by fax and only needed to be justified if they contradicted the recommendation laid down. The necessary discussion had not taken place. However, the court considered that any such procedural breaches had been rectified by a subsequent KJM decision and confirmed that the behaviour shown had been likely to harm the development of children and young people into responsible people capable of living in society (Art. 5 JMStV). The programme should therefore not have been shown until late in the evening.

The other complaint concerned four television programmes that reported on the rescue of a helpless old man who had been ill-treated by his nurse. The reports repeatedly showed images secretly filmed by a private individual, in which the nurse beat the man and made indisputably inhumane comments about him. In this case, the court considered that the right to free reporting enshrined in Art. 5(1)(2) of the *Grundgesetz* (Basic Law - GG), had been restricted by the inviolability of human dignity (Art. 1(1) GG). The court ruled that the human dignity of the helpless man had been breached because the victim had been used by the broadcaster for reporting purposes and because of the way his ill-treatment had been broadcast repeatedly. The VG ruled that there had been no justification for showing his suffering in such detail. ■

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- ***Verwaltungsgericht Hannover*** **(Hanover Administrative Court), ruling of 6 February 2007 (case no. 7 A 5469/06)**
- ***Verwaltungsgericht Hannover*** **(Hanover Administrative Court), ruling of 6 February 2007 (case no. 7 A 5470/06)**

DE

DE – Telemedia Act Adopted

After the *Bundestag* (lower house of the German Parliament) had adopted the *Gesetz zur Vereinheitlichung von Vorschriften über bestimmte elektronische Informations- und Kommunikationsdienste* (Act on the standardisation of provisions on certain electronic information and communication services – ElGVG), the cornerstone of which is the *Telemediengesetz* (Telemedia Act - TMG), on 18 January 2007, it was passed by the *Bundesrat* (upper house of the German Parliament) on 16 February 2007.

The Telemedia Act no longer distinguishes between tele-services, which were previously covered by the *Teledienstegesetz* (Teleservices Act – TDG) within the framework of the *Informations- und Kommunikationsdienste-Gesetz* (Information and Communication Services Act – IuKDG), and media services, which were previously the subject of the *Mediendienstestaatsvertrag* (Inter-State Agreement on Media Services – MDStV). Instead, similar to the *Neunte Rundfunkänderungsstaatsvertrag* (9th amendment to the Inter-State Broadcasting Agreement – RÄStV), it combines the two concepts (see IRIS 2005-2: 9 and IRIS 2006-7: 9). Commercial rules for telemedia will, in future, be found in the TMG, while content-related aspects will be regulated in a specific section of the Inter-State Broadcasting Agreement and the existing *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on Protection of Youth in the Media). Telecommunications services and broadcasting are distinguished from telemedia and thus excluded from the scope of the new Act.

One new rule, which has attracted particular criticism, is the obligation to make user data available to investigating authorities for crime prevention purposes. This provision, which also applies in connection with the protection of intellectual property rights, has raised serious concerns from the perspective of data protection.

Protection from unsolicited e-mails ("spam") has also been extended insofar as it is now an offence for senders to breach information obligations, such as the failure to identify their communications as advertising or the withholding of their identity. ■

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- ***Gesetz zur Vereinheitlichung von Vorschriften über bestimmte elektronische Informations- und Kommunikationsdienste*** **(Act on the standardisation of provisions on certain electronic information and communication services –** ***ElGVG*****)**
- **The Bill and related documents are available at: http://merlin.obs.coe.int/redirect.php?id=10603**

DE

DE – The DLM Adopts Key Features of the DVB-H Trial

At its meeting on 25 January 2007, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of *Land* media authority directors) decided on the key features of a nationwide trial of mobile broadcasting services using the DVB-H standard (see IRIS 2007-2: 10).

The aim of the project is to develop a workable overall system for the digital terrestrial transmission of broadcasting services and telemedia. The full bandwidth of an analogue television channel (8 MHz) will be made available throughout the country for the trial of the DVB-H standard (*Digital Video Broadcasting – Handheld*). Capacity in the respective networks will in particular be allocated to channels that broadcast to a large reception area, to specialist news, music and sport channels, to regional TV channels and radio stations. The remaining capacity may be given to groups of companies, who are paying special attention to telemedia.

A nationwide call for tenders for the available

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capacities will be issued immediately. Since the process, which will last three years, is subject to respective *Land* laws, applicants must, if in doubt, submit applications to all *Land* media authorities, requesting the necessary licence in accordance with media law.

The DLM stressed that the chosen project does not represent a decision to abandon the DMB standard (*Digital Multimedia Broadcasting*). ■

● DLM press release no. 3/2007 of 25 January 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10602

● Key features of the trial of mobile broadcasting services using the DVB-H standard, available at: http://merlin.obs.coe.int/redirect.php?id=10604

DE

FR – The Moral Right of Victor Hugo before the Court of Cassation

Amélie Blocman
Légipresse

On 30 January, the court of cassation delivered a judgment, one that was both anticipated and noteworthy, concerning the conditions under which a sequel to a work may or may not be produced. In the case at issue, the dispute was between an heir of Victor Hugo and the author of two novels presented as "sequels" to Victor Hugo's work *Les Misérables*. In France, the moral right – unlike pecuniary rights which lapse 70 years after the death of the author – is "perpetual, inalienable and not subject to limitation in terms of time. On the author's death it is transmitted to the author's heirs" (Art. L. 121-1 of the French Intellectual Property Code). However, very few heirs ever uphold the moral right of their ancestors more than a century later, by which time the work has fallen into the public domain.

In the case at issue, the two novels concerned in the dispute brought back to life the legendary characters of Cosette, Thénardier, and even Inspector Javert, to the great displeasure of the writer's great-great-grandson, who claimed EUR 675,000 from the author in damages and called for his books to be banned, on the grounds that he had infringed the respect due to his ancestor's work. The court of appeal upheld the claim in 2004 (but only awarded damages amounting to a symbolic EUR 1), holding that "there could be no sequel to a work such as *Les Misérables*, which was definitively complete". The court of cassation, on the basis of Article 10 of the European Convention on Human Rights and Articles L. 121-1 and L. 123-1 of the Intellectual Property Code, found that, in principle, a sequel of this kind, which was related to the right to make an adaptation, could not be forbidden. The court stated that a sequel involved the freedom of creation, which, on condition that there was no disregard toward the title of the work and its integrity, could be exercised on expiry of the period during which the work's author, or the latter's heirs, held a monopoly on its use. It therefore overturned the judgment of the court of appeal in Paris which had decided that editing and publishing the disputed works had infringed the moral right of Victor Hugo; the judges had based their decision with reference to the genre and the merit of the work, and its complete nature, without examining the novels at issue or deciding whether they altered Victor Hugo's work or whether there was any confusion as to who had written them. The case was referred to a different configuration of the court of appeal in Paris, which this time had to determine whether the author's moral right had been infringed, within the restrictive limits laid down by the court of cassation. This decision does, however, have the merit of defining for the first time the framework within which a sequel to a work, whether it is literary or audiovisual, may be produced. ■

● Court of cassation (1re civil chamber), 30 January 2007, Société Plon and another v. P. Hugo and the Société des Gens de Lettres

FR

FR – Legislation on the Television of the Future (the final Episode)

On 31 January 2007, following on from the Senate decision last November (see IRIS 2007-1: 10), the National Assembly adopted the bill on the television of the future, to which the Government had applied the urgent procedure (one single reading in each House). However, only the UMP group, which has an absolute majority in the Assembly, voted in its favour.

The Act creates the necessary legal framework allowing, from March 2008, the discontinuation of analogue signals in favour of digital broadcasting, with the changeover to be completed by 30 November 2011. Despite vigorous protests from the independent channels, the National Assembly adopted one of the most controversial items in the text of the bill – the granting of a "bonus" channel to the incumbent private sector channels TF1, Canal+ and M6, as "compensation" for discontinuing analogue broadcasting and the "challenging of acquired rights". The three channels will also have their broadcasting authorisations extended for five years.

The MPs also adopted the new definition of an audiovisual work, by including video clips in addition to the "works of fiction, animation, documentaries, the recording or re-creation of live shows" as adopted by the Senate in November. The principle of a tax credit was also adopted: this is to be capped at EUR 3 million per year and will be passed on to French video game companies. However, the amendments aimed at imposing uniform numbering for the non-paying

channels on terrestrially broadcast digital television by all broadcasting media (terrestrially broadcast digital television, cable, satellite, and broadband) were rejected.

The main new feature included in the bill by the National Assembly is the reform of the tax levies for funding support for the programme industry (*compte de soutien à l'industrie des programmes* - COSIP). The purpose of this is to involve Internet access providers (IAPs), who also distribute audiovisual programmes, in the financing of creation, through a tax on their turnover in connection with broadband television. The tax would kick in at a turnover of EUR 10 million for audiovisual business, at a rate of 0.5%. The lower House introduced eight levels, with a maximum of 4.5% for turnover in excess of EUR 530 million. Apart from Free, the IAPs accepted this financing effort without demur, since they hope to achieve satisfaction with regard to their main claim in the inter-profession negotiations currently taking place on VOD, namely the right to offer films for rental on a VOD basis six months after the film's first showing in a cinema theatre, instead of nine months, as is currently the case.

Lastly, the text requires manufacturers to market televisions that incorporate digital TV adapters "within twelve months of the Act being officially announced".

Once the National Assembly had voted, the text – due to the use of the urgent procedure – was discussed by a joint mixed committee (composed of seven members from each House) with a view to agreeing on common wording. The compromise text produced by this committee made no substantial amendments to the bill adopted – the only amendments adopted were basically of a technical nature.

The text was approved by Parliament on 22 February 2007. Opposition MPs who contested the allocation of the bonus channel referred the matter to the Constitutional Council, which validated the Act on 27 February 2007. Since the three compensatory digital television services cannot be allocated until analogue broadcasting is discontinued, i.e. on 30 November 2011, and given that the editors concerned will have to subscribe to stricter obligations concerning the broadcasting and production of cinematographic and audiovisual works, and since they will be subject to the anti-concentration provisions of common law, the Council held that the disputed Article did not constitute "manifestly disproportionate compensation". It did have one reservation, however, that "the competent authorities shall be required to ensure observance of diversity (…) taking into account the radio-electric resources available" when attributing the three compensatory services. The Act should therefore be published in the *Journal Officiel* in the very near future. ■

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● ***Loi sur la télévision du futur*** **(Act on the Television of the Future), available at: http://merlin.obs.coe.int/redirect.php?id=10651**

● ***Décision n° 2007-550 DC du 27 février 2007*** **(Decision of the Constitutional Council no. 2007-550 DC of 27 February 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10652**

FR

FR – Establishment of an "Images of Diversity" fund

On 8 November 2007, the Minister for Culture and Communication and the Minister with responsibility for the promotion of equal opportunities presented a communication to the Council of Ministers concerning the establishment of an "Images of Diversity" fund. The fund, to be managed by the national agency for social cohesion (*Agence nationale pour la cohésion sociale* - ACSE) and the national cinematographic centre (*Centre national de la cinématographie* - CNC), is intended to support the creation of cinematographic and audiovisual works dealing with diversity in France and equal opportunities. The aim is to support the production of works, whether fiction, documentary or news programmes, that deal with diversity in France. It also involves giving additional support to those projects accepted by the committees for awarding the selective aid provided by the CNC, on condition that the projects deal with diversity and social cohesion, whether at the stage of writing, development or production, or to promote their circulation among the widest possible public. The Decree of 9 February 2007 creating the "Images of Diversity" Committee lays down the committee's composition and *modus operandi*. It has eleven members and is required to examine all applications and projects likely to receive assistance from the fund. The committee deliberates by taking into account the contribution the works or programmes could make: to awareness of the reality and expression of first- or second-generation immigrants; to awareness of the reality and expression of the French population outside mainland France; to enhancing the remembrance, history and cultural heritage of these populations and of their links with France; to combating discrimination; to the visibility of all the populations that make up present day French society; and to the construction of a common history on the basis of shared values (Art. 3 of the Decree). The "Images of Diversity" fund has a budget of EUR 10 million, divided equally between the ACSE and the CNC. The decision to award aid will be taken on the basis of the quality of the projects submitted – the fund will be able to provide aid for 500 projects each year. The CNC called for projects to be submitted as soon as the Decree was published. ■

Amélie Blocman
Légipresse

● **Decree No. 2007-181 of 9 February 2007, creating the "Images of Diversity" Committee, published in the *Journal Officiel* of 10 February 2007, p. 2575, available at: http://merlin.obs.coe.int/redirect.php?id=8885**

FR

GB – Government Approves New BBC Licence Fee Financial Settlement

The BBC does not carry advertising on any of its public service broadcasting channels and so relies on funding by licence fee. The funding level is set for several years in advance by the government, and the latest settlement has just been announced. The BBC had sought a generous settlement to include the costs of digital switchover, the development of new services, and the moving of key departments to Salford, in the North West of England. It thus applied for a settlement of inflation plus two point three percent over the next ten years. This was widely perceived as having been unrealistic, and the settlement is much lower. Although the initial stages of the review were carried out through public consultation, the final outcome was determined by private negotiations within government, in which the main actor was the Treasury, the UK ministry of finance.

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The settlement, as finally announced by the Secretary of State for Culture, Media and Sport, will be for six years, with annual increases in the licence fee of three per cent for each of the first two years and two percent in years three, four and five. In year six there will be an increase of up to two percent, depending on a further review nearer the time; this review will form the basis for the next settlement. As a result the price of the annual colour television licence will rise from its current level of GBP 131.50 (EUR 199) to GBP 151.50 (EUR 229) in 2012. This increase will be close to the forecast rate of inflation. The settlement assumes that the BBC will be able to make up to three percent cash-releasing savings annually from 2008. The funds include GBP 600 million for helping elderly and disabled people to switch to digital broadcasting, and GBP 200 million for a public communications campaign run by Digital UK to ensure that viewers are properly informed regarding the digital switchover. According to the Secretary of State, these responsibilities will not impact on the BBC's core budgets and services, and its borrowing capacity will be increased by 12.5% (it had asked for an increase of 100%). According to the BBC, however, it is now left with a funding shortage of over GBP two billion over the next six years. ■

- **Oral Statement on Licence Fee by the Secretary of State, 18 January 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10609
- **Background and other relevant documents, available at:**
http://merlin.obs.coe.int/redirect.php?id=10610

EN

GB – First Market Assessment of New BBC On-Demand Proposals

The new BBC Royal Charter and Agreement (see IRIS 2006-5: 13), which came into effect on 1 January 2007, requires that new and modified BBC services should be subject to a Public Value Test to establish whether they will be in the public interest. As part of this process the communications regulator, the Office of Communications (Ofcom) undertakes a Market Impact Assessment to assess the likely impact of the services on the markets in which the new services will be provided and in related markets, examining the extent to which they might deter innovation and investment by alternative providers in the commercial sector. The first such Assessment has been completed, and the BBC has announced its provisional decision as a result.

The BBC proposed four new on-demand services. The first was a seven-day catch-up TV service over cable, including "series stacking" by which an entire series could be stored and viewed within seven days of the final episode. The second was a similar service over the Internet, including series stacking and the opportunity to store downloaded programmes for up to 13 weeks before viewing. The third was for simulcast TV broadcasting over the Internet. The fourth proposal was for non-DRM (digital rights management) audio downloads of BBC radio programmes (excluding commercial music).

Ofcom noted that the markets for on-demand services are at an early stage of their development, but growing rapidly, and estimated that over the next five years linear TV-viewing may fall by 20-30% to be largely replaced by on-demand services. It supported the presence of the BBC in these new markets, and considered that this would have a considerable effect in expanding them. However, Ofcom was concerned about the presence of series stacking, which would make the service a more direct substitute for commercial services, and recommended that its scope should be substantially reduced through a narrower definition of what constitutes a "series" or through other restrictions; if these proved not to be feasible, series stacking should be excluded altogether. Ofcom was also concerned by the market impact of catch-up TV over the Internet where programmes could be stored for up to 13 weeks; the 13-week storage window should be removed or substantially reduced. The new services would involve increased broadband capacity, and this should be taken into account by the BBC. Non-DRM audio downloads could have a negative effect on investment in competing services, especially in relation to live classical music and book readings; these should be excluded, or at least a much tighter definition provided of the classical content to be made available.

In its provisional decision, the BBC Trust approved the new on-demand services, but with significant modifications. The storage window for seven-day

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catch up over the Internet will be reduced from 13 weeks to 30 days, and audio-books and classical music will be excluded from non-DRM downloads. A tighter definition will be offered concerning which series will be available for series stacking. In addition, a platform-agnostic approach will be required, and provision made to protect children from unsuitable content. The proposals are now subject to consultation for eight weeks. ■

- **Ofcom: BBC New On-Demand Services – Market Impact Assessment, 23 January 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10611
- **BBC: BBC Trust Reaches Provisional Conclusions on BBC On-Demand Proposals, 31 January 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10612

EN

LV – New Rules on Licensing of Broadcasting and Re-broadcasting Activities Adopted

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On 13 December 2006, the Radio and Television Commission of Lithuania (RTCL) adopted the new Rules on Licensing of Broadcasting and Re-broadcasting Activities, which came into force on 20 December 2006. The new version of the rules was adopted with the aim of harmonising their provisions with the requirements of the Law on Provisions of Information to the Public, which came into force on 1 September 2006 (see IRIS 2006-9: 16).

The Rules on Licensing of Broadcasting and Re-broadcasting Activities determine the types of broadcasting and re-broadcasting licences, the procedure for the issuing of licences or for the refusal of a licence, rules for the amendment and specification of the terms and conditions of licences, for the temporary suspension and cancellation of their validity, as well as the duties and obligations of the licence holders, the terms and conditions of licensed activities and the supervision of compliance.

The main amendments are related to the modified licensing regulation of broadcasting and re-broadcasting activity laid down in the Law on Provision of Information to the Public. In accordance with the new version of this law, one is obliged to apply for a broadcasting licence from the RTCL if interested in engaging in television programme broadcasting and/or re-broadcasting activities via electronic communications networks, of which the main purpose is not broadcasting and/or re-broadcasting of radio and television programmes (e.g. by Internet or mobile phones).

Accordingly, the new provisions of the rules define the procedure of the issuing of these licences for television programme broadcasting and/or re-broadcasting. The provisions of the Rules state that, if one intends to obtain a broadcasting or re-broadcasting licence, an application has to be submitted to the RTCL either to take part in the tender, or to obtain a licence where a tender is not foreseen.

The requirements for the content of the application are also determined by the Rules. According to these, the licence applicants must declare not only the names of the radio or television programmes planned to be re-broadcast, but also give information regarding the jurisdiction of the broadcasters whose programmes are planned to be re-broadcast, as well as the languages in which the programmes will be re-broadcasted and subtitled. As regards the programme broadcasting and/or re-broadcasting via satellite, the rules foresee that the RTCL has to, *inter alia*, be provided with the name of the satellites used and their orbital location, the number of the satellites' receivers/transmitters, the frequencies used for the radio programmes, as well as the addresses and operators of the terrestrial stations of the satellite broadcasting services.

Additionally, there is a new provision in the rules stating that a broadcaster who already is a holder of a broadcasting licence but wishes to obtain an additional licence needs only to submit those documents to the RTCL which are directly related to the type of the desired licence and the chosen broadcasting technology (e.g., digital, Internet, etc). In such cases the broadcaster is not obliged to submit documents revealing general information, e.g. the founding documents (the association agreement) or the structure of its management (shareholders, members etc). ■

- **RTCL Decision on the approval of the Rules on Licensing of Broadcasting and Re-Broadcasting Activities of 13 December 2006, available at:**
http://merlin.obs.coe.int/redirect.php?id=10606

LV

LV – Regional Court Assesses a Decision on Granting a Broadcasting Permit as Illegal

On 4 January 2007, the Regional Administrative Court of Latvia ruled that a decision of the *Nacionālā radio un televīzijas padome* (National Broadcasting Council – NRTP) on the issuing of a broadcasting licence did not conform to the law. Although the specific decision concerned a permit for radio broadcasting, the principles pointed out by the court equally apply to television broadcasting licences.

The issuing of all kinds of broadcasting licences in Latvia is carried out by the National Broadcasting Council in accordance with the Radio and Television Law. The law requires a special competition for the assignment of free frequencies. In order to receive a broadcasting permit, the participant needs to win a competition. Within the competition, the Council must evaluate the applications of the participants and assess which application would best serve the needs of the public. The Radio and Television Law does not explicitly list the criteria that the Council should take

into account when assessing the applications.

In the relevant case resulting in the judgement mentioned above, the Council issued the broadcasting permit for two individuals, but did not indicate in its decision any reasons why the application of these particular individuals was deemed to be the most suitable to the public needs. Before the court the Council argued that the Radio and Television Law does not foresee the obligation to explain its reasoning. Moreover, as the Council is a collegial body (decisions are adopted by the majority of the nine Council members' votes), each member is voting according to his/her own opinion and taking into account his or her individual reasoning. The claimants nevertheless argued that the Council, as an executive body, is obliged to comply, not only with the Radio and Television Law, but also with the laws on administrative procedure, which require that each administrative act (and a decision on a broadcasting permit is an administrative act) must contain the grounds and reasons for its adoption.

The court of the first instance (the Administrative District Court) had rejected the claim, stating that the Council members are representatives of the public and their reasoning may not be subject to evaluation by the court. Nevertheless, the Regional Administrative Court had an opposite opinion and ruled that the decisions on granting broadcasting permits must contain the reasoning. Although the court cannot assess the rationality of the reasons presented by the Council, it has to examine if the Council has indicated certain reasoning and grounds for the decision at all. The court agreed with the claimant's argument that the Council is, as a public executive body, obliged to follow the requirements of the administrative procedure and to provide reasoning for its decision. In the case of granting broadcasting licences, the Council must indicate the criteria, which it has applied to the assessment of the applications, as well as to provide grounds as to why the application of the winning participant has been found the best and most suitable in view of the public needs.

The judgement is not final and may be appealed by any of the parties to the Senate of the Supreme Court of Latvia. However, the judgement follows a tendency, which has been established already by a similar judgement of the first instance court in a case adjudged in March 2006. ■

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● **Decision of the Regional Administrative Court of Latvia, 4 January 2007**

LV

MT – Revision of the List of Major Events

In November 2006, the Broadcasting Authority issued a consultation document proposing *inter alia* a review of the existing list of major events. The consultation period closed on 7 December 2006 and the Authority has now reviewed the responses received. The Authority had also consulted a number of organisations that have a direct interest in the matter. In the light of this review, the Authority has drawn up a revised list of major events.

The list of Cultural Events consists of the following: (1) the Malta Song for Europe: final and qualifying nights; (2) the Eurovision Song Festival: final night but the qualifying event has also been included in case of Maltese participation; (3) the Malta Carnival: Saturday Carnival for Children, Carnival Sunday and Tuesday Floriana Carnival.

The list of Sports Events consists of the following: (1) the Maltese national football team's competitive home matches; (2) the Maltese national football team's competitive away matches; (3) the final and semi-final games of the UEFA Cup and of the UEFA Champions League; (4) the opening ceremony, the opening game, the quarter-finals, the semi-finals, the game for third place and the final of the FIFA World Cup; (5) the opening ceremony, the opening game, the semi-finals and the final of the UEFA European Football Championship; (6) the opening ceremony and Maltese participation in the Summer Olympic games; (7) the opening ceremony and the finals taking place on the last day of the Games of the Small States of Europe; and (8) the March and September regattas.

Coverage of the above cultural and sports events is always direct and in full except in the following cases: (a) the Maltese national football team competitive home matches which could be aired on a deferred basis within 24 hours from the time that the match has ended; and (b) the Malta Carnival held on Saturday afternoon is to be broadcast on a deferred basis and in full on Carnival Sunday afternoon only if the actual Carnival Sunday event has been cancelled.

Finally, the semi-final of the UEFA Cup and of the UEFA Champions League will be considered a major event with effect from the football season 2007-2008. ■

Kevin Aquilina
Malta Broadcasting Authority

● **List of major events published in the Malta Government Gazette, 29 January 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10613

EN-MT

RO – Ringier and Dogan Join Forces in Romanian Media Market

According to a joint press release, the media companies Ringier and Dogan intend to join forces in Romania and invest jointly in the television broadcaster Kanal D Romania, whose main shareholder is Dogan Media International SA. According to the agreements reached so far, Ringier will acquire 25% of the shares. The television channel

Kanal D Romania was due to start broadcasting on 18 February 2007.

While Dogan Yayin Holding is the largest media entertainment group in Turkey and is developing its activities outside that country, Swiss media group Ringier is responsible for more than 100 publications in 12 countries, produces more than 20 TV channels, operates over 50 Internet platforms and owns 11 printing works. After Ringier worked its way up to becoming the largest player in the Romanian print media market, its 25% share in Kanal D Romania represents its first foray into the audiovisual sector.

Free competition in the Romanian audiovisual sector is protected by the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA). The CNA "must notify the competent authorities regarding the occurrence or existence of practices restricting competition, the abuse of a dominant position or of economic concentrations, as well as the existence of any other infringement of the legal provisions that does not fall under its competency" (Art. 10(3)(c) of Audiovisual Act no. 504). Articles 44 to 47 of the Audiovisual Act contain detailed provisions on the promotion of pluralism and cultural diversity, as well as the prevention of major concentrations of ownership and excessive market shares in the audiovisual sector. Art. 44(3), for example, states that "It is considered that a broadcaster holds a dominant position in forming public opinion at national level when its market share exceeds 30% of the market of television programmes broadcast at national level".

According to Art. 44(4), calculating a broadcaster's market share involves "establishing the average market share registered during the respective year for the entire broadcasting duration", whereby "market shares must be calculated electronically" (Art. 44(5)). The provisions of Art. 44(3) do not apply to public broadcasters (Art. 44(7)).

Another rule designed to prevent market domination in the audiovisual sector states that "A Romanian or foreign natural or legal person may hold no more than two audiovisual licences at the same time within the same administrative unit or area" (Art. 44(8)). According to Art. 44(9), a natural or legal person may directly or indirectly become a majority shareholder in one single audiovisual company and may hold no more than 20% of the share capital of other media companies.

Under Art. 45 of the Audiovisual Act, audiences and market shares must be measured in compliance with international standards and practices by specialised institutions appointed by tender.

"It is considered that a broadcaster holds a dominant position in forming public opinion at regional or local level when the total market share in television and/or radio stations broadcast within the respective area exceeds 25% of the channels broadcast at regional or local level" (Art. 46(2)).

Until now, the CNA has never lodged a complaint in connection with a dominant market position held by a domestic or foreign broadcaster in Romania. ■

Mariana Stoican
Radio Romania International, Bucharest

SE – Chief Editor of Evening Newspaper Convicted of Violating the Press Act

The chief editor of the evening newspaper Expressen has been convicted of defamation and ordered to pay SEK 75,000 (ca. EUR 8,200) for violations of *Tryckfrihetsförordningen* (the Freedom of the Press Act).

Expressen had published on its placard the news that a famous actor (M.P.) had suffered acute alcohol poisoning and been admitted to a clinic. The same information was found on the front page of the newspaper. The newspaper and its Internet version featured an article with pictures of the clinic, which was said to be M.P.' s "new home". The information was later disproved. Five days later, Expressen published an apology on the placard and in the newspaper. M.P. rejected the apology and reported Expressen for defamation to *Justitiekanslern* (the Chancellor of Justice).

The Chancellor of Justice can act as a public prosecutor in cases involving violations of the freedom of the press in certain circumstances. The Chancellor found that the content of the article constituted defamation and proceeded to the prosecution of the chief editor of Expressen who, as such, is legally responsible for the publications. Public prosecution for violations of the Freedom of the Press Act is unusual and this is the first time in 15 years that a public prosecution for defamation has been initiated. Cases brought under the Freedom of the Press Act are first heard by a jury. If the jury finds that a violation has been committed, the matter will be assessed by the court, which then renders the judgment. The court may not deliver a harsher judgment than the jury has decided.

In this case, the jury considered that the information in the newspaper constituted defamation. The chief editor admitted that the information in the article was erroneous but argued that at the time of publication it was believed to be true. Further, the chief editor denied that publication of the information constituted defamation since M.P.'s alcohol problems were well known at the time and he had previously been outspoken about his private life in the newspapers. The information was therefore not intended to compromise M.P' s reputation.

However, the court found that the information in the newspaper did constitute defamation. M.P. had claimed SEK 500,000 in damages, SEK 200,000 of

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Wistrand Advokatbyrå, Gothenburg, Sweden

which constituted compensation for the violation of his personal rights. The remainder was claimed in order to deter future violations. However, the court considered that preventive considerations should not be taken into account when determining the amount and awarded SEK 75,000 in damages. ■

● ***Stockholms tingsrätts dom 2006-12-15, Mål nr B 11840-06*** **(Judgment of the district court of Stockholm on 15 December 2006, Case no. B 11840-06)**

SV

SK – Amendment to the Broadcasting and Retransmission Act

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The Slovak Parliament has recently approved an amendment to the Broadcasting and Retransmission Act No. 308/2000 Coll. The amendment to the act is published as No. 13/2007 and became effective on 1 February 2007.

The amendment foresees that advertisement and tele-shopping spots must not be broadcast with a sound volume higher than the sound volume of the parts of the programme service that immediately precede or follow such spots. This parameter is also applicable to audio-visual tools separating advertisement and teleshopping from other parts of the programme service.

The purpose of this amendment is to eliminate annoyance to the viewer watching broadcast programme services and other audio, visual or audio-visual information designated for public reception. The amendment was regarded as necessary since several broadcasters in the past tended to turn up the sound volume during advertisement spots and programme sponsorship announcements, and thereby created disturbing effects during the programmes broadcast prior to the advertisements. With the new law a broadcaster now has the duty to ensure that the broadcast's sound volume is not increased during the broadcast of advertisement and audio-visual tools separating advertisement or teleshopping spots from other parts of the programme, as well as programme sponsorship announcements. ■

● ***Novela zákona o vysielaní a retransmisii*** **(Amendment to the Broadcasting and Retransmission Act), available at: http://merlin.obs.coe.int/redirect.php?id=10607**

SK

UZ – New Media Statute Enters into Force

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On 15 January 2007 Uzbekistan's President, Islam Karimov, signed into law the Statute that provides for a new version of the 1997 Law on the Mass Media. Among the types of mass media "in electronic form" the new statute specifically lists "TV, radio and video programmes, newsreels, and websites in general access telecommunication networks" (Art. 4). Censorship is forbidden, which means that "nobody shall have the right to demand a preliminary approval of materials or reports", intended for mass publication, changes in their texts or a complete ban to print or air them (Art. 7).

The statute expands the article that forbids abuse of the freedom of the mass media, by adding issues such as the propaganda of terrorism, as well as that of ideas of religious extremism, separatism and fundamentalism, propaganda of narcotics and of pornography, to the list of such abuses (Art. 6).

The new statute provides for more clarity as to the procedure of closure or suspension of a news outlet by the court of law following such a demand from the registration authority because of violations of the mass media legislation (Art. 24).

Some of the rights of the journalists and the editor are now transferred to the founders (owners) of the news outlets (Art. 11, 13, 16). ■

● ***Закон Республики Узбекистан "О средствах массовой информации"*** **(Statute on the mass media of the Republic of Uzbekistan) was published in Russian in the official daily "*Narodnoe slovo*" (Tashkent) on 16 January 2007**

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AGENDA

IViR International Copyright Law Summer Course
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The 6th Media Law Advocates Training Programme
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E-mail: louise.scott@csls.ox.ac.uk
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The 3rd Annenberg / Oxford Summer Institute 2007 in Global Media Policy
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