



Bosna i Hercegovina
Босна и Херцеговина
Regulatorna agencija za komunikacije
Регулаторна агенција за комуникације



Sesion II: Content regulation in conflict-affected regions: legal implications and professional standards

Experience and practice of the regulatory authority: example of Bosnia and Herzegovina

Tbilisi, Georgia, July 6-7th, 2016.

Experience and practice of the BiH regulatory authority

- BiH insight – from media chaos to regulatory regime
- Media scene prior to the establishment of the IMC
- Post war programme contents overfilled with hate speech -- language of intolerance and offence openly promoting hatred among nationalities.
- Hate speech- one of the reasons for establishment of media regulation in BiH- Independent Media Commission (IMC)

Experience and practice of the BiH regulatory authority – Broadcasting Code of Practice

- IMC - Establishment of regulatory framework (1998 by Decision of the High Representative)
- Regulatory framework in BiH regarding «hate speech» in electronic media is based upon international legal instruments regulating issue of hate speech, European Convention on human rights as well as -Council of Europe Recommendation on «hate speech».
- Broadcasting Code of Practice- This Code is intended to conform with the right to freedom of expression as provided by the European Convention on Human Rights and Fundamental Freedoms and other instruments incorporated in the Constitution of Bosnia and Herzegovina, while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, protection of minors and protection of privacy.

Experience and practice of the BiH regulatory authority – Hate Speech

- Broadcasting Code of Practice — provision regarding hate speech 1.1 General:
- *Programmes shall meet generally accepted community standards of civility and respect for the ethnic, cultural and religious diversity of Bosnia and Herzegovina.*
- *Broadcasters shall not broadcast any material which by its content or tone:*
 - (1) carries a clear and immediate risk of inciting ethnic or religious hatred among the communities of Bosnia and Herzegovina, or which by any reasonable judgement would incite to violence, disorder or rioting, or which could encourage crime or criminal activities.*
 - (2) carries a clear and immediate risk of causing public harm: such harm being defined as death, injury, damage to property or other violence, or the diversion of police, medical services or other forces of public order from their normal duties.*

Experience and practice of the BiH regulatory authority – Hate Speech

Markale case:

Local TV broadcast programme on massacres that took place on one of the Sarajevo market places Markale in 1994 and 1995. The program was edited in the way to portray the "Moslems" as culprits for the massacre, all the time pointing out that the massacre took place because an explosive device, usually used by the Hesbollah, was planted. Different news clips were used in the program in order to support the claims, but always followed by the narrator's voice, who was explaining and commenting on the footage. The program depicted the massacre as a guided scenario of bloodshed launched in order to attract attention of the International Community. The narrator even called, *inter alia*, that many of the graphically portrayed bodies shown in the program were actually dolls adding that the real dead bodies were actually bodies of Croats killed in a battle that took place before, and later exchanged and used for illustrating the massacre

Experience and practice of the BiH regulatory authority – Hate Speech

- From 1998-2001- positive influence of the regulation (18 cases of hate speech)
- Since 2001 number of cases of hate speech radically diminished
- In 2001 IMC combines competencies with TRA into converged regulator CRA
- Efforts in eradicating hate speech continue- Over time hate speech became more subtle, sophisticated
- Period 2004-2013, 14 cases of hate speech registered
- 2013 – (several complaints - one hate speech case)
- 2014 – (several complaints - no hate speech cases)
- 2015 – (several complaints -

Experience and practice of the BiH regulatory authority – Hate Speech

- CRA upgrades regulatory framework- on couple occasions
- Hate speech definition incorporated during rules and regulations revision in 2008
- Defined provision on Hate speech
- Latest revision of regulatory framework took place in 2011.
- Regulatory framework harmonized with AVMSD
- Code on audiovisual and radio media services and Code on Commerical communication

Experience and practice of the BiH regulatory authority – Code on AVM

- Broadcasting Code of Practice – became Code on Audiovisual Media Services and Radio Media Services (Code on AVM)
- Code on AVM, Article 3 (Basic principles):
 - shall respect human dignity and the fundamental rights of others, and will encourage the free formation of opinions.*
 - will ensure respect for ethnic, cultural and religious diversity of Bosnia and Herzegovina in its programme content.*
 - will not provide content which includes any discrimination or prejudice based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin, as well as any other content that has the purpose or consequence to disable or endanger recognition, enjoyment or exercise on an equal basis, of any person's rights and freedoms.*

Experience and practice of the BiH regulatory authority – Code on AVM

- *are free to create and edit their content, in compliance with the generally accepted professional and ethical standards and values.*
- *shall ensure that the generally accepted standards of decency apply in the audiovisual and radio programmes.*
- *shall not in any way abuse and/or manipulate superstition, fears or credulity of individuals or the public, or encourage the potentially harmful behaviour.*
- *is responsible for all content regardless of its source, as well as for the professional activities of its employees. This content includes owned, purchased/procured, retransmitted and exchanged programme, programme announcements, text messages and other messages of the public, as well as commercial communications.*
- *will pay special attention to the treatment of vulnerable persons who appear in their content.*
- *shall not include material which carries a clear and immediate risk of causing negative consequences, including, but not limited to death, injury, damage to property or other kinds of violence, or obstructing police activity, medical services or activity of other forces of public order and security.*

Experience and practice of the BiH regulatory authority – Code on AVM

➤ Code on AVM, Article 4 (Hate Speech):

(1) Audiovisual media services and radio media services will not humiliate, intimidate or incite hatred, violence or discrimination against persons or groups based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or based on any other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or exercise on an equal basis, of any person's rights and freedoms.

(2) Audiovisual media services and radio media services shall not include material which carries a clear a clear and immediate risk of inciting hatred, violence or discrimination against persons or groups on the grounds referred to in paragraph (1) of this Article, or which could be interpreted by the audience as incitement of hatred, violence, disorder or rioting, or which could cause or incite criminal acts.

.....

Experience and practice of the BiH regulatory authority - Code on Commercial Communications

- Code on CC, Article 3 (General Principles of CC)

.....

(4) Commercial communications will not:

- bring into question the respect for human dignity;
- humiliate, intimidate or incite hatred, violence or discrimination against persons or groups based on gender, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or based on any other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or exercise on an equal basis, of any person's rights and freedoms;
- be offensive or contrary to generally accepted standards of decency;
- encourage behaviour that is detrimental to health or safety;
- encourage behaviour that is harmful to the environment.

Experience and practice of the BiH regulatory authority

- Procedure on handling cases-complaint driven, ex officio
- Preliminary analysis – regulatory actions- ECHR practice followed
- How to deal with cases on hate speech?
- *Hate speech can come from a number of sources, which elicits various degrees of responsibility from the media*
- What is valued while examining cases of hate speech? Defamation, insult, street language- not hate speech
- Cases of hate speech in SMS messages- parallel form of communication with viewers

Experience and practice of the BiH regulatory authority

- Examples:
Radio XX- Morning program
PSB- interveiw
TV XX

Experience and practice of the BiH regulatory authority

- Radio XX - morning programme:

Reporteur: I have made a comment on gay couples, such is Elton John and his partner, and I said these two were not nice to see with a child. I have nothing against gay population, on the contrary, we all choose with who we want to be, but I am against the possibility of allowing these people to have children. „

Experience and practice of the BiH regulatory authority

- PSB – Interview
 - RS Prime Minister on judiciary system:
“I will not be judged by Muslim judges. Negative historical experience warns us that we cannot trust in good intentions of Muslims. ”

Experience and practice of the BiH regulatory authority

➤ TV XX - programme in prime-time:

„- Beware, you have been damned in all religious books, it's a disease, especially what you've been doing during Ramadan, it is perversion. Be afraid...

- You gays if you decide to attend the parade, you only risk to be beaten up, lesbians too.

- It's a disease, they need to be cured. This is a religious state, and this what you are doing, will never pass.

- Just try to come, you will get beaten! Stones and sticks over your backs.

- BE AFRAID. You only need to pass by the mosque and expect us to watch peacefully. Well, it will not be like that, it will not be peaceful.

- Many of those like you, from Hare Krishna and Jahve witnesses ended up in the emergency with knives in their stomachs, I will be humble, I wish you the same

- First time together in the action against gays, sick persons.

- Be sure that this manifestation will not take place, there will be problems, and you scums should go away from here

-Muslims, Christians, Catholics, Jews it is time to unite and banish these imbeciles.

- I am waiting for this parade in the first lines, to shot at you. Many will be hurt.

- Here is our chance to unite and kick down all these sick people (homosexuals). Death to gays.

- There will be problems, there will be beating, death to perverts, freedom to the people.

- the whole BiH is sick of you, no parent wants his child to be like you. Stop this shame.

Experience and practice of the BiH regulatory authority

– regulatory principles –

They are:

- Existence of Independent Regulatory authority (guaranteed by Law), empowered to adopt Codes and issue sanctions.
- The protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality
- The development of professional and viable public (especially PBS) and commercial broadcasters - balance between the two;
- Separation of broadcasters from political control and manipulation, so as to strengthen democratic principles and the foundations of a market economy;
- Award of licences on the basis of a process by which appropriate professional standards of programme content, technical operation and financing are ensured;

Experience and practice of the BiH regulatory authority

– multistakeholder approach -

1. CRA - Licensees

2. CRA - Others:

- Government - Council of ministers (policy strategy)
- Media community – different stakeholders
- Institutions – Ministries, Agencies, Governmental organizations
- Academia/Faculties – DTT Forum, teaching on faculties
- General public - public, NGO
- International organizations

Experience and practice of the BiH regulatory authority

– Licensees –

- Issuing of license for different services:
 - AVM Licensees: 149 (42 Terrestrial, 100 - over other networks, 7 AVM on Demand)
 - Radio:146 – 4 Community radio
 - PBS: 6
 - Distributors: 42 (36 via cable, 1 DTH and 5 IPTV)
- Direct contact with Licensees: regular correspondence via letters, e-mail, tel/fax
- Regular meetings – concrete issues, problems, etc
- Regionally advisory panels (imposition of new rules and regulations, explanatory meetings, etc.)

Experience and practice of the BiH regulatory authority

– Media community -

- Association of RTV stations - AEM
- Association of private radio stations - PEM
- Associations of public radio station of RS
- Associations of programme distributors – AKOP
- Association of Journalist (B&H and Entity levels)
- Regular meetings with all associations

Experience and practice of the BiH regulatory authority

– Institutions/Agencies -

Cooperation with different Institutions:

- Ministry for traffic and Communication of B&H and an Entities' level, Ministry for Human Rights and Refugees, Ministry of Security, etc..
- Press Council – press and on-line media
- Agency for protection of consumers
- Entity Agencies for privatization process
- Court and Prosecutor's office – defining elements of hate speech
- Other Ministries and Agencies

Experience and practice of the BiH regulatory authority

– Academia/Faculties –

Academia

- DTT Forum:
 - a) Council of DTT (CoM, CRA, WG Coordinators)
 - b) Secretariat of DTT
 - c) 5 Working groups (Regulatory aspect, Programme content, Technical, Socio-economic aspect and Promotion)

Faculties

- Delivering speeches or provide lectures on regulations for students
- Regular seminar with students of master studies on the Department for journalism at University of Sarajevo attend each semester

Experience and practice of the BiH regulatory authority

– General public, NGO -

- Public consultations set by Communication Law (minimum 14 days)
- CRA practice:
 - a) Phase 1 – opinion of local community
 - b) How to lodge complaints
- Regular contact with NGO (national minorities, different organizations related to “public watch dog functions”, etc)

Experience and practice of the BiH regulatory authority

– process of consultations -

- Preparation of document by CRA (in accordance with policy and strategy)
- Presentation to the Media community associations
- Regional advisory pannels – meeting with Licensees
- Public consultations – minimum 14 days (Institutions, Academia, general public and NGO)
- Evaluation of all submitted comments by CRA
- Addption of documents by the CRA Council
- Publishing in Official Gazette

Experience and practice of the BiH regulatory authority

– International organizations –

- Steering Committee on Media and Information Society (CDMSI) – Council of Europe
- European platform of regulatory authorities (EPRA)
- European Union – B&H
- Regional cooperation

THANK YOU!

epovlakic@rak.ba

+387 61 160 660