

# **COMMENTS ON**

## **THE BILL ON BROADCASTING IN MONTENEGRO**

By

### **ARTICLE 19**

#### **Global Campaign for Free Expression**

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#### **I. Introduction**

ARTICLE 19 welcomes the UNEMS Draft Bill on Broadcasting in Montenegro as a proposal to place broadcast regulation in Montenegro on a new, democratic footing, in line with international standards on the right to freedom of expression. The draft has many of the key elements needed in an effective broadcasting law, including the establishment of an independent Broadcasting Council, national, regional and local public service broadcasters, and provisions to protect and promote diversity and pluralism in broadcasting.

While the overall approach of the draft Bill is a sound one, the draft Bill could be improved in some aspects. We offer the following comments as an aid to discussion.

#### **II. Comments**

The draft Bill envisages the establishment of an independent Broadcasting Council whose members will be appointed by Parliament, following nomination by a Parliamentary subcommittee. Articles 5-15 aim to ensure the independence of the Council by providing for public participation in the nominations process, detailed rules on qualifications of councillors, terms of office, removal from office, conflicts of interests and a requirement for annual reports to be published.

The independence of members of the Broadcasting Council of Montenegro can be further enhanced by explicitly requiring Councillors not to take instructions from outside bodies or individuals, not to make any statements which might prejudice the independence of their functions, and not to take political or commercial advantage of their functions. Such a requirement is recommended in the recent Council of Europe

Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector.<sup>1</sup>

Under Article 7, terms of office are set for four years. In order to avoid having to appoint a new Council every four years, ARTICLE 19 recommends the introduction of a staggered appointments system, whereby some Councillors are initially appointed for two years, and others for four. Upon expiry of the first, shorter term, all Councillors are then appointed for terms of four years.

One of the main functions of the Council will be to issue licences and broadcast frequencies. Under Article 19 of the draft Bill, public hearings will be held to decide applications. However, the draft Bill fails to specify the criteria by which licenses may be granted or withheld. ARTICLE 19 recommends that, in order to limit the discretion of the Council and to avoid the potential for abuse of that discretion, any such criteria should be clearly set out in the draft Bill.<sup>2</sup> The Council's decisions should then be given in writing, and specify reasons. Finally, the Council's decisions should be open to appeal in a court of law.<sup>3</sup>

Articles 21-25 of the draft Bill establish a national public broadcaster, governed by a Board which will be appointed by Parliament. The Board will have eleven Members, including the chair, seven of whom will serve on a "Board of Administration" which is appointed from the general Board. These seven required to have specific expertise in matters of administration and finance. This leaves only four members of the board with expertise in broadcasting matters and freedom of expression issues, creating a Board whose expertise lies mainly in administrative issues. ARTICLE 19 recommends that the membership of the Board should have a broader expertise, including in the fields of journalism, human rights, broadcasting policy, law, technology, journalism or business.

Articles 29-32 allow for the establishment of private broadcasting services. Whereas the draft Bill explicitly guarantees the editorial independence of the public broadcasters, it fails to do so with regard to the private broadcasters. ARTICLE 19 recommends that the draft Bill should address this issue.

Finally, it is unclear how this draft Bill will interact with the existing Public Information Law.<sup>4</sup> For example, Article 21 of the Public Information Law establishes boards of directors for broadcasters, and Article 54 of the Public Information Law provides that broadcasting licenses are granted by 'the competent Republican authority' on the fulfilment of some conditions. These and several other provisions partly overlap with draft Bill. To avoid confusion, the draft Bill should clarify how its provisions interact with existing law, and should indicate whether its provisions are designed to repeal certain provisions of existing law.

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<sup>1</sup> Recommendation R(2000)23 of the Committee of Ministers of the Council of Europe, Appendix, Chapter II paragraph 5.

<sup>2</sup> See, for example, *Sunday Times v. the United Kingdom*, Judgment of 26 April 1979, para. 49 (European Court of Human Rights).

<sup>3</sup> See Article 13 ECHR.

<sup>4</sup> No. 01-168/2, 16 February 1998.