

BOSNIA AND HERZEGOVINA

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I. Executive Summary

Public Service Broadcasting (PSB) in Bosnia and Herzegovina is a reflection of the country's complex political and constitutional arrangements. Due to the stalling tactics employed by the local political forces coupled with a rather inconsistent approach taken by the international community, the transformation of state-run television networks, which began in 1998, has not yet brought a complete legislative framework for PSB, not to speak of long-term sustainability. As a consequence, significant parts of the population still do not accept PSB, the public broadcasters are in a difficult financial situation, and political pressures are not an exception.

Considering the linguistic similarities between the three official languages (Bosnian, Serbian, and Croatian) and the continuous coexistence of all BH peoples in the entire country over the centuries, law makers have established a unique Public Service Broadcasting System consisting of three broadcasters: a state level broadcaster (*BHRT*) and the two entity-level broadcasters (*RTRS* and *RTVFBiH*).

The legal framework created attempted- but mostly failed- to strengthen the role of the public service broadcasters as a factor of social cohesion between the three ethnic groups. It defines the three broadcasters within the PSB System as broadcasters for the entire population within their respective territories of coverage. Going even beyond this, the law requires all three broadcasters to fully reflect the ethnic and cultural diversity of the country in their programming and staffing.

However, as in many other areas of failed or cumbersome reforms in Bosnia and Herzegovina, the PSB System is characterized by a huge discrepancy between normative stipulations on one side and actual practice on the other. For example, the language and tradition of all constituent peoples is not adequately represented by all three public service broadcasters, and their staffing does not reflect the diversity of the country.

As a consequence, public service broadcasting remains a contested field, subject to constant political power struggle and manoeuvring, and characterized by a continuous state of crisis. It closely reflects intense inter-ethnic tensions and the complex paths of redefinition of ethnic group identities, combined with the daunting task of intensified EU integration processes. This study shows the difficulties that PSB faces in a post-conflict, multi-ethnic country, where the war ended more than 12 years ago, but the peace has not yet properly begun.

2. Introduction

2.1 Background

Public service broadcasters (PSBs) in Bosnia and Herzegovina (hereinafter, BiH) reflect the complex political arrangements that emerge from a unique constitutional design. BiH consists of two self-governing territorial units, defined as 'entities': the Federation of BiH (FBiH) and the Republika Srpska (RS), and three 'constituent

peoples': Bosniaks, Croats and Serbs,¹ along with a fourth category of "others".² Furthermore, the FBiH entity is a federal structure in itself, consisting of ten self-governing cantons.³ The result is an asymmetric structure with two entities and three ethnic groups, while cantons within FBiH add another level of government.

Apart from territorial division, the country has a weak central government, while a broad range of powers rests at the level of the entities. There is also an extensive form of consociational⁴ power-sharing, ensuring a balance between the three constituent peoples. Hence, the collective presidency has three members, one Bosniak, one Croat and one Serb, while the representatives to the House of Peoples are elected according to territorial and ethnic criteria. A constitutional provision for

¹ In June 2005, the country had a population of 3,842,537, Source: Agency for Statistics of Bosnia and Herzegovina. Available at <http://www.bhas.ba/Files/statistika-bih.htm>. (Accessed on 4 August 2007). As a result of the war that lasted from 1992 to 1995, the three "constituent peoples" mostly live in ethnically homogenized territorial units: RS has a Serb majority while FBiH is mostly populated by Bosniaks and Croats, concentrated in their majority cantons (four Bosniak-dominated and four Croat-dominated cantons), except two mixed ones. According to some sources, in 1996 the ethnic structure of Federation BiH was: Bosniaks 1,773,566 (72.5%); Croats 556,289 (22.8%), Serbs 56,618 (2.3%), and others 58,192 (2.4%). Source: Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Federation_of_Bosnia_and_Herzegovina, (accessed on January 26, 2008). In 1996, the population of Republika Srpska numbered 1,475,288 inhabitants: Serbs 1,427,912 (96.8%), Bosniaks = 32,344 (2.2%), and Croats = 15,028 (1.0%). Source: Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Republika_Srpska#Modern_estimates (accessed on January 26, 2008)

² The "others" are minority groups.

³ Additionally, there is the self-governing unit of Brčko District which belongs to neither entity.

⁴ Arend Lijphart suggests four basic principles of consociational democracy: (1) grand coalition government that fosters cross-ethnic elite cooperation, (2) minority veto that reduces minority group fears, (3) proportionality in allocation of shared resources, such as public funds and civil service positions, and (4) ethnic group autonomy (Lijphart, 1977, also see Palmer 2001a, Keating 2007).

the protection of "vital national interests" gives veto rights to the entities as well as to the constituent peoples.⁵ This model also applies at the level of entities, and the consociational power-sharing mechanisms to ensure ethnic balance are applied in the organization of ministries and public administration.⁶ The range of power-sharing mechanisms⁷ is so far-reaching and extensive that they tend to paralyse the political system,⁸ making it extremely difficult to propose and undertake policy reforms in any area, including the media.⁹

Such an extensive and multi-layered protection against majoritarianism is not balanced by mechanisms for cooperation between the administrative units, levels and constituent peoples. There is a lack of basic consensus about the nature of the state, and the divisions are deepened by an overwhelming distrust between political elites. Together with the weak central institutions, all this works to "solidify ethnic boundaries, penalize those unwilling to play ethnic politics, and effectively disenfranchise those not belonging to any of the three recognized groups".¹⁰

⁵ According to Zvonko Mijan, "The constitutional concept of "constitutiveness" has not been extensively defined in the BiH Constitution, or the entity constitutions, but it has been institutionally defined by the "Decision on Constitutiveness" of the Constitutional Court of BiH No. U-5/98", (Source: Zvonko Mijan, Constitutive Peoples (II): The Vitality of National Interest, Puls demokratije, 10.9.2007. (<http://www.pulsdemokratije.net/index.php?id=349&l=en>, Accessed on January 26, 2008).

⁶ See M. Keating, 2007.

⁷ Power-sharing mechanisms for reducing conflict are supposed to guarantee adequate representation of ethnic groups and eliminate the danger of majoritarianism in societies with deep ethnic divides, strong inter-ethnic tensions and a history of ethnic conflict (Horowitz 1985, Lijphart 1977, Keating 2007).

⁸ See M. Keating, 2007.

⁹ See M. Keating, 2007.

¹⁰ M. Keating, 2007.

The shortcomings of this system are partly redressed by the internationally-appointed High Representative,¹¹ who supervises the implementation of the civilian aspects of the Dayton Peace Accords. The military aspects of the DPA are ensured by the 2500 strong peacekeeping forces led by the European Union.¹² The European Commission (European Union) exerts a strong influence on internal affairs, as does the USA. Nominally a sovereign state, BiH is in practice an international protectorate.

Overall, the country is substantially dysfunctional, and major reforms have stalled. This has also affected the reconstruction and development of PSB. The permanent crisis in PSB reform has become a metaphor of the wider political crisis. It is also closely linked to the broader issue of constitutional change.

2.2 Structure of the television sector

Currently, there are 40 licensed television stations¹³ and 142 radio stations,¹⁴ with a growing cable TV market featuring 49 cable operators.¹⁵ Additionally, there is the Public Service Broadcasting System, which consists of three broadcasters: *Radio-*

11 Under the Dayton Accords, the High Representative is the final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement. The High Representative's authority was further strengthened in December 1997, with the award of the so-called "Bonn Powers".

12 See for example: FACTSHEET - EU military operation in Bosnia and Herzegovina (Operation EUFOR - Althea) (<http://www.eusrbih.eu/media/pr/1/?cid=545,1,1>, accessed on January 26, 2008).

13 15 public and 25 private; Public register of Television Stations at the Communications Regulatory Agency, (URL - <http://www.rak.ba/bs/broadcast/reg/tmpl1.aspx?cid=2422>; accessed on 3 July 2007).

14 63 public and 79 private; Public register of Radio Stations at the Communications Regulatory Agency, (URL - <http://www.rak.ba/bs/broadcast/reg/tmpl1.aspx?cid=2421>; accessed on 3 July 2007).

15 Communications Regulatory Agency, 2005, p. 91.

Television of Bosnia-Herzegovina (BHRT), which is the state-wide broadcaster; and two entity broadcasters, *Radio-Television of Federation of Bosnia-Herzegovina (RTVFBiH)* and *Radio-Television of Republika Srpska (RTRS)*.

None of the broadcasters covers the whole country. According to the Bosnian regulator, the Communications Regulatory Agency (CRA), "most of the licensed TV stations have a limited local coverage".¹⁶

There are only two TV stations received by more than 2 million viewers in approximately 100 municipalities (OBN and Pink); 7 "medium size" broadcasters cover between 16 and 50 municipalities reaching between 500,000 and 1,000,000 viewers; 30 TV stations are received by less than 500,000 viewers in less than 16 municipalities. It's worth noting that the remaining 11 TV stations have a very limited coverage, ranging between 1,500 and 80,000 viewers.¹⁷

According to the same source, approximately two thirds of the TV stations are registered in FBiH and one third in Republika Srpska. In spite of ethnic divisions, a significant number of TV channels can be seen by all of the three constituent peoples.¹⁸

As a state-wide public broadcaster, *BHT1* covers both entities, while *FTV* mainly covers Federation territory and *RTRS* targets viewers in Republika Srpska.¹⁹ According to the *BHRTV* annual report for 2006,²⁰ *BHT1* reaches some 93 per cent of BiH territory, while *RTRS* reaches some 78 per cent of the population of Republika Srpska.²¹ and *RTVFBiH* reaches 92 per cent of the population of *FBiH*.²² In 2004,

¹⁶ Ibid., p. 91.

¹⁷ Ibid., p. 73.

¹⁸ Ibid., p. 71.

¹⁹ Communications Regulatory Agency, 2005, p. 73.

²⁰ BHRT annual report for 2006, p. 5.

²¹ Taken from the RTRS website, <http://www.rtrs.tv/kompanija/pokrivenost.php>. (Accessed 27 July 2007).

²² Sector for communication and promotion of RTV and online programs of RTVFBiH (17 September 2007).

some 95 per cent of households in BiH had a TV receiver,²³ with a total of 1,100,000 TV households in 2005. "As of mid 2005, satellite television is available in approximately 500,000 households, accounting for nearly 48 per cent of the total TV households in the country, whereas more than 100,000 TV households ... subscribe to cable TV services."²⁴ Cable TV is much more important than one might assume based on the official data about cable penetration.²⁵ Namely, ratings of foreign TV stations²⁶ which are primarily available through cable or spill-over from neighbouring countries²⁷ have increased steadily over the past four years. Hence, the audience share of these foreign stations increased from 14.3 per cent in 2002 to 33.3 per cent in 2006.²⁸

Since 2003, the three broadcasters within the PSB system have steadily lost viewers to the largest commercial broadcasters, such as *Pink BH*, *OBN* and *Hayat*, as well as to foreign TV stations, such as *HRT* and *TV Nova* from Croatia, and *RTS* from Serbia.²⁹

23 Agency for Statistics of B&H, 2004, <http://www.bhas.ba/> (Accessed in July 2007).

24 Communications Regulatory Agency, 2005, p. 69.

25 According to unofficial data, there are around 300,000 cable television subscribers.

26 By foreign TV stations is meant stations from neighboring countries (HRT 1& 2 - Croatia, Nova TV - Croatia, RTL - Croatia, PINK - Serbia and Montenegro, RTS 1&2 - Serbia and Montenegro, BK - Serbia and Montenegro, B92 - Serbia and Montenegro), TV Audience Measurement 2002-2006, Mareco Index Bosnia, available at: <http://www.mib.ba/version02/01/news.htm> (Accessed 13 September 2007).

27 Even in markets where spill-over is not possible, such as Sarajevo, the share of foreign TV stations is very significant, running to 25.6 per cent according to MIB data for April 2007.

28 TV Audience Measurement 2002-2006, Mareco Index Bosnia, available at: <http://www.mib.ba/version02/01/news.htm> (Accessed 13 September 2007).

29 Communications Regulatory Agency, 2005; EUMAP, 2005.

Table: TV audience share at the national level, 2002-2006

| | 2002. | 2003. | 2004. | 2005. | 2006. |
|----------------------------------|-------|-------|-------|-------|-------|
| Public service (FTV; RTRS; BHT1) | 37.9 | 33.5 | 31.8 | 24.8 | 23.7 |
| Local / regional TV stations | 42.6 | 45 | 48.9 | 40.6 | 40.3 |
| Foreign TV stations | 14.3 | 16.3 | 14.6 | 30.8 | 33.3 |
| Other satellite TV channels | 5.2 | 5.2 | 4.7 | 3.8 | 2.7 |

Source: Report Mareco Index Bosnia - BiH Gallup International 2002-2006, available at: <http://www.mib.ba/version02/01/news.htm> (Accessed 13 September 2007.)

The individual TV stations' performance over the 2002-2006 period show a rapid drop in ratings for *FTV* and *RTRS*, a slight increase for *BHT*, and continuous significant growth for the strongest commercial channels, especially *Pink BH*.³⁰

2.3 The Ethnic Nature of the Audience

TV ratings and viewers' habits confirm the overall division of BiH along ethnic lines. This is best seen in the ratings of the PSB channels in each entity. According to MIB,³¹ *FTV* had ratings of around 21 per cent in the Federation in 2006, while *RTRS* only had around 1 per cent and *BHT1* around 10 per cent. In Republika Srpska, *RTRS* viewership in 2006 was around 9.4 per cent (2006), *BHT1* had 3 per cent while *FTV* had only 1.4 per cent. Other research data, too, indicate that the audience is ethnically divided:

³⁰ MIB Mareco Index Bosnia - BiH Gallup International 2002-2006, available online at: <http://www.mib.ba/version02/01/news.htm> (Accessed 13 September 2007).

³¹ MIB Mareco Index Bosnia - BiH Gallup International 2002-2006, available online at: <http://www.mib.ba/version02/01/news.htm> (Accessed 13 September 2007).

If we split the results by three areas, with Bosniak, Croat and Serb majorities, [the] data is drastically changed, implying that the media landscape is (ethnically) divided (...) or at least that is what citizen's subjective assessments show. (...) According to citizen's subjective assessments, it is evident that in areas with Bosniaks as majority, the most frequently watched channels are FTV, BHT and OBN. In areas with Croat majority, the most frequently watched channels are those with Croatian attributes (HRT1, HRT2, HR RTL and Nova TV). In areas with Serb majority most frequently watched channels are PINK BH, BN and RTRS.³²

Ethnic-based viewing strongly affects all three PSB channels. Although *Federal TV* cannot be seen in all of Republika Srpska and *RTRS* cannot be seen in all of Federation BiH, they still cover significant parts of the population of "the other" entity but are obviously not able to attract the ethnic groups that dominate that entity. At the same time, *BHRT* can be seen in most of the country, while retaining the strongest appeal among Bosniaks. Finally, but most importantly, the Croat population in BiH is almost completely oriented to TV channels from neighbouring Croatia - *HRT1*, *HRT2* and *NOVA TV*, and only some 30 percent of Croat population in BiH pays obligatory monthly licence fee for PSB, mostly for political reasons (see section of funding, below). In sum, Bosniaks watch Sarajevo-based channels (*Federal TV*, *BHT 1*, *OBN*), Serbs watch *RTRS* and Belgrade-based programs, while most Croats are dependent on and oriented towards programs from Croatia.

³² GfK BH Market Research Centre, Press Release, 12 February 2006. Available at <http://www.gfk.ba/PR/2006/GfK%20PR%2002-2006%20-%20TV%20and%20radio.pdf>. (Accessed on 16 September 2007).

2.4 General broadcasting regulation and structures

Under the 1995 Dayton Peace Agreement (hereinafter DPA), responsibility for communication issues is assigned to the entity governments. Moreover, within the FBiH, communication policy issues were assigned to the cantons. Such a diffuse and fragmented set of responsibilities has made any attempt to systematically regulate and reform broadcasting sector virtually impossible, resulting in the vast number of broadcasters, lack of editorial standards, lack of regulatory and enforcement mechanisms and capacities, legal confusion, and last but not least, the failure to initiate more progressive reform of the public broadcasters.

This chaotic situation was significantly changed in October 2002 by Decision 52/02 of the High Representative, which introduced a comprehensive framework for the broadcasting sector at the state level, in the form of the *Law on Communications of Bosnia and Herzegovina*.³³ This law stipulates that the BiH Council of Ministers is responsible for policy-making and the CRA is responsible for regulation, and sets out key regulatory principles of broadcasting.³⁴

Hence the Law on Communications establishes basic principles and preconditions for the regulation of broadcasting, while "(t)he definition of a more comprehensive framework for the broadcasting sector has been left by the Law to the CRA, which has adopted several rules and codes of practices",³⁵ creating the framework for competition, diversity and pluralism of ownership, and setting out principles for programming and advertising. The CRA's Broadcasting Division is

³³ Law on Communications of Bosnia and Herzegovina, Official Gazette of BiH, No. 33/02 of 12 November 2002, (hereafter, Law on Communications of BiH), available in English at <http://www.cra.ba/en/legal/?cid=2427> (accessed on 8 July 2007). The Law on Communications of BiH replaced the Telecommunications Law of BiH (Official Gazette of BiH, 29 June 1999, No. 10/99).

³⁴ Law on Communications of BiH, Arts. 3 and 4 (a-e).

³⁵ Communications Regulatory Agency, 2005, p. 43.

responsible for regulation, licensing, enforcing rules, monitoring compliance and protecting copyrights. The independence of the whole broadcasting sector is linked to the independence of the CRA.³⁶

3. Structure, Management and Funding of the Public Service Broadcasting

3.1 The public broadcasting system

The transformation of the former state-controlled broadcasters into PSBs has come a long way since the Dayton Accords.³⁷ Reforms have been pushed through by strong pressure from the OHR and backed by the Peace Implementation Council (PIC) after a series of initial clashes with local political elites.³⁸ In June 1998, the PIC called for "the creation of a single, State-wide, public service broadcasting system. This decision was reinforced by the PIC declaration on media reform at the Madrid meeting in December 1998. This declaration gave even stronger powers to the OHR to facilitate the reform of State-owned broadcasters into public service broadcasters."³⁹

In mid 1999, the HR established the state-wide Public Service Broadcasting of Bosnia and Herzegovina (today's *BHRT*), and the entity Public Service Broadcaster

³⁶ See EUMAP, 2005.

³⁷ See for example, Thompson and De Luce.

³⁸ See Thompson and De Luce, also the Chapter on Bosnia-Herzegovina in EUMAP, 2005.

³⁹ EUMAP, 2005, p. 294.

for the Federation BiH.⁴⁰ The HR also requested the assembly of Republika Srpska to establish a public broadcaster for that entity.⁴¹ After another year of obstructions, the HR issued the *"Second Decision on Restructuring the Public Broadcasting System in Bosnia & Herzegovina"*,⁴² establishing two new public corporations: the *Public Broadcasting Service of BiH*, and the *Radio-Television of the Federation of BiH*.⁴³

When the entity authorities failed to adopt laws to implement these decisions, the HR established BHRT by decree and in May 2002 imposed the *Law on the Basis of the Public Broadcasting System and on Public Service Broadcasting in Bosnia and Herzegovina* (hereafter, PSB Law 2002).⁴⁴ In the same month, the HR imposed three further decisions regarding public service broadcasting: the *Decision Imposing the Law on Radio-Television of Republika Srpska*,⁴⁵ the *Decision Imposing the Law on Radio-Television of the Federation of Bosnia & Herzegovina*,⁴⁶ and the *Decision on the*

⁴⁰ High Representative Decisions on the restructuring of the Public Broadcasting System in BiH and on freedom of information and decriminalisation of libel and defamation, 30 July 1999.

⁴¹ High Representative Decisions amending the Law on Radio-Television of the RS, 1 September 1999.

⁴² High Representative Second Decision on restructuring the Public Broadcasting System in BiH, 23 October 2000. Available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=91 (Accessed on 11 August 2007).

⁴³ See Bosnian chapter in EUMAP, 2005.

⁴⁴ High Representative Decision Imposing the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina, 23 May 2002. Available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=8359 (Accessed on 11 August 2007.)

⁴⁵ Decision Imposing the Law on Radio-Television of Republika Srpska, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=8361 (Accessed on 11 August 2007.)

⁴⁶ Decision Imposing the Law on Radio-Television of the Federation of Bosnia & Herzegovina, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=8360 (Accessed on 11 August 2007.)

*Liquidation Procedure to be Applied in Winding-up the Public Enterprise Radio and Television of Bosnia and Herzegovina.*⁴⁷ The result was the creation of the Public Service Broadcasting System of Bosnia-Herzegovina, consisting of the following broadcasters:⁴⁸

- Public Broadcasting Service of Bosnia & Herzegovina (*PSB BEH*), the public broadcaster of BiH, comprising one television channel (*BHT*) and one radio channel (*BH Radio 1*).
- Radio-Television of the Federation of Bosnia & Herzegovina (*RTFBiH*), the public broadcaster of the Federation of Bosnia & Herzegovina entity, consisting of one TV channel (*FTV*) and two radio channels (*Radio FBiH* and *Radio 202*).
- Radio-Television of Republika Srpska (*RTRS*), the public broadcaster of Republika Srpska entity, consisting of one TV channel and one radio channel.

Although the three broadcasters have been established, some important provisions of the *PSB Law 2002* have not been implemented - most notably Article 9, which requires the public broadcasters to create a joint Transmission Corporation to operate the transmission network.⁴⁹ Additionally, the existing legal frameworks and proposed organizational structure failed to provide for efficient cooperation among the three broadcasters, which act as competitors rather than partners. As media commentator Dušan Babić observed: "The consequence of poor coordination

⁴⁷ Decision on the Liquidation Procedure to be Applied in Winding-up the Public Enterprise Radio and Television of Bosnia and Herzegovina, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=8362 (Accessed on 11 August 2007.)

⁴⁸ *PSB Law 2002*, art. 3.

⁴⁹ As Dušan Babić explains, the failure to establish the transmission corporation "(...) has had the most dire effect on the Public Radio and Television Service of BiH (BHRTV), which has played the part of a Public Broadcasting System of BiH in the past years, functioning as a para-corporation with a multitude of obligations - programming and production, maintenance of technologically obsolete and deteriorated equipment, providing space and equipment, cleaning, etc. All of this required considerable finances and was an additional burden on BHRTV, hindering a more intensive development of this broadcaster". Source *Javna radio-televizija BiH: Stari problem novog zakona, Puls demokratije*, 2007, available at: <http://www.pulsdemokratije.net/index.php?id=268&l=bs>.

and cooperation was the irrational use of resources, staff surplus, high business costs and a lack of competitiveness in relation to commercial RTV network".⁵⁰ The situation was further complicated by decreasing ratings, weaknesses in the model of collection of the monthly licence fee, overstaffing, debts, and continuous obstacles mounted by opponents of PSB.

Hence, in late 2005, two new laws were adopted on the state level, replacing the Laws imposed by the HR in 2002, with the goal of creating legal and structural preconditions for a functional and sustainable PSB system: *The Law on the Public Service Broadcasting System in BiH*⁵¹ (hereinafter *System Law 2005*), and the *Law on the Public Service Broadcasting of BiH*⁵² (hereinafter *BHRT Law 2005*). These Laws were adopted under strong pressure from the HR and the EC, which made them one of 16 preconditions for a Stabilization and Association Agreement (SAA)⁵³ between BiH and the EU.⁵⁴

The System Law 2005 regulates the whole PSB system, and the relationship between the three broadcasters: *BHRT*, *RTRS*, and *RTVFBiH*. It also calls for the establishment of a joint organizational unit within the PSB System - the Corporation of the Public RTV Services of BiH (hereafter, the Joint Corporation) - to be funded and managed by all three public broadcasters in order to perform a variety of duties, including management of the transmission network, internationally representing the

⁵⁰ Babić, 2007.

⁵¹ Official Gazette of Bosnia and Herzegovina, no. 78/05.

⁵² Official Gazette of Bosnia and Herzegovina, no. 92/05.

⁵³ The Stabilisation and Association Process (SAP) is a mechanism for co-ordinating the EU's relations with Albania, BiH, Croatia, the former Yugoslav Republic of Macedonia (FYROM), Serbia and Montenegro. The process foresaw the negotiation of a Stabilisation and Association Agreement (SAA) with each of these States, in recognition of the progressive implementation of free trade and as a framework for the State's commitment to assume EU standards in such fields as human rights, rule of law, competition policy and the environment.

⁵⁴ On the conditions set by the EC, see the Bosnian chapter in EUMAP, 2005.

PSB System, program rights issues, managing technical resources and property, advertising, and coordination. The Law on *BHRT* regulates the operations of the state-level *BHRT* broadcaster.

The European Union also required the entities to amend the laws regulating *RTVFBiH* and *RTRS*. The Law on *RTRS* was adopted on 11 May 2006, while the adoption of the Law on *RTVFBiH* has been stalled, because Croat and Bosniak members of the entity parliament are not able to reach a compromise, while Croat representatives arguing that the draft Law damages the national interests of Croats in BiH, and have therefore initiated the procedure for the protection of "vital national interest".⁵⁵ They also claim that the decision making procedures at the System Board gave no assurance that all three constituent peoples would be equally represented.⁵⁶

Notwithstanding these objections, the state-level Constitutional Court concluded that the proposed Law did not threaten the vital national interests of the Croat people.⁵⁷ However, the Croat members of the Constitutional Court published a separate opinion, dissenting from the decision. As the Constitutional Court has the final say in these matters, the System Law was adopted at the state level. Nevertheless, when the same procedure to protect vital national interests was again put in motion at the entity-level Parliament of FBiH, during debate on the Law on *RTVFBiH*, the Constitutional Court of the FBiH entity upheld the objections of the Croat representatives. The stalling in the adoption of the *RTVFBiH* Law prevents the implementation of the state-level System

⁵⁵ For this case relevant stipulations are in the definition of vital national interest of constituent peoples stated in Amendment XXXVII on the Constitution of FBiH: equal rights of constituent peoples in the process of decision-making; education, religion, language, promotion of culture, tradition and cultural heritage; see: Decision No. U 10/05. Official Gazette of Bosnia and Herzegovina, no. 2/04.

⁵⁶ According to the System Law 2005, the System Board comprised of 12 members- all four members of the Supervisory Boards from each Public Broadcasters- which are members of the System Board according to official position. Also see Decision No. U 10/05. Official Gazette of Bosnia and Herzegovina, no. 2/04

⁵⁷ Decision No. U 10/05. Official Gazette of Bosnia and Herzegovina, no. 2/04.

Law; the Joint Corporation is still not established, and there is only partial implementation of the other provisions of the state-level Law, especially in the area of funding and programming (see below). This saga confirms that the political elites are not able or willing to compromise in order to achieve consensus, and therefore cannot agree upon solutions. As a consequence, the purely political issues such as the one about the number and nature of TV channels within PSB have moved from the political to the judicial arena.

3.2 Funding

According to the CRA, "(r)evenues of *BEH TV* broadcasters, in the 2004 financial year, totalled approximately KM 102 million", and remained at approximately the same level in 2005.⁵⁸ As in many EU countries, the public broadcasters are the strongest players on the market, attracting close to 70 per cent of total market revenues (including the monthly licence fee). A further 15 per cent are shared by three largest private TV stations (*NTV Hayat*, *Pink BiH*, *OBN*) while the remaining 15 per cent of revenues are distributed among local broadcasters.⁵⁹ The public broadcasters attracted 43 per cent of advertising revenues, while the three strongest private broadcasters drew 32 per cent.⁶⁰

Even so, the financial situation of the PSBs is difficult. According to the System Law, their regular operations are primarily financed by revenues from the licence fee⁶¹ and advertising. Each of the three PSBs operates as an independent company responsible for its own financial operation. The System Law 2005 envisions collecting

⁵⁸ Communications Regulatory Agency, 2005, p. 73. (Assessment for 2005 based on data for the first half of the year).

⁵⁹ Communications Regulatory Agency, 2005, p. 76.

⁶⁰ Ibid, p. 73.

⁶¹ The licence fee is defined as a form of tax on possession of television and radio sets and it is presumed that one person in each household as well as legal entities is in possession of at least one radio or television receiver.

the licence fee at one central account and distributing it among the three public broadcasters, so that 50 per cent of the total licence fee revenue collected goes to the state-wide broadcaster, *BHRT*, while each entity broadcaster gets 25 per cent. This system of distribution became effective on 1 December 2005. The licence fee has been collected through telecom operators in both entities, but each entity broadcaster also collects the fee through its own services. In 2006, only 63 per cent of licence fee revenue was collected: considerably below the planned projection of 85 per cent that is supposed to secure financial sustainability for the PSBs.⁶² According to the System Law 2005, advertising revenues are treated the same way as the licence fee: all advertising revenue from three broadcasters is to be put into one pot and distributed according to the same formula of 50:25:25.

This mechanism of distributing resources has a twofold purpose: to direct most of the funding into *BHRT*, and to eliminate the difference between financially stronger and weaker groups and parts of the country. This is in accordance with Horowitz's integrative model, which recommends such disproportional distribution of resources so that smaller groups are strengthened by subsidies from larger groups.⁶³ This in effect fosters stronger cooperation between groups by eliminating the feeling of discrimination on the side of smaller groups.

Subsidising weaker parts should not significantly subdue the ability of stronger parts of the System to finance their own activities. However, it seems that in the case of BiH, the lawmakers did not take this aspect into account. Namely, *RTVFBiH*'s contribution to *BHRT*'s total revenue is very considerable, while *RTRS*'s contribution is symbolic.⁶⁴ This is a consequence of incomplete and asymmetric reform of the

⁶² See: BHRT "Public Radio and Television Service of Bosnia-Herzegovina Business Report for 2006", March 2007, p. 1.

⁶³ D. L. Horowitz, 1985.

⁶⁴ RTVFBiH gave BHRT the sum of KM 8,125,998 in 2006, while RTRS gave KM 219,238. See: BHRT's 2006 Annual Business Report, March 2007, pp. 25 and 30.

broadcasting system.⁶⁵ Only the Corporation of Public Broadcasting Services will be able to place the existing broadcasters on an equal footing, as it is envisioned that complete program production will be given for management to the Corporation, while all three broadcasters will pay for services provided by the Corporation.

A second problem is the persistent boycott of the licence fee by a significant proportion of Croats. HT Mostar, which collects the fee in Croat-majority areas, collected no more than 28 per cent of the fees due, while BH Telecom, which collects the fee in areas populated mostly by Bosniaks, collected some 81 per cent.⁶⁶

Third, there is a serious problem with the distribution of revenues among the three public broadcasters according to the 50:25:25 formula endorsed by the System Law 2005.⁶⁷ This formula marks a radical break with the previous Law (2002) which allowed each PSB to keep its own marketing income. The new solution is most unfavourable for *RTVFBiH*. In 2006, the total marketing income for all three televisions was KM 18,905,584, with *RTVFBiH* contributing 61 per cent.⁶⁸ *BHRT* earned 24 per cent,⁶⁹ and *RTRS* earned some 15 per cent.⁷⁰

However, the new system is still not fully in effect. The *RTVFBiH* management was particularly opposed and, as an argument for delaying the implementation, they pointed out that the Corporation, which is obliged by the law to manage marketing, has not been established. *RTVFBiH* management, according to Director Jasmin

⁶⁵ During reconstruction, *RTVFBiH* was left practically without assets and got only 2 per cent of assets of the former Television of Bosnia-Herzegovina, while *BHRT* got the rest. See: The Report of the Office of Audit of Institutions of the Federation of B-H, July 2007, p. 8. *RTVFBiH* is now forced to pay *BHRT* for all services for producing its own program. *RTRS*, by contrast, brought no resources into *BHRT*.

⁶⁶ *BHRT*'s 2006 Annual Business Report, March 2007, p. 26.

⁶⁷ The new system of licence fee distribution favours *RTRS*. Its income in 2006 was more than 2.5 million KM higher than in 2005. See: JP *RTRS* "2006 Annual Report/2007 Annual Plans," p. 14.

⁶⁸ Report of the Office of Audit of Institutions of the Federation of B-H, July 2007, p. 13.

⁶⁹ *BHRT*'s 2006 Annual Business Report, March 2007, p. 28.

⁷⁰ JP *RTRS*, "2006 Annual Report / 2007 Annual Plans", p. 14.

Duraković, is determined to defend the principle that each television must receive the marketing revenue that it earns. Otherwise, he says, "those who work best would be punished".⁷¹ The President of the Supervisory Board of *BHRT*, Mr. Nikola Deretić, insists that the Law adopted in 2005 must be implemented in its entirety.⁷² Also, *BHRT* director Mehmed Agović maintains that this part of the law should be implemented as soon as possible and that it makes sense if the system is viewed as a whole.⁷³

The situation is further complicated by the lack of reform within the PSBs, which are heavily overstaffed (see section 4 below). Also, the issue of the formula for sharing revenues from the licence fee and advertising has to be seen in relation to the program content of all three broadcasters, to their human resources policies, and their signal footprint. If the money is to be collected and distributed centrally by the Public Service Broadcasting System, then the System needs to be able to coordinate all aspects of the three broadcasters' operations, including staffing, programming and editorial policy, and its mechanisms and procedures of program purchase and production (see below, sections on staffing and programming). The implementation of any single aspect of the law is linked to and conditioned by the implementation of any other provisions of the same law.

3.3 Governance structure

The Supervisory Board (*Upravni odbor*) and Managing Board (*Poslovodni odbor*) are the two key governing bodies of *BHRT*. The Managing Board, consisting of the Director General and sector managers, oversees the daily work of *BHRT*, while the Supervisory Board represents the public interest with respect to programming, and

⁷¹ Interview with Jasmin Duraković, 24 July 2007.

⁷² *Dani* magazine, 14 September 2007, p. 7.

⁷³ Interview with Mehmed Agović, 24 July 2007.

oversees the overall operations of *BHRT*. The Supervisory Board has four members, one from each of the three constituent peoples and one representing the "others". Two members are to come from each entity. Members of the Supervisory Board are appointed by the Parliamentary Assembly of BiH, based on a list of candidates submitted by the CRA. The Supervisory Board makes decisions by majority vote, with a minimum of three members present at the meeting. For appointing and removing the Director General, adoption of programming and financial plans and yearly budget, a minimum of three votes is needed. Under the relevant laws, *RTRS* and *RTVFBiH* have practically the same managing bodies as *BHRT*, except that all members of their respective Supervisory Boards come from their respective entities.⁷⁴

The Managing Boards (as opposed to Supervisory Boards) are not required to have equal representation of all constituent people. This allows situations where all members can be of one ethnicity, as is the case with *RTRS* today.⁷⁵ This is particularly important since the Managing Board is more important than the Supervisory Board in day-to-day management and operations.

At the level of the Public Service Broadcasting System, there is a System Board consisting of 12 members, who come from Supervisory Boards of the three broadcasters: *RTVFBiH*, *RTRS*, and *BHRT* (four members from each of the three broadcasters).⁷⁶ The System Board coordinates activities within the system, proposes the amount of the monthly RTV licence fee and supervises its collection, coordinates program schemes between three broadcasters, and acts as Supervisory Board of the joint Corporation of the PSB System. Moreover, the System Board adopts codes of conduct for the whole PSB System, through which it protects the languages, culture

⁷⁴ See, for example, Article 45 of the Law on RTRS.

⁷⁵ Interview with Dragan Davidović, RTRS director, 23 July 2007.

⁷⁶ Law on the Public Broadcasting Service, Article 7.

and tradition of the constituent peoples and minorities in BiH, in accordance with the Constitution (Article 8; 1:c).

One of the issues raised by Croat political representatives when invoking the mechanism for the protection of vital national interest was the Law's failure to explicitly stipulate a balanced representation of constituent peoples in decision making mechanisms at the System Board. Although the state-level Constitutional Court ruled against the claims by Croat representatives, the Croat judge of the Constitutional Court of BiH, Valerija Galić, in her separate opinion, explained that the way the System Board is conceptualized does not protect the equality of the constituent peoples. According to Ms. Galić, since the quorum for decision-making is 7 members, and decisions are made by a simple majority, it means that only 4 members of the System Board can make decisions of utmost importance for all three constituent peoples.⁷⁷

Nevertheless, at the entity level, the Constitutional Court of FBiH upheld the Croat representatives' claims.⁷⁸ It decided that the proposed decision making mechanism at the Supervisory Board of *RTVFBiH* enables "majorization" in decision making. It also ruled that programming principles have no clearly elaborated legal instruments to protect vital national interests. The draft Law on *RTVFBiH* was returned to the entity parliament for amendment in line with this decision. The Government of the FBiH, in its 17th Session,⁷⁹ stipulated the Draft Law on Public

77 Separate opinion of Valerija Galić, Judge of the Constitutional Court of BiH, opposed to the decision of the Constitutional Court of BiH in case no. U-10/05, available at: <http://www.ccbh.ba/bos/odluke/index.php?src=2#>

78 Decision of the Council for the Protection of Vital National Interests of the Constitutional Court of the Federation of Bosnia and Herzegovina, deciding on a request of the Croat Caucus in the Federation Parliament, Decision no: U-11/06, dated 19 July 2006, available at: www.ustavnisudfbih.ba. This decision was based on the votes of Croat judges; the non-Croat judges gave separate and dissenting opinions.

79 Press Release of FB-H Government, Sarajevo, 2007, July 12 available at: http://www.fbihvlada.gov.ba/bosanski/sjednica.php?sjed_id=19&col=sjed_saopcenje

Broadcasting System of the Federation BiH after the OHR amended it. The amended draft was then adopted, but again without support from the Croat members of the parliament,⁸⁰ who again introduced an amendment for creating two separate channels in FBiH: a Croat channel and a Bosniak channel.⁸¹ The new amended version of the Law will be referred back to the Constitutional Court of FBiH.

4. Human resource policies

The three PSBs employ a total of 1,904 staff. Of these, 49 per cent declare themselves as Bosniaks, 30 per cent as Serbs, 9 per cent as Croats, 9 per cent as Bosnians,⁸² with Others making up 3 per cent.⁸³ Compared to the census data from 1991, it is evident that the Croats are significantly under-represented.⁸⁴ However,

⁸⁰ The Parliament of FBiH passed the law on 26 July 2007.

⁸¹ *Nezavisne novine*, 27.07. 2007, p.3

⁸² 'Bosnians' do not exist as a constitutional category. However, a large number of employees in Sarajevo declare themselves as such. The RTVFBiH and BHRT directors assess that this category to a great extent includes people coming from mixed marriages.

⁸³ This summary was made according to data on the number of employees and national representation for all three public broadcasters. Data for BHRT are based on an internal document, "Structure of BHRT employees", dated 9 August 2007, and data for RTVFBiH are taken from an internal document, "National structure of RTVFBiH on 31 July 2007", dated 29 August 2007. Data for RTRS are taken from "JP RTRS -2006 Business Overview", 25 January 2007, p. 9. (All documents on file with the authors).

⁸⁴ According to the 1991 census, the population of BiH was 43.5 per cent Muslim (now Bosniak), 31.2 per cent Serb, 17.4 per cent Croat, 5.6 per cent Yugoslav and 2.3 per cent Other. Federal Bureau of Statistics. Available at: <http://www.fzs.ba/Dem/Popis/NacStanB.htm>.

there are significant differences among public televisions in how they tackle the problem of staffing structure.

BHRT has a staff of 997 people:⁸⁵ 67 per cent Bosniak, 12 per cent Bosnian, 9 per cent Croat, 8 per cent Serb, and 4 per cent "Others".⁸⁶ In comparison to *FTVFBiH* and *RTRS*, *BHRT* has the most balanced ethnic structure when it comes to editors and program presenters. The *BHRT* director claims it is fully balanced.⁸⁷ The distribution of top positions supports this claim; the director is a Bosniak, *BHRT*'s director is a Serb, and a Croat employee is expected to take up the empty position of news director.

Federal Television has 409 employees: 66 per cent Bosniaks, 13 per cent Croats, 13 per cent Bosnians, 5 per cent Serbs, and 3 per cent Others.⁸⁸ Hence, Croat politicians have often publicly complained that this is a television exclusively of and for Bosniaks.⁸⁹ However, Croats are more adequately represented in news production and presentation, as well as the television's management structures. The TV program director, who has more input than anyone else in creating television programs, is also

⁸⁵ It should be noted that 671 people are only temporarily registered as *BHRT* employees and that with the establishment of the Corporation of the Public Broadcasting System these workers will become Corporation employees.

⁸⁶ Data for *BHRT* based on document "Structure of *BHRT* employees", dated 9 August 2007 (On file with the authors).

⁸⁷ Interview with *BHRT* Director, Mehmed Agović, 24 July 2007.

⁸⁸ Data for *RTVFBiH* given in document "National structure of *RTVFBiH* on 31 July 2007", dated 29 August 2007 (On file with the authors).

⁸⁹ Former Croat member of the Presidency Ivo Miro Jović has stated: "I don't know of any Croat who works in the public service media. I know that on *FTV* there are 2.7 per cent Croats and 48 per cent Bosniaks. There are also 18 per cent Bosnians, which is not a constitutional category at all." *Hrvatsko slovo*, 15 October 2005, available at: http://www.hkz.hr/Hrvatsko_slovo/2005/547/medjuHrvatima.htm.

a Croat.⁹⁰ The management is making additional efforts to redress the ethnic balance among employees, and has announced the opening of a bureau in Posušje, a region with a majority Croat population.⁹¹ The representation of Serbs is still neglected.

The situation at RTRS is the least favourable in terms of ethnic representation. Of its 498 employees, 93 per cent declare themselves as Serbs, 3 per cent as Croats, 2 per cent Bosniaks and 2 per cent others (i.e. minorities).⁹² The ethnic structure of the editorial and managerial staff is still almost 100 per cent Serb. The Management Board, comprising directors of departments, is exclusively Serb. The situation in the news department is a little better, with 86 per cent of the 41 employees being Serbs, 10 per cent Bosniaks, and 4 per cent Croats.⁹³ This indicates the management's intention to improve the ethnic structure where this is most needed. However, unless non-Serbs are put into senior editorial and managerial positions, the broadcaster is unlikely to be perceived as a PSB of all citizens of Republika Srpska.

Evidently, all three PSBs more or less fail to achieve an adequate representation of the constituent peoples in the ranks of their own employees. The laws on public

⁹⁰ "The president of this RTV's Supervisory Board today is a Croat; Croats are also the director of FTV, two members of the Managing Board, and more than half of all hosts of the primetime news program. At RTV Federation, Finally, there are some 60 employees of Croat ethnicity, most of them journalists. All this, certainly, is not enough. For, there are not enough Croat journalists outside the news program - in the documentary, cultural-entertainment and educational programs. But the reason for this is not lack of will on the part of Federal RTV. Quite the contrary", Slavo Kukić, The president of this RTVFB-H's Supervisory Board, Večernji list, 2007, Aprli 27. Available at: http://www.poskok.info/index.php?option=com_content&task=view&id=8321&Itemid=103

⁹¹ Director General of RTVFB-H signed a contract on July 29, 2007 with Zvonko Jurišić, Prime Minister of West Herzegovina Canton about renting the building for RTVFB-H bureau in Posusje. See: <http://www.studio88.ba/bh/21/bih/5296/?tpl=23>

⁹² Data for RTRS from document "JP RTRS -2006 Business Overview", 25 January 2007, p. 9. (On file with the authors).

⁹³ The percentages were calculated according to the list of employees in news department of RTRS. 10 August 2007.

broadcasting define a public broadcaster's obligations to implement relevant provisions related to the equal rights of constituent peoples and others in Bosnia-Herzegovina.⁹⁴ However, it is not entirely clear what these relevant provisions, defined by the constitutions, are. Amendments to the entity constitutions state that "constituent peoples and the group of Others shall be proportionately represented in public institutions",⁹⁵ and that proportionate representation according to the 1991 census shall be established as a constitutional principle until Annex 7 of the Dayton Peace Agreement on the return of refugees and displaced persons has been fully implemented. However, "public institutions" are specified as ministries, municipal and cantonal bodies of governance, and municipal and district courts, and it is impossible to say when, if ever, Annex 7 will be considered to have been fully implemented.

This legislative vagueness has allowed television managers to take a relaxed attitude to establishing adequate representation of the constituent peoples in the PSBs. Their efforts in this direction are inadequate. Although there is awareness that the present structure is not adequate, concrete plans do not exist on what kind of ethnic structure they want to achieve and in what timeframe. Furthermore, data on ethnic representation at public televisions are not presented in any annual report. The issue of ethnic structure of staff has been the subject of public debate for several years. *RTRS* has been labeled by Bosniak and Croat politicians as an exclusively Serb broadcaster, while *Federal Television* has been seen by Croat politicians as a Bosniak broadcaster.⁹⁶ Croat representatives have expressed greatest dissatisfaction with the staffing structure,

⁹⁴ Article 8 of the Law on the Broadcasting Service of B-H, Article 8 of the Draft Law on RTVFBiH, Article 18 of the Law on RTRS.

⁹⁵ Amendment LXXXV to Article 97 of the Constitution of RS; Amendment LII (Article 11.1) to Article IX.7 of the Constitution of FB-H.

⁹⁶ S. Kukić, 2007.

complaining about the small percentage of Croat staff at the PSBs.⁹⁷ In these circumstances, neglecting the ethnic balance among employees contributes significantly to destabilising the fragile public broadcasting system. As Kukić remarks: "these legacies require a higher level of sensitivity to what may be a source of frustration and intolerance, a cause of separation and distancing. In other words, the ethnic element must be taken into account - everywhere where it may be pronounced".⁹⁸

Another important issue to be considered is that of the professional qualifications of the staff of PSBs. Proportional representation is obligatory at the decision making level, but not for all other levels, especially when it contradicts the requirement for appropriate qualifications and experience. A proper solution is to introduce quotas and the criteria of "*positive action*", i.e. "*affirmative action*", accompanied by judicial protection, but not at the cost of qualifications and expertise. Otherwise, the principle of constituent peoples becomes superior to the principle of non-discrimination.

⁹⁷ The head of the Croat caucus in the FB-H Parliament House of Peoples, Josip Perić, stated: "There are percentages. Even Bosnians, whom I didn't know existed as a people along with Bosniaks and who are not in the FB-H Constitution, have a bigger percentage of employees than Croats who are a constituent people." *Nezavisne Novine*, 28 July 2007, p. 8.

⁹⁸ S. Kukić, 2007.

5. Program framework and editorial standards

The PSBs' programming is regulated by their respective Laws, as well as by the obligations stemming from CRA Rule 01/1999 on the Definition and Obligations of Public Broadcasting, as amended in 2003.⁹⁹ Programming statistics indicate that none of the PSBs fulfills the CRA rules¹⁰⁰ that require a minimum of 40 per cent of programs to be of public interest.¹⁰¹ An average of 24.9 per cent of news programming and 2.9 per cent of educational and cultural programming was broadcast on *RTRS* in the last three years (2004-2006), while *RTVFBiH* had an average of 15.3 per cent of news programming and only 0.3 per cent of educational programming for the same period. The news programming share on *BHRT* in 2006 was 15.2 per cent of its total programming.¹⁰²

In terms of daily news programming, there is not much difference between the PSBs. Moreover, a lot of mutually competitive programs are aired at the same time.

⁹⁹ RAK Rule No. 01/1999 on the Definition and Obligations of Public Broadcasting, as amended on 22 September 2003 (published on 13 November 2003). Available at <http://www.rak.ba/bs/legal/rules-codes/broadcast/rules/default.aspx?cid=2812>. (Accessed on 10 August 2005).

¹⁰⁰ Article II: B *Program Content Requirements* prescribes that at least 40 per cent of program time in any week shall consist of news and other informative or educational programming.

¹⁰¹ Program statistics from RTVFBiH and RTRS Business Reports for 2004-2006 and BHRT Business Report for 2006.

¹⁰² RTVFBiH and RTRS Business Reports for 2004-2006 and BHRT Business Report for 2006.

The entity PSBs reserve the most attractive time for broadcasting their primetime news, which is 19:30, while *BHRT* airs its primetime news at 19:00. This kind of scheduling raises the issue of compatibility of public television programs because their programming is largely available across the whole country.

Television channels in the PSB system compete with each other. Instead of offering viewers top quality diverse content, they produce the same or similar programs of poor or mediocre quality, and broadcast them in the same time slots. However, the idea of creating a single service for news gathering, as well as redesigning the entity primetime news programs, found no support from *RTRS* management,¹⁰³ and *RTVFBiH* support is conditional.¹⁰⁴ All in all, uncoordinated schedules and duplicated (or even triplicated) production results in extremely irrational spending patterns. Numerous and redundant programs of poor quality are produced at a very high cost.

The section on Programming Principles in the Law on the Public Broadcasting System of BiH, also carried into the laws on the public broadcasting services, defines

¹⁰³ "Radio-Television of Republika Srpska (RTRS) will not move the broadcast time of its news program, nor will it agree to do away with this primetime news program", said Dragan Davidović, RTRS Director, *Nezavisne Novine*, 7 August 2004, p. 5.

¹⁰⁴ The views of RTVFBiH management on the issue had been changing over time. In an interview with our researcher (24 July 2007), RTVFBiH Director Jasmin Duraković endorsed the idea of creating a single news program. However, at an earlier point, in 2004, he did not accept BHRT management's idea for the entity televisions to discontinue their 19.30 primetime news programs and instead broadcast the programs "Federacija danas" (Federation Today) and "Srpska danas" (Srpska Today) at 17.00 as their central news programs, as well as a news bulletin around 22.00. On the other hand, the then BHRT Director Drago Marić maintained (9 August 2004) that "a year and a half ago there was consent from Federal Television management to stop the entity primetime news programs and to carry the primetime news program with the BHTV1 logo". Web-portal Danas, available at: <http://danas.co.yu/20040809/hronika1.html>.

PSB obligations in terms of satisfying the interests and needs of the constituent peoples and ethnic minorities. Three items define programming obligations with regard to ethnic, regional, tradition, religious and linguistic characteristics of peoples and ethnic minorities in BiH. Equal use of all three official languages of the constituent peoples, Bosnian, Croatian and Serbian, is required, as well as two alphabets, Latin and Cyrillic, and also that "In production of its own program and program in co-production the public broadcasting services shall ensure ... equal representation of contents that correspond to the tradition and heritage of all three peoples and adequate representation of others" (Article 26:5).

However, neither the Law nor the statutes of the PSBs, which further develop the programming principles, define program quotas for each of the constituent peoples and ethnic minorities, nor do they define what equal and adequate representation means. As the directors of all three PSBs confirmed to the authors of this report, the implementation of these requirements is at the discretion of individual editors. The *RTRS* Director General describes the situation as follows: "This is not something that is prescribed. It would be bad if we had to prescribe these things because then we would either hurt one party or push for another party; instead, it is a matter of inner feeling, the professional code of certain editors or a daily need to satisfy all these elements."¹⁰⁵

There are no statistics that would show whether public broadcasters fulfill the legally prescribed obligation on representation of content related to the cultural, religious and traditional needs of all peoples and ethnic minorities.

According to a report on *Media and Religion*,¹⁰⁶ *RTVFBiH* and *RTRS* do not give adequate coverage of the religious heritage of all three constituent peoples.

¹⁰⁵ Interview with the *RTRS* Director General, 23 July 2007.

¹⁰⁶ Tajić, 2007:20.

The issue of language is one of the most frequently discussed when speaking about PSB output. The loudest in these discussions are Croat political representatives and other Croat public figures,¹⁰⁷ but frequent objections are also heard from Bosniak public figures.¹⁰⁸ The essence of Croat objections is that the Serbian language is spoken on *RTRS*, Bosnian is spoken on *RTVFBiH*, and a combination of Serbian and Bosnian is represented on *BHRT*, while the Croatian language is nowhere to be heard.¹⁰⁹ In the Declaration on the Constitutional and Legislative Position of Croats in BiH, an unofficial but high-profile document dating from October 2005,¹¹⁰ it is stated that official and public use of the Croatian language is suppressed, bypassed and even negated in administration, education, culture, media and other public circles and institutions. Consequently, the Croat people need to have a separate public channel broadcasting in the Croatian language. On the other hand, a number of Bosniak critics maintain that the language on Federal Television is not Bosnian; on the contrary, they say it is kind of a 'laboratory' language, based on Croatian and with no basis in Bosnian-Herzegovinian speech.¹¹¹

Thus, PSBs have found themselves at the center of a broader debate on the position of language. The processes of creating three new languages out of the

¹⁰⁷ See: Statement by former Croat Member of the Presidency Ivo Miro Jović, *Hrvatsko Slovo*, 15 October 2005, available at: http://www.hkz.hr/Hrvatsko_slovo/2005/547/medjuHrvatima.htm.

¹⁰⁸ A. Sidran, "Jezik za zube" (Shut your mouth), *Slobodna Bosna*, 19 July 2007, pp. 48-49.

¹⁰⁹ See: S. Kukić 2007.

¹¹⁰ A conference titled "The Constitutional and Legal Position of the Croat People in BiH - Language, Education, Culture and Media", held in Neum on 27-29 October 2005, attended by representatives of the Croat Society of Science and Arts of BiH and University of Mostar, with active support from the Croat Community of Herceg-Bosnia, HKD Napredak, Central Croatian Cultural and Publishing Society branch in BiH, Society of Croat Writers of Herceg-Bosna, Association of Croat Journalists in BiH, etc.

¹¹¹ See: N. Filipović, *Slobodna Bosna*, 7 June 2007, p. 46; M. Riđanović, *Oslobodenje*, 29 June 2007, p. 36; or Web-forum of RTVFBiH at: <http://www.rtvfbih.ba/forum/viewpost.wbsp?ForumID=18&ThemeID=36>

formerly single Bosnian-Herzegovinian language standard are so intense and controversial that the PSBs were bound to be affected.¹¹² In these circumstances it is very difficult to plan and implement a coherent policy that will satisfy the interests of peoples who are determined to promote different languages.¹¹³

The linguistic policies of all three PSBs are based on the right of journalists to choose what language they will use, and in this regard no one has the right to tell them which language to use. On the other hand, PSBs have language-editing services that make sure that the language spoken by journalists is in line with the norms of the Bosnian, Serbian or Croatian language. So far these services covered the work of news program journalists, as well as subtitled foreign films, serials and documentary programs. *Federal TV* also partly language-edits texts in children's programs, but the whole program from this newsroom is not covered yet. With this kind of linguistic policy, linguistic representation is directly related to ethnic representation of people working in news programs and translators of foreign programs. Given the unbalanced ethnic representation in the PSB newsrooms, it is clear why the language-use in these programs is not balanced either.

¹¹² See, e.g. H. Vajzović, "Savremena jezička situacija - komunikativna i simbolička funkcija jezika" (The Contemporary Linguistic Situation in Bosnia and Herzegovina: Communicative and Symbolic Function of Language) in *Language and democratization: (proceedings)*, Sarajevo Language Institute, Sarajevo, 2001.

¹¹³ There is a huge debate as to whether these three languages are truly different in linguistic terms, and considerable consensus among linguists that this is not a matter of understanding (as the differences between the languages are slight), but rather of identity politics and recognition. This point seems to be important in that it is hard to find a similar example in comparative practice.

6. Conclusion

The lack of capacity of Croat and Bosniak representatives to reach a consensus on the shape and purpose of PSB, followed by the demand for a separate Croat channel, has for many years been the main formal obstacle to establishing a PSB legal framework in BiH. Analyzing the decisions of the Constitutional Courts of BiH and FBiH, it is difficult to support either solution without reservations. Even if we accept as more convincing the argument of the Constitutional Court of BiH that Croat vital interest is not violated by the law, we must also accept the argument of the Constitutional Court of FBiH that the existing articles of the law defining equal use of language and alphabet and respect for ethnic, regional, traditional, religious, cultural and other characteristics of the constituent peoples and all citizens of Bosnia and Herzegovina "do not have specific legal elaboration in the domain of their exercise and manner of protection, which could ensure satisfactory ... implementation."¹¹⁴

The PSBs do not provide equal representation of languages and alphabets. Hence, the existence of legal obligation does not practically guarantee the equality of the constituent peoples in the framework of all three broadcasters in the public

¹¹⁴ Decision of the Council for the Protection of Vital National Interests of the Constitutional Court of the Federation of Bosnia and Herzegovina, deciding on a request of the Croat Caucus in the Federation Parliament, Decision no: U-11/06, dated 19 July 2006. Available at: www.ustavnisudfbih.ba

broadcasting system, be they Croats, Bosniaks or Serbs. Moreover, there are no mechanisms to guarantee the implementation of legal obligations when it comes to adequate representation of minority communities.

On the other hand, there is no constitutional or legislative basis for the insistence on the creation of an exclusively Croat channel as the only solution to the problem. Namely, the Decision on the Constitutionality of Peoples and the Constitutions of FBiH and RS, which require proportionate staffing representation, as well as relevant laws on the Public Broadcasting System of BiH, do not envision the existence of public institutions that use only one of the three languages and employ only or predominantly members of just one people.

In addition to the obvious legislative and constitutional obstacles, the idea of creating purely ethnic channels is hardly feasible in economic terms. As Kukić has said,¹¹⁵ the request by Croat representatives and public figures for a separate channel is entirely legitimate, but Croats alone would have to pay for separate Croat channels; a solution which points toward complete ethnic segregation, as has already happened in the educational system.

Instead of seeking a solution within the framework of the present system by building in mechanisms to guarantee effective equality for all peoples and citizens, and insisting on the consistent implementation of existing laws, solutions are being sought that raise a number of questions related to BiH's overall constitutional arrangement, increase ethnic division, and are wholly irrational from a financial point of view.

However, the future of PSB is shaped not only by this disagreement, but also by the evident failure of the PSBs to establish themselves as public broadcasters for BiH and all its citizens. The framework of PSB reform has not led public television to act as a factor of social integration and cohesion.

In addition, the PSBs are in an extremely grave financial situation, in particular *RTVFBiH*, as well as *BHRT*; *RTRS* is somewhat better placed. This is the result of a number of factors: overstaffing, irrational duplication of program schedules and program production, and poor collection rate of the monthly licence fee. To a great extent, the poor financial situation is directly related to overall organization of the public broadcasting system, which again reflects the complex ethnic, political and territorial realities in the country.

Nevertheless, the key problem is that a solution for a purely political issue has been sought through legal mechanisms. This will not yield satisfactory solutions, as long as there is no consensus at the political level between Croat and Bosniak political representatives.

Another root cause of all the problems is the systematic failure of political actors, PSB management, and relevant state and international agencies to ensure full implementation of already existing legal solutions. The practice is that, depending on the territorial level (entity or state level), ethnic and political alliances and interests, some aspects have been implemented while others are ignored. This results in contradictory practices, where each side insists on implementation only of those aspects that are in its own interests while blocking the implementation of those that are not. So, Serb political actors insist on implementation of financial aspects, but are doing nothing to ensure adequate representation of other groups in staffing and programming at *RTRS*; Croat representatives insist on a third channel in the Croat language while boycotting the payment of the licence fee, thus undermining the very foundation of the broadcasting system. Bosniak representatives, meanwhile, propagate more integrative solutions while at the same time pushing legislation that has not been based on consensus and accepted by their Croat counterparts. This becomes a vicious circle of crisis, a perpetual engine for the production of conflict and the stalling of reform.

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