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Law contexts

Television broadcasting is a peculiar type of communication that is intended for specific technical means for the creation of content, the transmission and reception, communication peculiar, aesthetic and creative possibilities. It is not an interpersonal communication, as we know it from everyday life, but a mass-mediated communication, from an institution (producer, broadcaster, provider) to the mass of individuals (viewers) receiving information at a given moment. And since this communication enters the public space in various ways and shows a considerable ability to influence the behavior and behavior of its recipients and groups, it also creates a specific legal situation that democratic countries have to regulate. Not to forbid communication, but rather to support the existence of such communications and defined. On that occasion they define the basic rules. The legal regulation of the media can be collectively called the media law, but it does affect the much broader legal context.



Internal and external regulation

Regulation cannot be limited to laws. In principle, it can be divided into external and internal, from several perspectives.

(a) Europe and any EU country

In terms of the status of one EU member state, all the directives of the European Parliament, resp. Of the Council of the European Union by external regulations. They are binding to the extent that EU Member States should gradually harmonize their laws with these directives, unless they have already done so. This documents

- 1) **define the basic concepts** for the European jurisdiction to use the same language (what is the audiovisual service, who is the provider, who is the end user, what is teleshopping, what is product placement, what is the European audiovisual work, etc.)
- 2) **emphasize equal access for all citizens** of the European Union to information and electronic communications (ie telephone, analogue and digital broadcasting, etc.)
- 3) **set the basic parameters** of Europe's communication environment (definition of competition, free market, equal opportunities, promotion of employment opportunities in audiovisual media, etc.)
- 4) **regulate the basic ethical limits** of contents, respectively. content and content management rules (restrictions on minors, violence and pornography presented, certain types of products such as cigarettes or pharmaceutical products).

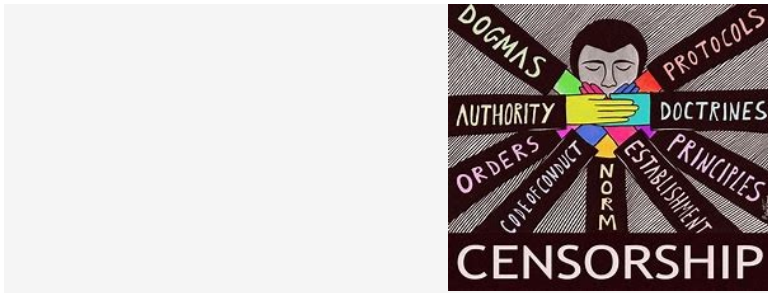
However, the content of these directives is very general and rather sets out the basic idea, so that they do not directly interfere with the specific legal situations in the States concerned. The laws of the Czech Republic, for example, are internal regulations in the European legal context.



(b) *Laws and codes of member countries (example of the Czech Republic)*

The Parliament of the Czech Republic has enacted a whole set of laws relating to the rules for the production, distribution and reception of audiovisual programs. One group is the standards set up by the state for communication networks (*Act on Electronic Communications*) or institutions and their rules (*Act on Radio and Television Broadcasting, Act on Czech Television* etc.), eventually regulates communication content (*Act on Advertising Regulation* etc.). However, mass-mediated communication creates a much broader context, directly or indirectly affecting fundamental human rights and freedoms (*Constitutional Act on the Charter of Fundamental Rights and Freedoms, Act on Free Access to Information, Act on Personal Protection, etc.*), and other specialized areas of the *Commercial or Civil Code* (e.g. *Copyright Act*). These laws must be respected by producers, authors and recipients of audiovisual programs, so this is clearly a type of external regulation.

However, the media organizations themselves have developed their own internal regulations - either the authorities (the Ethical Panel of Czech Television) or codes that specify the ethical and moral boundaries of their communication. For some institutions, the Code is a statutory obligation (the *Code of Czech Television*), especially because it lays down the principles for the fulfillment of the public service for which the institution was established by the same Act. On the other hand, the voluntary professional association of journalists, the Syndicate of Journalists of the Czech Republic, has published its *Journalist's Code of Ethics*, which regulates “requirements for high professionalism in journalism” and ensures “credibility, decency and seriousness”. The third example of the urgent need for internal regulation is the creation of a Council for Advertising by Advertisers, Agencies and the Media, which aims to achieve “fair, legal, decent and true advertising in the Czech Republic” and has issued its binding *Code of Advertising*.



(c) *Censorship and self-censorship*

In non-democratic countries, external regulation is censorship (preliminary or follow-up) - one of many propaganda tools. Self-censorship can be considered as internal regulation, but it does not necessarily have to be linked to the character dress of an individual living under political or other social pressure, but can also have a positive connotation: based on its outcome, it continues to dispose of it. But that would be a separate chapter.

General frameworks - information, access and networks

Freedom of expression and the right to information are guaranteed by the Basic Document of the Modern History of the Democratic Czech Republic, *Constitutional Act 23/1991 of 9 January 1991*, which introduces the *Charter of Fundamental Rights and Freedoms*. The same article **prohibits censorship** and **restricts these freedoms** only if it is "necessary to protect the rights and freedoms of others, national security, public security, public health and morality".

A similarly simple truth is the motto "who has information, has power", that is, working with information is the most effective power tool. Access to information is guaranteed to every citizen by the *Freedom of Information Act*, which means "information" means "any or all of its content in any form". Such a wide-ranging unrestricted access of anyone to anything, however, is unrealistic, therefore the law subsequently defines the types of information that cannot be accessible: protection of business secrets, protection of confidentiality, information in the interest of national, European Union or North Atlantic Treaty security ongoing criminal proceedings, intelligence services, etc.

Information of a personal nature regulated by the *Personal Data Protection Act* is quite specific. It distinguishes between so-called personal

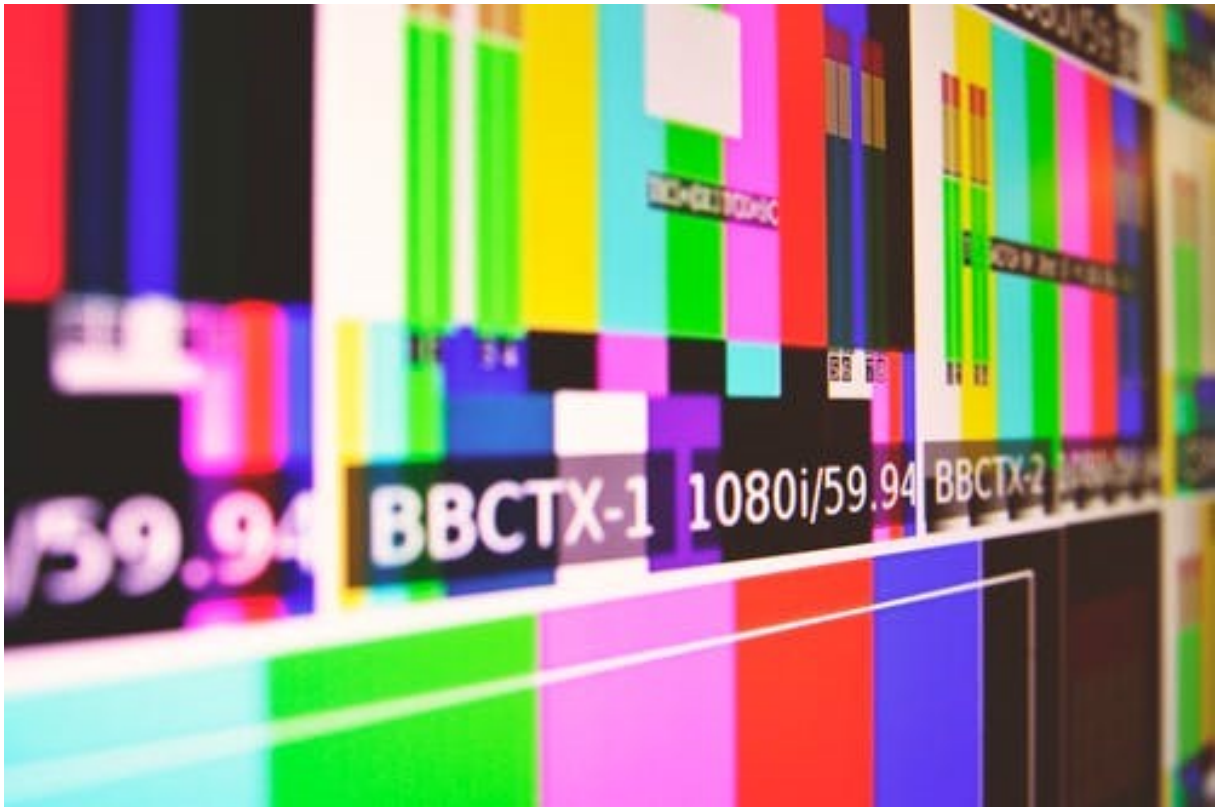
data and sensitive data. Somewhat incomprehensibly, the data subject is referred to as a "data subject" - if we accept this terminology, then the definition of two basic terms can already be understood:

1) **personal data** is any information relating to a designated or identifiable entity data. A data subject shall be considered as designated or identifiable if the data subject can be identified, directly or indirectly, in particular on the basis of a number, code or one or more elements specific to his physical, physiological, psychological, economic, cultural or social identity;

2) **sensitive data** is referring to national, racial or ethnic origin, political attitudes, trade union membership, religion and philosophical beliefs, criminal convictions, health and sexual life of the data subject and the data subject's genetic data; a sensitive data is also a biometric data that allows direct identification or authentication of the data subject. Sensitive and personal data can be processed, collected, stored, liquidated, recorded, almost always with the consent of the person concerned, and the law is installed by the supervisory authority, the Office for Personal Data Protection, which can be contacted in an emergency. **This law should interest every television worker, every author who publishes news and current affairs information about others.**

One of the ways to get information is through technological means of communication through electronic transmission systems. It can be imagined that while in the 19th century the European continent gradually „telephonised“ and into the invention of wireless telegraphy was quilted through and through the electrical telegraph line, today Europe is riddled not only horizontally (cable lines) but also vertically - thousands of electromagnetic waves of different lengths and frequencies that control the space between heaven and earth. And what terrestrial transmitters do not procure, they provide satellite systems. The Access Directive of the European Parliament and the Council of Europe reflects the **existence of such networks**. It aims to '**cover electronic communications networks and services in the Community**' and emphasizes **the right of every citizen to access them**. Furthermore, the European Parliament regulates the use of these networks in competition with regard to the "end-user" by the Universal Service and Users' Rights Directive. It calls on the Member States to ensure equal economic and technical conditions for the reception of services and to preserve the principles of objectivity, transparency, non-discrimination and proportionality in competition. Although the Directive focuses primarily on

telephony and mobile operator services, States in the field of digital television broadcasting encourage the standardization of devices and their equipment with all connectors allowing reception so that **"interoperability is guaranteed for all devices sold within the Community"**.



Audiovisual communication

Directly on audiovisual communication, two documents are concentrated: the *European Audiovisual Services Directive* on the coordination of certain laws, regulations and administrative provisions of the Member States governing the provision of audiovisual media services and the *Czech Broadcasting Act*. Let us take a closer look at these two standards as they **directly regulate the space for the establishment, operation and termination of television broadcasting**.

The European Perspective notes that **"audiovisual services are equally cultural and economic services"**. This is an important definition **specific to European tradition**; partly explains why, for example, the cinematography sector in our country falls under the Ministry of Culture and not industry such as the United States of America. Furthermore, the growing

importance of audiovisual services for society and democracy - "in particular by ensuring freedom of information, diversity of opinion and media pluralism" is noted. Audiovision is thus given a great deal of power, an influence on the '**way people shape their opinions**', and it is emphasized that it is precisely for this 'special nature' that it is directed and that the user is always in a position to know who specifically services. In doing so, the *Directive* defines that this guidance applies only to the mass media, not to "private correspondence in any form, such as e-mails sent to a limited number of recipients" - not just email, but skype and social networks. This standard is also instructive in the definition of audiovisual media service, program, media service provider, television broadcasting, broadcaster, audiovisual commercial communication, television advertising, hidden audiovisual commercial communication, sponsorship, teleshopping, product placement, European work.

These and similar terms are defined as follows:

- **radio and television broadcasting:** provision of programmes and other parts of broadcasting organised under the programme through electronic communications networks
- **re-admitted radio and television broadcasting:** reception of broadcasting of original radio and television programmes or essential parts thereof and their simultaneous, complete and unchanged dissemination to the public through electronic communications networks
- **nationwide broadcasting:** broadcasting which can receive to a defined territorial extent in the case of television broadcasting at least 70 % of the population of (e.g.) the Czech Republic
- **regional broadcasting:** broadcasting which, to a defined territorial extent, can receive more than 1 % of television broadcasting in the case of [...] television broadcasting and less than 70 % of the population of (e.g.) the Czech Republic
- **local broadcasting:** broadcasting a programme determined by its reach for and for the locally defined area; locally defined territorial area must not include more than 1 % of the population of (e.g.) the Czech Republic
- **broadcaster:** the legal or natural person who compiles the programme, including services directly related to the programme, determines the manner in which television broadcasting is organised and has editorial responsibility for such broadcasting, and under audio or video identification which

identifies the programme and services directly related to the programme, the programme and services directly related to the programme are initially disseminated or disseminated through third parties

- **retransmission operator:** the legal or natural person who decides on the composition of the retransmission programmes, including services directly related to the retransmission programmes, and who disseminates such programmes and services directly related to them; through third parties, disseminate in full and unchanged form on the basis of the authorisation to operate the retransmission

- **programme:** deliberate timing of individual television programmes and other parts of broadcasting, other parts of broadcasting means audio, video or audio-visual parts of a broadcast which are not of the nature of the programme and are classified between programmes or are programmes accompanied or interrupted, in particular advertising, teleshopping, notification by the broadcaster concerning its own programmes and accompanying products directly derived from such programmes, reporting programmes, audio and video means announcing or separating the posting of commercial communications and other programme punctuation

- **full format programme:** a television programme containing programmes of different orientations and themes, in particular news, film, documentary, documentary, music and educational programmes, which is not aimed only at a certain group of people with the same interests

- **the one programme in television:** a moving image sequence with or without sound which, by its content, form and function, forms a closed whole of broadcasting and constitutes a separate item of the television programme

- **advertising:** any public notice, broadcast for consideration or similar consideration, or broadcast for the purpose of self-promotion by the broadcaster, with a view to promoting the supply of goods or services for consideration, including immovable property, rights and liabilities

- **hidden commercial communication:** a verbal or pictorial presentation of the goods, services, name or name, trade mark or activity of the manufacturer of the goods or service provider, indicated by the broadcaster on the programme, provided that such presentation deliberately pursues an advertising objective; may mislead the public about the nature of the presentation; such a presentation is considered to be intentional, in particular if it occurs for consideration or a similar consideration

- **teleshopping:** direct offer of goods, including immovable property, rights and obligations, or services, intended for the public and included in radio or television broadcasting for consideration or similar consideration
- **sponsorship:** any contribution from a person who does not broadcast radio or television broadcasting, does not provide audiovisual media services on demand, nor does he produce audiovisual works, provided for direct or indirect financing of radio or radio, programme or programme with a view to promoting its name or name, trade mark, goods, services, activities or images in public
- **subliminal communication:** audio, video or audio-visual information that is deliberately processed to affect the subconscious of the listener or viewer without being able to consciously perceive it

The importance of this broadcasting law is not only in the definition of terms, but in particular in the definition of the humanistic tradition of Europe: "**the broadcaster and the broadcaster of the retransmission has the right to broadcast programmes freely and independently.** Their content can only be interfered with by law and within its limits. The broadcaster **shall provide objective and balanced information necessary for the free creation of opinions. Opinions or assessment comments shall be separated from intelligence information**'. In this spirit, two other paragraphs on the principles of **objectivity** and **balance** in political-current affairs programmes continue, so that no political party or movement is favoured in the whole programme broadcast and that the programme tracks are drawn up in such a way that the broadcast provide a **balanced offer for all residents, taking into account their age, gender, colour, belief, religion, political or other mindset, national, ethnic or social origin and minority affiliation.** Furthermore, the *Act* ensures the protection of persons affected by television broadcasting content, including the often cited protection of the source and content of information, the promotion of European creation and European independent and simultaneous creation, the broadcasting of commercial communications (advertising, teleshopping, product placement) and prevents the emergence of a monopoly on the television and radio

However, when we talk about audiovision in general, it should be remembered that this concept does not include, by far, only radio and television broadcasting. The area of **cinema is governed by other own laws**, but far more problematic and legally inevitable is all the audiovisual

business in the **cyberspace of the Internet** – even here we know various streams, television and radio channels, repositories of the original or (e.g. *Netflix*), thematic pages, etc. And it can be assumed that at the moment the volume of audiovision on the Internet and elsewhere exceeds the entire classical television broadcast together. Here, the European Union comes up with the term '**audiovisual (media) on-demand service**'. It is precisely the fact that the programme offer is not determined by the service provider, but is compiled by the user himself, that limits and defines all other non-television activities.

The European Audiovisual Media Services Directive already cited clearly states that '**television broadcasting currently includes, in particular, analogue and digital television, live streaming (webcasting), and time video (near video on demand) and an on-demand audiovisual service is a 'non-linear audiovisual service' whose characteristic is that it is 'similar to television broadcasting, i.e. a non-linear audiovisual service. that they are trying to attract the same viewers as television broadcasts'** However, it differs from television broadcasting, '**in terms of the user's choice and control, as well as the impact they have on the company'**. A typical example of a service is the so-called "service". video on demand.

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