

EASTERN EUROPEAN LEGAL DEVELOPMENTS IN RADIO AND TV BROADCASTING

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I. Abstract

After the "fall of the wall" between the two political blocks in Europe, the field of mass media communications was one of the most important areas which reacted immediately to the profoundly changed social circumstances: The substantially unrestricted contents of radio- and TV broadcasting brought about the so-called "information revolution" in Eastern Europe with all its positive and negative consequences. In contrast thereto, the elaboration and implementation of an appropriate legal framework proved to be much more difficult to achieve since this development had to overcome the traditional principles of state monopolism and to respond to the "explosion" in the technical development of broadcasting, including the ever increasing possibilities of satellite communication. Another important aspect constitutes the fundamentally changed role of one of the relevant international communication organisations, i.e. Intersputnik.

This development takes place on several normative levels: The crucial change consists of the large possibilities of private broadcasting based upon the predominant interpretation of the pertinent provisions of the new Eastern European constitutions and, in particular, the enactment of specific statutory law. These acts seek, simultaneously, to regulate the acceptable amount of state influence in this area and to respond to the new technical conditions for broadcasting and are accompanied by further regulations of infra-constitutional rank.

The paper presents and attempts to analyze some exemplary steps taken in Eastern Europe

during the last years. Particular attention is devoted to the task of comparing the respective solutions of national law with the existing and developing international, especially European standards.

II. Introduction

Subsequent to the demise of the former socialist political systems in Europe, the area of mass communication in these countries constituted one of the most important areas of change. This change was and is characterized by the now basically unrestricted flow of information; in contrast to this factual development, the normative response to this new situation proved to be much more difficult since it had to overcome the traditional principles of state monopolism in this field and to take adequate account of the pertinent technical developments, in particular in the field of satellite communication. Thus, this paper seeks to present and analyse the pertinent developments in the legal order of some formerly socialist countries, namely Bulgaria, the Czech Republic, Poland, Russia and Slovakia; with a view to the aspirations of these countries to be integrated into the relevant European framework, it seems appropriate to examine whether and to what extent these developments correspond to the existing European standards as they emerge, in particular, from Art. 10 of the 1950 European Convention on Human Rights (ECHR) and the pertinent jurisprudence of the European Court of Human Rights². A brief presentation of the fundamentally changed role of Intersputnik as one of the important international organizations in this area constitutes the second aspect dealt with in this paper.

III. Examples of National Legal Regulations

Before embarking upon the task to present the new domestic legal orders of Bulgaria, the

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Czech Republic, Poland, Russia, and Slovakia, and in order to be able to determine whether and to what extent they conform with the pertinent European standards as emerging from Art. 10 ECHR³, it seems necessary to briefly recall the main features of these standards.

These have been developed, in particular, in three judgements of the European Court of Human Rights: the decision of 28 March 1990 in the Groppera case⁴, the decision of 22 May 1990 in the Autronic case⁵ and the decision of 24 November 1993 in the Lentia case⁶. Without going into details, the contents of these judgements may be summarized as follows: In the Groppera case, the Court held that every broadcasting programme, irrespective of its contents, which is transmitted through air or by cable, falls under the scope of applicability of Art. 10 (1) (1 and 2) ECHR; the right of States to require licensing under Art. 10 (1) (3) ECHR applies also to the transmission of radio programmes by cable but must be exercised primarily in order to regulate the technical aspects of broadcasting and in accordance with the criteria laid down in Art. 10 (2) ECHR; limitations of the freedom to broadcast may be justified with a view to protect the international telecommunication system and the rights of others; States adopting such limitations benefit from a margin of appreciation that is not transgressed if, as in that case, such a limitation is narrowly construed and serves to prevent the circumvention of a legal provision. In the Autronic case, the Court held that the reception of foreign TV programmes transmitted by satellite by means of an aerial falls within the scope of Art. 10 (1) (1 and 2) ECHR; national regulations subjecting the use of the necessary receivers to a specific permission and, thus, interfering with the right to receive information, are, in principle, admissible under Art. 10 (1) (3) ECHR if compatible with the criteria laid down in Art. 10 (2) ECHR; this applies also to national legal measures taken with a view to protect the international telecommunications system by preventing disorder and disclosure of confidential information; in that case, however, the national authorities had exceeded their margin of appreciation: firstly, the nature of the broadcasts in question precluded describing them as not intended for the general use of the public, and, secondly, there was no risk of obtaining secret information by means of dish aerials receiving

broadcasts from telecommunication satellites. In the Lentia case, the Court held that national regulations that made it impossible to set up and operate private radio or TV stations because of a state monopoly interfere with the exercise of the freedom to impart information protected under Art. 10 (1) ECHR; States are permitted to regulate by licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects; granting or refusing licenses might also be made conditional on other considerations such as the nature and objectives of a proposed station, the potential audience at national, regional or local level, the rights and needs of a specific audience, and the respect for obligations deriving from international legal instruments; the monopoly system operated in Austria was held to be capable of contributing to quality and balance of programmes and thus consistent with Art. 10 (1) (3) ECHR; however, from the fundamental role of the freedom of expression in a democratic society results that a public monopoly that imposes most severe restrictions on this freedom could only be justified under Art. 10 (2) ECHR if it corresponded to a pressing need which was not established in the present case.

The principal human rights standards in the field of radio and TV broadcasting which may be deduced from this jurisprudence are the following: The freedom of expression as laid down in Art. 10 ECHR encompasses, in principle, the right to establish private radio and TV stations and state monopolies have to be considered as unjustified interferences with this right unless there is a pressing need for such restrictions; from this results that national legal orders have to provide for a "dual system" of public and private radio and TV stations that may, however, restrict the right to establish such stations in order to protect the interests spelled out in Art. 10 (2) ECHR including the respect for obligations stemming from the international telecommunication law. On the other hand, the freedom to receive information encompasses, in principle, the reception of radio and TV broadcasts transmitted by satellite; this right may only be restricted if such interference is necessary in order to safeguard the criteria laid down in Art. 10 (2) ECHR.

1. Bulgaria

a) On 12 July 1991, the Grand National Assembly adopted Bulgaria's new Constitution⁷ which contains several

provisions relevant for this paper: By virtue of Art. 18 (3), the State shall exercise the sovereign rights with respect to radio frequencies and geostationary orbit positions assigned by international instruments to Bulgaria. The possibility of a state monopoly in the field of postal and telecommunications is envisaged in Art. 18 (4) according to which such a monopoly may be established by law. Pursuant to Art. 18 (5), conditions and procedures regulating the grant of licences for the exercise of pertinent activities are to be laid down by statute.

The human rights chapter of Bulgaria's new Constitution enshrines, in its Art. 39 (1), the right of everyone to express his/her opinion and to impart it by words, written or orally, sound, image or any other means. Pursuant to Art. 40 (1), the press and other mass media shall be free and shall not be subjected to censorship. According to Art. 40 (1), everyone is entitled to seek, obtain and disseminate information. All these rights are subject to those limitations which form part of the pertinent international, in particular European standards, such as the protection of national security or the rights of others. It should be mentioned that Bulgaria's Constitution does not provide for a specific individual right to engage in radio and TV broadcasting.

b) As regards statutory law, Bulgaria's telecommunications order is still based upon the Telecommunications Act of 26 March 1975⁸ which, in its Art. 2, entrusted the Ministry of Information and Telecommunication with the task to control and supervise the mass media. The responsibility for assigning frequency bands and frequencies for radio and TV broadcasting was attributed to the Interdepartmental Radiofrequency Commission the status and tasks of which were, according to Art. 31, to be determined by the Council of Ministers, i.e. the government. In consistence with the political system of those years, the act defined "enterprises, economic and social organisations" as the legal subjects to which such frequencies should be assigned.

The profound changes of Bulgaria's economic and political system imply the necessity of preparing new legislation also in the field of telecommunication. Pending the adoption of a new Telecommunications Act, the relevant modifications were effected by infra-statutory norms: The first step consisted of Government

Directive No. 24 of 6 February 1992⁹ which brought about some changes of the structure of the institutions involved in telecommunications; it should be noted that this Directive explicitly refers to the enactment of such a new Telecommunications Act by limiting its temporal applicability "until the new Telecommunications Act enters into force". For the interim period, the main organ in this field is the Government's Committee of Post and Telecommunications which assumed the competences previously assigned to the Committee of Telecommunications and Information¹⁰. Among its various powers should be mentioned the granting of licenses (Art. 2 (8)) and the representation of Bulgaria in international telecommunication organisations (Art. 2 (12)).

Another major step was recently taken by this Committee's Decree No. 10 of 3 May 1994¹¹ that determines the procedure of granting licenses for telecommunication activities. Its Art. 5 differentiates between so-called individual and group licenses: An individual license is granted to legal or natural persons for the purpose of founding, maintaining and using the general telecommunications network and/or providing telecommunication services as well as founding, maintaining and using private telecommunication networks. Group licenses are described as licenses issued for specific telecommunication activities which can be provided by each of their holders. As a rule, individual licenses concerning the general telecommunication network are granted on the basis of a concours held either upon that Committee's initiative or in response to applications entered by interested legal or natural persons (Art. 8 (1)). The conditions for obtaining a group license have to be published in the official Law Gazette (Art. 11). Applicants have to prove by submitting the necessary documents that they comply with such conditions (Art. 12). Pursuant to Art. 17, the power to determine the conditions for obtaining licenses is held by the President of the Committee. Such licenses are issued on a personal basis and may not be transferred to a third person (Art. 18); they are valid for a maximum period of 25 years.

2. The Czech Republic

a) The Constitution of the Czech Republic, adopted by the Czech National Council on 16 December 1992¹², declares in its Art. 3 the Constitutional Law No. 23 of 9 January 1991, the Charter of Fundamental Rights and

Freedoms¹³, to form an integral part of the constitutional order of the Czech Republic. In accordance with international standards, in particular Art. 10 ECHR and Art. 19 ICCPR, its Art. 17¹⁴ guarantees the freedom of opinion and the right to information. It does not contain, however, a provision specifically referring to an individual's right to engage in radio or TV broadcasting.

b) Notwithstanding the dissolution of the Czech and Slovak Federative Republic (CSFR) on 31 December 1992/ 1 January 1993, the former (federal) Act No. 468 on Radio and TV Broadcasting of 30 October 1991¹⁵ still constitutes the statutory basis for such activities in the Czech Republic. Under its Art. 2 (1a), radio and TV broadcasting is defined as the broadcasting of programmes and audiovisual information by means of broadcasting stations, cable networks, satellites and other means intended for reception by the general public. As regards the institutional framework, Art. 3 introduced the 'classical' dual system by providing for two categories of broadcasting enterprises, namely those which are referred to as 'broadcasters by virtue of law' (provazovatelé ze zákona) and those which are referred to as 'holders of a license' (držitelé licence).

In Art. 3, the conditions for obtaining such a license are determined as follows: A legal person must have its seat in the territory of the CSFR (now the Czech Republic) and be registered in the general commercial register; if it has its seat outside the territory of the CSFR, a license may be granted only for the simultaneous, complete and unchanged transmission of already broadcasted programmes. A natural person may obtain a license if he/she has his/her permanent residence in the territory of the CSFR; having obtained the license, such person is required to apply for registration in the commercial register.

'Broadcasters by virtue of law' are obliged, inter alia, to guarantee, in co-operation with the respective telecommunication organs and organisations, the broadcasting of their programmes for the population of the territorial unit for that they are charged with securing broadcasting services (Art. 9). For that purpose, they receive 'reserved transmission paths' (parts of the frequency band) and have access to the network of stations what enables them to cover the whole territory of the CSFR by two TV programmes.

Under Art. 23 (2), holders of a license receive such 'reserved transmission paths' which were originally used by the third, experimental TV programme.

Particular attention deserves Art. 10 which determines as a further condition for obtaining a license that no licensee may acquire a dominant position in the field of mass media. In order to guarantee the implementation of this principle, the Act instituted, in its Arts. 16 - 18, the Federal Council of Radio and TV Broadcasting which was, inter alia, vested with the task to grant such licenses. This organ was construed as an independent body, composed of nine members three of whom were elected by the Federal Assembly (Federal Parliament), three by the Czech National Council and three by the Slovak National Council, the parliaments of Czechoslovakia's component states, for a period of six years. Corresponding to the federal structure of the CSFR, acts passed by the Czech and Slovak National Councils introduced, moreover, Republic Councils of Radio and TV Broadcasting which were responsible for granting licenses to legal or natural persons the planned broadcasting activities of whom were limited to the territories of the respective republics¹⁶. Subsequent to the dissolution of the CSFR, these last-mentioned institutions fully assumed competences with regard to the granting of licenses for the territories of the Czech Republic and Slovakia, respectively¹⁷. Finally to be mentioned in this context is the present debate in the Czech Republic concerning the question as to whether the Czech Council of Radio and TV Broadcasting really is to be considered a truly independent body since, pursuant to Art. 3 (3) of Act No. 103 of the Czech National Council of 21 February 1992¹⁸, the Council's nine members are elected by the Czech Parliament which has, moreover, under Art. 5 (4) of this Act, the right to dissolve the Council if it does not comply with its obligation to submit a report on the state of broadcasting and its activities "at least once in a year or at any time if the Czech National Council so requires"; this provision has been criticized as imposing an obligation upon the Council threatening its independence¹⁹.

The 1964 Czech Act on Telecommunication in its present version of 1992²⁰ still reflects the view predominant at the time of its enactment as it is based upon the notion of the so-called "coherent telecommunication

network" (jednotná telekomunikační síť). In Art. I § 2 of the 1992 Amendment, this notion is defined as "a telecommunication network for the needs of natural and legal persons, composed of the distance- and local network". According to Art. I § 1, establishing and operating telecommunication stations and providing telecommunication services requires, as a rule, a pertinent permission or authorization issued by the competent state organs.

As concerns radio and TV broadcasting stations, Art. I § 1 stipulates moreover that the competent state organs decide on the establishment and operation of such stations run by 'broadcasters by virtue of law'. As to the other category of broadcasters, the 'holders of a license', Art. I § 5 provides that they may receive a permission for the establishment of radio or TV stations if they have obtained "a permission to broadcast radio and TV programmes and the station in question will be used in accordance with the Plan for the Use of Frequencies for Radio and TV Broadcasting".

Presently, substantial amendments of the Telecommunication Act are being discussed. Suffice to mention the so-called 'Principles of State Telecommunication Policy' approved by the Czech government on 10 August 1994 the contents of which should serve as the basis for future legislative activities. Notwithstanding the above-presented amendments effected in 1992, new legislation is considered to be necessary for two main reasons: Firstly, to provide for precise rules concerning the possibilities of private persons to engage in telecommunication activities; secondly, to profoundly reform the institutional system in the field of telecommunication. In the latter context, it is envisaged to create, under the authority of the Ministry of Economy, a Czech Telecommunication Agency to be vested with the task to issue the necessary technical regulations whereas the Ministry would function as the central organ of State administration and, in particular, grant the licenses necessary to engage in telecommunication activities. Irrespective of these plans, it has already been decided to embark upon the preparatory work for the enactment of a completely new Telecommunication Act which should abandon the now obsolete system underlying the 1964 Act and be based upon a differentiation between a public and a private

network instead of the traditional 'coherent telecommunication network'.

Finally, it should be mentioned that there are - as yet - no specific legal regulations concerning telecommunication activities by satellites.

3. Poland

a) Poland has - as yet - not succeeded in adopting a new Constitution fully reflecting the fundamental economic and political changes which took place since 1989. According to Art. 77 of Act No. 426 of 17 October 1992, generally referred to as the "Small Constitution"²¹, the catalogue of fundamental rights and freedoms of the 1952 Constitution remained in force. Its Art. 83 guarantees the freedom of speech and of the press to Polish citizens; consistent with the socialist human rights concept, this article also provided that e.g. printing houses, post and telecommunication installations, radio and other means of communication should be at the disposal "of the working people and its organisations". Obviously, these provisions will have to be changed in order to make Poland's telecommunication law compatible with non-socialist concepts of human rights and with the above-mentioned contents of Art. 10 ECHR.

A first step into this direction was made, on 15 October 1993²², by the introduction into the Constitution of Art. 36 b. This article provides for the establishment of a new State organ, the 'National Council of Radiophysics and Television', the task of which consists of protecting the freedom of expression and of implementing the right of the people to information and of safeguarding the public interests as regards radio and TV broadcasting. More detailed regulations, e.g. as concerns the composition of the Council and a precise definition of its tasks, was left to statutory law.

b) This main statutory source for Polish telecommunication law is the recent Act No. 34 on Radio and Television of 15 December 1993²³. Its Art. 2.1 introduces a dual system under which the right to broadcast is attributed to the 'subjects of public radio and TV broadcasting' as well as to those private persons who obtain a broadcasting license. Such licenses are issued by the above-mentioned National Council introduced by

Art. 36 b of the Constitution; it has nine members four of whom are elected by the Sejm, two by the Senate and three are appointed by the President (Art. 7.1) who also appoints the Council's chairman (Art. 7.2). Pursuant to Art. 8.1, all members of the Council must be specialists in the field of radio and television and have to suspend all political activities during their six-year term of office.

The conditions for obtaining a license are laid down in Arts. 33 - 40: It may be granted to natural persons holding Polish citizenship and being domiciled in Poland or to legal persons with their permanent seat in Poland (Art. 35.1). In contrast to the corresponding Czech or Slovak legislations, Art. 35.2 of the Polish Act provides for a detailed regulation as regards applications for a license filed by a legal person with non-Polish partners: The share of foreign legal subjects of the basic or share capital may not exceed 33%, the founding contract or statute of the company in question must provide that the majority of the members of its administrative or supervisory board is composed of Polish citizens permanently domiciled in Poland, and the share of voting rights in the assembly of associates or the general meeting held by foreign legal subjects or legal subjects controlled by foreign legal subjects may not exceed 33%.

As regards the contents of radio and TV programmes, particular attention should be given to the highly controversial Art. 18.2 which was adopted after a long and intense public discussion and clearly reflects the strong impact of religion on Polish public life²⁴. It stipulates that, as a rule, all radio and TV programmes have to respect the religious feelings of the the audience, especially by taking account of the Christian value system²⁵. In the same vein, Art. 21.6 specifies this obligation with regard to public broadcasting which is required to respect this "Christian value system based upon universal ethical principles".

Mention should also be made of Art. 37 stipulating which complementary data are to be furnished in order to obtain a license for satellite broadcasting, namely the name of the satellite, its position in the geostationary orbit, the frequency used and the power of the transponder.

More technical aspects are regulated in Act No. 504 on Telecommunications of 23 November 1990²⁶. Its Chapter II contains the main rules regulating activities in the field of telecommunications: According to Art. 7.1, it is possible to found and to use any telecommunication system on the Polish territory only by virtue of a license granted by the Ministry of Telecommunications; such license can be of either individual or general character (Art. 7.2). Both types of licenses may be withdrawn if the technical parameters of the installation or system in question have changed (Art. 7.6). Major legal restrictions on the granting of licenses are to be found in Art. 16: no license may be issued for the operation of international telecommunication services of a general character (Art. 16.1); no license for the use of radio and TV installations may be granted to foreign legal subjects or to legal subjects with a foreign capital share exceeding 33% (Art. 16.2); no license for the use of telecommunication installations, lines or networks directly connected by cable, radio or within the framework of the international satellite systems to be used for the purpose of trans-boundary telecommunication may be issued to foreign legal subjects or foreign share companies (Art. 16.3); finally, foreign legal subjects or companies with foreign shares exceeding 49% of the share capital may not be granted a license to use inter-city lines and telecommunication networks or to operate inter-city telecommunications services (Art. 16.4).

Moreover, this Act created as major subsidiary organs of the Ministry of Telecommunications the State Telecommunications Inspection vested with the task to control the telecommunication networks, lines and installations, and the State Telecommunication Agency vested with the task to control the radiocommunication networks, lines and installations, to reserve the necessary frequency assignments, to secure unhindered access to the assigned slots of the geostationary orbit, and to participate in the international coordination efforts in this field.

4. Russia

a) The new Constitution of the Russian Federation (Russia), approved by referendum on 12 December 1993, contains in its Art. 29 the guarantee of freedom of information. According to this provision, everyone has the right to freedom of thought and expression and nobody shall be forced to express his

opinion or conscience or be forced to abandon them. Furthermore, everyone has the right freely to seek, receive, impart, produce and disseminate information in any legal way. A list of those informations which are considered to constitute state secrets shall be determined by a federal act. Moreover, the freedom of mass information is guaranteed and censorship forbidden.

Another set of rules concerning the institutional system is to be found in Art. 71 of the Constitution which attributes competences in the field of federal transport, communication, information and telecommunication as well as space-related activities to the Russian Federation.

b) As basis for any activities in the field of mass communication media was intended the Act on the Mass Media of 27 December 1991²⁷ which was, however, limited to a general regulation of the legal position of print and electronic media and envisaged further legislation in the form of a new Act on Radio and TV Broadcasting. A draft of this act was elaborated by a working group of the Supreme Soviet in 1992 - 93 and proposed the introduction of a dual system attributing the power to grant licenses for radio and TV broadcasting to independent federal or regional media institutions. This draft was, however, rejected by the Supreme Soviet on 17 February 1993. Thus, the factual development in this field is brought about by Presidential Decrees such as, e.g., the Decree on Citizens' Supplementary Guarantees of Their Right to Information of 31 December 1993²⁸ which concerns access to information on the activities of "state organs, organisations and enterprises, social associations and civil servants", or the Decree on the Judicial Chamber for Information Disputes of the same date²⁹. This body assumed some of the functions of the previous "Tretejsk Information Court" that was instituted in order to settle information disputes arising during the 1993 election campaign³⁰.

All these regulatory steps as well as the present system of granting broadcasting licenses by a Provisional Broadcasting Commission existing since autumn 1991 may be described as mere provisoria; a final solution of the problems connected with the establishment of a legal framework for mass communication is, however, presently under discussion. In this context, particular relevance should be attributed to the rapid development

of private broadcasting in Russia which might be further enhanced once the envisaged federal Act on State Support to the Means of Mass Communication of the Russian Federation will have entered into force; a draft of this Act is soon expected to be presented to the competent institutions including the Committee of the State Duma for Information Politics and Telecommunication³¹. Another legislative project to be mentioned is the preparation of a federal Act on Information, Informatisation and Protection of Information a first version of which has already been approved by the State Duma and has been transmitted subsequently to the Federal Assembly and other bodies for further consideration³².

5. Slovakia

a) The Constitution of the Slovak Republic was adopted on 1 September 1992³³. The right to information is enshrined in its catalogue of fundamental rights and freedoms, more specifically in Art. 26³⁴. This provision was mainly taken from Art. 17 of the former federal Charter of Fundamental Rights and Freedoms, still in force in the Czech Republic³⁵. The only, however very important, difference is the introduction of a specific reference to radio and TV broadcasting in Art. 26 (2) of the Slovak Constitution which provides the constitutional basis for making such activities expressly contingent upon State approval.

b) According to Art. 152 (1) of the Slovak Constitution, all former federal (i.e. Czechoslovak) constitutional acts, statutes, decrees and other generally binding legal regulations remained in force in Slovakia subsequent to her independence so long as they did not contravene the Slovak Constitution. Consequently, the federal Act No. 468 on Radio and TV Broadcasting of 30 October 1991³⁶ became first part of the Slovak legal order and was later again promulgated as Act No. 268 of 19 November 1993³⁷, as amended by the Slovak Act No. 166 on Measures in the Area of Radio and TV Broadcasting of 14 July 1993³⁸. As the just mentioned Czechoslovak Act No. 468, it is based upon a dual system, attributing the competence to grant licenses to the Council of the Slovak Republic for Radio and TV Broadcasting (Art. 10 (3)). The composition of this body has been regulated by Act No. 269 of 19 November 1993³⁹ establishing this Council: It is composed of nine members, all

elected by the Slovak National Council for a period of six years (Art. 3). Its powers are, however, limited by virtue of Art. II (8) of the above-mentioned Act No. 166/1993 which stipulates that licenses to broadcast programmes for the entire Slovak territory have to be approved, upon a proposition by this Council, by the Slovak parliament. Such approval constitutes a precondition for the eventual grant of such a license to be issued by that Council.

By Act No. 96 of 24 March 1993⁴⁰, the Slovak National Council adapted the former federal Act on Telecommunication⁴¹ of 1964, in its version of 1992, to the specific Slovak conditions. However, just like that former federal Act (and the Czech Act No. 150 of 12 March 1992⁴²), this new Slovak law continues to base the telecommunications system upon the concept of the 'coherent telecommunication network' which is defined in Art. I (2) as "the complex of all telecommunication networks situated in the territory of the Slovak Republic".

In contrast to the situation in the Czech Republic, the Slovak Act No. 96 introduced, in its § 21, a new institutional structure of the organs of State administration; these are the Ministry of Traffic, Communications and Public Works, the Telecommunication Office of the Slovak Republic and regional telecommunication offices. The competences of the Telecommunications Office include, *e.g.*, the assignment - contingent upon the consent of the Ministry of Defence and the Ministry of the Interior - of frequencies and frequency bands for telecommunication facilities (§ 21 b (4g)).

Finally, it should be mentioned that there are - as yet - no specific regulations on satellite telecommunication.

IV. Legal Developments concerning Intersputnik

Finally, a brief presentation of recent developments regarding Intersputnik seems to be called for. This international satellite organisation had been founded - somewhat as a rival to Intelsat - by the Soviet Union and other COMECON member states on 15 November 1971⁴³. In 1989, the use of the services of Intersputnik was opened also to non-member states, such as Algeria, Iraq and

India. In August 1992, the United States Federal Communication Commission authorized At&T and IDB to use Intersputnik as a separate system to supplement Intelsat as a means of communication between the United States of America and Russia.

Presently, a far-reaching re-structuralization of Intersputnik is being discussed: Items under discussion include the abolishment of the principle of every member state having one vote in Intersputnik's Council's decision-making process, the adoption of plans concerning the design, operation and further development of the communication system, the drafting of rules on specifications for ground stations and their integration into the general system, the allocation of frequency channels, the fixing of uniform rates for transmission, the annual election of a Director General, the establishment of a different institutional set-up, *etc.* Generally speaking, it seems clear that Intersputnik's future institutional system will be largely influenced by structural elements of Intelsat and Inmarsat including the possible introduction of a system of weighted voting.

In contrast to the former policy which was characterized by the lease of repeaters from the Russian Postal and Telecommunication Administration aboard the five Gorizont satellites, Intersputnik is expected to have its own repeaters and to continue (partially) financing the construction of satellites.

V. Concluding Remarks

By way of conclusion it may be justified to state that the legal development concerning telecommunication in the countries covered by this paper conforms by and large to the respective developments in Europe as a whole. This applies - at least as regards the Czech Republic, Poland and Slovakia - in particular to the question as to whether the pertinent legislations are compatible with the legal standards emerging from the jurisprudence of the European Court of Human Rights. Although most of the countries dealt with in this paper do not have legislation specifically addressing satellite telecommunication, the use of space-based telecommunication facilities seems to be generally possible due to the predominant view according to which the above-presented legal rules governing telecommunication in general and radio and

TV broadcasting in particular apply also to telecommunication activities by satellites.

² It may be recalled that Bulgaria, the Czech Republic, Poland and Slovakia are member states of ECHR whereas Russia is - as yet - no member state of the Council of Europe and thus not in a position to ratify this treaty. Since none of these countries is a member state of the European Union and with a view to the limited space available, it seems justified not to deal with the question as to the compatibility of these national legislations with the pertinent developments within the European Union.

³ This provision reads: "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

⁴ *Groppera Radio AG v. Switzerland*, Series A No. 173, reprinted in e.g. EuGRZ 17 (1990), 255 et seq.

⁵ *Autronic AG v. Switzerland*, Series A No. 178, reprinted in e.g. EuGRZ 17 (1990), 261 et seq.

⁶ *Informationsverein Lentia v. Austria*, Series A No. 276, reprinted e.g. in HRLJ 15 (1994), 31 et seq.

⁷ Durzhaven Vestnik No. 56 of 13 July 1991.

⁸ Durzhaven Vestnik No. 27 of 4 April 1975.

⁹ Durzhaven Vestnik No. 16 of 14 February 1992.

¹⁰ Durzhaven Vestnik No. 39 of 12 May 1992, amended by Government Directive No. 202 of 16 October 1992, Durzhaven Vestnik No. 87 of 27 October 1992.

¹¹ Durzhaven Vestnik No. 48 of 14 June 1994.

¹² Act No. 1 of 16 December 1992, Sbirka zákonu České republiky No. 1 of 31 December 1992.

¹³ Sbirka zákonu České a Slovenské federativní republiky No. 6 of 8 February 1991.

¹⁴ This provision reads: "(1) Freedom of opinion and the right to information are guaranteed. (2) Everyone has the right to express his opinion by word, writing, press, picture or by other means, as well as freely to seek, receive and disseminate ideas and information regardless of the State boundaries. (3) Censorship is forbidden. (4) The freedom of expression and the right to seek and disseminate information may be limited by law if its necessary, in a democratic society, for the protection of the rights and freedoms of others, for state security, public order, or for the protection of public health and morality. (5) State authorities and organs of the territorial administration are obliged to provide reasonable information about their activities. Conditions and means of access to information are specified by law".

¹⁵ Sbirka zákonu České a Slovenské federativní republiky No. 91 of 22 November 1991.

¹⁶ Act No. 103 of the Czech National Council of 21 February 1992, Sbirka zákonu No. 25 of 5 March 1992, and Act No. 294 of the Slovak National Council of 5 May 1992, Sbirka zákonu No. 61 of 11 June 1992.

¹⁷ See e.g. Art. 3 of the Constitutional Act No. 4 of the Czech National Council on Measures in Connection with the Dissolution of the Czech and Slovak Federal Republic of 15 December 1992, Sbirka zákonu No. 3 of 31 December 1992; and Art. IV of Act No. 474 of the Czech National Council on Measures Concerning the System of Central Organs of State Administration of the Czech Republic of 23 September 1992, Sbirka zákonu No. 95 of 22 October 1992.

¹⁸ See supra note 16.

¹⁹ Cf. J. Kabát, *Nezávislé instituce jsou páterí demokracie* (The Independent Institutions are the Back-Bone of Democracy), *Telegraf*, 10 August 1994 at p. 3.

²⁰ Act No. 110 of 5 June 1964, Sbirka zákonu No. 48 of 18 June 1964, amended by Act No. 150 of 12 March 1992, Sbirka zákonu No. 33 of 24 March 1992.

²¹ Dziennik ustaw Rzeczypospolitej Polskiej (Dziennik ustaw) No. 84 of 23 November 1992; this Act brought about a profound reform of the legal relationships between the major state organs but did not introduce a new bill of rights.

²² Dziennik ustaw No. 7 of 29 December 1993.

²³ Dziennik ustaw No. 7 of 29 December 1993.

²⁴ See L. Vinton, Sejm approves new law on radio and television, RFE/RL Vol. 1, No. 43, 30 October 1993.

²⁵ In a recent judgement, the Polish Constitutional Court declared this provision as compatible both with the Polish Constitution and Poland's obligations under international human rights treaties: The prohibition to disrespect the religious feelings of the audience was held to apply also to non-Christian religions and the obligation to respect the Christian value system did not constitute an obligation to propagate such values but rather a "paradigmatic description" of the scope of such values; see Rzeczpospolita of 8 June 1994.

²⁶ Dziennik ustaw No. 86 of 15 December 1990, as amended by Act No. 293 of 28 June 1991, and Act No. 451 of 9 October 1991.

²⁷ See M. Schuler-Harms, Neues Rundfunkrecht für die Russische Föderation, ZUM 37 (1993), 408 et seq.

²⁸ Rossijskaja gazeta of 6 January 1994, p. 4.

²⁹ Ibid.

³⁰ On 17 February 1994, it settled the first dispute submitted to it; see O prave na informaciju, Rossijskaja gazeta of 18 February 1994, p. 4.

³¹ Sobranije zakonodatelstva Rossijskoj Federacii No. 14 of 1 August 1994, Article 1557.

³² Ibid., Article 1558.

³³ Sbírka zákonu České a Slovenské federativní republiky No. 92 of 1 October 1992.

³⁴ This provision reads: "(1) Freedom of opinion and the right to information are guaranteed. (2) Everyone has the right to express his opinion by word, writing, press, picture or by other means, as well as to freely seek, receive and disseminate ideas and information regardless of the State

boundaries. Publication is not subject to permission. Business activity in the area of radio and television may be subject to State approval. Conditions are specified by law. (3) Censorship is forbidden. (4) The freedom of expression and the right to seek and disseminate information may be limited by law if it is necessary, in a democratic society, for the protection of rights and freedoms of others, for State security, public order, or for the protection of public health and morality. (5) State authorities and organs of the territorial administration are obliged to provide reasonable information about their activities. Conditions and means of access to information are specified by law."

³⁵ See supra note 14.

³⁶ See supra note 15.

³⁷ Zbierka zákonov Slovenskej republiky No. 67 of 19 November 1993.

³⁸ Zbierka zákonov Slovenskej republiky No. 44 of 30 July 1993.

³⁹ Zbierka zákonov Slovenskej republiky No. 67 of 19 November 1993.

⁴⁰ Zbierka zákonov Slovenskej republiky No. 28 of 5 May 1993.

⁴¹ See supra note 20.

⁴² Ibid.

⁴³ UNTS Vol. 859/860 No. 12343.