Arbitration Decision on Hercegovačka radiotelevizija HRT d.o.o. Mostar

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The High Representative's Special Envoy for Mostar

Mostar, 24 November 2006

Pursuant to the powers vested in the Special Envoy for the City of Mostar under the Decision of the High Representative on the Implementation of the Reorganization of the City of Mostar No. 186/04 of 28 January 2004 and Article 6 paragraph 4) thereof which provides that "*the authorities of the City of Mostar may refer to the Special Envoy any dispute arising from the reorganization of the City of Mostar. The Special Envoy may decide all such disputes.*

Emphasising that, according to the same provision, "the decisions adopted by the Special Envoy shall be final and binding".;

Bearing in mind that the Mayor of the City of Mostar in his letter of 26 September 2006 as well as the City Council by its Decision of 06 October 2006 called upon the Special Envoy to resolve the dispute related to status of Hercegovacka radiotelevizija Mostar by Arbitration;

Noting that on 03 November 2006, the Special Envoy chaired a meeting with the Mayor of the City of Mostar, the President of the City Council of the City of Mostar and Presidents of Political Party Clubs represented in the City Council of the City of Mostar and that no suggestions were made in that forum that would be acceptable to all participants.

Taking into account that in a subsequent meeting held on 15 November 2006, and in line with the previous discussion, the Special Envoy presented the solution outlined in this decision as a compromise solution to the parties mentioned above and that no agreement was reached on that basis.

Noting, in particular, that:

1. The Mayor and Croat Coalition agreed principally with the proposal, however they wanted to have a deadline that goes 45 days beyond a formation of Cantonal Governments.

2. The SDP Caucus also agreed with the proposal, but requested shorter deadline for financing to be by 31 December 2006 .

3. The SBiH rejected further financing of HRTas HRT is broadcasting in only one language. There was a request that arbitration should only apply to the cession of 60% of the ownership rights to the other municipalities in the West Herzegovina Canton. Namely, the cession of 100% of the ownership rights would be desirable.

4. The SDA wants one TV for all the citizens in the City of Mostar but alternatively agreed that in case of ownership transfer, a certain partner from the higher administrative level should be found.

Having considered, borne in mind and noted all the matters aforesaid, the Special Envoy for the City of Mostar issues the following:

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Mostar

Article 1

Until 31 March 2007, the City of Mostar shall subsidise Hercegovacka Radio Television d.o.o. Mostar (hereinafter referred as to: HRT) inthe same monthly amount as in the 2006 budget. To this end, 106,500 KM will be included in the budget for 2007.

Article 2

During the period provided for in Article 1 of this Decision, the City of Mostar as well as the management board and management of HRT shall conduct all steps required to transfer the ownership of HRT either to other levels of authorities, public institution/s or through the privatization process.

Article 3

The City of Mostar may decide to divide HRT into two separate legal entities i.e. radio and television. If so decided, the City of Mostar shall ensure proper registration of the two legal entities resulting of such division with the competent court and shall perform all the steps provided for in Article 2 of this Decision within the deadline determined in Article 1 of this Decision.

Article 4

In the event that the transfer of ownership of HRT as ordered in Article 2 of this Decision has not been effected by 31st March 2007 , bankruptcy or liquidation proceedings of HRT shall be processed by the competent Court in accordance with applicable laws.

Article 5

This Decision shall be published in the official gazette of the City of Mostar and shall enter into force on the day of its publication.

Explanation

The City of Mostar is the sole owner of the company. The company runs a regional television and radio station. Even managed jointly, the two sections of the company *de facto* work completely independently with separate locations and staff. The language of broadcasting is Croatian.

The station has been subject of political disagreements for years. The financial situation of the station has been disregarded and the enterprise has to be considered insolvent for years. It is indisputable that the accumulated loss until 31 December 2005 amounts to KM 993.891, with an additional KM 400,000 expected to be incurred for 2006. Thus, the basic capital of KM 1. 008.062 will be depleted. Current liabilities amount to KM 1.217.078. These include taxes as well as contributions to health and pension funds in particular. The equipment is outdated. Necessary investments are estimated at KM 1.396. 000. The annual loss of KM 369.882 (2005) does not yet include the legally prescribed contributions. Thus, an additional KM 400,000 annually would be required to continue with the program at present capacities but not allowing for an expansion.

When considering if to continue to keep the station in City ownership, economic and legal aspects have to be evaluated. Realistically speaking, the City will only be able to continue operating the station if it fully rehabilitates it, including servicing its debt, providing new ground capital and reinvestments as well as guaranteeing annual subsidies of KM 850,000. Given that the City of Mostar has to finance severance packages for surplus employees, a reorganisation of public companies for communal services, investments in basic infrastructure and reconstruction, its financial situation does not seem to allow for financing a station. The idea to possibly finance the

station with a contribution from the World Bank does not allow for sustainability: the World Bank offers soft loans that nevertheless have to be paid back and would burden the budget in coming years. As there is no medium- to long-term financial plan, only empirical values can be used as a basis. In any event, a responsible financing of such a station in the estimated amount would call into question the financial sustainability of the City. Article 53 of the Statute of the City of Mostar establishes that the City may only establish, support, take over or extend public companies that are proportional in size to the economic viability of the City, as well as its requirements.

Article 53 of the Statute also establishes that the City may only run public companies if this is in the interest of its citizens, i.e. of the City. However, HRT is a regional not a City station as confirmed by both its name and its programmatic approach. Therefore, it is questionable whether the running of the station in sole ownership by the City is legal and in line with the Statute.

Transforming the station from a regional to a multicultural City station does not appear to be politically feasible and would instead lead to new political conflicts. Such a station would have to be established from scratch without neglecting the question of its financing. The same applies to the idea of establishing a Bosniac station in addition to the existing one. Referring to the existence of television stations in other cities in BiH does not lead to a different result either as the significant destruction during the war requires especially high expenditures for reconstruction and economic development. Furthermore, the dismal financial situation of the City's public companies requires significant investments.

However, it would be unfair to close down the station immediately, i.e. to liquidate the company, which would be legally feasible. If possible, it should be taken into account that the Croat side considers a Croat station an opportunity for promoting Croat culture and language in Herzegovina . As this cannot be seen as a task of the City, the station has to be offered the opportunity to position itself differently. Therefore, there will be a deadline until 31 March 2007 for anybody who supports a Croat station to search for solutions. Options might be to try to persuade other public authorities to take over the ownership or to privatise the company.

From the point of view of the arbitrator a postponement of the deadline is unacceptable. Since the Statute became effective in January 2004, this problem has been discussed without passing any decision. It is to be feared that without a deadline a decision would be always delayed. Ongoing establishment of the governments of the state is not an obstacle for setting a deadline.

A conclusion that HRT should not be financed from the city budget corresponds to the request of SBiH. Therefore it is not rational that the proposed 60% of the ownership rights be ceded to the other municipalities and that 40% burdens the City budget. Therewith the financing from the City would be continued. The proposal that 100% of the ownership to be transferred to the other municipalities is not serious, taking into consideration that other municipalities would question why the City of Mostar does not want to participate in the financing any why should the burden be imposed to them. Incidentally, no reason could be identified why should the Arbitration be restricted on ceding the rights to the other municipalities.

The radio section of the station has to play a special role in the entire process. On 30 June 2003 already, the former municipalities decided to split the television and radio sections of the station. Due to the joint financial management of the company it is not visible to what extent the radio section contributes to subsidising the television one. According to representatives of labour unions, the radio station could operate without subsidies. Therefore, its privatisation should be considered.

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