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Evolution of the European Standards of Reporting of Major Events by the Electronic Media

KEY WORDS: major events, reporting rights, TV, European standards, Council of Europe, European Union, European Convention on Transfrontier Television, “Television without Frontiers” Directive

ABSTRACT: The author discusses the legal framework governing broadcasts of major events and a right of short reporting in the electronic media, mainly TV. It covers European law in broader sense, including regulatory instruments of the Council of Europe (e.g. European Convention of Transfrontier Television) and the European Union (e.g. “Television without Frontiers” Directive). Recent legal developments in this field discussed are: the Court of First Instance ruling in the “Infront” case, the proposal for an amendment of “Television without Frontiers” Directive and preparation for a new recommendation of the Committee of Ministers of the Council of Europe in this field was included. The step-by-step development of these standards was influenced by the fact that, on the one hand, member states should ensure that broadcasters established in other member states are not deprived of access to events of high interest to the public which are transmitted by broadcasters under their jurisdiction but, on the other, it should not be forgotten that such reporting restricts exclusive marketing rights and therefore affects contrary interests and important legal positions.

1. Introductory remarks

The issue of broadcasting in electronic media, especially on television, of major events with exclusive rights is becoming increasingly significant regarding international regulation¹. The matter concerns adjusting the delivery of audiovisual services to technological progress, such as to digital television.² Also, we need to take into account the phenomena of information and communication technologies convergence³.

All this is particularly important because it is of great interest of the public. That is why dialogue on this issue intensifies any time there are significant events broadcasted such as sports games⁴. In 2006 there were many such events, including the Pope Benedict XVI pilgrimage to Poland, the Winter Olympic Games in Turin and the World Cup in Germany. This encourages an analysis of regulation regarding broadcasting of these events via electronic media.

New legal regulation was recently issued in order to create European standards. There was the Court of First Instance ruling in the *Infront WMAG* case, from December 15, 2005 as well as the proposal for an amendment of “Television without Frontiers” by the Council of Europe from December 13, 2005. It will be imperative to analyse the preparations and recommendations by the Council of Europe and the EU regarding “events of major public significance” and “rights for short reporting”. These are particularly relevant in order to delineate the activity of electronic media especially in transnational broadcasting⁵. It should be noted that both the Council of Europe⁶ and the European Union⁷ play an imperative role in

¹ See G. Damien, *Access to Content by New Media Platforms: a Review of the Competition Law*, “European Law Review” 2005, nr 1, p. 69.

² See K. Bereger, M. Schoethal, *Tomorrow’s Delivery of Audiovisual Services: Legal Questions Raised by Digital Broadcasting and Mobile Reception*, European Audiovisual Observatory, Strasbourg 2005, p. 12 i n.

³ See *The Networked Future: Living in a World of Converging Information and Communication Technologies*, EUR-OP, Luxembourg 2005, p. 14 i n.

⁴ Por. *Sports Image Rights in Europe*, ed. I.P. Blackshaw, R.C.R. Siekmann, Aster International Sports Law Centra, The Hague 2005.

⁵ Por. *Transnational Television Worldwide: Towards a New Media Order*, I.B. Tauris, London 2005.

⁶ See J. Jaskiernia, *Rola Rady Europy w dziedzinie mediów masowych*, “Studia Medioznawcze” 2001, nr 1, p. 76.

⁷ See I.E. Schwartz, *Broadcasting and the EEC Treaty*, “European Law Review” 1986, nr 1, p. 8.

the creation of international standards on the mass media which then in turn influence domestic regulation⁸.

2. The notion of “major events”

The phrase *major events*, also known as *events of major public significance*, means any and all events important to society. According to the KRRiTV⁹ art. 20b act 1, from December 29, 1992¹⁰, the phrase “major events” is defined as “events of significant social importance”. This encompasses political, social and cultural events and can be indicated by above average public opinion interest. Since direct access to such information is rather limited, then on a wider scale only the mass media, and television in particular, broadcast such news.

Major sport events are among the most imperative in this category. They are a modern phenomenon, are social and integrative in character, and around which predicted can be large viewing audiences. Sport commentaries are guaranteed high audiences figures which is important to advertisers as well as to the broadcaster himself as it brings in publicity¹¹. Audiovisual media’s broadcasting of sport events has become a potential marketing tool. This means that sport plays a key role in the development of these media¹².

Although sports events are imperative¹³, there are also other events of equal significance, such as political. These include presidential and parliamentary elections, presidential addresses, and momentous historical events (i.e. taking down of the Berlin Wall). Other major events are cultural, such as popular music band concerts.

First live broadcasts were transmitted in Germany in 1952 during a football tournament. An unprecedented event was a live broadcast of the crowning of Queen Elisabeth II. During the 1954 World Cup in Germany there was a great increase in purchases of TV sets for the households. A few years later, in 1974, also in Germany during the World Cup, a popularisation of colour TV sets was noted. Consequently, it was predicted that for the 2006 World Cup in Germany there will be increased interest in the HDTV standard. The examples above show that certain major events can stimulate growth of certain manufacturing sectors. Consumers become convinced to purchase if there is increased availability of particular services.

3. Broadcasting rights of major social events

Regarding this matter, broadcasting rights for major social events become a key issue. This means rules of presentation in electronic media. Such rights have to also be specified in case of telecommunication companies, the Internet and mobile phone technology. Exclusive rights play an imperative role here, mainly in the progress of media and European competition rights¹⁴. There are two key factors as far as the regulation of audiovisual media: 1) right of public access to broadcasts and entire transmissions of major social events through public television; 2) right to short reporting. These will be analysed separately:

⁸ See A.J. Harcourt, *Engineering Europeanization: the Role of the European Institution in Shaping National Media Regulation*, “Journal of European Public Policy” 2002, nr 5, p. 736.

⁹ See C. Mik, *Media w europejskim prawie wspólnotowym*, TNOiK, Toruń 1999, p. 258.

¹⁰ Dz.U. from 2004 r. nr 253, pos. 2531.

¹¹ See L.A. Wenner, *Media, Sport and Society*, London 1989, p. 47 i n.

¹² See A. Scheuer, P. Strothman, *Sport as Reflected in European Media Law*, “IRIS Plus – Legal Observations of the European Audiovisual Observatory” 2004, nr 2, p. 5.

¹³ See Council of Europe, *Recommendation No. R(80) 1 of the Committee of Ministers to Member States on Sport and Television* (Adopted by the Committee of Ministers on 24 January 1980 at the 313th meeting of the Ministers` Deputies).

¹⁴ Por. A. Harcourt, *The European Union and the Regulation of Media Markets*, Manchester University Press, Manchester 2005, p. 46 i n.

3.1. Right of public access to events of major social significance

This issue was regulated by the EU (“Television without Frontiers” Directive), as well as by the Council of Europe (European Convention on Transfrontier Television). In these two cases observed can be a development of European standards regarding these issues.

3.1.1. European Convention on Transfrontier Television (1989)

The approval of the European Convention on Transfrontier Television¹⁵, from May 5, 1989, was a result of work carried out by different organs of the Council of Europe¹⁶. The goals of the convention were: 1) to ensure a free flow of information, which is imperative in the ever changing world of international communication due to satellite TV; 2) to create standards and norms according to which broadcasting may take place. However, the issue of major social events transmission was not regulated in this original document.

3.1.2. “Television without Frontiers” Directive (1989)

The Council of European Communities Directive Nr 89/552, from October 3, 1989, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television (known as “Television without Frontiers”)¹⁷ fulfilled two goals¹⁸. One – to ensure minimal conditions for the free flow of transfrontier television services, the other – to ensure European programmes a special status¹⁹. The original text of the directive also did not include the issue of major events of social significance. Both, the Council of Europe and the EU, did not take this issue into consideration at that time which means that either they did not consider it of importance or they did not have a uniform stance on this subject.

3.1.3. Change of “Television without Frontiers” Directive (1997)

This issue was eventually regulated by the change of “Television without Frontiers” Directive in 1997, art. 3a. It said that Member States may compose their own lists of major social events which will not be able to be broadcasted through the *pay-TV* system only.

It is distinctive that the issue was not taken up earlier, during the original proposal for change of directive, proposed by the Committee²⁰, nor during the Council meeting on June

¹⁵ See European Convention on Transfrontier Television (European Treaty Series, No. 132), Strasbourg, May 5, 1989. (Dz.U. March 29, 1995, Nr 32, pos. 160). Cf. J. Sobczak, *Prawo środków masowej informacji. Prasa – radio – telewizja*, TNOiK, Toruń 1999, p. 244.

¹⁶ See R. Smoleń, *Europejska konwencja o telewizji ponadgranicznej*, “Sprawy Międzynarodowe” 1990, nr 6, p. 111.

¹⁷ See Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 298 of 17 October 1989, p. 23. Por. J. Sobczak, *Prawo środków...*, as above, p. 55.

¹⁸ Cf. K. Doktorowicz, „*Telewizja bez granic*” – europejskie regulacje w dziedzinie komunikowania, w: *Międzynarodowe regulacje działalności środków masowego przekazu*, ed. K. Doktorowicz, W. Dudek, Uniwersytet Śląski, Katowice 1992, p. 42.

¹⁹ See C. Mik, *Media masowe...*, as above, p. 241.

²⁰ See *Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of Television broadcasting activities of 21 May 1995*, COM(95) 86 final, p. 27, OJ C 185/4 of July 1995; *Amended proposal for a Directive amending Directive 89/552/EEC*, COM (96) 200 final OJ C 221 of 30 July 1996, p. 10.

11, 1996²¹. It was the European Parliament which finally considered the matter, when it passed a resolution on broadcasting of sport events²². It said that the goal of the EU is to guarantee everyone access to major sports events and therefore such transmissions may not be coded. The Parliament decided that owners of exclusive rights may not prohibit other stations from broadcasting fragments or highlights of such major events.

The directive was passed as a result of the Kirch Group buying exclusive rights to 2002 and 2006 World Cup sport broadcasts. It was after the Culture, Youth, Education and Media Committee issued a recommendation in this case²³, the matter was taken up during a parliamentary session²⁴. The Parliament proposed that there be created a common list of major events for all Member States. Most representatives agreed with the proposal that public access to significant events should be guaranteed. However, the concept of one common list was rejected. Separate lists were to be created by each Member State only with some general guidelines. The goal of “Television without Frontiers” art. 3a is to create an effective means in order to prevent the formation of exclusive rights regarding major events. A solution is the idea of *mutual recognition* which means that member states are obliged to take the necessary steps ensuring that broadcasters in their jurisdictions will not take actions which could result in people in other member states not having access to major events which are included on their country lists. The key is to respect the other countries’ lists regardless whether the country has or does not have their own list. According to Max Schoenthal, the resolutions included in art. 3a have three goals: 1)

- 1) Member States need to take the necessary steps and delineate which events they wish to have protected; 2) Member States’ decisions should be verified by a monitoring procedure enacted by community law; 3) Any changes in legislation regarding broadcasting from other Member States are prohibited. Member States are independent in creating their own lists but they are to be guided by common guidelines with non-arbitrary standard²⁵.

Article 3a amended the directive so that member states could take the necessary steps in order to protect the right to information and ensure public access to events of major social significance, nationally and internationally. The goal was to have community law regulating broadcasters under their jurisdiction and preventing them from having exclusive rights to transmission of major events from other member states (acts 18,20).

It is necessary to follow the directive amendment for agreements regarding broadcasting rights in order to prevent speculation in this area (art. 20). The essence of art. 3a § 1 is to ensure that member countries follow community law to guarantee that broadcasters under their jurisdiction do not obtain exclusive rights and prevent this way a large majority of viewers from watching via free television significant events live. The directive does not, however, delineate exactly which events are of major significance or specify what free television is. There are only some guidelines in the preamble of the directive. It is said that major events are those which **incite remarkable public interest** within the EU, member countries or a region, which have been prepared by an organizer with sales rights to the event

²¹ See *Common Position (EC) No. 49/96 adopted by the Council on 8 July 1996 with a view to adopting a Directive of the European Parliament and the Council amending Directive 89/552/EEC*, OJ C 264 of 11 September 1996, p. 52.

²² See *Resolution of 22 May 1996 on the broadcasting of sport events*, OJ C 166 of 10 June 1996, p. 109.

²³ See *Recommendation for second reading on the common position established by the Council with a view to the adoption of a European Parliament and Council Directive 89/552/EEC*, Committee on Culture, Youth, Education and the Media (Rapporteur: Gerardo Galeote Quecedo), 31 October 1996, doc. No. A4-0346/96, proposed amendments n° 28 and 29.

²⁴ See *Decision of European Parliament of 12 November 1996 on the common position adopted by the Council with a view to the adoption of a European Parliament and Council Directive 89/552/EEC*, OJ C 362 of 2 December 1996, p. 56.

²⁵ See M. Schoenthal, *Major Events and Reporting Rights*, “IRIS Plus – Legal Observations of the European Audiovisual Observatory” 2006, nr 4, p. 4.

(art. 21). The term *free television* means broadcasts via public channels or commercial ones which are available to the general public free of charge (regardless of its financing, subscription or advertising – art. 22)²⁶.

Member countries are to follow the directive although they are not obliged to create specific lists of significant events. If they decide to make them, they are to be clear, precise and provided in a timely manner. It needs to be stated whether the event will be broadcasted in its entirety and live, if it is necessary or desirable for objective reasons of general interest, and whether it will be re-transmitted and to what extent (§ 1 clause 2 and 3). Member countries actions need to be communicated to the European Commission which will verify them within a three month period (especially regarding art. 49 [59] and 86 [90] of the Treaty) and then pass them on to other members (§1). The Commission asks for Contract Committee's opinion, enacted in art. 23a. The resolutions will be published in the "*Official Journal of the European Communities*" and at least once a the list will be updated (§ 2). The member countries are ordered not to counteract this regulation using their domestic legal system so that broadcasters under their jurisdiction do not use exclusive rights preventing large audiences in other member countries from access to significant events. Such events need to be broadcasted live or retransmitted via public television, in accordance with regulation of other member states, as stated in art. 1 § 1 (§ 3)²⁷.

3.1.4. Amendment to European Convention on Transfrontier television (1998)

Regulation of broadcasting major events by the Council of Europe amending the European Convention on Transfrontier television took place on October 1, 1998²⁸. Article 9a basically restates the resolutions of Art. 3a of "Television without Frontiers" creating a uniform standard regarding broadcasting of significant social events.

The difference between the two regulations is that according to the convention a list of major social events needs to be submitted to the Permanent Committee established by the convention. This committee, as stated in Art.21, which is a communication unit with other states, proposes suggestions for modification, verifies proposals, interprets the legal regulations and is an intermediary in case of conflict, based on art. 25 of the convention.

According to Permanent Committee guidelines, major events are defined by four criteria: 1) event or its result creates significant resonance in society also among those who are not normally interested; 2) event has cultural significance; 3) event regards a national team; 4) event normally has high audience ratings on public television²⁹. At least two of these criteria need to met in order for the event to be considered a significant social event.

The so far existing lists include predominantly sport events such as the Olympic Games, as well as cultural ones, i.e. the San Remo Festival or the Vienna Opera Ball. Other ones include the most important and prestigious events such as football tournaments involving national team games but it does not include national league matches. These may be broadcasted by paid television with exclusive rights³⁰, as is the case in Italy (*Sky Italia*), Great Britain (*BSkyB*) and in Germany (*Premiere*).

3.1.5. Court of First Instance ruling in the "Infront" case (2005)

²⁶ See C. Mik, *Media masowe...*, as above, p. 260.

²⁷ *Ibidem*, p. 260-261.

²⁸ See Protocol amending the European Convention on Transfrontier Television (European Treaty Series, No. 171).

²⁹ See www.coe.int/T/E/Human_Rights/media/2_Transfrontier-Television/default.asp#TopOfPage.

³⁰ See *Telewizja w Europie: regulacje, polityka i niezależność. Raport z monitoringu 2005*, Open Society Institute, EU Monitoring and Advocacy Program, network Media program, Budapest-New York 2005, p. 118..

A key event regarding the discussed issue was the Court of First Instance ruling in the *Infront WMAG* case³¹. It was the *Infront WM AG* company (earlier known as the Kirch Group) actions against a list of significant events in Great Britain. As the owner of rights to some of the events on the list, Infront believed that its rights were breached. The subject of the procedure was the Committee's official letter informing British authorities that it does not have objections regarding the list and therefore it will be published. The court acknowledged that the letter will be the subject in the court assessment since, due to mutual recognition rule, the list is legally binding. The court decided that the Committee did not have proper competence as the Commissioner Body was not consulted and the director general, who signed the paper, did not have full approval from the Body. Because the decision was undermined based on procedural circumstances, the ruling cannot be used as a basis to settle material legitimization regarding matters enacted by art. 3a regarding lists created by a Member State³².

3.1.6. Work on recommendations of Council of Europe Committee of Ministers (2005)

Working group *ad hoc* dealing with exclusive rights and public right to information (MM-WG-EX), acting as part of the Committee on Media and New Communication Services (CDMC), began working on recommendations of the Committee of Ministers in regard to public right to information on major events, subject of exclusive rights. Since the recommendations (91)5 were passed, technological and market changes took place. The CDMC decided to look into the issue and come up with recommendations in order to ensure society access to right to information in the wider sense, also including other media. It has been noted that advancing commercialisation of rights to major events results in more difficulties in providing the public with access to information. First, the MM-D-DB group worked on the project until 2004, then it was taken over by MM-WG-EX which included experts from Denmark, France, Norway, Poland, Portugal, Great Britain and a representative of the European Committee as an observer. In result created was a project with recommendations and an explanatory memorandum³³.

It was postulated that Member States, where it is necessary, should take the necessary steps in order to guarantee the public right to access to major events, subject to exclusive rights, domestically and transfrontier wise, taking into account the regulations proposed in the project. The right to access to information should be balanced with ownership rights, organizer rights, stadium owners, copyright laws and others guaranteed by organs of international law. It was also proposed that if agreement resolutions between the interested parties protecting the right to information do not say otherwise, then using exclusive rights by their owners should be subject to some limitations so that broadcasters providing news services could be able to report on these major events. The project includes specific resolutions for different media; printed, radio, television, the Internet and press agencies³⁴.

The facts are that this issue still incites many doubts and it is difficult to reach agreement. The Committee of Ministers recommendations project prepared by MM-WG-EX was not recommended by the CDMC as the two were not able to reach agreement³⁵.

³¹ See Judgment of the Court of First Instance of 15 December 2005, *Infront WM/Commission*, "Official Journal", 10 February 2006.

³² See M. Schoenthal, *Major Events...*, as above, p. 4..

³³ See *Informacja o podstawowych problemach radiofonii i telewizji w 2005 roku*, Krajowa Rada Radiofonii i Telewizji, Warszawa 2006, p. 271-272.

³⁴ *Ibidem*, p. 272- 273.

³⁵ See CDMC, Meeting Report, doc. CDMC(2005)028.

3.2. Rights to short reporting of major events

Regarding major events broadcasting, a key factor is the *right to short reporting*. Transmitting short reports from such events is very important to the public, therefore it should be allowed regardless exclusive rights.

3.2.1. European Convention on Transfrontier Television (1989)

This issue of right to short reporting was first discussed during the European Convention on Transfrontier Television. Article 9 of the original text³⁶ entitled “Public Access to Major Events” states, “Parties will look into legal regulation in order to avoid not respecting public right to information as a result of broadcasters using exclusive rights or retransmissions, as stated in article 3, or reports from significant events so that it does not result in large numbers of people without access to information about such events”. The language in the regulation, as can be seen, was very general and did not include specific recommendations regarding the right to short reporting.

3.2.2. “Television without Frontiers” Directive (1989)

The original text of “Television without Frontiers” directive did not include specifications regarding right to short reporting about significant social events³⁷.

3.2.3. Council of Europe Committee of Ministers Recommendations (1991)

Specifications regarding right to short reporting of major events when exclusive rights to TV broadcasting were purchased in the transfrontier context were outlined by the Committee of Ministers on April, 11, 1991³⁸.

The committee allowed subsequent broadcasters (with agreements) the right to access to information on major events in order to transmit highlights from such events. Subsequent broadcasters could only air such short reports during regular news services and could not transmit them earlier than the owner of exclusive rights. Due to this, the original broadcaster could not request payment for access to such information. It is only the organizer who may collect fees for access to arena of the event³⁹.

It was further explained that if the major event consists of a series of different events each of these should be treated as a major event. If the event takes place over a period of several days, the subsequent broadcaster should have the right to one short report per day. The length of the report should be such that the broadcaster could talk about the highlights of the event. If the report is done based on materials of the original broadcaster, then his name needs to be given as the source of information. Such reports can be presented once only and need to be destroyed after they have been broadcasted.

These recommendations helped interpret art. 9 of the original text but still they were not binding in character. Committee of Ministers recommendations are considered *soft law*⁴⁰

³⁶ ETC, No. 132.

³⁷ Cf E. Machet, *A Decade of EU Broadcasting Regulation. The Directive “Television without Frontiers”*, “Mediafact”, Düsseldorf 1997, p. 6.

³⁸ See Recommendation No. R (91) 5 of the Committee of Ministers to Member States on the right to short reporting on major events where exclusive rights for their television broadcasts have been acquired in a transfrontier context (Adopted by the Committee of Ministers on 11 April 1991 at the 456th meeting of Ministers’ Deputies).

³⁹ Cf. A. Jaskiernia, *Rada Europy a problemy mediów masowych*, Oficyna Wydawnicza ASPRA-JR, Warszawa 2002, p. 156-157.

⁴⁰ See K. Abbot, D. Snidal, *Hard and Soft Law in International Governance*, “International Organization” 2000, nr 3, p. 427

and are not binding⁴¹. They are to inspire the creation of treaty standards and to compliment them (then their content is permanent under the condition that unregulated matter is not fit to be included in treaty standards)⁴². This was the case regarding short reporting, as seven years after the recommendations were made the Convention was modified.

3.2.4. Protocol changing the European Convention on Transfrontier Television (1998)

The protocol changing the European Convention on Transfrontier Television was signed on October 1, 1998⁴³. One reason for it was so that it would be consistent with the “Television without Frontiers” directive⁴⁴. New art. 9 of the convention states, “The parties will investigate and take necessary legal action, such as the introduction of the right to short reporting on major events so that public right to information is not breached if a broadcaster under jurisdiction has exclusive rights to transmission and retransmission, as understood by art. 3, to an event”. What it means is that the convention does not bind but encourages Member States to enable sides to right of short reporting. It is to be done in connection with “public right to information”.

The original text of the Convention only touched on this issue, the Committee of Ministers recommendations were not binding and the protocol changing the Convention, although binding member countries, is not obligatory in character. It does, however, put on member states the responsibility to investigate and in case of breach of rights, the obligation to take necessary action. Therefore, it can be said that serious steps have been taken so that member countries regulate this issue domestically.

3.2.5. Proposals for changes of “Television without Frontiers” Directive (2005)

The “Television without Frontiers” Directive does not include specifications regarding right to short reporting⁴⁵. The European Committee proposed, on December 13, 2005, that such changes need to be made and they are to be included in art. 3b. It is intended that for the purpose of *short news reports* broadcasters situated in other Member States will not be denied access, on fair, non-discriminatory and justified conditions, to major events which are transmitted by broadcasters under their jurisdiction. Short news reports should be created based on original transmission and their source needs to be stated. The preamble also states that limitations of exclusive rights can not go too far. Short reports can only be used in news services, on right, reasonable and non-discriminatory conditions respecting exclusive rights. The conditions need to be stated beforehand and the length should be no longer than 90 seconds. The project does not, however, raise the issue of payments for broadcasting the short reports⁴⁶.

4. Adaptation of Polish law to European standards regarding broadcasting of major events

In Poland, this issue was regulated by KRRiTV’s art. 20b. which states, in act 1, that “broadcasters can transmit live reports of major events: 1) through national channels, as defined by law and concession, available entirely free of charge, except for charges delineated

⁴¹ See N. Buchowska, *Uchwały organizacji międzynarodowych jako źródło prawa międzynarodowego*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2001, nr 3, p. 51.

⁴² See C. Mik, *Standardy Rady Europy dotyczące wolności odpowiedzi*, “Palestra” 1993, nr 9-10, p. 88. Por. A. Jaskiernia, *Prawo do odpowiedzi w świetle standardów Rady Europy*, “Państwo i Prawo” 2006, z. 6, p. 57.

⁴³ See Protocol amending the European Convention on Transfrontier Television, ETC, No. 171.

⁴⁴ See B.J. Drijber, *The Revised Television without Frontiers Directive in its Fit for the Next Century*, “Common Market Law Review” 1999, nr 1, p. 87.

⁴⁵ See C.A. Jones, *Television without Frontiers*, “Yearbook of European Law” 1999-2000, nr 19, p. 299.

⁴⁶ See M. Schoenthal, *Major Events...*, jw., p. 5.

by chapter 7⁴⁷ and basic charges from cable network operators, or if 2) the same event is retransmitted by a broadcaster who meets the criteria delineated in pt. 1 based on an agreement with exclusive rights owner, on the stipulation of act 6⁴⁸. The legislation also states, in act 2, that major events are such as: 1) summer and winter Olympic Games, 2) semi-finals and finals of European Championships in football and any matches played by the Polish national team in this tournament, including qualifying games, 3) other national team matches part of official tournaments and games of Polish clubs in Champions League and the UEFA Cup. The list is not final and may be amended based on need. This can be done by the KRRiTV which takes into consideration “the level of public interest and the event’s impact on social, economic and political life” (art. 20b act 3). The KRRiTV can not further limit the list as delineated by art. 20b act 2.

The legislation also agreed, in accordance with European standards, that “if an event is comprised of several parts, each of these is separately considered a major event”. It also decided that regulation in art. 20b act 1 regards delayed broadcasts, if such a delay is no longer than 24 hours and for justified reasons such as 1) if the event takes place between 12-6am Polish time, 2) if it takes place at the same time as another major event (art. 20b act 5). The regulation is invalid, however, if no broadcaster entered into agreement for short reporting, in accordance with act 1, pt 2 (art. 20b act 6).

From the point of view of Poland meeting international obligations, imperative is also regulation included in art. 20b act 7 which states that, “the KRRiTV may, in accordance with international agreements: 1) decide that lists of events considered major in other countries are also major in Poland, 2) regulate exclusive rights, as described in pt.1, so that they do not prevent the public access to major events, in accordance with international law regulation”.

Overall, it can be said that KRRiTV’s regulations correspond to European standards. Polish legislation was familiar with EU’s regulations when it was making the amendments. Specifically, it was the addition of art. 20b.

5. Regulatory tendencies regarding major events and rights to short reporting

The presented analysis shows that the issue of broadcasting significant events is an imperative one and European standards needed to be created as a result. Even though this issue was not originally dealt with in the “Television without Frontiers” directive or the European Convention on Transfrontier Television, they were later amended to include the necessary regulation.

What is interesting is that the regulation was created only after European Parliament pressure. It articulated the interests of European public opinion while the European Commission was more receptive to opinions of broadcasters with exclusive rights. Nevertheless, although the resolutions were passed, it does not mean that the two regulatory bodies have uniform views.

Regarding the right to short reporting of major events, the Council of Europe standards surpassed the EU ones. But through its proposal for the change of directive “Television without Frontiers” it is attempting to close this gap. It focuses on fair, justified and non-discriminatory conditions for access to short reporting. At the same time, it states that limiting exclusive rights should not be too extensive. EU’s caution confirms that there is a conflict of interest. The public should have access to major events via short reports which is an imperative factor of democratic social communication. On the other hand, this limits exclusive rights which should also be protected by the EU. Generally, this issue needs to be dealt with carefully and that is why, perhaps, it took a long time to enact more specific regulation of this matter.

⁴⁷ Meaning subscription fees for the use of radio and TV sets, charged by the KRRiTV.

⁴⁸ This is if a broadcaster proves that no broadcaster, meeting criteria in act 1 pt 1, has wished to enter into agreement for re-transmission.

Difficulties experienced during the formulation of Council of Europe Committee of Ministers recommendations show that uncertainties regarding this issue are not only with regard to the EU. There is difficult dialogue going on in both the organizations. The events and experiences from the last few years (1989-2006) have lead legislators to widen the scope of freedoms regarding public access to major events, regardless of broadcasters' exclusive rights. However, all needs to be carried out in accordance with legal regulation.

Overall, progressive synchronisation of standards can be observed. Both organizations take into account the influence of media on European democracy⁴⁹. Moreover, we can also observe simialar activity in both of the organizations. We may even ask whether such doubling is necessary. Council of Europe's⁵⁰ pan European scope means that its standards can be considered a proper tool of international influence on the European continent. On the other hand, the EU, comprising of 25 members presently⁵¹, aspires to by an active regulatory body regarding the mass media. We may, therefore, predict cooperation of both of these organizations with the Council of Europe being the leading body and inspiring the EU. The latter has come a long way in creating an outstanding regulatory system, geared toward democracy and well-being of societies in member states where both information rights and media freedoms play an imperative role.

⁴⁹ See J. Olędzki, *Komunikowanie w świecie. Narzędzia, teorie, unormowania*, Oficyna Wydawnicza ASPRA, Warszawa 1998, p. 155.

⁵⁰ As of June, 30, 2006, Belarus is the only country which is not member of the Council of Europe, as it does not meet the basic requirements for membership.

⁵¹ In 2007, Bulgaria and Romania will join the EU.