



# **Public Service Broadcasting Regulation in the Commonwealth of Independent States**

Special Report on the Legal  
Framework for  
Public Service Broadcasting  
in  
Azerbaijan, Georgia,  
Moldova, Russia and Ukraine

by Andrei Richter & Dmitry Golovanov

edited by Susanne Nikoltchev



European Audiovisual Observatory  
Strasbourg, France  
November 2006



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**published by the European Audiovisual Observatory**

**Strasbourg, November 2006**

***soon also available in French, German, and Russian***

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# Public Service Broadcasting Regulation in the Commonwealth of Independent States

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## INTRODUCTION

Until 1990, broadcasting in what then used to be the Soviet Union was state-run only. The years 1990-1991 witnessed a booming start for private broadcasting in the region, especially in the Ukraine and Russia. Almost overnight, “alternative” television and radio surpassed in popularity local state-run broadcasting and started competing for listeners and viewers with national stations.<sup>1</sup>

Due to the “exodus” of the audience that turned to commercial channels, the necessity to strengthen new post-Soviet national identities among the population, and the collapse of the traditional system of financing and programme production, the authorities of the newly independent states faced the need to replace bankrupt – in many senses – state-run television and radio systems with an appealing system of public service broadcasting. A factor encouraging this process was the insistence of the Council of Europe that was joined, one after another, by 9 out of the 15 post-Soviet states. Numerous conferences, resolutions, recommendations, and expert opinions supported by the Parliamentary Assembly and the Media Division of the Council of Europe again and again stated that public service broadcasting is a standard mechanism in a European democracy. Additional pressure was applied upon the national governments by the office of the Representative on Freedom of the Media of the Organization on Security in Europe (OSCE).

A major step in this direction was the adoption of statutes that established the frameworks of the future public service broadcasters. Those broadcasters have become known as (in chronological order):

- Estonian Radio and Estonian Television (both set up in 1994);
- Latvian Radio and Latvian Television (1995);
- Public National Teleradio Organization – Company “Teleradio-Moldova” (1995),
- Lithuanian National Radio and Television (1996),
- Public Teleradio Company in Armenia (2000),
- Public Service Broadcaster “Television and Radio of Georgia” (2004),
- Public Broadcasting Company (ITV) in Azerbaijan (2005),
- Public Service Television “El-TV” in Kyrgyzstan (2005).

In all these countries – with the exception of Azerbaijan and Kyrgyzstan - traditional state television companies were shut down with the rise of public service broadcasters.

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<sup>1</sup> Kachkaeva, Anna and Andrei G. Richter. The Emergence of Non-State TV in the Ukraine. *Canadian Journal of Communication*, 4, Vol. 17 (1992). P. 520. Available on the Internet at: <http://www.cjc-online.ca/viewarticle.php?id=121>

In the Ukraine a public service broadcasting law was passed in 1997<sup>2</sup> but it has not been enforced yet. Attempts to introduce public service broadcasting by means of passing a law were made although unsuccessfully in Russia. From time to time discussions on the issue take place in Belarus, Kazakhstan, Tajikistan and Uzbekistan, while in Turkmenistan such a debate is non-existent.

This comparative review focuses on five post-Soviet countries in which we find different levels of development of a public service broadcasting institution. While Moldova has just introduced the third reform of its public service broadcasting system, Georgia and Azerbaijan have a short experience of slightly over a year of public service broadcasting, the Ukraine completes a decade of failures to put into practice adopted legislation on public service broadcasting, while Russia is sitting on the fence struggling to determine the necessity of setting up a public service broadcaster by watching the experience of its neighbours. The review of legislative models of public service broadcasting and their implementation aims at identifying common phenomena in transition countries in the process of initializing and setting up a public service broadcasting system.

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<sup>2</sup> See Andrei Richter, UA – Public Broadcasting Act Enters into Force. IRIS 1998-4: 10, available at <http://merlin.obs.coe.int/iris/1998/4/article13.en.html>

## AZERBAIJAN

### Historical Background

Activities dealing with the establishment of public service television in Azerbaijan started in 2001, when the country joined the Council of Europe. The first bill regulating public service television was introduced that year. Lengthy discussions took place afterwards in society and the government, with an active participation of the Council of Europe experts. A controversial point was a proposal to keep the existing state television alongside a future public service television system. This idea was backed by the Administration of the President of Azerbaijan and drew strong criticism from independent national as well as European experts. In particular, Mr. Karol Jakubowicz, the Chair of the Steering Committee on the Mass Media<sup>3</sup> of the Council of Europe, made a point in his analysis of the bill on public service television in Azerbaijan<sup>4</sup> that a public service broadcaster, if created, would have to co-exist with the incumbent state broadcasting organization. Such a situation, according to the expert, would be incompatible with Article 10 of the European Convention on Human Rights and with the model of broadcasting universally applied in democratic countries which does away with state broadcasters and provides for the dual coexistence of public service and commercial broadcasting.

On 2 October 2002 the Statute "On television and radio broadcasting"<sup>5</sup> was adopted by *Milli Mejlis* (the national Parliament). It provided for the parallel functioning of state, public service, municipal and private broadcasting. Article 9 of the Statute established three general principles that concern the functions of a public service broadcaster.

First, such a broadcaster shall be established according to Article 109 para 32 of the Constitution. The constitutional provision in question is one that empowers the President of the Azerbaijani Republic to undertake any actions for which both the legislature and the judiciary lack competence. That means that the practical steps in setting up such a company fall within the powers of the President and are ruled by decree.

According to the second principle, the membership of the Broadcasting Council (managing body of the public service broadcasting company) shall result from a competition between candidates proposed by well-established non-governmental organizations (i.e., having more than one thousand members) as well as by civil society organizations.

Finally, it was prescribed that the main source for financing such a company is the license fee (unless the law prescribed otherwise).

By January 2004 the Parliament had passed a bill regulating public service broadcasting activities in three readings. The bill had been submitted by the President,

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<sup>3</sup> Since 2005 the Steering Committee on the Mass Media (CDMM) has been renamed the "Steering Committee on the Media and New Communication Services" (CDMC).

<sup>4</sup> Analysis and Comments on Law of Azerbaijan Republic on Public TV-Radio Broadcasting (Strasbourg, 16 February 2004), available at [http://www.coe.int/t/e/human\\_rights/media/3\\_assistance\\_programmes/legislatives\\_exp/azerbaijan/atcm\(2004\)005\\_en.asp#P28\\_229](http://www.coe.int/t/e/human_rights/media/3_assistance_programmes/legislatives_exp/azerbaijan/atcm(2004)005_en.asp#P28_229)

<sup>5</sup> Available at: <http://www.medialaw.ru/exussrlaw/l/az/tv.htm>

who, however, on 3 March 2004 vetoed it,<sup>6</sup> after the document had been strongly criticized by the Council of Europe. In its Resolution 1358 (2004) "Functioning of democratic institutions in Azerbaijan", the Parliamentary Assembly deplored the fact that "the commitment undertaken by Azerbaijan to transform the two existing state channels into truly independent public service broadcasting organisations was not fulfilled. The Assembly regrets that the draft law on public television currently being examined by the Parliament was not submitted to the Council of Europe for a final appraisal".<sup>7</sup>

The redrafted bill "On public service television and radio broadcasting" was passed again and finally signed into law by President Ilham Aliyev on 28 September 2004.<sup>8</sup> On 5 November 2004 the President issued a decree for the implementation of the statute.<sup>9</sup>

These two acts established legal and organizational guarantees for the functioning of the national public service broadcasting system. The Public Television Company started its broadcasts on 29 August 2005 after a ceremony with the participation of the President, and Public Radio began broadcasts in January 2006.

In its Resolution 1398 (2004) "Implementation of Resolution 1358 (2004) on the functioning of democratic institutions in Azerbaijan"<sup>10</sup> the Parliamentary Assembly of the Council of Europe welcomed the adoption by the Azerbaijani Parliament of the law on public service broadcasting and called on the Azerbaijani authorities to implement its provisions of the law. In a Report of 14 July 2005 on an assessment visit to Azerbaijan the Representative on Freedom of the Media of the OSCE Mr. Miklós Haraszti provided some additional conclusions:<sup>11</sup> he emphasized that the transformation of a part of state TV broadcasting into a public service channel did not concern Channel 1 which continued to be state-run. Moreover, the management chosen to run public service television, Mr. Haraszti noticed, had been widely criticized as not being independent.

### Legal Status of the Public Service Broadcaster

According to the Statute "On public service television and radio broadcasting" such a broadcaster shall be an independent legal entity established to provide public service broadcasting.

The above-mentioned decree of 5 November 2004 in its para. 1 and 2 stipulates that public service broadcasting shall be set up on the basis of Channel 2 of the State Azerbaijani Television and Channel 1 of the State Azerbaijani Radio. It also provided for the transfer of the channels' property to the Broadcasting Council (managing body of the Public Broadcasting Company ITV). Para 3 of the Decree prescribes that the National Council of Television and Radio (NCTR) initiate the process to create the

<sup>6</sup> See Report "????? ?????? ???? ????? ??????????????: ?????????? ??????? ??????????" (Political Institutions of Azerbaijan: dichotomy of text and reality) by Rakhman Badalov and Niyazi Mekhti, available at: [www.idea.int/europe\\_cis/upload/rahman-niyaz\\_rus\\_edi.pdf](http://www.idea.int/europe_cis/upload/rahman-niyaz_rus_edi.pdf).

<sup>7</sup> See: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/eres1358.htm>

<sup>8</sup> Available in Russian at <http://www.medialaw.ru/exussrlaw/l/az/pubtv.htm> and in English at <http://www.internews.az/eng/legislation/6.shtml>

<sup>9</sup> Available at: <http://www.day.az/news/society/15567.html>.

<sup>10</sup> Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/eres1398.htm>.

<sup>11</sup> The text of the Report is available at:

[http://www.osce.org/documents/html/pdftohtml/15783\\_en.pdf.html](http://www.osce.org/documents/html/pdftohtml/15783_en.pdf.html).

Broadcasting Council, and delegates to the NCTR the competence of the supervisory governmental authority prescribed by the Statute “On public service television and radio broadcasting”.

The National Council of Television and Radio, in turn, was established along the lines set out in a decree of the Azerbaijani President. On 11 October 2002, three days after the Statute “On television and radio broadcasting” came into legal force, the President adopted a Regulation governing the activities of the NCTR. According to the Regulation in question, the Council shall perform the following main functions concerning broadcasting in the country: regulation of broadcasting activities, licensing, exercise of controlling functions, and protection of the interests of the audience. The Council consists of nine members appointed for six years by the President of Azerbaijan. The lack of any specific criteria for appointment to the Council as well as the exclusive authority vested on the head of state in appointment decisions seriously undermine the independence of the NCTR.<sup>12</sup>

Article 5 of the Statute “On public service television and radio broadcasting” stipulates that broadcasting licenses and frequencies for public service broadcasting shall be granted without any time limits and free of charge. The public television company obtained such a license in September 2005.

### Economy of ITV

In every case where public service broadcasters were established in post-Soviet countries the national law-makers envisaged a system of license fees as the backbone of the broadcasters' economies. This was seen as a guarantee of independence from government of extreme importance for the functioning of broadcasting companies. Unfortunately, one after the other, the authorities buried this idea arguing it was impractical and too difficult to implement. So far Azerbaijan remains the only exception to the rule. The prescription of a license fee still appears in Article 26 of the Statute “On public service television and radio broadcasting” to be introduced by 1 January 2010 or even earlier.<sup>13</sup>

The Statute authorises the public service broadcaster to own property (para 4.2 of Article 4); however, the law stipulates that the said property may be used only for goals of public service broadcasting and may not be privatised or sold except if prescribed by law (paragraph 4.4). These provisions may be interpreted as protecting the integrity of state property that is now part of the public broadcasting company's assets.

The fifth chapter of the Statute “On public service television and radio broadcasting” establishes a complex system for the financing of the public service broadcasting service. According to paragraph 1 of Article 23 the sources of financing shall be: a license fee (as the main source), advertising, sponsorship, donations, and sales of programme content. Until the introduction of a license fee, the main source of finance is the national budget. The Statute does not establish a minimum amount of finance to be received from the national budget; however, it guarantees an annual increase. As to the amount of permitted advertising the law authorises a maximum of 15 per cent of daily television broadcasting time (in practice, advertising does not exceed 1 per

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<sup>12</sup> See the Report of 14 July 2005 on Assessment Visit to Azerbaijan of the Representative on Freedom of the Media of OSCE, available at [http://www.osce.org/documents/rfm/2005/07/15783\\_en.pdf](http://www.osce.org/documents/rfm/2005/07/15783_en.pdf).

<sup>13</sup> Paragraph 4 of the Decree of 5 November 2004 authorised the Government of the Azerbaijani Republic to work out the proposals on development of the legislation in the sphere of public broadcasting including the formulation of principles of the license fee collecting.

cent).<sup>14</sup> It also includes a number of content and placement requirements for the dissemination of advertising.

The company's budget for the first year of broadcasting – 2005 – drew up 10 billion Azerbaijani old *manats* (1 euro equalled then 5,600 *manats*).<sup>15</sup> Initially the budget was expected to be half that amount, but the Government managed to provide ITV with additional financing. The sufficient provision of funding in this case was, of course, a positive sign for the public broadcasting company. However, the Government's power to change financial rules at its own discretion could potentially be used as an instrument for exerting pressure on ITV.

In this context it is important to take into account a number of additional issues regarding the economic grounds for the functioning of the public broadcaster. Particularly, according to Mr. Jahangir Mammedli, the Chairman of the Broadcasting Council of the Public TV and Radio Company of Azerbaijan (see below), in order to become fully operational the public service television would need an annual budget of at least 30 million euro.<sup>16</sup>

The adequacy of the financial arrangements of the public service broadcaster may be best judged by looking at the different approach that the government takes with regard to the state broadcaster. In the same year 2005 the sum of money from the state coffers given to state-run AzTV was 71 billion old *manats*.<sup>17</sup> Clearly the well-being of the state-owned rather than the public service broadcaster is a priority for the authorities.

The Statute "On public service television and radio broadcasting" includes guarantees for the transparency of the public broadcasting company. According to its Article 10 both regular and special audits shall take place. However, the law contains neither criteria for choosing particular auditors, nor for the periodicity of the audit.

### Governing Bodies and System of Management of the Public Service Broadcaster

Chapter 4 of the Statute "On public service television and radio broadcasting" sets out the system of management of the public broadcasting company. There shall be two major managing bodies according to paragraph 1 of Article 16: the Broadcasting Council and the Director-General.

The Broadcasting Council consists of nine members which the Parliament of the Azerbaijani Republic elects from among candidates proposed by non-governmental organizations. To this end, each organization (or group of organizations) names two candidates for the Broadcasting Council and the parliament chooses one of the two for each seat. As a result four members are chosen by the Confederation of Trade Unions, the National Academy of Sciences, the Council of Entrepreneurs, and the Press Council (self-regulatory body for the journalistic profession) and the remaining five are candidates proposed by youth organizations, women societies, sports federations,

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<sup>14</sup> "Public Service Television Accused of Bias)/Caucasus Reporting Service (Russian) No. 338. By the report of the Centre of Journalism in Extreme Situations at the Union of Journalists of Russia of 18 May 2006.

<sup>15</sup> See, <http://www.day.az/news/hitech/26984.html>.

<sup>16</sup> See the Report of 14 July 2005 on Assessment Visit to Azerbaijan the Representative on Freedom of the Media of OSCE.

<sup>17</sup> According to information of Fariz Ismailzade provided in the Report "Public Service Television Go On) , available at:

[www.eurasianet.org/russian/departments/rights/articles/eav120904ru.shtml](http://www.eurasianet.org/russian/departments/rights/articles/eav120904ru.shtml).

religious confessions and creative (arts and literature) organizations. During their term in office members may neither work in public bodies nor in broadcasting or advertising companies. They must be citizens of Azerbaijan and have working experience in broadcasting, the press, information, culture, finance, TV technology or similar areas. The first Council was elected in 2005 and chaired by Mr. Mammadli Jahangir Abdulali, Chairman of the Department of Theory and Practice of Journalism of Baku State University, who in 2003-2005 was Deputy Chairman of the Press Council.<sup>18</sup>

The Broadcasting Council enjoys the following substantial powers: it adopts its own charter and by-laws; it elects the Director-General of ITV and can terminate the Director-General's appointment before the end of the regular term; upon demand by the Director-General the Broadcasting Council appoints and dismisses deputies to the Director-General; prepares and approves job descriptions and internal rules of *ITV*; approves the policy statement, the *ITV*'s budget and its annual report; sets the technical standards of *ITV*'s broadcasting. Its approval is necessary for *ITV* to start new services, to buy or sell real estate, to obtain bank credits and accept financial obligations.

The Director-General elected by the Broadcasting Council is engaged in the day-to-day management of the company. He or she is responsible for the preservation of the assets of the public service broadcaster, represents the company in court and abroad. His or her main duties include decisions on programming, personnel, budget and contracts.

Changes were introduced to in the course of the law-making process to the requirements for membership of managing bodies . Originally the key figures were to be appointed by the President of the Republic. However, because of criticism from European experts and pressure from civil society organizations the powers in question were handed over to Parliament.

On 15 April 2005, Parliament elected the members of the Broadcasting Council. The next day a Member of Parliament, Ismail Omarov, was appointed Director-General by the Broadcasting Council by a majority of six to three votes. Mr. Omarov is a controversial figure: while working for state television, he had accused the political opposition of high treason. Conflicts between the Director-General and the opposition are frequent. At a meeting on August 2005, the opposition political coalition "Azadlyg" demanded the dismissal of Mr. Omarov.

### Content Requirements

A research on *ITV* programmes made in October and November 2005 indicated the following proportion of different genres. Information and current affairs occupied 17.5 per cent of total airtime in November (in October – 17.4 per cent), educational programming took 25 per cent (in October – 18.3 per cent), entertainment – 53.4 percent (in October – 58.5 percent). Advertising and promotion of its own programming was 2.5 and 1.6 percent of time (in October – 4.8 and 1 percent) respectively.<sup>19</sup>

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<sup>18</sup> For the list of the Broadcasting Council members and their functions (in English), see the web site of the Council at: [http://www.itv.az/english/broadcasting\\_council.php](http://www.itv.az/english/broadcasting_council.php)

<sup>19</sup> ????????, ?. ??? ??????????? ?????? ????????????. ?????????????? ????? ?????????? ??????????? (ITV Becomes Less Biased – Says Najaf Najafov Foundation / Zerkalo newspaper (Baku), 27 December 2005.

The production of programmes, content issues and advertising rules are regulated by the third chapter of the Statute “On public service television and radio broadcasting”. Two fundamental duties of the public service broadcaster are to be found there: one is to supply the audience with official information and the other is to meet the needs of most groups of society in receiving diverse and pluralistic information. Under “official information” the Statute means information – provided by governmental officials – that contains messages important for public safety (for instance, about emergencies, natural disasters, etc.) or mirrors the official point of view on matters important to the public. The public service broadcaster is under an obligation to disseminate official information without any modification and cannot be held liable for the content of such information (Article 11). Article 13 of the Statute also sets out some additional requirements aimed at providing diversity of political opinions. In particular, its para. 1 sets out the obligation for the broadcaster to take into account in its programmes the different political ideas, religious beliefs, and opinions circulating in society. According to para. 8 information programmes shall fulfil the following requirements: neutrality, impartiality, independence, and differentiation between fact and commentary.

The principle of diversity in the public service broadcaster’s programmes was called into question during the 2005 electoral campaign. The “Azadlyg” coalition claimed that ITV paid no attention to their points of view when reporting about the electoral campaign.<sup>20</sup> In response, the Director-General of the Public Broadcasting Company issued a statement saying that the opposition was the only force in society who was unhappy with ITV’s activities.<sup>21</sup>

The Statute “On public service television and radio broadcasting” contains protectionist requirements. The law says that a priority for the Public Broadcasting Company is the dissemination of audiovisual production made in Azerbaijan (Article 13 para. 6), it requires that programmes be primarily in the state language (Azerbaijani) (Article 12). An all-purpose norm in the Statute (para 1 Article 12) requires the public service broadcaster to air broadcasts in the languages of national minorities. However, there are no requirements as to the amount and placement of such broadcasts. In practice, 75.8 per cent of news and current affairs programmes are in the state language, 13.5 per cent are in Russian, and 10.7 per cent in English.<sup>22</sup> Mr. Omarov declared recently that the public service broadcaster should start producing programmes in Armenian for the Armenians living in the Karabakh region in order to convince them to resist the “Armenian occupation” of the area.<sup>23</sup> At the same time the largest national minority group in the country, the Lezghins, are not catered for with programmes in their own language. It seems that the protection of national minorities is not a primary concern of ITV’s activities.

Still *ITV* is making progress. The first monitoring of the programmes conducted by the Najaf Najafov Foundation and sponsored by the Soros Foundation in September and October 2005 revealed that public service broadcasting devoted more time than any other channel to election campaigning. Political bias was noted in 29 per cent of current affairs programmes, while 71 per cent of the content was impartial.<sup>24</sup> A second stage of the same monitoring exercise conducted a year later showed that while 21 per cent of

<sup>20</sup> <http://www.day.az/news/politics/37889.html>

<sup>21</sup> <http://www.day.az/news/politics/34417.html>

<sup>22</sup> Kerimov, R. “???? ? ????????????? ??????????”. ? ???? ?????????? “????????? ?????” ???? ?????????? ?????????? ?????????? ?????????? ??? ?????????????? (ITV and Civil Society. During Roundtable Najaf Najafov Foundation Announced Monitoring Results / “Eho” newspaper (Baku), 12 September 2006.

<sup>23</sup> Interview with Mr. Omarov available at: <http://www.day.az/news/politics/28145.html>.

<sup>24</sup> Report of the *Turan* news agency of 2 November 2005.

news and current affairs content was biased already 79 per cent met the impartiality requirements.<sup>25</sup>

### Control over Activities of the Public Broadcasting Company

The National Council of Television and Radio is authorised to issue warnings to the managing bodies of the public broadcasting company. If the warnings are disregarded, the NCTR has the right to bring an action before a court of law in order to suppress violations of the law (Art. 22 of the Statute “On public service television and radio broadcasting”). The NCTR has not issued any warnings so far.

In turn, the Broadcasting Council can send memoranda to the Director-General regarding violations of the Statute “On public service television and radio broadcasting” in programmes with suggestions on how to remedy violations (Art. 20 of the Statute “On public service television and radio broadcasting”). The Broadcasting Council has not issued any warnings so far.

The law does not provide for mechanisms to involve civil society organizations in the exercise of control over the activities of the public service broadcaster. Consumers have the right to send petitions and requests to the Director-General of the Company who shall respond “if necessary”. It is peculiar to see a Statute that gives no powers to the Broadcasting Council to receive complaints and requests from consumers when the body in question is supposed to represent the public interests.

Critics of the system of public service broadcasting as it functions in Azerbaijan pointed to the lack of public control over activities of ITV. In particular, Zeinal Mamedli, a member of the national Press Council and Professor of the Faculty of Journalism of the Baku State University, called for the termination of the current public service broadcasting system. Dr. Mamedli argued that society does not participate in the control of the activities of ITV and therefore ITV does not have in fact the status of a public service broadcaster.<sup>26</sup>

### Recent Developments

In October 2005 ITV could broadcast to 75 per cent of the territory of Azerbaijan.<sup>27</sup> According to Mr. Ilham Akhadov, the Director-General of the Centre “Teleradio” (a telecommunications provider affiliated with the Ministry of Telecommunications), ITV reached 85 per cent of the national territory in July 2006.<sup>28</sup> In comparison, the state television AzTV covers 99 per cent of the territory of Azerbaijan.

In August 2006 an OSCE mission to Baku published a preliminary statement on public service broadcasting in Azerbaijan. The research carried out by the OSCE office included meetings of ITV representatives with experts from the British Broadcasting Corporation (BBC). A BBC team interviewed key staff and met local media experts to discuss the broadcaster's editorial policy, the role of the National Council of Television and Radio, programming, technical infrastructure and training programme. According to

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<sup>25</sup> Kerimov, R. *Op. cit.*

<sup>26</sup> Interviews with Mr. Mamedli is available at: <http://www.day.az/news/politics/30626.html>, [http://www.iwpr.net/?apc\\_state=henicrs200605&l=ru&s=f&o=261503](http://www.iwpr.net/?apc_state=henicrs200605&l=ru&s=f&o=261503)

<sup>27</sup> “????????????? ?????????????? ?????????????? ? ??????????”(Public Service Television Starts Broadcasting/ “525-? ??????” (525<sup>th</sup> Newspaper) (Baku), 30 August 2005.

<sup>28</sup> Interview with Mr. Akhadov is available at: <http://www.day.az/news/hitech/55196.html>

the OSCE, the managers of the public television company had succeeded in the provision of an effective system public service broadcasting.<sup>29</sup>

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<sup>29</sup> A detailed report on the assessment findings has yet to be published.

## GEORGIA

### Historical Background

After the resignation of President Eduard Shevardnadze following the “Rose Revolution” of 22 and 23 November 2003, early presidential elections and new parliamentary elections took place in January and March 2004 respectively. Mikhail Saakashvili and his political bloc took over the leadership of the country. The transformation of state broadcasting into public service television and radio had been on his electoral programme. The practical work on the relevant bill started almost immediately after he took office. Even before the introduction of the bill in Parliament about 2500 out of 3000 employees of the state broadcaster were made redundant.<sup>30</sup>

The Georgian Parliament discussed the bill “On broadcasting” for two weeks before adopting it. The bill was signed into law on 23 December 2004 and entered into force on 18 January 2005. The first aim of the statute was to initiate public service broadcasting in Georgia (Art. 1). Almost immediately the State TV and Radio Company of Georgia became the *Public Service Broadcaster “Television and Radio of Georgia”* which started broadcasting over two TV and three radio channels. This move was welcomed by resolutions of the Parliamentary Assembly of the Council of Europe,<sup>31</sup> which had not even raised the issue of introducing public service broadcasting in Georgia as the bill “On broadcasting” was already adopted.

The Statute “On broadcasting” established the National Commission on Communications (NCC) as the main independent regulatory authority for broadcasting. NCC members are proposed by the President of Georgia, approved by the Georgian Parliament and then appointed by the President of Georgia.

### Legal Status of the Public Service Broadcaster

According to the Statute “On broadcasting” the *Public Service Broadcaster “Television and Radio of Georgia”* is a single public service broadcasting company established by national law. The company is part of the state assets and is a legal entity under public law which is financed from public sources; it is independent from the state authorities, accountable to the public and may not be under control and command of any office of the State (Arts. 1, 15).

### The Economics of the Public Service Broadcaster

According to the Statute “On broadcasting” the budget of the *Public Service Broadcaster “Television and Radio of Georgia”* is to be approved by the Board of Trustees (see below). It shall consist of [license] fees and other legal sources. Fees shall be paid on a monthly basis by all physical persons who are taxpayers in Georgia (Art. 33). The transitional provisions of the Statute state, though, that until the relevant

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<sup>30</sup> “???????? ???? ? ??? ? ????????????? ? ????????? ?????” (*Today Public Service Television of Georgia Started Broadcasts*). / By the report of the Centre of Journalism in Extreme Situations at the Union of Journalists of Russia of 20 December 2004.

<sup>31</sup> Resolution 1415 (2005) “Honouring of obligations and commitments by Georgia” and Resolution 1477 (2006) “Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia”. See:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1477.htm>

provisions of Article 33 are enforced, the state budget will be the main source of funding for the *Public Service Broadcaster*. It is not clear when the transitional provisions are to expire and payment of the license fee becomes a requirement (as is the case in Azerbaijan). The amounts allocated from the state budget shall not be lower than 0.15 per cent of the gross domestic product of Georgia.

The budget of the *Public Service Broadcaster* in 2006 was 16 million *lari*, out of which 11.5 million *lari* came from the state budget (1 euro equals 2.21 *lari*).<sup>32</sup> At the same time, according to the Director-General of the *Public Service Broadcaster*, if one takes into consideration the 0.15 share of the GDP, the national budget should be providing the broadcaster between 18 to 20 million *lari*. Moreover, the company's debts as of 2005 amounted to 6 million *lari*. Revenues from advertising (see below) amounted to 3,000 *lari* per month in the same year.<sup>33</sup>

In a resolution adopted on 24 January 2006, the Parliamentary Assembly of the Council of Europe called on the Georgian authorities to "complete without any delay the transfer of property to the public service broadcaster and guarantee its financial sustainability and political independence".<sup>34</sup>

The Statute "On broadcasting" provides for an external annual audit of the company. The auditor shall be selected by the Board of Trustees on the basis of an open competition.

#### Governing bodies and system of management of the public service broadcaster

By the Statute "On broadcasting" the governing bodies of the public service broadcaster are the Board of Trustees and the Director-General (para 1 Article 22).

The key functions of the Board of Trustees are as follows:

- a) to determine the programme priorities of the Public Service Broadcaster (see below);
- b) to approve regulations of the public service broadcaster submitted by the Director-General;
- c) to approve the budget for the public service broadcaster and its implementation report submitted by Director-General;
- d) to approve a quarterly report on the activities of the public service broadcaster;
- e) to approve contracts concluded by the Director-General that involve an amount over one per cent of the *Public Broadcaster's* budget;
- f) to determine the duties and the salary of the Director-General.

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<sup>32</sup> *Media.Ge* (Tbilisi-based electronic information bulletin in Russian language). No. 54, 2 March 2006. Source: [www.media.ge](http://www.media.ge)

<sup>33</sup> "????????? ? ??????? ? ?????? ??? ?????????? ?????????????? ??? ?????. ?????????? ?????????? ?????????? «???-????????» ??? ? ?????????? ? ?????????????? ?????? ??? ?????????????????? ?????????????? ?????? ?????? ??????????????????". (Too Early to Talk on Existence of PSB in Georgia. Interview with Tamar Kintsurashvili, Director-General of PSB of Georgia / "????????????????????? ? ?????????? ?????-???????. ??????" (Media Law and Practice. Georgia journal). No.1, 2005. See:

<http://www.medialaw.ru/publications/zip/national/new/ge/3.htm#2>

<sup>34</sup> Resolution 1477 (2006) "Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia", see:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1477.htm>

Meetings of the Board of Trustees are held at least once a month. Special meetings are called by the Chair of the Board on his or her own initiative or at the request of one-third of the Board members, the Director-General or an auditor of the public service broadcaster.

The Board of Trustees prepares an annual report on the activities of the public service broadcaster to be presented to the President of Georgia, the Parliament, and the NCC; the report is to be published in the press. The report *inter alia* contains information on the current and future programme priorities; on the current and future programme schedules; on independent productions and their producers; on the number of complaints received and their analysis; on the content of public consultations held by the Board and the suggestions made by the citizenry; on the next year's budget of the public service broadcaster; the financial report of the previous year; and on the results of internal and external audits.

The Board of Trustees also takes part in the drafting a Code of Conduct for Broadcasters, prescribed by the Statute. The Code is to be approved by the National Commission on Communications. A number of Georgian NGOs with the support of experts from the European Union are still drafting this code.

The Board has nine members each serving for six years with three members rotating every two years. No trustee can serve for more than two consecutive terms. The Chair and his or her deputy are elected by the trustees at their first meeting.

The system for appointing members of the Board of Trustees is somewhat complex. The candidates are selected in an open competition. A hundred days before the expiration of the term in office of a trustee or within 10 days of his/her resignation (in a number of cases such a resignation is called for by the Statute "On broadcasting") or his/her death the President of Georgia issues a decree on opening the competition to fill the vacancy. A candidate should enjoy public respect, have college education and at least five years of working experience. Anyone can put forward a candidacy within 30 days of the date of issue of the decree. If less than three candidacies are put forward during this period, a new competition must be announced. Within 10 days after the end of the period for submitting candidacies the list of candidates must be published by the press. Within 10 days after publication the President, taking into consideration the qualifications of the candidates according to requirements, selects at least three candidates for each vacancy and presents them to Parliament. Within 30 days after that event, Parliament by secret ballot chooses the new trustee, who is to be appointed by the President. The chosen candidate should have the approval of no less than 50 per cent of all deputies in Parliament. If no candidate reaches such a majority, the President is to present new candidates within 50 days after the voting took place, following the same procedure.

The list of potential conflicts of interest that would prevent a trustee to fill a vacancy shall be verified. Cases of conflict of interest include a ban for a trustee to be – at the same time – an official of any other administrative body, to be a member of a political party, to have any paid job at a broadcasting company, to own stock of a broadcaster or a company producing works and/or services for a broadcaster, to be a manager, representative or a consultant of a broadcaster or a company producing works and/or services for a broadcaster, or to have any direct or indirect economic interest in regards to such companies. Some of these bans apply also to family members of a trustee.

The Board of Trustees was appointed in July 2005. Its chair is Mr. Levan Tarkhishvili, who was originally a forest engineer, but after the collapse of the Soviet Union earned a degree from the Central European University and later worked in the Georgia offices

of the Eurasia Foundation.. The Board counts among its members a former University professor and Executive Director of the Soros Foundation; an internationally trained sociologist; a composer of songs; a professor of European public law at Tbilisi University; a investigative journalist; the President of the Georgian Associations of Radiologists and Telemedicine Professionals; and Nino Ananiashvili, a world-known ballerina, formerly at the *Bolshoi* Theatre in Moscow.

The Director-General is elected by the Board of Trustees for the term of six years following an open competition. The Director-General performs managerial duties and represents the public service broadcaster in its relation with third parties. The current Director-General is a 35-year old woman journalist who was elected on 19 August 2005.

### Content Requirements

Public service broadcasting is based on the principles of independence, impartiality and honesty of its programmes. The purpose of its establishment is to produce and make available for the public high quality TV and radio programmes free from any political, religious and commercial pressure, openly presenting in a balanced way the different views of the public and allowing various social groups make more noticeable their involvement in the process of developing a democratic society. Public service broadcasting will promote the introduction of democratic values and institutions, foster national identity , and the formation of a well informed society with active citizenry.

An important demand to the public service broadcaster is to preserve an equal share for news, current affairs, educational, cultural, and sports programmes.

The Statute “On Broadcasting” prescribes that coverage of events in Georgia, its regions, and in the world shall be timely and pluralistic. News shall be broadcast in prime time, the same applies for current affairs programmes and election debates (Art. 16).

No less than 25 per cent of its airtime shall be allocated to programmes produced by independent companies. Programmes shall reflect ethnic, cultural, linguistic, religious, gender and age differences in society. Indeed, the public service broadcaster disseminates evening news programmes with simultaneous translation in areas populated by the Azerbaijani minority.

The public service broadcaster, says the Statute, shall disseminate programming for children and young people. A rare demand in a country in the Commonwealth of Independent States (CIS) also imposed by the Statute is to broadcast programmes for those in the audience “with limited physical capabilities”.

In order to prevent pressure from commercial interests, advertising during programmes is limited to 30 minutes per day, tele-shopping is reduced to an additional 15 minutes per day. Advertising and tele-shopping combined is limited to six minutes per hour. Advertising is allowed only on week days and only during breaks between programmes and natural pauses during sports events.

The Board of Trustees determines programme priorities of the public service broadcaster of Georgia, by taking into account the public opinion research and the main directions of state policy in the area of broadcasting.

The programme priorities of the public service broadcaster were approved by the Board of Trustees for the first time in October 2005.<sup>35</sup> They defined the priority objectives of the public service broadcaster as:

- To provide for the adequate information of the public on social, political and cultural processes taking place both in the country and abroad;
- To show the diversity of interests, values and views existing in the country, to promote public dialogue and discussion;
- To promote civic education, providing those who are active participants in public life with an adequate knowledge on science, history, and different areas of public thought;
- To provide the public with high quality products of modern and classical arts.<sup>36</sup>

The following quotation from the instructions part of the document concerning coverage of international events illustrates the level of detail in programme priorities: "The public service broadcaster should cover in its programmes global events. The events should be analyzed firstly from the perspective of their influence on Georgia. During coverage the focus should not be exclusively on political and economic issues. News and achievements in cultural, sports, scientific and other spheres should also be addressed. The activity of international organizations, as well as the role that Georgia plays in these organizations should also be covered.

The public service broadcaster should widely cover life and current affairs in Georgia's partner and neighbouring countries. Special attention should be paid to Georgia's relationships and cooperation with those countries.

When covering international events, initiatives related to global, regional and sub-regional security should be prioritized.

Programmes should address the processes of Georgia's international integration. Special attention should be paid to Georgia-NATO and Georgia-EU relationships".<sup>37</sup>

The programme priorities were developed for 2006, a transitional year for the new system, with the purpose of demonstrating the Board's vision concerning current main values and development directions for public service broadcasting.

The public service broadcaster ensures the transparency of its activities; it organizes regular meetings with society aimed at achieving a better expression of the interests of the public, and taking into consideration issues that matter to citizens. For that reason, public councils shall be established within the Board of Trustees. Although so far those councils have not been established, a stated goal is that, after the establishment of those public councils, this first version of the Board's vision will be widely discussed by the general public leading to the preparation of a three-year programme for further development of public service broadcasting and programme priorities.

### Control over Activities of the Public Broadcasting Company

The personnel policy of the governing bodies of the public service broadcaster came under sharp criticism from the deputies of the majority party in Parliament in February

<sup>35</sup> *Media.Ge.* No. 3, 1 November 2005. Source: [www.media.ge](http://www.media.ge)

<sup>36</sup> See the official web-site of the Board of Trustees of the *Public Broadcaster "Television and Radio of Georgia"* at: <http://www.geotvr.ge/board/english/prior.html>

<sup>37</sup> *Ibid.*

2006 when several journalists lost their jobs. The protests in Parliament were supported by the trade unions. The former employees also complained to the Public Defender (Ombudsman) of the Republic. In response, the Director-General noted that the Parliament had no right to interfere in the activities of the company and can only express views upon hearing the annual report of the public service broadcaster.<sup>38</sup>

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<sup>38</sup> *Media.Ge.* No. 54, 2 March 2006. Source: [www.media.ge](http://www.media.ge)

## MOLDOVA

### Historical Background

Moldova was the first country of the CIS to introduce public service broadcasting. Indeed, the first steps towards the goal of creating public service television were taken during late Soviet times when the Parliament adopted a Resolution<sup>39</sup> giving equal and free of charge access to National Television and Radio to organizations that functioned according to the Statute “On political parties and other public and political organizations”.

On 3 October 1995 the Statute “On Television and Radio”<sup>40</sup> was adopted. The Statute authorised the operation of public service broadcasters and declared the transformation of the State Company “Teleradio-Moldova” into a public institution of television and radio. In 1996, a new Charter of “Teleradio-Moldova” was approved by the Government. The Company was labelled in the Charter the only public service broadcasting institution in the Republic of Moldova.

In 2002 there was a political crisis. Opposition parties and journalists of “Teleradio-Moldova” protested against *inter alia* lack of access for the opposition to programmes of the public service broadcaster. The Parliamentary Assembly of the Council of Europe in its Resolution N 1280 (2002) regarding the “Functioning of democratic institutions in Moldova”<sup>41</sup> expressed concern about those events in Moldova at the beginning of 2002. It urged the Moldovan authorities to end the censorship of television programmes and urged them to grant all opposition political parties a generous access to discussion programmes. It urged the Moldovan Government and Parliament to embark without delay on transforming “Teleradio-Moldova” into an independent public corporation, and in particular the Resolution demanded: “an immediate start of work by the relevant parliamentary committee; the possible resumption of consideration of the draft legislation examined by the previous legislature; and assistance of Council of Europe experts in defining the public service status of the Moldovan radio and television corporation. This work should be completed by the end of the current parliamentary session, on 31 July 2002”.<sup>42</sup>

On 26 July 2002, Parliament passed the Statute “On Public National Broadcasting Company ‘Teleradio-Moldova’”.<sup>43</sup> This law satisfied neither the Council of Europe, nor the journalistic community or the opposition. This time the Parliamentary Assembly of the Council of Europe in its Resolution 1303 (2002) invited the Moldovan authorities to revise, during the autumn of 2002, the Statute “by genuinely involving civil society, associations representing the media and the political opposition in discussion, and by taking on board the recommendations made by the Council of Europe’s experts”. In particular, the Assembly requested that revision of the provisions on the composition, appointment and powers of the Supervisory Board (managing body of the Broadcasting

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<sup>39</sup> Resolution “? ?????????????? ???? ???? ? ?????? ??? ?????????-????? ???????  
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???????? ??????????????” (“On providing parties and other public and political organizations the right  
to use free of charge air of the National Radio and Television Company”), N 785 of 18  
November 1991, available at:

[http://www.justice.md/lex/document\\_rus.php?id=4AB7C70C:361DC6CB](http://www.justice.md/lex/document_rus.php?id=4AB7C70C:361DC6CB)

<sup>40</sup> Available at: [http://justice.md/lex/document\\_rus.php?id=9E0042E2:72BF64AE](http://justice.md/lex/document_rus.php?id=9E0042E2:72BF64AE).

<sup>41</sup> Available at: <http://assembly.coe.int/Documents/AdoptedText/ta02/eres1280.htm>

<sup>42</sup> Ibid.

<sup>43</sup> Available at: [http://justice.md/lex/document\\_rus.php?id=B1A533FA:E00A5A81](http://justice.md/lex/document_rus.php?id=B1A533FA:E00A5A81).

Company) “be the subject of the widest possible consultation”.<sup>44</sup> Amendments were introduced in 2003; however, the opposition indicated that they were dissatisfied with the legislation.

Recommendation 1721 (2005) of the Parliamentary Assembly of the Council of Europe regarding the “Functioning of democratic institutions in Moldova” called on the Committee of Ministers to “require the Moldovan authorities to submit all draft legislation in the relevant areas to the Council of Europe for expertise prior to its adoption”<sup>45</sup> particularly in relation to Moldovan legislation on broadcasting.

In the beginning of 2006 criticism of the status of public service television reached its peak. In May 2006 a group of ambassadors from EU Member States and representatives of the OSCE, the Council of Europe, and the European Commission in Chisinau issued a statement calling upon the Moldovan authorities to intensify the reform of “Teleradio-Moldova” in order to create genuine public service television.

Shortly before that event, on 6 April 2006, the Audiovisual Code of the Republic of Moldova – an act seeking the full codification of audiovisual legislation – passed a first reading in Parliament. It included a number of innovations changing the conditions for electronic mass media but, at the same time, it retained some provisions and institutions which had already been criticised by experts. The debate on the text of the bill was intense, this time with the participation of critics from the political opposition, the journalistic community, and European experts<sup>46</sup> and the second (final) reading took place on 27 July 2006. As a result of the debate Parliament made into law a changed version of the bill mostly responded to the needs of the government. The President of Moldova promulgated the Code on 4 August 2006; it entered into force on 16 August 2006.<sup>47</sup>

The Audiovisual Code of the Republic of Moldova replaced both the Statutes “On Television and Radio” and “On Public National Broadcasting Company ‘Teleradio-Moldova’”. In order to understand the development of regulation of the public service broadcasting in Moldova it is useful to compare the new regulatory regime with the one previously in force.

### Legal Status of the Public Service Broadcaster

Article 1 of the Statute “On Public National Broadcasting Company ‘Teleradio-Moldova’” defined the Company as a legal entity, enjoying operational autonomy and editorial independence, enabling pluralism of views and catering to the right of all citizens to receive full, true and up-to-date information. Article 2 of the new Audiovisual Code of the Republic of Moldova (hereinafter “Code”) expanded this definition emphasizing that “Teleradio-Moldova” shall serve society and shall be subject to its control.

The Code states that a public service broadcaster can be a “national or regional” organization. Initially the draft of the Code provided for the functioning of a single national broadcasting company with its own regional bureaus. The idea to allow

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<sup>44</sup> See: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/eres1303.htm>

<sup>45</sup> See: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/erec1721.htm>

<sup>46</sup> See, e.g. “Further Comments on the draft Audiovisual Code of the Republic of Moldova” at [http://www.osce.org/documents/rfm/2006/05/19078\\_en.pdf](http://www.osce.org/documents/rfm/2006/05/19078_en.pdf)

<sup>47</sup> Audiovisual Code of the Republic of Moldova of 27 July 2006 is available (in Russian) at: <http://www.medialaw.ru/exussrlaw/l/md/broadcast.htm>.

regional public service broadcasters was introduced almost as an afterthought. This approach was considered in the law due to the pressure of the opposition that was critical of the monopoly of the governing party over public service broadcasting in Moldova. The Code provides that regional public service broadcasters shall exist in the two autonomous regions of the Republic (Gagauz and Trans-Dniester),<sup>48</sup> and declares that their activities are subject to the Code. However, the opposition lobby did not achieve its main goal: the establishment of local public service broadcasters, most of which would have been in opposition to the Government.<sup>49</sup> All local broadcasters in operation when the Code was enacted were to be reorganized in the course of two months either as private companies or territorial bureaus of the national public broadcasting company "Teleradio-Moldova" (Article 68 para. 6).

The Code pays special attention to the principle of editorial independence of the public broadcasting company (Article 52). It includes two components. First, there is a ban for the authorities, political parties and other organizations to interfere with the public service broadcaster's activities. Second, the Code grants the managing bodies of the Company exclusive powers to make decisions on editorial policy; the law regards editorial policy as both a right and a duty of those bodies.

Unlike the previous law, the Code does not pay much attention to privileges granted to the Company by the State. There is no longer statutory obligation for the State to provide "Teleradio-Moldova" with a priority use of state owned technical equipment for the transmission of signals. "Teleradio-Moldova" no longer enjoys unhindered access to public archives, documents and other information at the disposal of governmental bodies. At the same time, public service broadcasters are no longer under a legal obligation to disseminate "official information". Also the exclusive right of the public broadcasting company to broadcast events of major importance for society was dropped from the Code.

Surprisingly, the Code does not include provisions guaranteeing the right to obtain a broadcasting license free of charge and without time limits for the public broadcasting company. These norms were deleted from the text between readings in Parliament.

However, the State is still under obligations concerning the economic dimension of public service broadcasting. According to Article 64 of the Code Parliament is obliged to guarantee a stable and full financial support for "Teleradio-Moldova". Government guarantees income to the company (Article 63).

#### The economy of "Teleradio-Moldova"

Until recently license fees were viewed by many as the economic backbone of public service broadcasting in Moldova. Nonetheless, every time a bill introduced the fee the approach was voted down by Parliament. The last time this happened was in 2001.

According to Article 63 of the Code, the public broadcasting company has assets and is authorised to own, use and dispose of property. However, the law contains a number of restrictions concerning operations involving the assets of the public broadcasting company. Those restrictions aim at preventing both the disposal of property via indirect schemes (for instance, there is ban on transferring property of the company at a price below market to any person, act as a sponsor or a subcontractor) or the accumulation

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<sup>48</sup> The Government has no control over the territory of Trans-Dniester.

<sup>49</sup> For more information on parties arguments see <http://www.vreamea.net/news/2006-04-07/15:08:36.html>



### Independent Regulatory Body and System of Management of the Company

According to the Statute on Television and Radio the Audiovisual Coordination Council (CCA) had the status of “an autonomous public authority” (Article 14). The CCA had powers to grant broadcasting licenses and control the legality of licensees’ activities, to enforce the broadcasting law, to elaborate (jointly with the Central Election Committee) rules on conducting electoral campaigns in the broadcast media. The Council was also authorised to impose fines on television companies who violated the law as well as to suspend and annul broadcasting licenses.

The Audiovisual Code kept the legal status of the CCA and extended its competence. The CCA now has the additional powers important for the operation of “Teleradio-Moldova”: it can make decisions regarding the organization and reorganization of the company’s departments and approve rules for internal audit. The CCA is also authorized to control compliance with legislation of the company’s activities, and to inform the Supervisory Council about violations of license conditions committed by “Teleradio-Moldova” , and to impose sanctions on the public broadcasting company.

As the CCA remains the regulatory and controlling body, the law provides for the Council’s independence and seeks to ensure representation of the interests of society. All nine members of the CCA are to be appointed by Parliament (by 3/5 of votes) from among the candidates proposed by a parliamentary commission related to the mass media affairs (in the past, Council members were appointed in equal parts by the President, the Government, and Parliament). Civil society organizations have the right to propose candidates. However, those proposals are not obligatory for the selection or consideration by the parliamentary commission. The practical side of the new arrangements will be seen soon. On 15 September 2006 the Parliament Commission for culture, science, education, youth, sports and media publicly announced the contest for selection of members to the Audiovisual Coordinating Council. The new CCA was appointed on 20 October 2006.<sup>53</sup>

According to Article 47 of the Code the activities of the CCA are to be financed from three sources: the state budget, the license fee (paid by broadcasters), and the regulation fee (1 per cent of the annual turnover of all broadcasters). Previously, the Council was financed exclusively by the state budget.

With the adoption of the Code, the management system of “Teleradio-Moldova” was transformed. Initially it included three bodies: the Supervisory Board, the Administrative Council, and the Company’s President. According to the provisions of the Code, the Administrative Council was dissolved, its functions were distributed between the President and his or her deputies (i.e., Director-General of Television and Director-General of Radio). The status and competence of the Supervisory Council (new name for the Supervisory Board), the President and his or her deputies were modified.

Members of the Supervisory Council are appointed by Parliament from among the candidates proposed by the CCA. In the past, according to the Statute “On Public National Broadcasting Company ‘Teleradio-Moldova’”, members of the Supervisory Board were appointed by a number of governmental bodies and public organisations (by Parliament, the President, the Government, the staff of the Company, and NGOs, including national minorities’ organizations, organizations of professional journalists, trade unions, etc.).

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<sup>53</sup> <http://press.try.md/print.php?idb=Polit&id=77642>

The independence of the Supervisory Board was called into question by experts. For example, the press freedom watchdog “Article 19” in its report “State to public: genuine public service broadcasting in Belarus, Moldova and Ukraine?”<sup>54</sup> referred to an episode when Mr. Efremov, a young businessman with little media experience but close connections to the ruling party, was appointed President of “Teleradio-Moldova” in 2003. However, in February 2004 Mr. Efremov was dismissed by the Board for violating the law and ignoring its warnings, an incident that seemed to put into question the independence from government of the company.

It seems that under current regulatory arrangements the level of public representation in the Supervisory Council is lower than it was in the former Supervisory Board. The Council will include only representatives supported by political parties that are represented in Parliament. However, in Moldova there are a significant number of political forces outside of Parliament.

The Supervisory Council shall: approve the Charter of “Teleradio-Moldova” and the “technical provisions”; evaluate the company’s activities and publish annual reports and recommendations; approve the organization and reorganization of departments of the Company including territorial bureaus; appoint the President of “Teleradio-Moldova” and his deputies (which will have been selected by a competition for each vacancy); inform the President about violations of the law by the public broadcasting company and puts requests to him or her to suppress violations (Art. 58 of the Code). There is an obvious overlap with the competence of the CCA. This overlap was the result of the reallocation of functions between these bodies when the Code was redrafted before the second reading. The Supervisory Council was introduced in the Code at the very last minute, before that moment the CCA competence included regulatory, supervisory and management functions of the public service broadcaster. Another negative consequence of the reallocation of powers is the absence of financial control over the activities of the public broadcasting company by both the Supervisory Council and the CCA.

The President of “Teleradio-Moldova” is responsible for the production of programmes, the establishment of the programme schedule, the protection of editorial independence, the compliance of programmes with legislation, as well as for the effective and envisaged use of the budget.

Initially, according to the law (both the 1996 Charter and the 2002 Statute), it was Parliament’s privilege to appoint and dismiss the President of the public broadcasting company. In 2003 this power was granted to the Supervisory Board. The Council organises a competition to select the President and is authorised to dismiss him or her by a 2/3 majority.

The Director-General of Television and the Director-General of Radio provide for setting up the “creative process” for the production of radio and television programmes and are responsible for human resources and management. In the past, human resources were managed by the Administrative Council (see above), which led to a crisis in “Teleradio-Moldova”. In 2004, the Administrative Council established a selection committee in to “restructure” the staff of the Company. Decisions of the committee were questioned by the journalists of the “Teleradio-Moldova”. They claimed that a number of journalists had been fired not because of lack of professionalism, but because of participation in strikes. It seems that current regulation does not provide for guarantees for making transparent decisions concerning human resources and preventing crises in the future.

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<sup>54</sup> Available at: [www.article19.org/pdfs/publications/belarus-moldova-ukraine-psb.pdf](http://www.article19.org/pdfs/publications/belarus-moldova-ukraine-psb.pdf)

## Content Requirements

The Code provides for a number of rules applicable to all broadcasters and some rules specific to “*Teleradio-Moldova*”. One may distinguish four issues concerning content requirements.

First, all broadcasters according to Article 3 of the Code will be obliged to dedicate at least 51 per cent of weekly broadcasting to European audiovisual production upon Moldova’s admittance to the European Union. When calculating the total amount of broadcasting time for purposes of the percentage, neither news, sport, entertainment programmes, nor advertising shall be included.

Second, measures aimed at support of the state language as well as domestic production were extended. According to current regulation at least 65 per cent of broadcasting time is devoted to Moldova news and public affairs programmes shall be in Moldovan language. From 1 January 2010 the percentage will raise to 80 . By the same date 80 per cent of a broadcaster’s programmes shall be produced in Moldova (50 per cent as of today) or in the European Union, or in countries that are parties to the European Convention on Transfrontier Television. If Russia does not ratify the Convention by that date, its programmes that now comprise the majority of broadcasting time in Moldova will be drastically reduced in volume. Nevertheless, the Code guarantees the rights of national minorities. In small territories where of certain minorities are settled, the minimum level of programmes in the state language is lower, 20 per cent.

Third, the law provides for a number of bans aiming at the protection of rights of other persons and especially minors (first of all, prohibition of “hate speech” and programmes harmful to minors).

Fourth and finally, a number of provisions concern the provision of “information stability” and pluralism (Article 7). Information programmes of broadcasters must satisfy the following requirements: plurality, social and political balance, objectivity, and impartiality. In order to implement these provisions broadcasting companies shall *inter alia* use a variety of sources of information; ensure the authenticity of information; avoid the distortion of facts by means of cutting, interpretation, etc.

As to the specific requirements for public service broadcasting, the provisions in the current Code are more detailed than in the former legislation. According to its Article 51 “*Teleradio-Moldova*” shall: inform the audience about a wide range of events (including political, economic and cultural), guided by the principles of pluralism, impartiality, novelty, high quality and integrity; disseminate the values of national heritage and implement the language policy; present the values of world civilization; cultivate human dignity, encourage public morality and national unity; contribute to democratic discussion; produce programmes for minors; prepare and enforce a professional code and introduce innovative technologies.

The programme policy statement shall be a part of the document devoted to “technical provisions” – a complex document to be approved by the Supervisory Council (Article 62). The declaration of programme policy shall include information concerning the weekly and total amount of broadcasting; the ratio of broadcasting in the state and national minorities’ languages; suppositional proportion of news programmes, documentary, movies, performances produced or purchased by the Company.

The difficulty with the technical provisions is that the Code does not make their enforcement obligatory. In particular, enforcement is neither within the competence of

the President of the Company – the chief executive body of “Teleradio-Moldova” – nor is it an object of the CCA’s control. The approval of the “technical provisions” may be considered as a formality necessary for receiving financing from the state budget.

In order to support Moldovan producers and to guarantee pluralism and diversity, the public service broadcaster shall “strive” to broadcast 20 per cent of programming made by independent producers.

As in the past, most difficult situations for the broadcaster arise when trying to meet the requirement of pluralism when reporting electoral campaigns. In 2002 a crisis concerning reporting the electoral campaign led to conflict within the public broadcasting company which eventually brought about its transformation.

In 2005 another tense situation took place. The Government and the President, as well as the representatives of the majority faction of Parliament refrained from communicating with the public via the public broadcasting company, starting from 1 January 2005 and until the end of the electoral campaign. In a message addressed to the Supervisory Board of the Company on 28 December 2004, President Vladimir Voronin of Moldova mentioned that “Teleradio-Moldova” continued to produce the same products “quite primitively and tritely”, as broadcast for many years before to the start of the media reform process in Moldova. “It provoked both disappointment and concern within part of civil society, among some politicians, international observers, as well as within the authorities, which had not just to watch its own activity, refracted back by some kind of distorting mirror, but tolerate unfair blows because the broadcaster ostensibly abuses the audience attention and exercises administrative pressure on the mass media”, stated President Voronin in his message. In order to exclude the possibility of a “wrong interpretation of any information about the current activity of government”, Mr. Voronin asked the Supervisory Board to adopt a decision to limit the presentation of such information to a maximum of a minute within the a news programme and up to 10 minutes during a given week.<sup>55</sup> The initial draft of the Code contained an obligation for broadcasters to devote not more than 90 seconds to each news message. Such detailed regulation was evidently a result of the 2004-2005 electoral crises. However, the proposal was rejected by Parliament.

“The monitoring of the ‘Teleradio-Moldova’ programmes in 2004 showed a discrepancy between the coverage of real issues faced by citizens on a daily basis and the topics covered by the broadcaster”, said a focus group of local observers established by a Western researcher studying freedom of the media in Eurasia.<sup>56</sup> Among various examples of poor service of the public service broadcaster during the electoral period another observer noted that despite the legislative requirement to place electoral debates on prime time (7 to 10 p.m.) “Teleradio-Moldova” showed them at 5:10, when many viewers were still at work or on their way home.<sup>57</sup>

In September 2006 the Supervisory Council required different types of programming to be broadcast by “Teleradio-Moldova” during the period of October 2006 to April 2007. According to the schedule 38 per cent of TV air time shall go to news programmes, while radio programmes shall contain 39 per cent of news. TV Moldova shall also

<sup>55</sup> <http://www.presedinte.md/press.php?p=1&s=2460&lang=rus>

<sup>56</sup> Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia. Washington, 2005. ? . 182.

<sup>57</sup> ? ???, ?. “????????? ?????? ?????????? ?????????????? ?? ‘????????????-?????????’” (Incomplete Protest of Journalists at “Teleradio-Moldova” / ?????????? ? ?????????? (Mass Media in Moldova bulletin) (Chisinau). December 2005. P. 16. See also: Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia. Washington, 2005. ? . 182.

include 17 per cent of social and economic programmes, 9 per cent of musical shows and programmes for youth, along with 5 per cent of programmes for national minorities in their respective languages. As to the further division of radio programmes, music is scheduled to take up 27 per cent of air time, culture 6 per cent and 2.5 per cent shall go to programmes in the languages of national minorities.<sup>58</sup>

### Control of the Activities of the Public Broadcasting Company

The previous law contemplated a form of public control of the activities of public broadcasting companies *pari passu* with the institutional one. The Statute “On the Public National Broadcasting Company “Teleradio-Moldova” obliged the Company to register letters and appeals of citizens concerning its programmes and to provide answers to these addresses within one month. At present, the Supervisory Council’s duty is to organize meetings with representatives of various social groups in order to “carry out research” (point “e” Article 58 of the Code). The goals and significance of such research is unclear.

With the adoption of the 2006 Audiovisual Code, the CCA alone has competence to guarantee that both private and public service broadcasters’ activities comply with the act. The Council is authorized to issue warnings, to prohibit certain advertising (which could mean to ban commercials), to impose fines, to suspend and to annul licenses. The Code establishes a closed (although quite long) list of grounds for imposing sanctions (Article 38 para. 2). The procedure for imposing sanctions is not set out, however, the Code contains few procedural guarantees of the broadcasters’ rights. The CCA shall be obliged to inform a broadcaster about an alleged violation of the law and to provide it with the opportunity to present its position. It is also important that all decisions of the CCA be reasoned and published on the Internet.

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<sup>58</sup> Moldova Media News (Chisinau). Volume 6, nr.9, 4 October 2006 (<http://ijc.md>)



## RUSSIAN FEDERATION

### “Public Russian Television” (ORT)

The creation of “Public Russian Television” (*ORT*, by its Russian abbreviation) by President Boris Yeltsin's decree of 29 November 1994 in place of the state-run national *Ostankino* Company that used to broadcast on Channel 1 dealt a heavy blow to the promotion of the public service television concept in Russia. To begin with, *ORT* was not a public enterprise. In essence it was a state-private stock company of closed type, wherein the government had 51% of the stock, and 8 private interconnected banking and industrial groups held the remaining 49%. Thus the word “public” in its name was almost a euphemism.

Why was *ORT* created? It might well have been for the political reason of diverting the attention of the public from the fact that Channel 1, despite its new and allegedly independent face, continued to be a state-run channel. Had it been possible to re-establish the trust of the public in the political programming of a largely discredited Channel 1, the parliamentary elections of December 1995 might have been won by the political elite then in power.

An economic reason was to attract investments from loyal banks and companies and establish – by means of broadcasts on the channel that was most accessible to the population – political stability in the country that had experienced calamities leading to the forced dissolution of the Russian Parliament and the adoption of the new Constitution in 1993. A calm political climate always enhances business, and although no-one seriously expected revenues from *ORT*, the mere strengthening of the then regime seemed to justify the investment. The government could kill two birds with one stone, it saved scarce budgetary means, and made private businesses work for the common goals.

In 1995 *ORT* obtained 19.3 per cent of its budget from the state coffers, but that was the last year when the government provided any substantial funding.<sup>59</sup> Thereafter, the authorities took the position that transferring huge studio capabilities to the company and offering reduced transmission rates amounted to sufficient and adequate support.

The creation of *ORT* was hardly a step toward establishing public service broadcasting in Russia because at the end of the day there was little doubt that the private investors in *ORT*, would never consent to putting the company under public control after they had invested so much money in television. The company's Board of Trustees, which had been elected by the stock-holders, had only analytical and advisory functions. By no means could it become “a guarantor of free speech, justice, objectivity and the humanity of any disseminated information”, as its Charter demanded.<sup>60</sup> When in 2002 the activities of the Board were investigated, no traces of the board could be found and it seems reasonable to suspect that it probably never met.<sup>61</sup>

With the change of public mood more tolerant of the stronger state control of national broadcasters put into force in the early 2000s, the broadcasting programme of *ORT* was quietly re-branded as *Channel 1* in September 2002.

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<sup>59</sup> ?????????? -daily (Kommersant Daily) (Moscow), 5 October 1996.

<sup>60</sup> ?????? ??? (ORT Charter), p. 11.1.

<sup>61</sup> Monroe Price & Andrei Richter. Russian Television and the Russian Public: Uneasy Transformations of Ideas of Public Service. Study prepared at the request of the Democracy and Governance Bureau of USAID in 2002. On file with the authors.

## Historical Background

The draft-making activity on public service broadcasting, slow in early 1990s, was boosted by the admission of the Russian Federation to the Council of Europe in 1996 and the subsequent joint work of Russian and European media experts. It intensified in 1997 when the *State Duma* (national Parliament) adopted in the first reading a bill "On Television and Radio Broadcasting", which called for the establishment in Russia of public service broadcasting, alongside with state and private broadcasting. The bill stated that regulations of public service radio and TV would be set by a separate statute. In 2000, however, the bill was resubmitted to the first reading and voted down by Parliament. Likewise, no other bill on broadcasting has passed its first reading in the State Duma ever since. The area of broadcasting remains regulated by decrees of the President and the Government.

This situation caused the Parliamentary Assembly of the Council of Europe to urge the Russian authorities to create conditions for pluralist and impartial broadcasting media by means of "establishing an independent public service broadcaster and an independent regulatory authority for the broadcasting sector in line with Council of Europe standards".<sup>62</sup>

Even though legislation was not successful up to date, several additional attempts to introduce public service broadcasting laws have been undertaken:

The latest bill on public service broadcasting was drafted by Dr. Mikhail Fedotov and set forward for public discussion by the Russian Union of Journalists (RUJ). It was officially introduced to the Duma in 2002 by a group of liberal deputies.<sup>63</sup>

According to that bill there would have been three levels of public service broadcasters in Russia funded in different ways. As the bill's final chapter stipulated, the only federal public service broadcasting corporation would have been created through the reorganization of the state-run Russian State Television and Radio Company (*RTR*). At the same time the government would have to sell its shares in *ORT* as the draft prohibits any kind of state involvement in other broadcasting companies (the "new" *RTR* would be funded by the State, but according to the Statute "On non-commercial organizations" it would have gained an independent status, and public control would be provided through its Board of Trustees).

At the regional level the main broadcasters in the regions of the Russian Federation (currently subsidiaries of *RTR*) could have been reorganized in a similar way or new companies could have been created by the regional governing bodies with the same "guarantees" of independence (and the government's withdrawal from the broadcasting field). The most questionable (given their non-compliance to the existing Civil Code requirements) was the proposed mechanism for the setting up of local (municipal) public service broadcasters – according to the bill, these could have been broadcasting companies of any possible legal type (commercial, non-profit etc) which had signed a

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<sup>62</sup> Resolution 1455 (2005) "Honouring of obligations and commitments by the Russian Federation". See:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1455.htm>

<sup>63</sup> Text of the draft law "On Public Broadcasting" (in Russian) is available at: <http://www.public-tv.ru/index.sema?a=articles&pid=2&id=59>.

"contract" with the municipal government to fulfil the agreed obligations of a public service broadcaster.<sup>64</sup>

In 2002 a Foundation for the Development of Public Service Broadcasting was started by the Russian Union of Journalists, chaired by a popular TV moderator Vladimir Pozner and ex-President of the USSR Mikhail Gorbachev as one of the trustees. It supported the draft federal statute on public service broadcasting and its introduction into Parliament.

In 2003 the draft law was rejected by the State Duma.

Thereafter a number of other bills were worked out in the constituencies of the Russian Federation (including Moscow and Tomsk regions<sup>65</sup>). They envisaged either the creation of a public production TV company funded by a percentage of the regional budget, or the transformation of a local state controlled broadcaster into a public TV company. All of them were rejected in 2006 by regional legislatures on the grounds that the regulation of broadcasting activities is within the exclusive competence of the federal authorities.

#### Public Control through Boards at State-run Channels

It is likely that in the 1990s the authorities thought that the setting up of state-run broadcasters whose activities were supervised by independent boards would be a realistic and fast way to introduce a Russian model of public broadcasting.

In 1993, at the time of an acute political crisis, the President and the Supreme Soviet (Parliament), were competing for the right to be the voice of the nation, and passed separate legal acts providing for the establishment of supervisory boards at the state channels.

The Presidential Decree of 20 March 1993 "On guaranties of the informational stability and broadcasting requirements"<sup>66</sup> provided for the transformation of the broadcasting system. It aimed at generating competition between state, public service and private television and radio. It also prescribed governmental authorities to establish *guardian councils* in order to resolve conflicts concerning the misrepresentation of political parties, attempts to introduce censorship or other unlawful forms of control. The Decree, still in force, was ignored by all governmental bodies, as well as by the state broadcasters.

On 29 March 1993 the Congress of People's Deputies of the Russian Federation (Parliamentary assembly) adopted the Resolution "On providing the freedom of speech in the state broadcasting and information services".<sup>67</sup> This act established the right of legislatures (both federal and regional) to establish supervisory boards at the state broadcasting channels. The goals of these boards were to guarantee objective information by state broadcasters on political and economic events, to provide access for various political organizations to broadcasters' programmes, and to counteract political monopolisation of the airwaves. The Resolution did not specify the powers of

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<sup>64</sup> Monroe Price & Andrei Richter. Russian Television and the Russian Public: Uneasy Transformations of Ideas of Public Service.

<sup>65</sup> Authors of this report contributed to numerous reviews of the bills in Tomsk and Moscow regions.

<sup>66</sup> Available (in Russian) at: <http://www.ruj.ru/ukaz1.htm>.

<sup>67</sup> Available at: [http://www.businesspravo.ru/Docum/DocumShow\\_DocumID\\_55709.html](http://www.businesspravo.ru/Docum/DocumShow_DocumID_55709.html).

the boards. For that reason its compliance with the Constitution was challenged in the Constitutional Court. Claimants argued that the Act provided for the introduction of censorship. The Constitutional Court in its Decision of 27 May 1993 ruled that the Resolution was enacted procedurally incorrectly and therefore annulled it.<sup>68</sup> It is important to note that the possibility *per se* to establish supervisory boards was not rejected by the Constitutional Court.

The story continued when by the Decree of the President of the Russian Federation of 31 October 1997 a supervisory board at the national state-run channel "Kultura" was established alongside the establishment of the channel.<sup>69</sup> The Board had sufficient competence including the right to form the programme policy and control other activities of "Kultura". The Council included experts in the sphere of culture and media appointed by the President, and was chaired by the President *in person*. However, after one or two meetings the Board ceased its functioning.

The 1998 Charter of RTR envisaged a public council at the office of the Chairman of the Russian State Television and Radio Company (RTR), whose members should have been selected from among "outstanding personalities of science, culture and arts" and approved by Ordinance of the Government. The body aimed at the protection of public control over state broadcast media. The Charter provided that the council members be selected by the Chairman alone. There is no record of meetings of the council.

By 2000 the whole idea of state-run television had changed. The Government as well as Parliament no longer considered new attempts to introduce public control over state broadcasting. In 2004 the Government approved the new Charter of the Russian State Television and Radio Company (RTR). It contains no mentioning of guarantees of editorial and/or financial independence of the state broadcaster.<sup>70</sup> The Company has the status of a regular federal unitary enterprise. Its assets shall be considered state property. The Chairman of the Company is appointed by the President of Russia and is the only managing body of the state broadcaster. The Charter recognizes the right of the Chairman to set up consultative bodies, although instances of execution of this right were never publicly recorded.

### Public Service Content Obligations

The Federal Statute of 13 January 1995 "On the order of covering the government authorities' activities in the state media"<sup>71</sup> obliges state-run national audiovisual companies to provide coverage for a number of public events (President's addresses, inauguration ceremony, State Duma's opening sessions, etc.). They must inform the public on the most important actions of national public bodies (exercising the constitutional authority vested in the Duma and the President, etc.) on the day they

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<sup>68</sup> Judgment of the Constitutional Court of the Russian Federation of 27 May 1993 N 11-P "??  
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constitutionality of the decree of the Congress of People's Deputies of the Russian Federation  
of 29 March 1993 'On Measures to Support Free Speech in State Broadcasting and in  
Information Services'), available in Russian at: [http://www.ksrf.ru/doc/postan/p11\\_93.htm](http://www.ksrf.ru/doc/postan/p11_93.htm)

<sup>69</sup> Available in Russian at:

[http://www.businesspravo.ru/Docum/DocumShow\\_DocumID\\_53842.html](http://www.businesspravo.ru/Docum/DocumShow_DocumID_53842.html).

<sup>70</sup> Text of the Charter (approved by the Resolution of the Government of the Russian Federation of 16 February 2004, N 111) available (in Russian) at: <http://npa.gov.garweb.ru:8080/public/default.asp?no=6048582#2000>.

<sup>71</sup> Available in Russian at: [http://www.medialaw.ru/laws/russian\\_laws/txt/3.htm](http://www.medialaw.ru/laws/russian_laws/txt/3.htm).

happen. They should produce weekly information programmes on the activities of the State Duma and the Federation Council (upper chamber of the Parliament) and offer information on their daily activities as a separate item of the news programmes. They should also organise and broadcast monthly debates between Duma deputies from different factions. A regional state-run audiovisual programme should twice a month provide airtime (no less than 7 minutes) to the Duma deputies from that particular region. The Statute introduces an obligation for state-run media to provide a comprehensive, objective and unbiased coverage of the activities of the national government, parliament and courts. The Statute is not being implemented in practice, since the Federal Broadcasting Commission that was supposed to oversee and control the implementation of the act has never been established, while the Federal Service that oversees the compliance of broadcasters with the mass media law is not eager to issue warnings to the government-run broadcasters for an abuse of a statute that supposedly is more focused on the coverage of Parliament than the executive branch or the President.<sup>72</sup>

The electoral law foresees that during election campaigns broadcasters that are either (i) funded (co-funded) by state or municipal bodies, or (ii) subsidized completely or partially from the state budget or that administered by the bodies of local self-government, as well as (iii) those whose stock belongs to the state or municipal bodies, shall provide equal conditions for election campaigning to registered candidates and electoral associations. The airtime shall be provided during the periods when TV and radio programmes are viewed and listened to by the highest number of persons (e.g., articles 47, 50, 51 of the 2002 Federal Statute "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum").

The electoral law set out a policy for granting equal free airtime for individuals and political parties running for office. The system is fair and for the most part it has been implemented in an even-handed way, giving opposing voices a degree of opportunity to reach the public during election campaigns. However, news and analysis programmes on state television during election campaigns far outweigh any public service provided by their free air time (which achieves far lower ratings than the regular news and current affairs shows).

### The 2002 Draft Law on Public Television and Radio

#### *Envisaged Legal Status of the Public Service Broadcaster*

The above-mentioned 2002 draft law on public service television and radio provided for an organizational status of the *state corporation* for the federal public broadcasting company. According to Russia's Civil Code the functioning of such organisation is to be regulated by a special federal statute, thus giving future corporation a special status. The new federal Public Broadcasting Company was supposed to emerge as a result of reorganization of the *RTR* Company. Second-level regional state-run companies of public service broadcasting were to be set as non-commercial organisations. Municipalities were granted the right to establish third-level broadcasting companies of any organisational forms (including *inter alia* joint stock companies) as well as to make agreements with commercial stations so that they perform public service broadcasts. According to the bill state and municipal bodies were not allowed to participate in any other form of broadcasting activities.

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<sup>72</sup> Andrei Richter "????????? ?????? ??????????????"(Media Law). ? oscow, 2002. P.72.

As in other countries the bill stipulated that broadcasting licenses would be granted to public broadcasters without competition or tender. However, the licenses were not unlimited, but they could be extended. Moreover, according to the bill licenses could be suspended or even annulled by a court of justice.

#### *Envisaged Economy of the Public Service Broadcaster*

Under the 2002 bill, the property of a public service broadcaster was supposed to be owned by the company itself. Founders, *i.e.* the state bodies, had no right to dispose of such property. The draft provided for a complex system of financing of the public broadcasting company. It included: budget financing (a minimum of 0.5 per cent of the total amount of the state budget allocated to the Federal Company); license fee (differentiated for citizens and companies); sponsorship, dissemination of political and social advertising (unlike commercial advertising that was supposed to be banned in public service broadcasts); and sale of its own programmes.

#### *Envisaged Content Regulation*

The 2002 bill contained a number of requirements regarding the content of the public service broadcasters' programmes. The programmes had to aim at guaranteeing the realization of principles of pluralism, impartiality, and independence. Public service broadcasters were supposed to provide access to their programmes to a number of social groups including national minorities, political parties represented in the legislatures and religious groups.

#### *Envisaged Governing Bodies and System of Management of the Company*

The management system of the federal public service broadcaster was supposed to be rather complex.<sup>73</sup> The structure of the governing bodies included a Supervisory Board, a Board of Directors, a Managing Board and a Director-General.

According to the 2002 bill the Supervisory Board, was to include 75 members (representatives of political parties, religious organizations, national NGOs) to be appointed by the State Duma. Its competence was vested in three main powers: to control PSB activities, to participate in appointment and dismissal of the Director-General, to determine directions of the development of the PSB.

The Board of Directors (formed by the President, the Parliament and the Government) was supposed to make decisions on key issues for the functioning of the public service broadcaster (for instance, approve major transactions and budget).

The Managing Board (formed by the Director-General) would have rendered the most important operative financial and employment services of the public service broadcaster (for instance, establishing wage rates of the Public Broadcasting Company's staff).

The Director-General was to be appointed and dismissed by the President of Russia. The latter, however, would have had to choose between candidates put forward by the Supervisory Board. The Director-General would have had full operational control over the activities of the Company.

It seems that such a management system was too difficult to operate and could have been subject to influence from the President of Russia. The author of the bill,

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<sup>73</sup> See scheme at [http://www.ruj.ru/index\\_47.htm](http://www.ruj.ru/index_47.htm)

Dr. Mikhail Fedotov (incidentally a co-author of the current Statute “On the Mass Media”), thought that the arrangements were intended to help having the bill passed.<sup>74</sup> Despite the fact that the author of the draft law called it conservative it was rejected by the Council of the Duma (body including representatives of all parliamentary factions that provides preliminary analysis of bills introduced in the lower house of the Parliament) and never submitted even for the first reading.

### Arguments against Public Service Broadcasting

The Legal Department of the State Duma in its preliminary review set forward more than a dozen of arguments against the bill on public service television. The bill, in the opinion of the lawyers of the legislature, was in contradiction with civil, constitutional, and mass media law. In particular, a prohibition for the authorities to fund any media outlets except for public ones was considered as an unlawful restriction of everyone's right to participate in economic activity as specified in the Civil Code. Moreover, the way planned for reorganising the state broadcasting companies was criticized as being contradictory to the civil legislation requirements. The term “public service broadcasting” was put under question for the reason that the Statute “On the Mass Media” did not specify differences between “public service” and “commercial” broadcasting. The competence of the State Duma to appoint members of the Supervisory Board was questioned as no such power was mentioned in the Constitution of Russia.

The introduction of a license fee was criticized as an unlawful form of taxation. The Legal Department emphasized that the introduction of such a fee would bear not only legal but also social consequences, hinting at possible public protests against a new tax. Generally speaking, whenever the possibility of introducing public service broadcasting in the Russian Federation is discussed, its opponents use arguments concerning future license fee. Politicians say that such new tax will provoke the anger of the citizenry.

The practical (both economic and political) reasons for an absence of public service broadcasting were formulated by Igor Yakovenko, the Secretary-General of the Russian Union of Journalists and a major proponent of public service broadcasting. He believes that there are two major forces counteracting activities aimed at the establishment of public service television: the advertising companies that have contracts with state-run channels and those bureaucrats scared to lose mechanisms of control over the media and public opinion.<sup>75</sup>

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<sup>74</sup> “????????????? ???????: ??????? ? ??????? ” (Public broadcasting: legal basis) by Prof. Mikhail Fedotov is available at: <http://www.public-tv.ru/index.sema?a=articles&pid=2&id=60>

<sup>75</sup> “????????????? ?????????????? ??????? ” (Encyclopedia of Public Service Broadcasting). Moscow, 2005. P. 9.

### Recent Developments

In April 2006 Mr. German Gref, Russia's Minister of Economic Development, announced at the meeting of trustees of the Foundation for the Development of Public Service Broadcasting that a new law on national public service television will be introduced and adopted by 2008. Mr. Gref emphasised that public service television is a necessary instrument to counteract wide-spread corruption. However, the statement does not seem practical. Doubts are cast by the fact that the Ministry of Economic Development had made similar statements earlier, though the date was set then for 2005. The ministerial draft was neither presented to Parliament, nor to experts or the public.

## UKRAINE

### Historical Background

The Statute on Television and Radio Broadcasting<sup>76</sup> was adopted by the Parliament on 21 December 1993. It was amended on 2 June 1995 and since then stipulates that the structure of broadcasting in Ukraine includes public service broadcasting alongside with state and "non-state" (commercial) broadcasters (Art. 11).

The control over the national state-run television and radio exercised by the President of Ukraine caused numerous protests from the *Supreme Rada* (Parliament), which attempted several times to share control and/or establish public service broadcasting parallel to the state-run pro-Presidential TV.

The Statute "On the public service television and radio broadcasting system"<sup>77</sup> entered into force on 5 November 1997. It provided the legal basis for the creation of the public service broadcasting system. Its preamble reads: "With a view to ensuring in-depth satisfaction of society's need in operative information, guaranteeing the pluralistic nature of broadcasts, allowing for national customs and moral values of the Ukrainian people, there shall be established a public service television and radio broadcasting system of Ukraine".

On 21 November 1997, the Parliament adopted the Resolution "On the creation of a Television and Radio Organisation of Public Service Broadcasting" and approved the "Programme Concept of Public Service Television and Radio Broadcasting"<sup>78</sup>. On 3 December 1997, the Resolution came into force (and continues still to be legally in force). By this Resolution the Parliament appointed a little-known stock company named the Civic Ukrainian Radio and Television Company (or *HURT* by its Ukrainian acronym) as a key part of the public service television and radio broadcasting system of Ukraine.

The Resolution ordered new arrangements for the distribution of air time on the national television channel *UT-2* and the radio channel *UR-3*: the Parliament instructed the National Council on Television and Radio Broadcasting (licensing and regulation body) to allocate 50 per cent of the channels' air time to *HURT*, 25 per cent to state-run and state-funded programmes of regional companies. The remaining 25 per cent shall be used for "the best creative contributions" of national and foreign companies. Thus national airwaves would become accessible to regional broadcasters. In absolute figures, according to the Policy Statement, 70 hours of weekly television broadcasting and 140 hours of weekly radio air time shall be allocated to the public broadcasting company (namely *HURT*).

The government was instructed by the Resolution to provide technical facilities to *HURT* for the transmission of its programmes. Other provisions of the Resolution stipulated a "prohibition on monopolisation of management" of the new broadcaster, "financial independence ... from certain subjects of the state power, enterprises,

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<sup>76</sup> Available in Russian at: <http://www.medialaw.ru/exussrlaw/ua/broadcast.htm>

<sup>77</sup> ????????? ?????????????????? ??????? (???) (Herald of the Supreme Rada of Ukraine), 1997, N 45, p.284. Changed and amended according to Law of Ukraine #2921-III (2921-14) of January 10, 2002.

<sup>78</sup> ????????? ?????????????????? ??????? (???) (Herald of the Supreme Rada of Ukraine), 1998, N 11-12, p. 51.

institutions and associations of citizens", "priority in obtaining the best technically-developed and economically feasible national channels and networks".

The National Council on Television and Radio Broadcasting at its meeting on 22 January 1998 refused to provide *HURT* with the licenses necessary to begin broadcasting.<sup>79</sup> Governmental agencies prevented budgetary financing of *HURT* and found loopholes in the applicable law and used this to sabotage the formation of public service broadcasting in Ukraine. The reluctance of the President and, therefore, of the executive branch to follow parliamentary decisions to take away from the National Council on Television and Radio Broadcasting's control of national broadcasting caused the refusal of the license and resulting there from the inability of *HURT* to begin actual broadcasting. An even further underlying factor is the fight between the different entities over who is to be the 'founder' of the broadcaster.

In numerous resolutions and recommendations the Parliamentary Assembly of the Council of Europe urged the Ukrainian authorities to promote public service broadcasting.<sup>80</sup>

### Legal Status of the Public Service Broadcaster

The Statute "On the public service television and radio broadcasting system" establishes public service broadcasting in the form of a Public Broadcasting Company – an independent legal entity that has the status of a nation-wide unitary and non-profit system (or amalgamation) of mass communication and is owned by the people of the Ukraine (Art. 1).

The Statute provides that the Parliament establishes a public service broadcasting company according to the procedures that it creates for this purpose.

The Supreme Rada shall give its approval to the Charter of Public Service Broadcasting and its Policy Statement, and shall take part in the creation of its governing bodies.

### Governing Bodies and System of management of the Company

The Public Council shall oversee public service broadcasting activities. It shall be comprised of one representative from every political party in Parliament, from every registered nation-wide artistic union and public association (from a list approved by the Rada separately), as well as from the President, Cabinet of Ministers, the National Bank, the Prosecutor-General's office, the National Council on Television and Radio Broadcasting, the Anti-Monopoly Committee, and the governmental Copyright Agency. By a separate Resolution of the Parliament the list of 12 artistic unions and public associations was approved on 15 January 1998.<sup>81</sup> Later the list of the members of the Public Council was added to the Resolution with 37 figures representing political

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<sup>79</sup> See: Richter Andrei "???????" (*Ukraine*) in "?????????????? ??? ??????????? ??? ??????" (Encyclopedia of Public Service Broadcasting) Moscow, 2005. P. 251.

<sup>80</sup> See, e.g. Resolution 1239 (2001) "Freedom of expression and the functioning of parliamentary democracy in Ukraine" at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta01/eres1239.htm> and Recommendation 1513 (2001) "Honouring of obligations and commitments by Ukraine" at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta01/erec1513.htm>

<sup>81</sup> ?????????? ?????????????????? ??????? (???) (Herald of the Supreme Rada of Ukraine), 1998, N 21, p.111.

parties and public organizations (but it contained no representatives from the President, the Prosecutor-General's office or the National Bank, as no delegates had been proposed from these offices).

The Qualification Council shall have three representatives from the President and three from the Parliament. It shall be created to advise the Public Council on the professionalism of the nominees to the Administrative Council.

The Administrative Council is a managerial body in charge of the day-to-day running of public service broadcasting, and subordinate to the Public Council. The Charter of Public Service Broadcasting was supposed to provide necessary details of appointments and regulations.

### Economy of Public Service Broadcasting

The Statute "On the public service television and radio broadcasting system" states that public service broadcasting shall be financed by means of a license fee, procurement contracts for the programmes produced for the government, commercial activities related to broadcasting, and other sources. A public foundation could be established by the Public Council if deemed necessary.

Advertising shall be banned, with 3 per cent of airtime allowed for tele-shopping. The formation of public service broadcasting and its activities in the first year of existence shall be financed from the national budget.

### Content Requirements

The Statute "On the public service television and radio broadcasting system" does not specify any content requirements pointing to the Policy Statement (or programme concept) that will guide on these issues. On 21 November 1997, the parliament adopted its Resolution "On the creation of a Television and Radio Organisation of Public Service Broadcasting" by which it approved the Policy Statement of Public Service Television and Radio Broadcasting.<sup>82</sup> The declared goals of public service broadcasting were the following:

- "Implementation of the system of public service broadcasting as an informational guarantor of human rights, for access to pluralistic information, and provision for the existence of independent media, controlled by society, on the basis of the granting of adequate status to non-governmental television and radio organisations";
- "Granting of free access to national broadcasting channels to a broad range of local ... television and radio organisations (irrespective of their form of ownership), as well as representatives of political parties, civic and religious associations";
- "Preservation and information about the best examples of the national culture and art, informational protection of national interests and the national spirituality, development of respect for general human values and general societal interests";
- "Realisation of broad information support for various political and social movements that contribute to the progress of Ukrainian statehood".

<sup>82</sup> ? ?????? ? ?????????????? ?????? (???) (Herald of the Supreme Rada of Ukraine), 1998, N 11-12, p. 51.

According to the Policy Statement, the Public Service Broadcasting Company shall be expected to produce 40 per cent of the programming, broadcast 40 per cent of the programming supplied by regional companies with the addition of 20 per cent of foreign programming. Its programming will consist of equal shares (20 per cent) of: i.) political and social programmes, ii.) public affairs and educational programmes, iii.) cultural and educational programmes, iv.) special programmes for children and young people, and v.) entertainment and films.

For the period of “establishment” of public broadcasting 10 per cent of airtime in the Statement was allocated to commercials.

### Recent Developments

One of the slogans of the “Orange Revolution” in Ukraine in late 2004 was the transformation of the propagandist state-run National Television into public service broadcasting companies. The new President Viktor Yushchenko and then Prime-Minister Yulia Timoshenko stated several times that this was on the agenda of the new government.

On 21 June 2005 following the parliamentary hearings that took place 13 April 2005, the Supreme Rada adopted a resolution that promised fast adoption of the revised 1997 Statute “On the public service television and radio broadcasting system” and its implementation in the near future. The basic changes that were planned sought to simplify the governing structure. The Supervisory Board of 30 persons was to become the sole body that appoints the management of the public service broadcasters. The Resolution already instructed the Government to allocate funding of public service television and radio in the 2006 budget.<sup>83</sup> Furthermore, it charged the Government with the transformation of the national television channels UT-1 and UT-2 as well as national radio channels UR-1, UR-2, and UR-3 into institutions of public service broadcasting by the end of 2005. None of these instructions were implemented.

On 8 July 2005 the new bill was adopted by the Supreme Rada in the first reading. On 6 October and on 3 November 2005 the Parliament held the second reading of the bill and both times sent it back to the parliamentary committee on freedom of speech and information for redrafting. On 22 December 2005 Rada discussed for the bill again in the second reading, it was put for a vote, failed to get support of the majority of the deputies and is therefore considered rejected. Only 119 members of Parliament voted in favour of the adoption of the bill in the second reading, 192 deputies then voted for a new second reading after further redrafting, while 226 votes are needed to pass any decision in Rada.

In 2006 the goal to facilitate the fast adoption of a revised version of the Statute “On the public service television and radio broadcasting system” was put on the Action Plan concerning Ukraine obligations vis-a-vis the Council of Europe as well as the Action Plan Ukraine-NATO. Both plans were approved by Presidential Decrees.

Nevertheless, 2006 was marked with the national elections to the Rada in March and subsequent crisis over the formation of the Cabinet of Ministers, which ended only in mid-summer. As a result no new bill on public service broadcasting was discussed by

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<sup>83</sup> ???????? ?????????????? ??????? (???) (Herald of the Supreme Rada of Ukraine), 2005 ?, N 28, ?? 377.

the Parliament and its committees. As of October 2006, the new bill was not expected in the Supreme Rada until mid-2007.<sup>84</sup>

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<sup>84</sup> Interview of Andrei Richter with Andrei Shevchenko, chair of the parliamentary committee on freedom of speech and information, Vienna, 14 October 2006.

## CONCLUSIONS

In a post-Soviet transitional society denationalization of state broadcasting and its replacement with public service television and radio allows the public to gain access to ideas of different political parties and groups, including oppositional, diversified sources of information on events taking place at home and in the world. Here public service broadcasting plays not only a cultural and educational role but is also of social and political importance. Public service broadcasting allows the citizens to freely discuss their problems, and not just those issues determined by the government. Public service broadcasting is an important guarantee of informational pluralism, ideological diversity, and also of professionalism of the mass media. The standards of public service broadcasting would improve the standards of journalistic work in other quality media.

Of special importance is the fact that television remains the main source of information in the CIS countries. No wonder that in the post-Soviet states that managed to make the transfer to public service broadcasting in earnest, public channels despite low ratings are more trusted than private broadcasters.<sup>85</sup>

The public service broadcasters in the post-Soviet states should not serve as a veil for the continuation of governmental control over the media. Therefore, public service broadcasting should reflect the standards adopted, for example, in the Recommendation No. R (96) 10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting.

The countries of the CIS do have an opportunity to implement the highest international standards concerning organization and legal regulation of public service broadcasting provided for by the Council of Europe and other international organizations. However, the implementation is quite controversial. It seems that it is more important for national legislatures to adopt acts including ready-made models of public service broadcasting that comply with standards of the Council of Europe and at the same time to retain the control over the broadcasting service, rather than to establish a genuine public service television that functions in order to satisfy the interests of society. It is a common practice in the countries of this study to change some “details” of the originally envisaged public service broadcasting laws in the course of the legislative process so that most of its provisions meant to secure the independence of public service broadcasting have no effect. Another “scholastic” way to counteract public service broadcasting is to lay stress on declarative provisions, without providing their actual enforcement. So far, paradoxically, the quality of legal regulation of public service broadcasting in general is relatively high, but its functioning is unsatisfactory. Another general problem is that governments tend to retain economic mechanisms, first of all budgetary funding, as a leverage for possible pressure upon public service broadcasters.

The functioning of public service broadcasters suffers from three “Achilles' heels”. *First*, the principles of formation of managing bodies does often neither guarantee independence to such bodies nor result in the widest possible representation of a given society. Past experience shows that appointment via democratic and transparent

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<sup>85</sup> For example, public trust in Estonia to public ETV is 52 percent, to ER – 49 percent, while the trust to private TV channels is 35 percent, private radio – 31, and newspapers – 34 percent. See: Estonia / EU Monitoring and Advocacy Program of the Open Society Institute. Television across Europe: regulation, policy and independence. Monitoring reports. Vol.1. Budapest, N.Y., 2005. P. 565.

procedures to the managing bodies of public television companies of either former state channels managers or inexperienced managers is a frequent practise. In turn, this predetermines a pro-governmental orientation of public service broadcasting. The same is true of the supervisory bodies to the extent that they are established in ways leading to the domination of the interests of the ruling political forces.

*Second*, the system of financing public service broadcasters does not secure their independence. The lack of clear rules and guarantees for budget financing and significant discretionary power of governmental bodies concerning economic decisions (including how much money to allocate to the budget of the public service broadcasters) cause a significant dependence of the public service broadcasting system on state authorities. The introduction of a license fee, a measure that might change conditions drastically, is postponed indefinitely in the countries under examination. Nevertheless the absence of a license fee anywhere in the post-Soviet world (including the Baltics) has also other reasons. The standards of living in this part of the world are much lower than in countries with developed public service broadcasting systems, and this puts a brake on any attempt to introduce an additional form of tax. Moreover, the motivation of the population to pay for public service broadcasting is low, which can be explained by the intense growth of commercial private TV and radio in the post-Soviet states taking place *before* the birth of public service broadcasting. A certain dependence of the majority of the population on light entertainment programmes has been created. The transformation of state broadcasting with little popularity into public service broadcasting led to the perception that public service broadcasting is despite its importance only an *addition* to the existing system of private television and radio. It can fill the niche and educational interests of the audience but it is not considered as a national good and value – like it is in the U.K. or Canada. To compare, almost everywhere else in Western Europe public service broadcasting was established earlier than private broadcasting (in some countries by decades). There commercial broadcasting was and in some cases still is felt as an addition to the backbone of the broadcasting system – public service television and radio. Altogether these arguments point to the perception that the main source of funds for public service broadcasting in the post-Soviet countries will remain payments from the state budget even in the long-term.

*Third*, the ability of society to control the activities of a public broadcasting company is very low. The inclusion of members from public organizations into governing bodies aims at providing compliance with European standards concerning the representation of society in managing bodies. However, neither the law nor the practice knows mechanisms for feedback between such bodies and citizens (including mechanisms of accountability of the former). Furthermore, the laws do not include provisions for the direct control of society over public service broadcasters' activities. So far, public service broadcasting does not progress in its transformation from public "representation" to public "participation".

The tendency of governments to provide control over public service broadcasting became obvious in situations when highly important events took place in the countries of this study, especially during election campaigns. An enticement to preserve state control over broadcasting channels as the most powerful electoral resource still overcomes other pro public service broadcasting arguments. It leads to crises and even scandals which are usually followed by a transformation of principles of public service broadcasting aimed at enhancing participatory regulation. This process in turn yields no results due to alterations introduced to other "details". It seems that unless

the main goal of government in the CIS space moves away from satisfying in a formal manner the standards set by international organizations, and focuses instead on the satisfaction of the actual needs of society for a system of broadcasting that is of a pluralistic nature and controlled by society, all attempts to introduce genuine public service broadcasting service are doomed to fail.