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THE ROLE OF NATIONAL PARLIAMENTS
IN IMPROVING INDEPENDENCE
AND PLURALISM OF THE MEDIA

Regional conference organised by

the Parliamentary Assembly of the Council of Europe

Budapest
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SUMMARY REPORT

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Partnership for Good Governance

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[1]   Views expressed in this report are those of the author and do not necessarily reflect the position of the Council of Europe.

Background

Since the beginning of 2015, the Parliamentary Assembly has participated in the implementation at parliamentary level of the joint programmatic framework between the Council of Europe and the European Union (Partnership for Good Governance). This programme aimed to support the reinforcement of democratic reforms in Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus.

The conference was a part of the Council of Europe's action as approved in the framework of the Partnership for Good Governance. The Sub-Committee on Media and Information Society met on this occasion. Closely linked to relevant Council of Europe standards, it evaluated strategies for improving media freedom, independence, transparency, pluralism and diversity.

The conference brought together national parliamentary delegations from Eastern Partnership states (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, Ukraine), Members of the Parliamentary Assembly of the Council of Europe, in particular of the Committee on Culture, Science, Education and Media and its Sub-Committee on Media and Information Society, representatives of media regulators, public service broadcasters and media professionals

Quote:

> *"The goal of human existence is to achieve happiness; and good democratic and societal procedures as well as media freedoms certainly are prerequisites for it. Aren't politicians, experts, civil society organisations, we all, obliged to contribute to societal conditions which would enable us to pursue happiness?"*
>
> *Gvozden Flego, Honorary member of the Parliamentary Assembly of the Council of Europe (Croatia)*

Introduction

The conference was a good opportunity for an exchange between members of parliament, media regulators and journalists within the framework of the Partnership for Good Governance project. During the introductory remarks, several important issues which form a cornerstone of the public service media existence were mentioned, including the necessity of diverse content which has to be supplied by the media so that all citizens can express their views and participate in the society.

Without pluralism and independence of the media, we would find ourselves in a situation whereby the media could be controlled or discretely manipulated. Pluralism and diverse media content is fundamental for our societies – it has to be supplied by the media so that all citizens can exchange their views and participate in the society.

The authorities have to elaborate an appropriate legal framework for the functioning of the media. The media have to be independent and they have to be protected from any political influence. Democratic and transparent appointment of the heads of regulatory authorities is very important – they cannot receive any instructions from anyone and governments should not interfere in their work. Editorial independence of the media is essential as without it there would not be any good quality programmes. Given the risk of serving the purposes of the parties in power, public service media have to be impartial in the context of new technology and they have to create a social cohesion component and a forum for a pluralistic debate. Public service media have to be independent in their editorial work and as institutions – it is essential that the proper legal framework be provided for funding of public service media that has to guarantee their independence. Public service media boards should guarantee the independence of public service media and no political influence should be tolerated.

Helping member States to promote freedom of the media, the Council of Europe has issued a number of recommendations in this area that could serve as a basis for a comprehensive legal framework. Over the last years, however, a worrying decline has taken place in the independence of media, with journalists receiving different kind of threats, facing intimidation and harassment. According to a recent report published by the Council of Europe, as many as 69 % of journalists claimed to have suffered some economic or psychological or political pressure.[2] Journalists have been arrested without due justification, intimidated and harassed

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[2] Journalists under pressure - Unwarranted interference, fear and self-censorship in Europe (2017)
https://book.coe.int/eur/en/human-rights-and-democracy/7284-journalists-under-pressure-unwarranted-interference-fear-and-self-censorship-in-europe.html

online. The Committee of Ministers has recommended that member States protect journalists and other media actors, encouraging them to take action to protect journalists when they are threatened and prosecute those who threaten them. Another area of concern are anti-terrorist and security laws which are legitimate as long as they are not misused to harass independent media or restrain their activities. There is a need to be critical about such harassment and the Parliamentary Assembly of the Council of Europe (PACE) has made specific proposals on this topic.

The changes in the media ecosystem in recent years make it more difficult for journalists to operate. As such, new economic models have to be identified as traditional media suffer from a legitimacy crisis which is often reinforced by politicians.

1. Legal standards for media transparency and pluralism

The first session focused on the existing standards for media transparency and pluralism in the Council of Europe member States and the role played by various actors, such as parliaments, regulators and others. Media are much more than they appear to be and parliaments are much stronger than they use their own strength. Media are more than mere mediators between events and publics or a pure disseminator of information. Democracy is a process of debating, of learning from each other and of common decision-making. To reach the right decisions, the decision-makers need to be properly informed. This makes the media not only informative but also formative, they are an important factor of creating the public opinion and, consequently, of public activities, and of our future.

It is important that people are free to speak, to associate, to elect, to be elected and to be properly informed. These freedoms and rights are part of many international documents. In the network of free public decision-making processes, the media also need to be free. The documents about freedom of expression, ratified by Council of Europe member States are to be adopted into national legislations and then properly implemented. It is incumbent upon state institutions to guarantee the freedom of the media and of journalists in the form of legal regulation and by judicial interventions.

Regrettably, a number of international organisations report about a dramatic decline of the media freedom during the last decade. According to a recent UNESCO report, two journalists are killed every week, what has far-reaching outcomes for journalists and for media.[3] As a result, they exercise self-censorship. The decline is *inter alia* due to pressure on editors and journalists by media owners, politicians and big advertisers. Instead of being the protectors of the freedom of the media, governments often misuse the media to stay in power. The media are also under pressure from many interest business or political groups to provide them a good coverage. The financial losses make media vulnerable and hence compliant. In such situations the media owners may be ready to accept different 'subventions' for their media services. By publishing contents created under external pressure which might be in disaccord with reality, the media information become often partial and unreliable.

Besides the traditional media, there are the new internet-based media which introduced so many innovations in our everyday lives that we need new definitions of media, journalist, pluralism, politics. The new online media ecosystem changes the ways of collecting information and of composing and disseminating news. The new media achieve two contrary effects: on the one hand, the mobile internet platforms open opportunities to everyone to report about events and to comment them on blogs, social media, web-portals, and so they enlarge the freedom of expression and expand the access to information. On the other hand, the news published by the new media is frequently not verified.

We live in the world where fake news and disinformation are becoming frequent and omnipresent, where people do not know whom to trust. It is incumbent upon public service broadcasters to have a responsibility to the public by offering credible and comprehensive newsworthy reporting. The journalistic standards and values that public broadcasters should represent are crucial in this era of misinformation and disinformation. The public service broadcasters should promote public interests and common good, they should inform impartially and comprehensively, and should not be obedient to dictates of financial profit or to particular political interests. They should produce good quality and diverse programs (information, education, culture, entertainment, and sport) for diverse audiences, raise political knowledge of their consumers and impact political participation of citizens. Moreover, they should produce specialised programs (for minorities) and contribute to societal inclusion and cohesion. The public service broadcasters have the best potential to be

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[3] For more information, see the UNESCO report available at:
https://en.unesco.org/world-media-trends-2017/trends-safety-journalists

the leading source of trustful information and to respond to extremely rapid societal, economic, and political challenges.

As for the role of the parliaments, members of parliament are responsible for establishing the legal framework for freedom of the media and the safety of journalists and the state institutions must ensure them. In addition to the adoption of laws, parliamentarians have a mandate to supervise how the executive power implements them. The public service media are predominantly established by the decisions of parliaments. By the act of establishment of the public service media, parliaments specify their mission, as well as their governing bodies and authorities. Parliaments largely decide also about the regulatory bodies for electronic media. The monitoring of freedom of the media would be the most efficient if parliaments established a parliamentary committee for media and communication, which would be entrusted with the observation of the media market, its functioning and the freedom of the media, particularly of the public service broadcasters. Parliament could, once a year, organise a public debate about freedom of the media in the country.

Governments are usually obliged to ensure the freedom of the media and of journalists, to guarantee the sustainable funding of the public service media (in the form of regular license fees, or, sometimes, through the state budget), but without any right to intervene in the public service media operations because there are legal provisions for public service media institutional and editorial autonomy. As such, governments have more obligations toward public service media than authority over them.

If some crucial problems arise in the functioning of public service broadcasters, the main responsibility would lay on its founder, i.e. on the parliament, either because it adopted a low-quality law, or because it does not supervise the implementation of the legal provisions regarding freedom and independence of the public service broadcasters. Because of its societal, cultural and political assignments, the dysfunctional public service broadcaster may cause a lot of damage and open the door to irreparable manipulations, what the parliament should not allow to happen. Our societies will be as free as the media will be free and the freedom of expression should be limited only by restrictions of hate speech, discrimination, and incitement to violence.

1.1. Transparency of media ownership and plurality and media concentration

The issue of transparency of media ownership and plurality and media concentration stem directly from Article 10 of European Convention of Human Rights and are very much connected, taking into account the importance of free, independent, diverse and responsible media, coupled with an ecosystem which ensures the respect of free media and enables the right to freedom of expression to flourish, without undue concentration of voices and opinions, in full accord with principles of transparency and plurality.

In the Council of Europe area, a number of Committee of Ministers' Recommendations and Declarations have been adopted, including Recommendation 94/13 on measures to promote media transparency, Recommendation 99/1 on measures to promote media pluralism, Recommendation 2007/2 on media pluralism and diversity of media content, and Declaration on protecting the role of the media in democracy in the context of media concentration.

The current media landscape is changing at a pace which was difficult to imagine, and is probably even more difficult to regulate: the essential role of the media is now being fulfilled not only by traditional and 'new' media, but also by various non-media actors, multinational corporations, NGOs and individuals. All this not only makes media sphere very dynamic and rapidly developing industry, but also forces us to change approaches and reinforce paradigm principles needed. That is why the Council of Ministers formed a committee of experts on media pluralism and transparency of media ownership. The committee finalised a draft text of a new recommendation in relation to media pluralism and transparency of media ownership, which will be submitted to the Committee of Ministers.

The statistics show that for 2015 on-line advertising generated more revenue than TV sector, with EUR 41.8 billion. Also, only Google and Facebook had 20% of global advertising. These two companies represented 85% of advertising growth. These trends challenge the traditional media business models and contribute to an increase in media convergence. It is of concern that a few media owners or groups acquire positions of considerable power where they can separately or jointly set the agenda of public debate and significantly influence or shape public opinion, reproducing the same content across all platforms on which they are present. These trends also lead to cost-cutting, job losses in traditional journalism and established media sectors, and the risk of financial dependencies for journalists and the media, which may ultimately cause a reduction in diversity of news and content and impoverish public debate.

This recommendation will reinforce the existing standards, as set forth by the aforementioned texts, and it additionally supplements them to ensure their continued relevance in the current multi-media ecosystem. Important principles that these and similar texts highlight are:

- ensuring access to diverse information sources by the public and at the same time recognising the diversity of the public either in terms of their backgrounds (ethnic, political, gender, sexual orientation etc.), or in terms of accessibility;
- continuously updating and publicising reliable and verifiable information on media ownership;
- underlining the desirability for separation between the exercise of control of media and decision making as regards media content;
- ensuring necessary regulatory measures in place with a view to guaranteeing full transparency of media ownership and adopting regulatory measures, if appropriate and having regard to the characteristics of each media market, with a view to preventing such a level of media concentration;
- underlying benefits of co-regulatory mechanisms for monitoring media markets and media concentration
- stressing the importance of adequately equipped and financed public service broadcasting, as a counterbalance against the risk of misusing the power of the media in a situation of strong media concentration;
- highlighting the importance of measures to promote informed citizenry, media literacy programs, etc.

It is also important to highlight the issue of net neutrality without which it would be very hard, if not impossible, to ensure that the basic principles of transparency, plurality and concentration are upheld. In that respect, it is also important to pay particular attention to finding ways to address the issue of the visibility, find ability, accessibility and promotion of media content online which is increasingly being influenced by automated processes, whether they are used alone or in combination with human decisions. In this respect, Council of Europe member States should encourage media, social media, search and recommendation engines and other intermediaries which use algorithms, along with media actors, regulatory authorities, civil society, academia and other relevant stakeholders to engage in open, independent, transparent and participatory initiatives that increase the transparency of the processes of online distribution of media content, including automated processes; seek to improve these distribution processes in order to enhance users' effective exposure to the broadest possible diversity of media content; provide clear information to users on how to find, access and derive maximum benefit from the wide range of content that is available, whilst upholding the protection of privacy.

It certainly is not easy to ensure these principles, and in most situations, particularly taking into account the current trends, does not seem reachable. But it is important to still try to achieve the main principles of transparency of media ownership and pluralism for the benefit of public interest, notably:

- By adopting and effectively implementing media-ownership regulation. Such regulation must ensure transparency in media ownership; it should address the issue of cross-media ownership, direct and indirect media ownership with effective control and influence over the media. It should also contribute to ensuring effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content, and therefore to ensuring that media continue to serve the public interest;

- By ensuring level-playing field for a number of independent and autonomous media channels and outlets and by adopting and effectively implementing laws in relation to regulation of audio-visual media services and media pluralism, ensuring, among other things, the existence of independent regulatory authorities and other relevant stakeholders;

- By encouraging and enabling co-regulatory measures and ensuring viable public service broadcasting and broadcasting of non-profit media.

It is important to stress that public service media are particularly suited to address the informational needs and interests of all sections of society, as is true of community media in respect of their constituent users. It is of utmost importance for public service media to have within their mandates the responsibility to reflect political pluralism and foster awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.

The big issues related to public service broadcasters include massive technology disconnect, the need to rebrand public media as depoliticised entities, following and responding to society needs, and a need to

repurpose public service content to keep up with powerful, far-reaching technologies and audience consumption patterns.

The media regulation should focus on rules regarding ownership concentration, ownership transparency, control and ownership of new players (technology companies, in particular). There is a need to reform funding mechanisms to rebuild national media. Public media should be rebuilt according to the most successful media formats. The media regulation should focus on companies with advanced technology capabilities. The commercial media model has collapsed – certainly in USA, but also in Europe. There is a clear growth in public funding – in most places governments are the biggest spenders on media. As governments spend money, it is important to find a fair mechanism for this money distribution.

Public service broadcasters suffer from massive technology disconnect. At the same time, the report published in 2013 by the Reuters Institute for the Study of Journalism provided a number of arguments that there is still place for Public Service Television despite the new technological changes. Public service media are the most trusted form of information source in Western countries. In the Eastern part, it is politicised and there is a massive technology disconnect. There is a need to repurpose public service media. There is a need to look at the media ownership issue more holistically – it is important to define concentration based on audience.

A particular question to address is whether popularity ratings should be taken into consideration when evaluating performance of public service broadcasters. According to several participants in the conference, criteria for public service media evaluation should be different, given the specific remit of these types of media. It is not the role of public service media to compete with commercial broadcasters. The basic role of public service media is to foster public debate and pluralism in all spheres, as outlined in a recent report by European Platform for Regulatory Authorities. The funding of public service media was also touched upon during this part of the conference, mentioning the Georgian example whereby the funding comes from the state budget and is calculated at 0,14 per cent of the GDP. Moreover, there is a new legal initiative to give the Georgian Public Broadcasters the right to have some amount of advertising. As for Armenia, advertising on public service broadcaster is not allowed. Some other participants opined that if a government has a say in how much money is spent on public service media, it naturally has more leverage in interfering with the broadcaster's editorial policy. In many countries, politicians feel that they are mercenaries who have the right to fix all problems and they have a problem in differentiating between public service media and state-funded one. The best possible model is the one whereby the funding comes from the subscription (license) fees paid by citizens.

Another problem is the fact that public service broadcasters suffer from a massive disconnect from their audiences who are not attracted to the content. There is a clear need for more creativity and talent. There is no need for establishing new criteria for public service media evaluation but the key question is what role public service media should play. It is first of all a matter of recognition (transparent public mechanism), their outreach and distribution (it is crucial to have access to best distribution networks). Problems with the media concentration and dangers of internal and external propaganda were mentioned in the context of Moldova, stressing the importance of the role of regulatory organs.

2. Regulating independence and pluralism of audiovisual media: Implementation challenges

The second session of the conference focused on the current challenges related to media regulation given the profound changes in the media ecosystem. More specifically, the participants heard from representatives of the UK media regulator OFCOM, the Georgian National Communications Commission (GNCC) and the Media Policy Division of the Latvian Ministry of Culture.

The OFCOM representative focused on sharing experience in the UK media regulator's role in the regulation of broadcast content; the role in ensuring a pluralistic media environment (including rules on media ownership); and the importance of regulatory independence in this context. OFCOM is the communications regulator in the UK, independent of government and parliament. It regulates TV, radio and video on demand; fixed telephone lines and broadband; mobile phones; postal services; plus the spectrum – the airwaves over which wireless devices operate. OFCOM was created by the Act of Parliament in 2002, deliberately as a single "converged" regulator. The logic then was that as technology and markets converged, a single regulator was needed to match that. OFCOM does not regulate newspapers.

That broad remit means that OFCOM is both an "economic" regulator and a "public interest" regulator. That's enshrined in its mandate, which is to further consumer and citizen's interests in communications services. In much of its work OFCOM does that by encouraging competition in the market, seeking to ensure

that markets work for consumers and citizens – for example, to provide mobile phone or broadband services. But OFCOM also has a number of specific duties relating to different sectors it regulates, and in broadcasting a number of these relate to protecting consumers as viewers and citizens in the public interest as Parliament has defined it. As a regulator, OFCOM does not set policy: that is the role of government and parliament. Also, although it was established by the Parliament, it is independent of it and of the government in how it operates.

OFCOM is responsible for regulating the content of all broadcasters to ensure that certain standards – impartiality, accuracy and decency – are met. These rules apply to all OFCOM licensees and of course to the BBC. These rules are set out in the OFCOM Broadcasting Code – which also includes sections dealing with Commercial Communications, the Protection of Children and Fairness and Privacy. In particular, the rules that are most relevant are:

- The need to ensure due accuracy and due impartiality in news;
- The need to ensure due impartiality in programmes that deal with politically/socially controversial topics;
- The need to avoid misleading viewers so as to cause harm;
- The need to avoid hate speech and anything that would incite crime or violence;
- The need to ensure that editorial content is distinct from commercial content and that broadcasters maintain editorial independence and control over programming (from commercial interference).

The rules ensure that viewers can trust the news they see, and that sensitive topics are dealt with due impartiality and are protected from hate and harm. This creates a situation where high standards are set at a level that applies to every broadcaster and creates a landscape and expectation of an independent and duly impartial media.

OFCOM enforces these rules through its licensing framework. Services in the UK jurisdiction must be licensed by OFCOM to broadcast, and that includes the public service TV broadcasters – ITV, Channel 4 and Channel 5 – and all commercial TV and radio stations. Compliance with the Broadcasting Code is one of the conditions of holding a licence and OFCOM's sanctions regime (which includes fines for very serious, repeated or reckless breaches) has as its ultimate sanction the revocation of the licence to broadcast.

Parliament has also given OFCOM specific objectives about media "plurality" and diversity that the regulator must bear in mind when it carries out our broadcasting duties. OFCOM must ensure "the availability of a wide range of television and radio services which are both of high quality and calculated to appeal to a variety of tastes and interests"; and "the maintenance of a sufficient plurality of providers of different television and radio services". OFCOM defines "plurality" as ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and preventing any media owner, or voice, having too much influence over public opinion and the political agenda.

In general, there are three areas where the UK regulator has an effect on the overall plurality of media services available in the UK:

- OFCOM awards and can remove broadcast licenses for TV and radio services in the United Kingdom, aside from the BBC. The law assumes that the regulator will grant a license unless a specific individual body is disqualified from holding one, or OFCOM has significant doubts about its ability or willingness to comply with standards of decency, impartiality set out in the Broadcasting Code. The rules on who is "disqualified" from holding a license are set by Parliament and they provide that, broadly, different tiers of government, advertising agencies and religious bodies may either not hold broadcasting licenses at all, or may only hold certain types of license. OFCOM also has a duty to consider whether an individual is "fit and proper" to continue to hold a license. The applicant for a license must tell the regulator where it is based, where editorial decisions will be taken, give details of directors, partner or governing member, who has an interest of more than 5%, the ultimate controlling parent company, any other forms of funding or financial assistance and so on. OFCOM must also be notified of any change of control.

- OFCOM has a duty to report every three years on the operation of the media ownership rules. These rules are set by Parliament and are designed to protect the plurality of the media in the UK, and to prevent "undue influence" in broadcasting.

  There are four media ownership rules. These are the restrictions on who may hold a broadcasting licence (disqualified persons); the public interest test for media mergers; limits on cross-media ownership (relating to overlaps between newspaper ownership and the Channel 3 PSB); and rules on

who may provide broadcast news services to Channel 3, the largest public service broadcaster outside the BBC.

OFCOM has reviewed the rules four times, the last time being in November 2015. Parliament granted OFCOM a wide discretion in how it should approach its reviews. As such, OFCOM has approached reviews by considering whether the rules still correspond to parliament's goals of ensuring that the media operate in the public interest, in part through securing plurality and preventing undue influence. OFCOM concluded in its latest review that these four current media ownership rules remain appropriate and necessary to protect plurality in the UK's current media landscape, and no changes were recommended. But OFCOM also observed changes in consumption of news and levels of trust and those trends have only continued.

- OFCOM has a specific role in carrying out public interest assessments of the effect of proposed media takeovers. The law allows the government to intervene in a merger in very limited circumstances. If that is the case, the government may decide to issue an intervention notice which triggers a review of whether a merger might harm the public interest. OFCOM then carries out that review, and publishes it as advice to the government. Such a review was conducted in 2017, when OFCOM was asked to consider the proposed acquisition by 21st Century Fox, Inc. ('Fox') of Sky plc ('Sky'). OFCOM recommended a referral to the Competition Authority because it saw a risk of increased influence by the Murdoch Family Trust, but the key point was that the review hinged on a plurality assessment that OFCOM conducted using the framework for measuring media plurality in the UK. This framework was developed by OFCOM at the government's request between 2011 and 2015, and it was based on measuring the availability, consumption and impact of news media, to provide a baseline measure of plurality and identify potential risks.

In the end, it is for democratically-elected politicians to set the overall regulatory framework, which they have done through Acts of Parliament. The law gives a very clear role to OFCOM to regulate broadcasting content, to report on the media landscape. OFCOM can do both of these things with a wide discretion and free from influence, and that is important both for its credibility as regulator and for that of the wider system.

What are the tenets of regulatory independence?

- Appointment and governance: appointment (and of course dismissal) procedures, length of mandates and safeguards (conflict of interest, etc.); all should be set out in law.
- Resources: to recruit and keep expertise.
- Financial Autonomy: Approving, preparing and allocating budgets autonomously.
- Accountability and Transparency: to which parties are national regulatory authorities accountable (public stakeholder government) and practical aspects – reporting, auditing, public consultation.
- Decision making: powers defined in law, publication of decisions (for scrutiny).
- Enforcement: ability to enforce directly without having to apply to another body/court/government department to confirm the decision or any sanction.

OFCOM has these powers, and its governance and leadership appointment processes are as follows:

- Accountable to Parliament (not ministers);
- Ofcom staff are public servants (not civil servants);
- Board structure (including: its Chair is appointed by government, but with an independent assessor);
- Board subject to Code of Ethics & Standards

What it means for OFCOM's principles of regulation:

- Bias against intervention
- Open and transparent
- Consultative
- Evidence based

Successive UK governments have taken the view that in a healthy democracy control of the media should not be concentrated in too few hands. The aim of policy and legislation has been to achieve a range of different media 'voices' to enable citizens to have access to a range of views and to help them actively participate in the democratic process in the widest sense.

The recent challenges include the increased consumption of news online, for example, the falling trust in traditional sources of news, worrying levels of critical understanding among the public. OFCOM's findings in the UK are still relatively reassuring, but it recognises worrying trends and is watching developments across Europe.

The representative of the Georgian National Communications Commission (GNCC) spoke on the work of GNCC which is a permanent, collegial and independent regulatory authority that does not subordinate to any state authority. Its five members are elected for six years term. Commissioners elect the chairman for a three-year term. In total, there are up to 95 TV Broadcasters and 50 Radio Broadcasters that are under regulation of GNCC. The source of financing of GNCC is regulation fee collected from telecom and broadcasting undertakings. The main objectives of GNCC are the following:

- Creation of equal and competitive environment in communications sector;
- Promotion of introduction of modern technologies;
- Protection of legitimate interests of consumers;
- Efficient allocation of frequency spectrum;
- Provision of creation and development of competitive environment in broadcasting sector, as well as promotion of editorial independence of the broadcasters;

The Georgian Law on broadcasting was elaborated in 2004 in cooperation with the Council of Europe. This law *inter alia* stimulates freedom of expression; ensures competitive environment between broadcasters; provides equality and independence of license holders/authorised undertakings; ensures transparency and establishes the public service broadcaster for the purposes of broadcasting of various programs free from political and commercial influence. The latest amendments to the Law on Broadcasting among other things include ensuring access of consumers to diverse and high-quality free to air broadcasting content; minimising procedures for entry to the broadcasting market; and promoting media pluralism.

The main change since the digital switchover is the fact that 23 nationwide free-to-air TV channels are available instead of 4. Approximately 25-26 free-to-air TV channels are available in regions instead of 4-5 and instead of licensing procedures for TV Broadcasting there are currently simple authorisation rules. A seeker of authorisation shall enclose an application with the declaration of compliance which must include identification data of a seeker of authorisation; data on superior officers and bodies of a seeker of authorisation; confirmation that a seeker of authorisation or its beneficial owner are not the persons specified in Paragraph 2, Article 37 of the Law on Broadcasting; and identification data of beneficial owners of a seeker of authorisation and information about the shares owned by them. There is an obligation to provide the regulator with the declaration of compliance in case of a change in owners of a broadcaster, shareholders of a broadcaster and members of governing bodies and officials of a broadcaster. In such cases, there is an obligation to inform the regulator within 10 days and publish the declaration on the webpage.

Only GNCC can supervise and control the conformity of the activities of a broadcaster with the legislation of Georgia. The supervision is based mostly on the information submitted by broadcasters. The difficulties might appear while monitoring the authenticity of the information submitted by the license/authorisation seeker as well as the broadcaster about its owners/beneficial owners. If the owner/beneficial owner of the license/authorisation seeker, or the broadcaster is a foreign legal entity, to control the authenticity GNCC is empowered to oblige the license/authorisation seeker to provide regulator with additional documentation. In case of Georgian resident natural persons or legal entities, it is easy to check data, because GNCC uses the data of Public Register of the ministry of Justice which is publicly available (www.napr.gov.ge). The problem remains if the broadcaster does not inform the regulator within 10 days about changes. In this case, the ownership of the broadcaster remains non transparent for a time. When the broadcaster submits the annual information to the commission (including the declaration of compliance) this information becomes public. The failure to meet declaration submission deadline will trigger sanctions against the broadcaster, which can be considered as prevention measure for this kind of violation.

In 2011 GNCC adopted a resolution, based on which license holders/authorized entities had to fill periodically statistical forms and to submit them to the Commission. In order to provide community, market participants and investors with reliable and systematically updated data about broadcasting market of Georgia, GNCC has developed an analytical portal, where all the submitted information is made public (analytics.gncc.ge). Broadcasters are obliged to submit information regarding the sources of the revenue – advertising/teleshopping, sponsorship, product placement, announcements (mostly regional broadcasters). The revenues which are more than 7000 Gel (approximately 3000 US Dollars) should be disclosed to the last

individuals/legal entities. Broadcasters are also obliged to submit information regarding the services provided for the broadcasters – production costs, salaries, audit, etc.

The Head of Media Policy Division of the Latvian Ministry of Culture explained that Media Policy Division was established after Russia's illegal annexation of Crimea. As regards existing regulation in audio and audiovisual sector, a share of 35 % is considered to be reaching a dominant position in the media market. But such a dominant position is never reached, thus it is not possible to implement the provision. Back in 2012, when there was a merger of two media actors, and the main competent authority was the Competition Authority, the national regulator was involved as well. As a result, there was a decision by the Competition Authority to keep the news programs on both channels until the end of 2017 (this was done for the sake of pluralism). Since 2017 there have been also new extra must-carry rules that so far included five channels, now there are nine. Also according to the recent amendments to the National Security Law, the government has a right to intervene in media (only in cases of major audio and audiovisual media companies) ownership changes in the name of national security. New provisions providing for transparency of all legal entity ownership (including transparency of the true beneficiaries), if the ownership exceeds 25% of shares, are coming into force on 1 January 2018. Thus also ownership of media will be publicly available.

The discussion focused on clarifying the examples given by OFCOM, GNCC, and the Latvian Ministry of Culture. While OFCOM allocates licenses also to foreign media, the same rules apply to everyone. OFCOM takes *a* principle-based and light approach, without monitoring broadcaster's content actively, but rather based on received complaints. When it comes to dealing with complaints, OFCOM assesses them, writes to the broadcaster which is the subject of the complaint to answer the OFCOM's comments, sends a preliminary review to the broadcaster, and re-evaluates the decision. There are some 30 people working in the OFCOM's content analysis department and about 700 people work at OFCOM in total. All OFCOM's decisions are appealable to a court. The law obliges commercial and public service media license holders to keep an archive of all programs for 60 days and 90 days respectively. When the complaint alleges use of hate speech, it is important that the regulator has enough time to properly investigate the claim before it reaches decision on any such complaint.

There are several challenges that the Ukrainian media regulator faces, particularly in relation to the conflict with Russia in the Eastern part of Ukraine. Given this conflict, it is important to protect information security. As such, the regulator adopted two different types of approaches when dealing with license holders depending if they are Ukrainian or they belong to a country which signed the European Convention on Transfrontier Television. But the regulator has a problem with Russia which did not sign the Convention and according to the head of Ukrainian media regulator Russian media violate Ukrainian legislation – specifically using hate speech which does not recognise Ukrainian territorial integrity (for example when talking on Crimea that it does not belong to Ukraine). That is why the Ukrainian media regulator has blocked these Russian channels as they violate Ukrainian rules. These channels however go to Latvia or any other EU country and succeed in getting a licence. After that, these channels are free to broadcast on the territory covered by the European Convention on Transfrontier Television, which means that Ukrainian media regulator is obliged to have the same attitude towards them as to any other foreign channels.

The discussion also focused on the media situation in Azerbaijan, where the public TV is not very popular and there are no major differences between public (or state) and private channels as they all show their strong support to the current establishment. Georgia was also mentioned here in connection with the abduction of Azerbaijani investigative journalist Afghan Mukhartli who was kidnaped on 29 May 2017 in Tbilisi and taken back to his home country. According to Georgian participants, the investigation of this abduction still goes on and the issue has received significant attention by Georgian media. Several other issues were discussed, including how to promote good quality content on public service media in order to render it more attractive to consumers, regulation of online media as well as the importance of media literacy. It is important to update the EU Audiovisual Media Services Directive in order to reflect the needs of countries which are not part of EU or are not in the process of accessing it (such as the countries of Eastern Partnership) but do need to have international instruments for the protection of free flow of information.

3. Institutional and editorial independence of public service broadcasting: topical challenges

The third session of the conference focused on topical challenges related to institutional and editorial independence of public service broadcasters. We live in the world where fake news and disinformation are becoming frequent and omnipresent, where people do not know whom to trust. It is incumbent upon public broadcasters to have a responsibility to the public by offering credible and comprehensive newsworthy reporting. The journalistic standards and values that public broadcasters should represent are crucial in the era of misinformation and disinformation.

Public service broadcasters should be a trusted source of information and promote objective, impartial news coverage as well as quality journalism. The role and responsibility touches on their *raison d'être* which is that public service media are for the people, serving all segments of society. Their democratic, social and cultural role is to contribute to democracy, social cohesion, solidarity, mutual understanding, media pluralism and diversity. It would be hard to imagine the world without public service media, leaving the national communication space in hands of state media propaganda and oligarchs who can afford having media outlet. It is clear that public service media are under pressure and following are some of the main challenges:

How to defend independence against outside pressures of any kind, including political and economic? It is important to protect editorial independence and not allow any interference in programme matters, notably news and current affairs programmes, including during election campaigns. It is important to protect institutional independence and organise public service media in the form of independent institutions entrusted with a clear remit. Moreover, it is important to prevent politicisation of controlling bodies. There is a need to establish culture whereby recruitments and dismissals based on political preferences are avoided and a clear corporate culture with commitment by all levels (top management) to assert independence against any attacks or threats. It is also important that there is a clear definition and separation of competences between various bodies. Supervisory bodies are in charge of overseeing activities of public service media while the management is responsible for day-to-day operations and bear ultimate editorial responsibility.

To shield these bodies from undue influence, it is crucial to ensure that the appointment and selection procedures of members are open and transparent, following procedural safeguards. Supervisory bodies should have a say about recruitment of management, based on merits (professional expertise & experience).

How to ensure that public service media have the necessary resources to perform their function? There are different funding systems across EBU members:

- License fee as main source of funding (public pays a fee/tax depending on possession of device, per household)
- Second most widespread source of revenue was public funds directly from state budget (most common in Baltics and Eastern Europe)

In general, where public service media receive direct funding from the state, there is a high risk of political interference. There are different safeguards to guard against this risk:
- Provide for a specific amount (e.g. a percentage of GDP/state budget) in the law
- Ensure that this funding is guaranteed over several years in a multi-annual framework (e.g. service agreements)
- Independent expert commission (e.g. German KEF)
- Adequate and secure:
    o to fulfil mission and purpose;
    o to enable public service media to plan, innovate and create
- Transparent and accountable:
    o demonstrate efficiency and effectiveness (citizens must receive value for money);
    o the public must be able to hold public service media fully accountable (publish budget and allocation of income)

It is further important that funding decisions are based wholly on the public interest and overall costs. Another important challenge is how to remain relevant amidst media convergence. TV consumption is still very strong in a number of countries but other players are gradually gaining a foothold in the market which is changing with the arrival of powerful competitors with deep pockets, often operating on a global scale, and vertically integrated. Audience behaviour is changing. There is a shift from linear TV to on-demand, content is increasingly consumed via multiple devices and on other platforms (i.e. VSPs, social media) – these are most visible trend particularly among young audiences. Public service media should be prepared to change and to innovate in order to continue to play their vital social role and remain relevant. More specifically, they should offer online services and be available on all significant platforms (universality); they should re-connect/establish new relationships with the public/young; and they should consider cooperation and partnership with third parties (e.g. in fighting fake news).

The discussion also focused on how to improve the work done by international donors. More specifically, it was mentioned that while the European Union and other donors actively support public service media, there is a need to improve the coordination among donors who are reluctant to share their experience. As such, a greater level of coordination and cooperation is essential. Public service media themselves are sometimes

reluctant to pursue the public service values as they feel that these are being imposed by Westerners. It was also mentioned that international players sometime come into this sphere with a great deal of naivety. There is a clear lack of information in terms of what the audiences want. As such, there is a need to first inquire what the audiences need. Another problem is the legacy of state broadcasters that employ huge number of people and suffer from a series of problems, including being under strong control of government. Moreover, individuals who have pro-reformist agenda do not last very long. The projects should be designed for longer periods, which require sufficient resources and time. There is a need to take a step back and be more realistic in term of what can be achieved. It is also important to have a roadmap and a vision on what can be achieved.

The best approach from the side of international community would be sustained commitment, holistic approaches, and up to date projects. It is clear that public service broadcasters need to catch up with the digital age and multiple platforms. Projects have to be relevant, based on careful assessment and with a better understanding of the sector. They have to be viable. Another important issue is media literacy where public service media should play an important role, including in promotion of critical thinking. One example of this is a recent initiative by the BBC which has launched a campaign to promote the understanding of fake news among school children.

The last part of the third session focused on the experience of Public Broadcasting Company of Ukraine in transformation from the state to public broadcaster, its current challenges and achievements. The objective of the Company is to become the most innovative media in Ukraine and its mission focuses on delivering accurate and balanced information about Ukraine and the world, and establishing public dialogue aimed at strengthening public trust, developing civil liability, Ukrainian language and culture.

In the past, the national broadcaster suffered from a very tight government control. It was state-owned and had to manage 31 separate state broadcasters on the national and local levels. Today, the broadcaster has become a public joint-stock company with an independent program policy that acts as one Ukrainian Public Broadcaster with different nationwide and regional platforms. In the past, heads of all companies were appointed directly by the government, whereas now the company board members and the head of board are appointed by supervisory board after an open competition.

The supervisory board consists of eight representatives from parliament factions and groups and nine representatives from civil society (in the field of education and science, minority rights, physical education and sport, journalism, human rights, protecting the interests of children and youth affairs, art, local self-governance and advocacy for persons with disabilities). The changes also included merging of separate structures, staff optimisation, salaries (doubled, comparable to market demand), open competition for regional management and involving new young professionals. In total, 583 employees were dismissed and 297 new ones were hired. Despite the changes, there are still significant problems, including with the funding. The changes included the content "detox" over the whole media platform. There is a new form of communication with local authorities, new way of cooperation with regional departments, policy and standards delivery and education. The main principles upon which the Ukrainian Public Broadcaster operates include the following:

- Content is more important than platform;
- Trust is more important than ratings;
- Communication is more important than PR;
- Values are more important than qualification.

RECOMMENDATIONS

The documents about freedom of expression, ratified by Council of Europe member States are to be adopted into national legislations and then properly implemented. It is incumbent upon state institutions to guarantee the freedom of the media and safety of journalists in the form of legal regulation and by judicial interventions.

The monitoring of freedom of the media would be the most efficient if parliaments established a parliamentary committee for media and communication (in case these do not already exist), which would be entrusted with the observation of the media market, its functioning, and freedom of the media, particularly of the public service broadcasters. Parliaments could, once a year, organise a public debate about freedom of the media in the country.

The Council of Europe member States should ensure access to diverse information sources by the public and at the same time recognising the diversity of the public either in terms of their backgrounds (ethnic,

political, gender, sexual orientation, etc.), or in terms of accessibility continuously updating and publicising reliable and verifiable information on media ownership.

There is a need to separate between the exercise of control of media and decision making as regards to media content.

There is a need to ensure that necessary regulatory measures are in place with a view to guaranteeing full transparency of media ownership and adopting regulatory measures, if appropriate and having regard to the characteristics of each media market, with a view to preventing a high level of media concentration.

There is a need to put into place and develop co-regulatory mechanisms for monitoring media markets and media concentration.

Council of Europe member States should encourage the media, social media, search and recommendation engines and other intermediaries which use algorithms, along with media actors, regulatory authorities, civil society, academia and other relevant stakeholders to engage in open, independent, transparent and participatory initiatives that increase the transparency of the processes of online distribution of media content, including automated processes; seek to improve these distribution processes in order to enhance users' effective exposure to the broadest possible diversity of media content; provide clear information to users on how to find, access and derive maximum benefit from the wide range of content that is available, whilst upholding the protection of privacy.

Council of Europe member States should adopt and effectively implementing media-ownership regulation. Such regulation must ensure transparency in media ownership; it should address the issue of cross-media ownership, direct and indirect media ownership with effective control and influence over the media. It should also contribute to ensuring effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content, and therefore to ensuring that media continue to serve the public interest.

There is a need to level-playing field for a number of independent and autonomous media channels and outlets, and adopt and effectively implement regulation of audio-visual media services and media pluralism, ensuring, among other things, the existence of independent regulatory authorities and other relevant stakeholders.

There is a need to look at the media ownership issue more holistically: it is important to define concentration based on audience.

There is a need to reform the funding mechanisms to rebuild national media.

The regulation should focus on companies with advanced technology capabilities.

It is important to further develop a reliable regulatory framework that recognises special impartiality and accuracy needs as well as the importance of a media ownership framework that supports plurality and the importance of monitoring that plurality.

It is important to update the EU Audiovisual Media Services Directive in order to reflect the needs of countries which are not part of EU or are not in the process of accessing it (such as the countries of Eastern Partnership) but do need to have international instruments for the protection of free flow of information.

It is necessary to promote informed citizenry, media literacy programs and similar.

There is a need to adequately equip and finance public service broadcasting, as a counterbalance against the risk of misuse of the power of the media in a situation of strong media concentration.

Public service media should be rebuilt according to the most successful media formats.

There is a need for legal framework to enshrine public service media independence, to secure multi-annual funding and to leave room to innovate and adapt. Parliaments across Europe have essential role in establishing and improving legal framework in line with the Council of Europe standards and organise a broad public consultation on the topic of public ownership of public service media. It is crucial to ensure that public service media can play their vital role for democracy and be a trusted partner.

It is of utmost importance for public service media to have within their mandates the responsibility to reflect political pluralism and foster awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.

International donors should better coordinate their efforts and involve all relevant stakeholders on board for public service media reforms.

The Council of Europe, in cooperation with the European Broadcasting Union should take a lead and approach international community as a whole in the effort to support development of public service media in different countries.

APPENDIX I - BACKGROUND DOCUMENTS

Parliamentary Assembly of the Council of Europe

- PACE Resolution 2179 (2017) on Political influence over independent media and journalists
- PACE Resolution 2065 (2015) on Increasing transparency of media ownership
- PACE Recommendation 2074 (2015) on Increasing transparency of media ownership
- PACE Recommendation 1878 (2009) on the funding of public service broadcasting
- PACE Recommendation 1641 (2004) on Public service broadcasting
- Conclusions of the Conference "Public Service Media and Democracy", Prague (10-11 November 2016)

Committee of Ministers of the Council of Europe

- Recommendation (2012)1 of the Committee of Ministers to member states on public service media governance (2012)
- Recommendation (2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society (2007)
- Recommendation (2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content (2007)
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (2007)
- Recommendation rec (2000) 23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector (2000)
- Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states (2006)

Other

- Council of Europe Publication on Standards related to media
- Commissioner for Human rights' webpage on media freedom