



**Organisation for Security and Co-operation in Europe
OSCE Representative on Freedom of the Media**

**ANALYSIS AND REVIEW OF
CHARTER
OF
ALBANIAN RADIO-TELEVISION
(Approved by Parliament on June 1, 2000)**

By

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FOREWORD

This review, commissioned by the Office of the OSCE Representative on Freedom of the Media, aims at establishing whether the Charter of Albanian Radio-Television as a public service broadcaster complies with European standards.

By “European standards” will be meant primarily standards defined by the OSCE itself¹, as well as those established by the Council of Europe in its various documents on public service broadcasting.

With a view to Albania’s future accession negotiations with the European Union, also EU criteria will be applied. This will relate primarily to compatibility of public service broadcasting in Albania with State aid rules in force in the European Union.

INTRODUCTION

Adoption of the Charter (Statute) of Albanian Radio-Television by its Steering Council is required by Article 99 of Law 8410 on Public and Private Radio and Television in the Republic of Albania. This article also describes, in general terms, the contents of this document as follows:

In the statute of the ART it is determined:

- a) the structure of the institution;*
- b) the steering bodies and their competencies;*
- c) criteria and procedures for the nomination and dismissal of the deputy General Director, the directors of the radio and of television, as well as the heads of the departments;*
- ç) the job description of all categories of employees;*
- d) the description of the financial and economic activity of the ART.*

According to Article 143 of the law, the Steering Council submits the Charter to Parliament for its approval.

Article 1 of the Charter itself states that its objective is “the general and detailed regulation of the activity of this national institution” and that it aims “at setting sufficient rules to enable the process of passage from state radio-television to public radio-television and to guarantee the normal functioning of ART”.

This last objective of the Charter is of particular importance and will provide a frame of reference for the analysis of this document.

¹ See i.a. Freedom of Expression, Free Flow of Information, Freedom of Media. CSCE/OSCE Main provisions 1975 – 1999. Vienna: The Representative on Freedom of the Media, July 2000; OSCE Human Dimension Commitments A Reference Guide. Warsaw: ODIHR, 2001

A Report to the CSCE Council on the CSCE Seminar of Experts on Democratic Institutions, Oslo (November 1991) states that “A diverse and independent press and broadcasting system has a vital role to play in any democracy”. This is all the more true of public service broadcasting. The European Union has clearly said in the Amsterdam Protocol of 1997 that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism (see also selected documents on the public service broadcasting remit in the Appendix).

Recommendations adopted by a conference on “Public Service Broadcasting: New Challenges, New Solutions”, co-organized by the OSCE together with the European Institute for the Media and RTV Slovenia (Ljubljana, 11 March 2003) point out that “it is necessary to establish a broadcasting system providing programme and structural guarantees which cover independent information and the representation of all societal groups, as well as offer an integration platform for all. Such a system is capable of shaping the national identity, participation through culture and education, and finally innovation in broadcasting as a cultural value. These functions cannot all be guaranteed by a commercial system. They are typically covered by public service broadcasting systems”.

According to the Recommendations, public service broadcasters must be capable of maintaining a high level of original programme production in order to fulfill the obligations and set a standard of high quality programming for the broadcasting industry as a whole. While maintaining their clear distinctiveness from commercial broadcasters, they must be able to attract a wide audience. It is also their role to spearhead technological innovation in order to use new technologies and all suitable delivery platforms to reach the audience.

The document further calls on parliaments and governments in Central and Eastern European countries to adopt or improve existing legal and institutional frameworks for public service broadcasting to make pursuit of these goals possible. These frameworks should safeguard the independence and public accountability of public service broadcasting organisations, *inter alia*, by separating it from the civil service and removing any unwarranted interference by public authorities in their operation, and provide for the adequate and secure financing. Legal provisions should define the public service broadcasting remit in a clear, detailed and verifiable way, setting them clearly apart from commercial broadcasting but, at the same time, making room for attractive mass-appeal programming in their schedules. This programme offer should serve all groups of society, including those neglected by commercial broadcasters, such as ethnic minorities and others. States should encourage and promote self-regulatory schemes in the area of programme standards and journalistic ethics. They should also safeguard the existence of audiovisual archives within public service broadcasting organisations as repositories of the nation’s audiovisual heritage to be used by public service broadcasters for the general benefit.

Finally, according to the document, financing systems for public service broadcasting should provide for diversified sources of revenue (including licence fees, advertising, government subsidies and own revenue) as well as for the financial transparency of public service broadcasters, including separate accounts for programming and non-public-service activities, should they exist. If advertising is allowed, it should be treated only as a supplementary source of revenue. Where government subsidies are provided, they should be granted on a secure, long-term basis, without infringing on the independence of public service broadcasters. Special financial or assistance schemes should be put in place in order to enable public service broadcasters to adopt digital technology and develop new channels for digital terrestrial broadcasting.

It is the context of these principles that the ART Charter will be analysed.

I. GENERAL ASSESSMENT OF THE CHARTER

The Charter is a detailed document which precisely defines many aspects of ART's structure, organization, system of management and operation. That is as it should be, but the fact that the Charter must be approved by Parliament and can only be changed with its consent means that Parliament has control over every aspect of the PSB broadcaster's organization and activities.

The Charter covers all the areas listed in Article 99 of Law 8410, though the system of financial management is not really covered fully.

Article 1 of the Charter itself states it aims "at setting sufficient rules to enable the process of passage from state radio-television to public radio-television and to guarantee the normal functioning of ART". In fact, it provides very little added value by comparison with Law 8410 in terms of the process of transition from state to public service broadcasting. It mainly repeats statutory provisions, or refers the reader to them, offering little assistance to the managers and employees of ART, and to the general public, in understanding more fully what it means to be a public service broadcaster, and how the public service remit must be discharged. In many aspects, the Charter reads as a document relating to a traditional state broadcaster.

Any future revision of the Charter should concentrate on the following areas:

- the need for full alignment of the law with European standards on freedom of expression and public service broadcasting;
- clear definition of the status of ART as a public institution, enjoying editorial freedom and institutional autonomy;
- the need for a fuller and clearer definition of the ART's programme obligations;
- changes in the system of management and financial management conducive to more efficient operation, ability to calculate and reduce costs and promotion of cost-effectiveness.

II. DETAILED COMMENTS ON THE CHARTER

The Remit of ART

Remit

This is dealt with in Article 2 and then again in Articles 39 and 40, in each case based on pertinent articles of Law 8410 on Public and Private Radio and Television in the Republic of Albania.

As such, the Charter does not really provide added value in this area, compared to the Law itself. While in very general terms the remit is defined correctly, many elements are missing. This concerns in particular the principle that while maintaining their clear distinctiveness from commercial broadcasters, public service broadcasters must be able to

attract a wide audience. Also, that it is their role to spearhead technological innovation in order to use new technologies and all suitable delivery platforms to reach the audience.

As stated above, legal provisions should define the public service broadcasting remit in a clear, detailed and verifiable way. This is especially important in terms of EU State Aid rules, as is made clear in Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04).

The Communication does say that a “‘wide’ definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, while preserving a certain level of audience, may be considered, in view of the interpretative provisions of the Protocol, legitimate under Article 86(2). Such a definition would be consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity”. Nevertheless, in the context of transformation from a state to a public service broadcaster, a clear and verifiable definition of the remit would facilitate the transition and protect ART against encroachments on its independence.

These changes should be introduced into the Charter so that ART has a fuller and clearer definition of its programme obligations. Much, however, depends on whether any future revision of Law 8410 on Public and Private Radio and Television in the Republic of Albania will remove the requirement for parliamentary approval of the Charter, as recommended below. If not, then the Charter will retain its status as an official document, entrusting the public service remit to ART, and as such serving as a formal complement to the Law. If so, then changes suggested above should also be introduced into the Law, as it will be the only formal document defining the remit of ART.

Programme Services

Article 39 of the Charter provides a full list of programme services to be broadcast by ART. This approach is correct, since the obligations of a programme service broadcaster should be defined very clearly. However, this is a closed list, allowing for no possible changes or additions of new programme services, should such a possibility arise.

It would therefore be advisable to supplement this article with provisions describing internal procedures by which a decision could be taken to extend (or reduce) the number of programme services broadcast by ART, and then to whom a request for approval of such an action should be addressed (preferably the National Council for Radio and Television).

Also, there is no mention in the Charter of the use of new technologies by ART. However, as noted above, it is the role of public service broadcasters to spearhead technological innovation in order to use new technologies and all suitable delivery platforms to reach the audience.

Recommendation Rec (2003) 9 of the Council of Europe Committee of Ministers on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting calls on member states to “create the financial, technical and other conditions required to enable public service broadcasters to fulfil this remit in the best manner while adapting to the new digital environment”. It goes on to say that “the means to fulfil the public service remit may include the provision of new specialised channels, for example in the field of information,

education and culture, and of new interactive services, for example EPGs and programme-related on-line services. Public service broadcasters should play a central role in the transition process to digital terrestrial broadcasting”.

This should be rectified in a future revision of the law, so that the door is open for ART to use new technologies whenever the need and opportunity arise.

Programme Production

According to Article 44, ART is to be “the principal producer of its own Radio and Television programs”. However, it is to move, step by step, to joint production with local and foreign private producers, but only of educational, cultural, artistic and entertainment programs. In the future, “it may order programs produced by third persons”.

This provision appears designed to protect the interests of the employees of ART, or their monopoly on programme production for ART. Restriction of co-productions only to “educational, cultural, artistic and entertainment programs” appears to be spring from the assumption that other programme genres – including especially news, current affairs, documentary and factual programming – should be produced internally.

Commissioning production from independent producers (“third persons”) is regarded as something that may happen in the indefinite future.

These provisions are not really justified. An independent production quota of at least 10% of air time (excluding the time appointed to certain types of programming) will have to be introduced in the process of harmonizing Albanian broadcasting legislation with EU regulations. There is no reason in principle why a public service broadcaster may not co-produce, or commission from an independent producer – any programme genre, including news (though this is rare) or current affairs (much more common). The ability to draw on the ideas, talent and production capacities of external producers will give ART programmers more freedom of choice and a richer pool of programme ideas and talent to draw upon. This approach should be reconsidered.

Minorities

According to Article 20 of the Albanian Constitution, the rights of minorities are to be fully respected, and persons who belong to national minorities have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging.

Also the EU appraises the candidate countries’ readiness to join on the basis of the Copenhagen criteria, including the political criteria, whereby “membership requires that the candidate country ensures stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities”.

In this context, it is encouraging to note that under Article 2 of the Charter, ART “realizes quality radio and television services in order to inform, educate and entertain the public, serving the nation, all groups of society, also including national minorities”. Article 40 proclaims “respect [for the] dignity and the fundamental human rights, impartiality and objectivity of information, the rights of children, Albanian language and culture, the constitutional rights of citizens and national minorities”.

However, the Charter provides very little information on what is done in practice to safeguard the exercise of the rights of minorities. One would expect to see provisions on how much air time is to be allotted, as a minimum, in national and regional programme services for programming in the languages of minorities, which regional station should serve what minorities, etc.

According to a study commissioned and published by the OSCE², some regional public radio stations, affiliates of ART, broadcast programmes intended specifically for national minorities. Thus, in 2003 *Radio Gjirokastra*, located in southern Albania, broadcast a 45-minute daily news and entertainment programme in Greek; *Radio Tirana*, located in central Albania, broadcast a programme in Greek for 30 minutes daily; *Radio Korca*, located in south-eastern Albania, broadcast a 40-minute news bulletin in Macedonian three times a week. ART is also reported to have installed a repeater on Mount Dajti for the signal of the Greek public television station, ERT, for the viewers in Tirana.

This is welcome information, but lack of formal provisions means that nothing could prevent the discontinuation or reduction of such activity.

The Status and Independence of ART

The legal form and status of ART are not defined in any way, except that it is described as a legal person (Art. 3 of the Charter) and an “institution” in Art. 64 of the Law and a “national institution” in Art. 1 of the Charter.

Under Article 51 of the Charter, “All movable and immovable property that at the time of entry into force of law nr. 8410 dated September 30, 1998 ‘On public and private radio and television in the Republic of Albania’ was in the use of ART remains its property”.

As noted above, the legal framework with regard to public service broadcasting should safeguard its independence and public accountability, *inter alia*, by separating it from the civil service and removing any unwarranted interference by public authorities in their operation. **In this context, the fact that neither the Law, nor the Charter define ART as an independent public service broadcaster, and safeguard that independence, is a serious omission and weakness of the legal framework.**

In its Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, the Council of Europe Committee of Ministers recommended that member states “include in their domestic law or in instruments governing public service broadcasting organisations provisions guaranteeing their independence”. The Appendix to this Recommendation lays down the following principles:

² Tarlach McGonagle, Bethany Davis Noll, Monroe Price (eds.) Minority-Language Related Broadcasting and Legislation in the OSCE. Study commissioned by the OSCE High Commissioner on National Minorities, April 2003

The legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy, especially in areas such as:

- *the definition of programme schedules;*
- *the conception and production of programmes;*
- *the editing and presentation of news and current affairs programmes;*
- *the organisation of the activities of the service;*
- *recruitment, employment and staff management within the service;*
- *the purchase, hire, sale and use of goods and services;*
- *the management of financial resources;*
- *the preparation and execution of the budget;*
- *the negotiation, preparation and signature of legal acts relating to the operation of the service;*
- *the representation of the service in legal proceedings as well as with respect to third parties.*

According to reports by the Media Task Force of the Stability Pact for South Eastern Europe, ART is formally editorially independent, but “is seen by the public as strongly influenced by the government”. It is not clear whether that influence is formal or informal, or both. More information would be required to establish what the situation is, from a legal and practical point of view.

In any case, the fact that Parliament appoints the ART Steering (Management) Council, with a majority of members nominated by Parliament itself, and approves its Charter, is already an indication of severe formal limits to ART independence. We will comment on the composition and manner of appointment of the Steering (Management) Council below. Here let us note that approval by Parliament of a very detailed Charter (with detailed regulations concerning the structure and manner of operation of the organization, and with job descriptions for most of the ranking managerial positions), as well as the requirement that any changes in the Charter must also be approved by Parliament, are a clear restriction on the institutional autonomy of ART in many areas, but especially the organisation of the activities of the service; staff management within the service; and preparation and signature of legal acts relating to the operation of the service.

These requirements also mean that practically no changes can be introduced into ART operation without the consent of Parliament. This may significantly hamper the ability of ART to operate on a competitive market, where the ability to adjust to rapidly changing circumstances is a must.

The requirement for parliamentary approval for the ART Charter (see Article 61 of the Charter) should be removed. It is the Steering (Management) Council in its role as a representation of society appointed to oversee ART that should approve and adopt the Charter. Its draft could be prepared by the Director General, who should also have the ability to propose changes in the Charter to the Steering (Management) Council. That would give ART control over its organization and manner of operation, and the flexibility needed to introduce changes when needed.

Governing Bodies of ART

Article 8 repeats the provision of Law nr. 8410 “On public and private radio and television in the Republic of Albania,” that the management organs of ART are:

- a) The Steering (Management) Council
- b) The General Director
- c) The Board of Administration.

The composition and manner of appointment of the Steering (Management) Council are determined in the Law. A situation in which most of the Council’s members are political appointees cannot serve ART and its independence well. The law should be changed so that power of nomination of all candidates for membership in the Council should be vested in pertinent civil society, non-government and professional organizations, so that Parliament would appoint individuals truly representing the interests of society in general, and not just the interests of politicians.

While the division of competencies and duties between the Steering (Management) Council and the Director General represent a classical and widely prevalent model in many public service broadcasting organizations, **the need for the Board of Administration is not clear.**

The Board of Administration of ART, appointed by the Steering (Management) Council, on a motion from the Director General, is described in Article 18 of the Charter as “an advisory organ of the General Director, with the exception of the cases contemplated in article 113 of law nr. 8410 dated September 30, 1998 ‘On public and private radio and television in the Republic of Albania’ for questions of administration and for financial and business questions of ART”. Under that article, consent of the Administrative Board is necessary for the following activities:

- Employment contracts, finalization of agreements and negotiation of conflicts with trade unions;
- Purchase, sale, and mortgage of properties;
- Receiving and paying off bank credits;
- Finalizing contracts about new investments, when the sum to be invested by ART is over 5 – 10 percent of the annual budget of the institution.

It is hard to expect that members of the Board – who are otherwise fully dependent on the Director General – will in these instances act independently and potentially oppose the Director General.

Under Article 19 of the Charter, the Board of Administration compiles the draft annual budget of ART; draws up the annual financial balance sheet, with the data submitted by the Economic-Financial Directorate, within the time periods specified by law; gives its opinion on expenses unanticipated in the budget; presents to the General Director a report about the expenses and income of ART, in the form of monthly, three-month and six-month financial reports, after receiving necessary data from the departments and sectors of ART; examines contracts, the amount of which exceeds 5 percent of the annual budget of ART.

All these duties could equally well be undertaken by the staff of ART, without the need for a special management (advisory) body. The decisions which now require the “consent” of the Board of Administration should be reserved for the Steering (Management) Council, since they represent precisely the kind of decisions which should be taken by the body that supervises the whole organization.

The Structure of ART

As regulated by Article 6 of the Charter, the organizational structure of ART is as follows:

- a) General Directorate of ART.
- b) Directorate of Albanian Television.
- c) Directorate of Radio Tirana.
- ç) Directorate of RTV Transmitting Stations.
- d) Regional centers of radio and television.
- dh) Economic-Financial Directorate
- e) News Directorate.

There are, of course, no European standards as regards the internal structure and organization of a public service broadcaster. As noted in the EU Amsterdam Protocol on the System of Public Broadcasting in the Member States, it is a matter for each Member State to “confer, define and organize” the public service remit in broadcasting. In any case, this structure represents a fairly typical, and also very traditional, way to organize a broadcasting organization, though of course other structural solutions are also possible.

Managers running each of these organizational units are appointed by the Steering (Management) Council, on a proposal from the Director General who proposes more than one candidate for each post (see Art. 14 of the Charter).

The reasons for possible dismissal of the Vice General Director, the Director of Albanian Television, the Director of Tirana Radio and the department heads are laid out in Article 15:

“a) when it is proved that he is a hindrance in implementation of the obligations the law nr. 8410 dated September 30, 1998 “On public and private radio and television in the Republic of Albania” imposes;

b) when he applies practices of institutional reform and practices of employment that are unsupported in law and in other acts that regulate work relations;

c) when the above persons, repeatedly, break or do not implement the decisions and rules approved by the Management Council;

ç) when with their actions or failures to act they bring considerable financial and programming damage to the activity of ART”.

The reasons for dismissal specified in items a) and b) are very general and vague and potentially open the way to arbitrary action. This should be reconsidered.

Funding and Financial Management

The Funding System

Articles 54 and 55 of the Charter, and Articles 115-118 of the Law contain a long list of actual and potential³ sources of funding for ART, including:

- Broadcasting fees collected from the public;
- Financing from the State budget, both for specific purposes (radio services for Albanians outside the borders of the Republic of Albania; radio services for the foreign public (in foreign languages); television services for Albanians outside the borders of the Republic of Albania; the ART and cinematography symphonic orchestra) and for particular projects (important technical projects for the introduction of new technologies in production and broadcasting; important motion picture projects or major pan-national artistic activities). In addition ministries and other state institutions “finance special projects of national importance in the fields of culture, science, and education, with the approval of the Steering Council of the ART” (Art. 118 of the Law);
- Commercial activities undertaken by ART itself, including advertising and sponsorship.

The procedure and rules for setting the level of the broadcasting fee is not defined in the Charter or in the Law. However, since it is described in the law as a tax “payable on individual radio and TV sets in conformity with the fiscal legislation in the Republic of Albania”, it must be assumed that the level of the fee is set by the government. In addition, the State budget provides funds, both for specific purposes and, on a case-by-case basis, for “special projects of national importance”. Article 55 says that the amount of financing from this source “is set in the annual state budget law”, so any amount (both very high and very low) is theoretically possible.

This funding system is a cause for concern for a number of reasons:

- It is not consistent with the principles laid down in Recommendations adopted by the conference on “Public Service Broadcasting: New Challenges, New Solutions”, co-organized by the OSCE, and in Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted by the Council of Europe Committee of Ministers;

³ For example, Art. 54 mentions “audiovisual pay services for the public” as a source of revenue. This is probably a potential, rather than actual source of financing.

- It is most likely inconsistent with EU requirements regarding State aid, as explained in the Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04).

Recommendations call for adequate and secure financing for public service broadcasters. Also the Council of Europe Recommendation says that “The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions”.

The situation where the level of the broadcasting fee is apparently set without any involvement by ART, and additional money may or may not be granted by ministries and other institutions, means that funding is not secure and there is no certainty that it will provide “the means necessary to accomplish [the ART] missions”. It is equally important in terms of EU regulations that there is no guarantee, in theory, at least, that ART may not receive too much money than the performance of its public service mission requires (see below).

The Council of Europe Recommendation says further:

The following principles should apply in cases where the funding of a public service broadcasting organisation is based either entirely or in part on a regular or exceptional contribution from the state budget or on a licence fee:

- *the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation;*
- *the level of the contribution or licence fee should be fixed after consultation with the public service broadcasting organisation concerned, taking account of trends in the costs of its activities, and in a way which allows the organisation to carry out fully its various missions;*
- *payment of the contribution or licence fee should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning;*

The ART funding system does not seem to comply with any of these principles:

- **The decision-making power of authorities external to the public service broadcasting organization both as regards the level of the broadcasting fee and the allocation (or otherwise) of additional funds for special projects may be used to exert pressure on ART;**
- **Neither the level of the contribution from the State budget, nor the level of the broadcasting fee appear to be fixed after consultation with ART (though the agreement of the Steering (Management) Committee is required for funding for special projects);**
- **Such a system of funding creates no guarantee of the ability of ART to engage in long-term planning.**

As for EU requirements, this entire system **will have to be adjusted to EU requirements regarding State aid, as laid down in Article 87(1) of the Treaty, the Amsterdam Protocol and the Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04).**

EU Member States are free to choose the means of financing public service broadcasting, but this cannot affect competition in the common market in a disproportionate manner. This means that the level of public funding (broadcasting fee, State subsidies and grants, etc.) may not exceed the level necessary for the performance of the public service mission. Also, ART will have to introduce dual accounting: (a) the internal accounts corresponding to different activities, i. e. public service and non-public service activities, will have to be separate; (b) all costs and revenues must be correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles; and (c) the cost-accounting principles according to which separate accounts are maintained must be clearly established.

ART will need to do this and to introduce fair-trading rules in order to prevent any cross-subsidization of commercial activities from public funding.

Financial Management

According to Article 5, “ART performs its activity relying on decentralized economic and financial management”.

This statement seems to be contradicted by Article 32 which describes the competencies of the ART Director of Finance. According to the article, the Director of Finance inter alia:

1. prepares in cooperation with the directorates of radio-television programs, the technical sectors and those of production the specified annual budgets for each organizational unit of ART, the annual budget of ART and submits it for further action to the General Director and the Board of Administration;
2. prepares in cooperation with the directorates of radio-television programs, the technical sectors and those of production the annual balance sheets for each separate organizational unit and together with the data about the annual balance sheet of ART submits them for further action to the General Director and the Board of Administration;
3. oversees and checks the realization of the budgets of each separate organizational unit of ART, whether they were used in compliance with the decisions taken and proposes the respective measures in writing to the General Director and the Board of Administration;
4. issues costs of production, of services and expenses, processes them and submits them in writing to the General Director and the Board of Administration;
5. in cooperation with the Director of Technical Resources and Development draws up drafts of tariffs for radio-television productions and services for third parties and presents them to the decision-making organs of ART (emphases added – K.J.).

This creates the impression of a highly centralized system of financial management. This impression is strengthened by the provision of Article 54 that “the tariffs for [commercial] services [rendered by ART facilities and technical resources] are approved by open voting, by a two thirds majority of the votes of the Board of Administration and the Management Council.

All this may mean that though both the Law and the Charter create the impression that ART is a commercially- and market-oriented organization (with many possibilities of engaging in commercial activities to gain additional revenue), its finances are in fact under rigid central control at the highest level (a two-thirds majority is required in the Steering (Management) Council to approve tariffs for commercial

services, the same as for the appointment and dismissal of the Director General!). Therefore, the commercial and economic potential of ART may not be fully utilized. Also, this system may not be conducive to cost-effectiveness in the operation of ART, or to controlling and reducing costs.

If this is the case, this system cannot serve ART well.

APPENDIX

SELECTED DOCUMENTS ON THE PUBLIC SERVICE BROADCASTING REMIT

4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994)

Resolution No. 1: The Future of Public Service Broadcasting

Public service requirements

Participating States agree that public service broadcasters, within the general framework defined for them and without prejudice to more specific public service remits, must have principally the following missions:

- to provide, through their programming, a reference point for all members of the public and a factor for social cohesion and integration of all individuals, groups and communities. In particular, they must reject any cultural, sexual, religious or racial discrimination and any form of social segregation;
- to provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed;
- to broadcast impartial and independent news, information and comment;
- to develop pluralistic, innovatory and varied programming which meets high ethical and quality standards and not to sacrifice the pursuit of quality to market forces;
- to develop and structure programme schedules and services of interest to a wide public while being attentive to the needs of minority groups;
- to reflect the different philosophical ideas and religious beliefs in society, with the aim of strengthening mutual understanding and tolerance and promoting community relations in pluriethnic and multicultural societies;
- to contribute actively through their programming to a greater appreciation and dissemination of the diversity of national and European cultural heritage;
- to ensure that the programmes offered contain a significant proportion of original productions, especially feature films, drama and other creative works, and to have regard to the need to use independent producers and co-operate with the cinema sector;
- to extend the choice available to viewers and listeners by also offering programme services which are not normally provided by commercial broadcasters.

Recommendation Rec (2003) 9 of the Council of Europe Committee of Ministers To Member States On Measures to Promote the Democratic and Social Contribution of Digital Broadcasting

2.2 Principles applicable to public service broadcasting

a. Remit of public service broadcasting

19. Faced with the challenges linked to the arrival of digital technologies, public service broadcasting should preserve its special social remit, including a basic general service that offers news, educational, cultural and entertainment programmes aimed at different categories of the public. Member states should create the financial, technical and other conditions required to enable public service broadcasters to fulfil this remit in the best manner while adapting to the new digital environment. In this respect, the means to fulfil the public service remit may include the provision of new specialised channels, for example in the field of information, education and culture, and of new interactive services, for example EPGs and programme-related on-line services. Public service broadcasters should play a central role in the transition process to digital terrestrial broadcasting.

b. Universal access to public service broadcasting

20. Universality is fundamental for the development of public service broadcasting in the digital era. Member states should therefore make sure that the legal, economic and technical conditions are created to enable public service broadcasters to be present on the different digital platforms (cable, satellite, terrestrial) with diverse quality programmes and services that are capable of uniting society, particularly given the risk of fragmentation of the audience as a result of the diversification and specialisation of the programmes on offer.

21. In this connection, given the diversification of digital platforms, the must-carry rule should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and programmes via these platforms.

c. Financing public service broadcasting

22. In the new technological context, without a secure and appropriate financing framework, the reach of public service broadcasters and the scale of their contribution to society may diminish. Faced with increases in the cost of acquiring, producing and storing programmes, and sometimes broadcasting costs, member states should give public service broadcasters the possibility of having access to the necessary financial means to fulfil their remit.

French Freedom of Communication Act No. 86-1067 of 30 September 1986 (as amended)

Article 43-11

The companies listed in Articles 44 and 45 carry out public service assignments in the public interest. They shall offer the public, taken as a whole, a group of programmes and services which are characterised by their diversity and their pluralism, their requirement of quality and innovation, respect for the rights of the person and of constitutionally defined democratic principles.

They shall present a diversified offer of programmes in analogue and digital modes in the areas of information, culture, knowledge, entertainment and sport. They favour democratic debate, exchanges between different parts of the population as well as integration into society and citizenship. They shall promote the French language and highlight cultural

and linguistic heritage in its regional and local diversity. They shall contribute to the development and broadcasting of intellectual and artistic creation and of civic, economic, social, scientific and technical knowledge as well as to audio-visual and media education. Using adapted devices, they shall favour access to their broadcasted programmes by persons who are deaf and hard of hearing.

They shall guarantee the integrity, independence and pluralism of information as well as the pluralist expression of currents of thought and opinion in respect for the principle of the equality of treatment and the recommendations of the Conseil supérieur de l'audiovisuel. The institutions of the public audio-visual communication sector, with respect to the performance of their assignment, shall contribute to the external audio-visual action, the influence of the French speaking world and the broadcasting of the French language and culture throughout the world. They shall endeavour to develop new services that may enrich or complete their programme offer as well as the new technologies of production and broadcasting of audio-visual communication programmes and services.

A report on the application of the provisions of this Article shall be filed each year in Parliament.

Polish Broadcasting Act of 1992 (as amended)

Art. 21

1. Public radio and television shall carry out their public mission by providing, on terms laid down in this Act, the entire society and its individual groups with diversified programme services and other services in the area of information, journalism, culture, entertainment, education and sports which shall be pluralistic, impartial, well balanced, independent and innovative, marked by high quality and integrity of broadcast.

1a. The tasks of public radio and television arising out of the implementation of the mission referred to in paragraph 1 shall include in particular:

- 1) production and transmission of national and regional programme services, programme services for reception abroad in the Polish language and in other languages as well as other programme services meeting the democratic, social and cultural needs of local societies,
 - 2) production and transmission of thematic programme services, if a broadcasting licence has been granted for transmission of the said programme service,
 - 3) construction and operation of radio and television transmitters and relay stations,
 - 4) transmission of teletext services,
 - 5) work on new technologies of production and transmission of radio and television programme services,
 - 6) production, provision of services and carrying out commercial activities related to audiovisual production, including exports and imports,
 - 7) encouraging artistic, literary, scientific and educational activities,
 - 8) dissemination of knowledge of Polish language,
 - 9) production of educational programmes and ensuring access by people of Polish descent and Poles living abroad to such programmes.
2. Programme services of public radio and television should:

- 1) be guided by the sense of responsibility for the content of the message and by the need to protect the good reputation of public radio and television,
- 2) provide reliable information about the vast diversity of events and processes taking place in Poland and abroad,
- 3) encourage an unconstrained development of citizens' views and formation of the public opinion,
- 4) enable citizens and their organisations to take part in public life by expressing diversified views and approaches as well as exercising the right to social supervision and criticism,
- 5) assist the development of culture, science and education, with special emphasis on the Polish intellectual and artistic achievements,
- 6) respect the Christian system of values, being guided by the universal principles of ethics,
- 7) serve to strengthen the family ties,
- 7a) advance the propagation of pro-health attitude,
- 8) contribute to combating social pathologies,
- 9) have regard to the needs of ethnic groups and minorities.