

**ANALYSIS OF THE LAWS PERTAINING TO THE PUBLIC SERVICE
BROADCASTING SYSTEM OF BOSNIA AND HERZEGOVINA**

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Executive Summary

The public service broadcasting system of Bosnia and Herzegovina consists of three public broadcasters: the countrywide Radio and Television of Bosnia and Herzegovina (BHRT), and two entity public broadcasters – Radio and Television of Federation of Bosnia and Herzegovina (RTV FBiH) and Radio and Television of Republic Srpska (RTRS). Laws adopted by three parliaments – the national parliament and the parliaments of the two entities – regulate public service media in Bosnia and Herzegovina. The legal framework is very complex because the regulation of each broadcaster is provided in its own special law as well as in the Law on Public Broadcasting System (Law on PB System). Although some provisions in the laws of individual public service broadcasters and in the so-called System Law, the Law on PB System are identical, a careful reading and interpretation of both laws is still necessary as some provisions are in conflict with one another.

Although the regulation of public service remit in Bosnia and Herzegovina is in line with some of the relevant media standards in Europe, the public broadcasters are not obliged to be factors for integration of all individuals and communities in the country, to serve as forums for pluralistic public discussions and to be promoters of broader democratic participation or produce innovative content.

The laws pertaining to the public service broadcasting system of Bosnia and Herzegovina include some of the safeguards for the independence and editorial autonomy, set out in Council of Europe Recommendation no. R (96) 10. However, in contrast to the latter, they do not prohibit censorship and a priori control of the activities of public service broadcasters and the taking of any instructions whatsoever from individuals and bodies outside the public service broadcasting system. The safeguards against conflict of interest are also weak.

Similar to other countries, national and entity parliaments in Bosnia and Herzegovina play a key role in the appointment and dismissal of members of the boards of governors of public service broadcasters. Candidates for the boards of RTRS and BHRT are nominated by the independent Communications Regulatory Agency (CRA). This safeguard against politicisation does not exist with respect to the board of governors of the RTV FBiH whose members are nominated by a parliamentary commission and not by the CRA. Another matter of concern is the powers of the National Assembly of Republika Srpska to reject without any reason the candidates nominated by the CRA. Likewise it is problematic that the Parliament of the Federation is given powers to collectively dismiss the Board of Governors of the RTV FBiH. Furthermore the laws pertaining to the public broadcasting system do not provide safeguards against arbitrary and politically motivated dismissal of member of the boards of governors and director generals of public broadcasters such as the requirement to provide reasons for dismissals and the right to appeal the latter in court.

The laws pertaining to the public service broadcasting system include requirements for public accountability of public broadcasters. However, it is questionable whether listeners and viewers could hold public service broadcasters accountable for their operation in view of the

low prominence which the laws of individual public broadcasters give to their public service remit. Moreover the legislation does not explicitly establish that the operation of public broadcasters is subject to public control and that the broadcasters can be held responsible for failures to fulfil their mission. Moreover, the broadcasters are not required to established internal complaint mechanisms allowing listeners and viewers to comment or complain on the way public service broadcasters carry out their public service duties.

The model of funding of public service broadcasting in Bosnia and Herzegovina is mixed, including the RTV tax and advertisement revenues. In contrast with Council of Europe Recommendation (2003) 9, the legal framework fails to guarantee that public service broadcasters will be provided with the necessary financial means to complete their missions and does not set out mechanisms for state subsidies to cover public service broadcasters' technical and administrative costs and allow them to adapt to the new digital environment. The regulation does not limit the proportion of advertisement revenues and consequently does not ensure that public service broadcasters are not excessively dependent on them. No rules restrict the use of the RTV tax and other public funds for unfair competition with private broadcasters.

The Law on PB System provides that the three public service broadcasters should establish and jointly run a Corporation. Its mandate includes the introduction of new technologies, the operation of the transmission network, the international presentation of the broadcasting services, the acquisition of foreign programming rights, the management of advertising, and the harmonisation of the different systems, policies and procedures of the current three broadcasters. However, the laws pertaining to the public broadcasting system do not regulate in detail the relations and cooperation between the three broadcasters, and between them and the Corporation. Their establishment and the running of the latter depends exclusively on the good will of the three broadcasters. As a result due to disagreements and conflicts between the public service broadcasters the Corporation has not been established yet.

Recommendations

General recommendation on the legal framework of the public service broadcasting

The legal framework of public service broadcasting should be harmonised. The Law of PB System should set out common elements of the three public service broadcasters such as their institutional structure, safeguards for institutional independence and editorial autonomy, content regulation and funding. The legal framework should also regulate the relations between the three public service broadcasters and the Corporation as well as the relations between the public service broadcasting system and the Communications Regulatory Agency. The laws of the individual public service broadcasters should be in compliance with the Law on PB System. They should only expand the provisions of the latter including specific

requirements regarding public service remit, qualification and other requirements concerning the selection of members of governing bodies and directors of public service broadcasters, and provisions aiming at public participation and accountability of public service broadcasters.

Recommendations on the public service remit

The laws pertaining to the public service broadcasting system should include a precise definition on the public service remit reflecting the European standards and set out mechanisms for control over the fulfilment of the public service remit. In particular they should give prominence to the role of public service broadcasters in the integration of all individuals, groups and communities in Bosnia and Herzegovina.

Recommendations on institutional autonomy and editorial independence of the public service broadcasters

The laws pertaining to the public service broadcasting system should strengthen the institutional autonomy and editorial independence of public service broadcasters by proclaiming the principles of institutional autonomy and editorial independence, and prohibiting directors general and members of board of governors and of management boards from receiving any instruction from any body other than the one which appointed them and by including provisions relating to conflicts of interests.

The Communications Regulatory Authority should be given powers to nominate candidates for the Board of Governors of the three public service broadcasters relying on a harmonised system of nomination. The national parliament and the parliaments of the two entities should not be able to reject the shortlist of candidates for the Board of Governors submitted by the CRA.

Recommendations aiming at increasing public participation

The laws pertaining to the public service broadcasting system should promote public participation in public service governance by providing for public hearings at parliamentary commissions of the shortlisted candidates for boards of governors of public service broadcasters and allow the public to make representations concerning these candidates.

Recommendations on public accountability of the public service broadcasters

The laws pertaining to the public service broadcasting system should indicate that public service broadcasters remain accountable to the public.

In addition to their obligation to issue annual reports to parliaments the public service broadcasters and the Corporation should be required like any another public body to disseminate regularly information on their activities.

The public service broadcasters should be required to establish internal complaint mechanisms allowing listeners and viewers to comment on the way they carry out their public service duties.

Recommendations on funding of the public service broadcasters

The national parliament and the parliaments of both entities should ensure that public service broadcasters are provided with the necessary financial means to complete their mission and set out mechanisms for regular reviews of their needs and provision of publicly funds to enable them to operate in the new digital environment.

The RTV tax should be determined after consultation with the public service broadcasters to reflect the financial means needed to fulfil the public service remit.

Recommendations concerning the Corporation

The parliaments and governments at national and entity levels and the civil society of Bosnia and Herzegovina should urge the three public service broadcasters to end the deadlock and establish the Corporation according to the Law on Public Broadcasting System. In view of its tasks to develop an overall broadcasting strategy, coordinate the technical and human potential of the three broadcasters, harmonise the differing systems, manage the sale of advertising space, and collect the licence fee, the Corporation would foster a unified, stronger and more efficient public broadcasting system. The government should urge the three public service broadcasters to end the deadlock and establish the Corporation according to the legal provisions.

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Introduction

The present comment was prepared by Boyko Boev, Senior Legal Officer at *ARTICLE 19*,¹ at the request of the Office of the OSCE Representative on Freedom of the Media.

The comment aims to analyse the laws pertaining to the public service broadcasting system in Bosnia and Herzegovina and to make recommendations for improvement. For the purposes of this review, the following laws have been examined: the Law on Public Broadcasting System of Bosnia and Herzegovina (Law on PB System)²; the Law on Public Broadcasting Service of Bosnia and Herzegovina (Law on BHRT)³; the Law on the Radio Television of Federation of BiH (Law on RTV FBiH)⁴; the Law on the Radio Television of Republika Srpska (Law on RTRS)⁵; and the Law on Communications of Bosnia and Herzegovina (the Law on Communications).⁶ The texts of the acts and their English translations under review were provided by the Office of the OSCE Representative on Freedom of the Media.

The structure of the comment is guided by tasks formulated by the Office of the OSCE Representative on Freedom of the Media. These include: analysing the above-mentioned laws; reviewing any related literature; comparing the provisions against international media standards and OSCE commitments; providing recommendations on how to bring the legislation in line with international standards; and suggesting useful regional models.

Part I of the comment outlines the international standards with respect to the right to freedom of expression and freedom of the media, and public service broadcasting. These standards are defined in international human right treaties and in other international instruments authored by the United Nations, the OSCE, the Council of Europe and UNESCO. Part II contains an analysis of Bosnia and Herzegovina's public service broadcasting system's compliance with these standards, specifically commenting on the public service remit, institutional autonomy, editorial independence, the professional status and rights of journalists, content regulation, the funding of the public service broadcasters, and right of reply. An overview of the public

¹ Established in 1988, ARTICLE 19 advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. It has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. ARTICLE 19's Law Programme publishes a number of legal analyses each year: analyses of legislative proposals, as well as of existing laws that affect the right to freedom of expression. All analyses are available online at: <http://www.article19.org/publications/law/legal-analyses.html>.

² Published in the Official Gazette of BiH 78/05.

³ Published in the Official Gazette of Bosnia and Herzegovina, no. 92/05.

⁴ Published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 48/08

⁵ Published in the Official Gazette of Republika Srpska, no. 49/06

⁶ Published in the Official Gazette of BiH, no. 31/03.

service broadcasting system in Bosnia and Herzegovina and the relevant background literature and studies is provided in an annex to this analysis.

Part I International Standards Relating to the Right to Freedom of Expression

Standards relating to the Right to Freedom of Expression and Media Freedom

The right to freedom of expression, including the right to freedom of information, is a fundamental human right. The full enjoyment of this right is central to achieving individual freedoms and to developing democracy, particularly in countries transitioning to democracy. Freedom of expression is a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of all human rights.

The public service broadcasting laws of Bosnia and Herzegovina engage a number of international human rights provisions that form the basis of the legal analysis in the next section. This section identifies the most relevant international standards relating to the protection of freedom of expression and, in particular, to the broadcasting regulations.

As a member state of the United Nations, the Council of Europe, and the Organization for Security and Co-operation in Europe (OSCE), Bosnia and Herzegovina is obliged to respect and protect the right to freedom of expression. In addition it has made commitments to media freedom and public service broadcasting.

The *Universal Declaration of Human Rights*⁷ (“UDHR”) is generally considered the flagship statement on international human rights standards, and is binding on all States as a matter of customary international law. Article 19 of the UDHR guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The *International Covenant on Civil and Political Rights* (“ICCPR”) is an international treaty, ratified by Bosnia and Herzegovina on 1 September 1993, which imposes legally-

⁷ Adopted by the UN General Assembly on 10 December 1948, Resolution 217A(III).

binding obligations on State Parties to respect a number of the human rights set out in the UDHR.⁸ Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms similar to those found in Article 19 of the UDHR.

Guarantees of freedom of expression are also found in all three major regional human rights systems. As a state party to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*,⁹ Bosnia and Herzegovina is legally bound to respect Article 10, guaranteeing the right to freedom of expression as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Similar guarantees for the right to freedom of expression are provided in Article 9 of the *African Charter on Human and Peoples' Rights*¹⁰ and Article 13 of the *American Convention on Human Rights*.¹¹

The right to freedom of expression and media freedom are guaranteed in various OSCE documents, which were signed by Bosnia and Herzegovina upon joining the OSCE.

In the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE¹² the OSCE participating states reaffirmed that:

... everyone will have the right to freedom of expression.... This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.¹³

⁸ UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

⁹ Adopted 4 November 1950, in force 3 September 1953. Ratified by Bosnia and Herzegovina on 12 July 2002.

¹⁰ Adopted 26 June 1981, in force 21 October 1986.

¹¹ Adopted 22 November 1969, in force 18 July 1978.

¹² Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990.

¹³ *Ibid.*, para. 9.1

In the the Charter for European Security (1999),¹⁴ the OSCE participating states stated:

We reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.¹⁵

Freedom of expression is among the most important of the rights guaranteed by the ICCPR and other international human rights treaties, in particular because of its fundamental role in the underpinning of democracy. The UN Human Rights Committee, the body established to monitor the implementation of the ICCPR, has stated: “The right to freedom of expression is of paramount importance in any democratic society.”¹⁶ The European Court of Human Rights has held:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.¹⁷

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The Inter-American Court of Human Rights, for example, has stated: “It is the mass media that make the exercise of freedom of expression a reality.”¹⁸ The European Court of Human Rights has referred to “the pre-eminent role of the press in a State governed by the rule of law”¹⁹ and has recognised that the press plays the vital role of ‘public watchdog’.²⁰ The UN Human Rights Committee has stressed the importance of free media to the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.²¹

¹⁴ Charter for European Security, adopted at the OSCE Istanbul Summit, November 1999.

¹⁵ *Ibid.*, para. 26.

¹⁶ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

¹⁷ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, 1 EHRR 737, para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

¹⁸ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

¹⁹ *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, 14 EHRR 843, para. 63.

²⁰ *Ibid.*

²¹ UN Human Rights Committee General Comment No. 25, issued 12 July 1996.

Standards on media and public service broadcasting regulation

Along with the obligation to protect and respect the right to freedom of expression and media freedom, states have a positive obligation to create an environment in which this right and freedom can flourish. This obligation stems from Article 2 of the ICCPR, which requires that States “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” Therefore the primary goal of media regulation is to ensure that diverse and free media can exist and operate. As the European Court of Human Rights stated: “[Imparting] information and ideas of general interest [...] cannot be successfully accomplished unless it is grounded in the principle of pluralism.”²²

The state’s obligation to create an environment in which diverse media exist has been proclaimed by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression.²³ The Convention establishes that states enjoy the sovereign right to adopt measures to protect intercultural dialogue and the diversity of cultural expression, as well as a duty to adopt measures aimed at enhancing the diversity of media, including through public broadcasting.

One of the key rationales behind public service broadcasting is that it makes an important contribution to pluralism. The German Federal Constitutional Court, for example, has held that promoting pluralism is a constitutional obligation for public service broadcasters.²⁴ For this reason, a number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism. Although not all of these international instruments are formally binding as a matter of law, they do provide valuable insight into the implications of freedom of expression and democracy for public service broadcasting.

*Resolution No. 1: Future of Public Service Broadcasting*²⁵ (hereinafter *CoE Resolution of the future of PSB*), notes the importance of public service broadcasting to human rights and

²² *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, 17 EHRR 93, para. 38.

²³ UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, adopted on 20 October 2005 by the 33rd General Conference and entered into force on 18 March 2007.

²⁴ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

²⁵ Resolution No. 1 on the future of public service broadcasting, adopted at the 4th European Ministerial Conference on Mass Media Policy, Prague, December 1994.

democracy generally, as well as the role of public service broadcasting in providing a forum for wide-ranging public debate, innovative programming not driven by market forces and promotion of local production. As a result of these vital roles, the Resolution recommends that member States guarantee at least one comprehensive public service broadcaster, accessible to all.

An important implication of these guarantees is that bodies that exercise regulatory or other powers over broadcasters, such as broadcast authorities or boards of publicly-funded broadcasters, be independent. This principle has been explicitly endorsed in a number of international instruments.

Recommendation No. R(96)10 on the Guarantee of the Independence of Public Service Broadcasting, adopted by the Committee of Ministers of the Council of Europe,²⁶ notes that the powers of supervisory or governing bodies should be clearly set out in the legislation and that these bodies should not have the right to interfere with programming matters. Governing bodies should be established in a manner which minimises the risk of interference in their operations, for example through an open appointments process designed to promote pluralism, guarantees against dismissal and rules on conflict of interest.²⁷

In the Political Declaration adopted at the Council of Europe ministerial conference in Reykjavik in 2009 the European ministers responsible for media and new communication services reaffirmed their support for public service media declaring that “public service media, having genuine editorial independence and institutional autonomy, contribute to media diversity and help counterbalance the risk of misuse of power in a situation of strong concentration of the media and new communication services.” The ministers recognised that “another important element for ensuring access to trustworthy sources of information is genuine, independent and adequately resourced public service media”²⁸

Recommendation (2003) 9 of the Committee of Ministers of the Council of Europe on measures to promote the democratic and social contribution of digital broadcasting provided

²⁶ Recommendation No. R(96)10 of the Committee of Ministers to member states on the Guarantee of the Independence of Public Service Broadcasting. Adopted on 11 September 1996.

²⁷ Appendix to Recommendation No. R(96)10 of the Committee of Ministers to member states on the Guarantee of the Independence of Public Service Broadcasting

²⁸ For more details on the Ministerial Conference, see Tarlach McGonagle, “Conference of Ministers responsible for Media and New Communication Services”, IRIS 2009-8/2, available at: <http://merlin.obs.coe.int/iris/2009/8/article2.en.html>

specific principles applicable to public service broadcasters in the digital era.²⁹ States are required to create the financial, technical and other conditions necessary to enable public service broadcasters to fulfil their remit. Furthermore, they should enable public service broadcasters to be present on the different digital platforms (cable, satellite, terrestrial) with diverse quality programmes and services. Finally, states should give public service broadcasters “the possibility of having access to the necessary financial means to fulfil their purpose” in the new technological context.³⁰ These recommendations, particularly the requirement of effective independence from government – including financial independence – are reiterated in a number of resolutions and recommendations of the Parliamentary Assembly and other Ministerial Conferences on the mass media policy of the Council of Europe.³¹

The Declaration “On the Road to Media Freedom”,³² adopted at the 1st South East Europe Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media, stated that “[p]ublic authorities at all levels should openly and resolutely acknowledge and ensure the independence of their respective public service broadcasters, both editorial and financial, as it is crucial for ensuring a well-functioning democracy and serves as a backbone for freedom of the media”. The Declaration included the following recommendations aimed at strengthening public service media:

- The existing legislation on public service broadcasting should be fully implemented to guarantee editorial and financial independence of public broadcasters;
- The financial independence of public service broadcasters should be guaranteed by law;
- Public authorities should develop and implement adequate funding mechanisms that allow for sustainable operation of public service broadcasters, ensuring their efficient mid- and long-term planning;
- Public service broadcasters should strive to develop high quality programmes for all segments of their audiences, including national minorities, based on the principles of balance and impartiality.

²⁹ Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting. Adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers’ Deputies.

³⁰ Appendix to Recommendation Rec (2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting.

³¹ Other specific Council of Europe documents concerning the functions and operation of public service broadcasters include Recommendation 1641 (2004), reviewing the situation of public service media across Europe; Recommendation 1878 (2009), outlining the key issues related to public service media and their funding; Recommendation CM/Rec (2007)3, setting out principles concerning the remit of public service media; and Declaration of the Committee of Ministers of 27 September 2006, containing an overview of the independence of public service in Europe.

³² Declaration “On the Road to Media Freedom”, adopted at the 1st OSCE South East Europe Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media and held in Sarajevo, Bosnia and Herzegovina on 13 and 14 October 2011.

Part II Compliance of the public service broadcasting laws in Bosnia and Herzegovina with international standards and their level of harmonisation

General comments on the legal framework of public service broadcasting in Bosnia and Herzegovina

The public service broadcasting system of Bosnia and Herzegovina consists of three public broadcasters: the countrywide public service broadcaster Radio and Television of Bosnia and Herzegovina (BHRT), and two entity public broadcasters, Radio and Television of the Federation of Bosnia and Herzegovina (RTV FBiH) and Radio and Television of Republic Srpska (RTRS).

Laws adopted by three parliaments regulate public service broadcasting media in Bosnia and Herzegovina. The institutional structure of the public broadcasting system, its guiding principle and the relations between the three public service broadcasters and the Corporation are regulated by the Law on Public Broadcasting System of Bosnia and Herzegovina (Law on PB System), adopted in 2005 by the Parliamentary Assembly of Bosnia and Herzegovina.¹ In addition, separate public service broadcasting laws adopted from 2005 to 2008 regulate the establishment and operation of each public service broadcaster: the Law on Public Broadcasting Service of Bosnia and Herzegovina sets out the legal framework of BHRT¹ (Law on BHRT); the Law on the Radio Television of Federation of BiH regulates the RTFBiH¹ (Law on RTV FBiH); the Law on the Radio Television of Republika Srpska deals with RTRS¹ (Law on RTRS).

As the Law on Public Broadcasting System (Law on PB System) regulates the entire public service broadcasting system, many of its provisions apply to each public service broadcaster and are identical to provisions in the three other laws. In addition the Law on PB System has provisions on the independence of the public broadcasting system, the purpose of the public broadcasting system, relationships within the public broadcasting system, and licences. It also regulates the establishment and operation of the Corporation, including its financing and governance.

The Law on RTV FBiH, the Law on RTRS and the Law on BHRT have a similar structure and sometimes identical provisions. They regulate the registration of the public broadcasting companies, their seats, legal status, specific tasks, relations with other broadcasters within the

public broadcasting system, and with the Communications Regulatory Agency (CRA), programming principles and restrictions, program quantity, and activities. The laws include rules on advertising, archives, sponsorship, protection of intellectual property, right of reply, corrections, confidentiality of journalistic sources, as well as on funding and access. Finally, the laws set out public service broadcasters' governance bodies.

The legal framework is complex as the regulation of each public service broadcaster is provided both in its own special law as well as in the Law on PB System. For example, provisions in the PB System which apply to all public service broadcasters are also present in the laws governing the specific public service broadcasters. At the same time, although some provisions in the laws of individual public service broadcasters and in the Law on PB System are identical, a careful reading and interpretation of both laws is still necessary, as some provisions are in conflict with one another. It is recommended that the regulation be harmonised and simplified. One way to do so is to include all provisions relating to common elements of the regulation of the three public service broadcasters in the Law on PB System.

Recommendation

The legal framework of public service broadcasting should be harmonised. The Law of PB System should set out common elements of the three public service broadcasters such as their institutional structure, safeguards for institutional independence and editorial autonomy, content regulation and funding. It should also regulate the relations between the three public service broadcasters and the Corporation and the relations between the public service broadcasting system and the CRA. The laws of the individual public service broadcasters should be in compliance with the Law on PB System. They should only expand the provisions of the latter including specific requirements regarding public service remit, qualification and other requirements concerning the selection of members of governing bodies and directors of public service broadcasters, and provisions aiming at public participation and accountability of public service broadcasters.

SPECIFIC COMMENTS

Public service remit

Overview

The Law on PB System states that “the principle responsibility of the public broadcasting services shall be to accurately inform the public about political, economic, social, health, cultural, educational, scientific, religious, ecological, sport and other events, support democratic processes, ensure an adequate proportion of impartial news and programmes on current events in prime time and other times, of news, cultural, artistic, educational, children’s, sports and entertainment programming as well as to ensure the highest quality programming is available to the public of Bosnia and Herzegovina, by presenting diverse and factual information”.³³

Specific public service responsibilities of public service broadcasters are defined in the provision relating to programming principles in the Law on PB System, the Law on RTRS and the Law on RTV FBiH.³⁴ The provision on programming principles is identical in all of the three laws. The public service broadcasters are “obliged to ensure diverse and balanced radio and television programs and meet high standards of ethics and quality, that show respect for human life, dignity and the physical integrity of persons, and that foster democratic freedoms, social justice and international understanding and peace.”

The programming should also “serve cultural and other needs of national/ethnic minorities of Bosnia and Herzegovina and respect the constitutional rights of them” and should ensure “representation of content that correspond to the tradition and heritage of all three peoples and adequate representation of Others”. The public service broadcasters are obliged “to produce and edit programs in accordance with the highest professional criteria and with respect for artistic and creative freedoms, independent of the opinions of governmental bodies, political parties”.³⁵ The Law on BHRT states that “programmes [of BHRT] shall be tailored to the needs of the constituent peoples and citizens of Bosnia and Herzegovina”.³⁶

³³ Article 5 of the Law on PB System.

³⁴ Article 26 of the Law on PB System, Article 38 of the Law on RTV FBiH, Article 13 of the RTRS.

³⁵ *Ibid.*

³⁶ Article 8 (2) and (3) of the BHRT.

Analysis

The regulation of public service remit is in line with some of the relevant media standards. The CoE “Recommendation Rec(2007)3 to member states on the remit of public service media in the information society” notes that PSM should serve as:

- a) a reference point for all members of the public, offering universal access;
- b) a factor for social cohesion and integration of all individuals, groups and communities;
- c) a source of impartial and independent information and comment, and of innovatory and varied content which complies with high ethical and quality standards;
- d) a forum for pluralistic public discussion and a means of promoting broader democratic participation of individuals;
- e) an active contributor to audiovisual creation and production and greater appreciation and dissemination of the diversity of national and European cultural heritage.

The provisions on the remit of public service broadcasters in Bosnia and Herzegovina focus on the provision of accurate information and on issues of respecting the identity and traditions of different constituent peoples and citizens. However, they fail to require that public broadcasters serve as a factor for integration of all individuals, groups and communities in Bosnia and Herzegovina, and as a forum for pluralistic public discussion. Furthermore the legislation does not emphasise the role of public broadcasters as promoters of broader democratic participation of individuals; or as contributors to audiovisual creation and innovative production. It is recommended that the Law on PB System includes a more precise definition of the public service remit to reflect European standards.

The public service remit set out in the Law on PB System should apply to all public service broadcasters. In addition the Law on BHRT, the Law on RTRS and the Law on RTV FBiH should include additional provisions expanding the public service remit of individual broadcasters to respond to the specific demands of their viewers and listeners at national level or in the two entities.

Recommendations

The Law on PB System should include a precise definition of the public service remit to better reflect European standards. In particular it should emphasise the role public service

broadcasters have in the integration process of all individuals, groups and communities in Bosnia and Herzegovina.

The Law on BHRT, the Law on RTRS and the Law on RTV FBiH should expand the remit of the public service system by including obligations in view of the specific demands of viewers and listeners at national level or in the two entities of Bosnia and Herzegovina.

Institutional autonomy

Safeguards for editorial independence and institutional autonomy

Overview

The Law on PB System, the Law on RTV FBiH and the Law on RTRS contain provisions proclaiming the editorial independence and institutional autonomy of BHRT, RTV FBiH and RTRS.³⁷ The Law on BHRT does not explicitly proclaim the editorial independence and institutional autonomy.

The Law on BHRT, the Law on RTRS and the Law on RTV FBiH include identical provisions against conflicts on interest. The members of Boards of Governors should not be

- officials of legislative, executive or judicial structures at any level of government;
- members of political party organs on any level of organisation;
- employees of the RTRS, RTV FBiH, BHRT or the Corporation;
- employees in other companies carrying out activities in radio or television broadcasting, including agencies that collect broadcasting tax;
- members of their governing and supervisory boards;
- or persons engaged in activities that may cause a conflict of interest.³⁸

Analysis

The laws pertaining to the public service broadcasting system of Bosnia and Herzegovina contain some safeguards for the institutional independence and editorial autonomy, set out in Recommendation no. R(96)10. However, in contrast to the latter, they do not prohibit any form of censorship of the programming of public service broadcasters or any *a priori* control

³⁷ Article 37 of the Law of RTV FBiH, Article 4 of the Law on PB System.

³⁸ Article 26 of the Law on the BHRT, Article 46 of the Law on RTRS, Article 25 of the Law on RTV FBiH.

of the activities of public service broadcasting organizations by external persons or bodies except in exceptional cases as provided by law.³⁹ Furthermore the four public service broadcasting laws fail to prohibit members of governing bodies and staff from taking any instructions whatsoever from individuals or bodies outside the broadcaster.⁴⁰

The safeguards against conflict of interests in the four laws are weak. For example, members of governing bodies and director generals can receive money from or hold interest in commercial broadcasting companies, which would be in conflict of interest with their functions on the Boards of Governors. Recommendation no. R(96)10 provides that members of supervisory bodies of public service broadcasters may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors when doing so would lead to a conflict of interest with their functions within the supervisory body.⁴¹

Recommendation

The Law on PB System should prohibit any form of censorship of the programming activities of public service broadcasting, as well as any a priori control of the activities of public service broadcasting organizations by external persons or bodies except in exceptional cases provided by law.

The Law on PB System should prohibit the members of the governing bodies and staff of public service broadcasters, including their directors, from taking any instructions whatsoever from individuals or bodies outside the organisation or from employing them without the agreement of the board of management of the organisation and subject to the competences of the supervisory bodies.

The Law on PB System should prohibit members of governing bodies of public service broadcasters and their directors general from, directly or indirectly, exercising functions, receiving payment or holding interests in enterprises or other organisations in media or media-related sectors when doing so would lead to a conflict of interest with their functions.

³⁹ Guideline IV in the Appendix to Council of Europe Recommendation no. R(96)10.

⁴⁰ *Ibid.*

⁴¹ Guideline III.2 in the Appendix to Council of Europe Recommendation no. R(96)10.

Selection and appointment of governing bodies of the public service broadcasters

Overview

The Law on the PB System contains no provisions on the selection and appointment of the board of governing bodies and director generals of the public service broadcasters. The Law on BHRT, the Law on RTRS and the Law on RTV FBiH provide that parliaments appoint and dismiss the members of the boards of governors of public service broadcasters. However, the selection procedure differs in the different public broadcasters. While the candidates for governors of RTRS and BHRT are shortlisted by the CRA⁴², the shortlist of the candidates for governors of RTV FBiH is submitted by the Commission for Selection and Appointment of both Houses of the Parliament of the Federation.⁴³

The Law on RTRS provides that the National Assembly can refuse to appoint the members shortlisted by the CRA.⁴⁴ In this case, the CRA is obliged to repeat the nomination procedure. The Law on BHRT and the Law on RTV FBiH do not permit the Parliamentary Assembly and the Parliament of the Federation to reject the shortlisted candidates.

Analysis

Similar to other countries, national and entity parliaments in Bosnia and Herzegovina play a key role in the appointment and dismissal of members of the Boards of Governors of the public service broadcasters. It is commendable that the Law on RTRS and the Law on BHRT insulate public service broadcasters from political influence by requiring that the nominations of board candidates be made by the CRA.

In contrast, the nominees for the Board of Governors of the RTV FBiH are shortlisted by the Commission for Selection and Appointment of both Houses of the Parliament of the Federation. The parliamentary nature of the Commission means that the Parliament of the Federation nominates and appoints the members of the Board of Governors of RTV FBiH. Although the regulation is similar in other countries, it is appropriate that the broadcasting laws limit the opportunities for political influence over the appointments. The distribution of powers between the Parliament of the Federation and another independent institution, like the CRA, would present a safeguard against politicisation. At the same time, given the federal

⁴² Article 46 (1) of the Law on RTRS, Article 26 of the Law on BHTV

⁴³ Article 25 of the Law on RTV FBiH

⁴⁴ Article 46 (4) of the Law on RTRS.

structure of Bosnia and Herzegovina, the nomination powers of the CRA would ensure that the candidates for the Board of Governors of RTV FBiH are shortlisted on a professional, rather than ethnic, basis. Therefore, it is recommended that the laws pertaining to the public service broadcasting system assign powers to the CRA to make nominations for board of governors of all three public service broadcasters, including the RTV GBiH

Another matter of concern is the powers of the National Assembly of Republika Srpska to reject nominated candidates. These powers give Parliament full control over the selection of the members of the Board of Governors of the RTRS and make public service broadcasters vulnerable to politicisation. Moreover, the Law on RTRS does not provide for grounds for refusals to appoint members nominated by the CRA. In practice, the National Assembly can reject shortlisted candidates on purely political reasons. It is recommended that the laws pertaining to the public service broadcasting system state that parliaments shall not have powers to reject candidates shortlisted by the CRA.

For the purpose of harmonisation it is recommended that the laws pertaining to the public service broadcasting system set out principles on the appointment of members of governing bodies of public service broadcasters. These principles should include equal representation of both sexes, requirements for transparent selection procedure and public hearing with potential candidates of the boards of governors of the three public service broadcasters.

Recommendations

The laws pertaining to the public service broadcasting system should give powers to the CRA to submit to national and entity parliaments a shortlist of candidates for boards of governors of all three public service broadcasters.

The laws pertaining to the public service broadcasting system should state that parliaments shall not reject the shortlist of candidates for boards of governors submitted by the CRA.

The laws pertaining to the public service broadcasting system should provide for public hearings regarding the shortlisted candidates for the boards of governors and allow professional and civil society organisations to submit comments concerning these candidates and pose questions to them.

The laws pertaining to the public service broadcasting system should set out principles on the appointment of members of governing bodies of all three public service broadcasters. These principles should include equal representation of both sexes, requirements for transparent selection procedure and public hearing with potential candidates for membership of the boards of governors of the three public service broadcasters.

Dismissal of members of the Board of Governors and Directors General

Overview

The Law on BHRT, the Law on RTRS and the Law on RTV FBiH contain identical grounds for dismissal of members of the Board of Governors, such as resignation, unjustifiable failure to attend three consecutive sessions of the Board of Governors and failure to participate in the work of the Board of Governors for a period of three months.⁴⁵ In addition, parliaments may dismiss a member following a recommendation of the CRA if the member failed to comply with the conditions of the system license and/or the broadcaster's licence.⁴⁶

Unlike the other two laws, the Law on RTV FBiH gives power to the Parliament of the Federation to collectively dismiss the Board of Governors. The Parliament of the Federation can order dismissal if the CRA determines that the Board of Governors failed to comply with the conditions of the system license and/or service license, which led to a serious breach or violation of the rights or interests of any of the constituent peoples and others, and in cases of repeated or continued breach or violation.⁴⁷ Furthermore, the Parliament of the Federation may dismiss the Board of Governors as a whole or each member individually if it is found that they violated the laws of Bosnia and Herzegovina, laws of the Federation, or committed malpractice.⁴⁸

The Law on BHRT, the Law on RTRS and the Law on RTV FBiH contain similar grounds for dismissal of the Directors General.⁴⁹ These include: resignation; reasons leading to termination of the contract of employment; and failure to perform professional duties in accordance with law, the system licences or broadcaster's license, the statute, the general acts or the contract of employment. In addition, Article 36 of the Law on RTV FBiH provides that

⁴⁵ Article 46 (7) of the Law on RTRS. Article 25 (3) of the Law on RTV FBiH, Article 26 (3) of the Law on BHRT

⁴⁶ Article 46 (8) of the Law on RTRS. Article 25 (4) of the Law on RTV FBiH, Article 26 (4) of the Law on BHRT

⁴⁷ Article 25 (5) of the Law on RTV FBiH.

⁴⁸ Article 25 (6) of the Law on RTV FBiH.

⁴⁹ Article 36 of the Law on RTV FBiH, Article 53 of the Law on RTRS, and Article 33 of the BHRT

“the Board of Directors shall dismiss the Director General of RTV FBiH if the CRA determines that the Director General has failed to perform his/her duties in accordance with the System/Service license which led to serious breach or violation of rights of any of the constituent peoples and others”.⁵⁰

The Law on BHRT, the Law on RTRS and the Law on RTV FBiH do not provide for an independent court review of decisions for dismissals of members of board of governors and directors general. Neither do they require reasoned decision-making for dismissal of a board member from office.

Analysis

In line with Recommendation no. R(96)10, the Law on BHRT, the Law on RTRS and the Law on RTV FBiH provide that board members can be dismissed only by parliaments, i.e. the bodies which appointed them. The specified factors which may lead to dismissal are in line with international standards.

However, it is worrisome that the Law of on RTV FBiH provides for collective dismissals. This provision runs against modern theories of justice, which are based on the idea of individual responsibility. Moreover, seeking of collective responsibility is unjustified in the context of Boards of Governors. In these bodies, members are elected on an individual basis and do not have control over the act of other members. They are independent and are expected to decide on specific cases in accordance with their own will. Finally, it is not necessary to hold Boards of Governors collectively responsible because it is possible to efficiently seek the individual responsibility of members. Accordingly, it is recommended that the opportunity for collective dismissals be removed.

The lack of protection against arbitrary or politically motivated dismissals is also problematic. The Law on BHRT, the Law on RTRS and the Law on RTV FBiH should require that any decision for removal of a Board member and directors general from office should be duly reasoned and subject to appeal in court.

⁵⁰ Article 36 of the Law on RTV FBiH.

Recommendation

The laws pertaining to the public service broadcasting system should include safeguards against arbitrary dismissal of members of boards of governors and directors generals. The rules should require that any decision for removal of a board member from office should be duly reasoned and subject to appeal in court. Collective dismissals should not be allowed.

Public accountability

Outline

The public service broadcasting laws establish mechanisms for public accountability of public broadcasters in Bosnia and Herzegovina. These include the obligation on public service broadcasters to report on their activities, financial matters and statements relating to public responsibilities of public service broadcasters.

The Law on BHRT, the Law on RTRS and the Law on RTV FBiH require that the Boards of Governors present to parliament and to the public annual financial and programmatic plans and reports on their realization.⁵¹ The laws give a right to everyone to submit objections and suggestions related to the plans and the reports.⁵² Each year the Director Generals should prepare a financial plan for the next year and submit a business report for the previous year to the Boards of Governors.⁵³

The Law on PB System obliges the Director General to arrange an annual business audit of the Corporation by an independent auditing institution.⁵⁴ The Law on BHRT and the Law on RTRS and the Law on RTV FBiH provide for annual business audits to be conducted by an independent auditing institution.⁵⁵ The Law on RTRS and the Law on RTV FBiH provide that the audit shall be conducted in accordance with the methodology and under the supervision determined by the Supreme Office for Republika Sprska's Public Sector Auditing

⁵¹ Article 29 (k) of the Law on the BHTV, Article 48 (1) (g) and Article 13 (8) of the Law on RTRS, Article 38 (8) of the RTV FBiH, Article 29 (k) and Article 38 (9) of the Law on RTV FBiH.

⁵² Article 13 (9) of the Law on RTRS and Article 38 (10) of the Law on RTV FBiH

⁵³ Article 21 and 33 (6) of the Law on BHRT, Article 40 of the Law on RTRS, Article 35 (6) of the Law on RTV FBiH

⁵⁴ Article 15 (1) (k) of the Law on BHRT, Article 28 (1) (k) of the Law on BHRT

⁵⁵ Article 22 of the Law on BHRT, Article 41 of the Law on RTRS

and by the Audit Officer for the Institutions of the Federation of Bosnia and Herzegovina, respectively.⁵⁶

The Law on PB System states that “the principle responsibility of the public broadcasting services shall be to accurately inform the public about political, economic, social, health, cultural, educational, scientific, religious, ecological, sport and other events, support democratic processes, ensure an adequate proportion of impartial news and programmes on current events in prime time and other times, of news, cultural, artistic, educational, children’s, sports and entertainment programming as well as to ensure the highest quality programming is available to the public of Bosnia and Herzegovina, by presenting diverse and factual information”.⁵⁷

Specific public service responsibilities of public service broadcasters are defined in the provision relating to programming principles in the Law on PB System, the Law on RTRS and the Law on RTV FBiH.⁵⁸ The provision on programming principles is identical for the three laws and states that public service broadcasters should serve the public interest. The public service broadcasters are “obliged to ensure diverse and balanced radio and television programs and meet high standards of ethics and quality, that show respect for human life, dignity and the physical integrity of persons, and that foster democratic freedoms, social justice and international understanding and peace.” The laws require that public service broadcasters take into account ethnic, religious, traditional, religious, cultural, linguistic, and other specific features of the constituent peoples and all citizens of Bosnia and Herzegovina. The programming should also “serve cultural and other needs of national/ethnic minorities of Bosnia and Herzegovina and respect the constitutional rights of them” and should ensure “representation of content that correspond to the tradition and heritage of all three peoples and adequate representation of Others”. The public service broadcasters are obliged “to produce and edit programs in accordance with the highest professional criteria and with respect for artistic and creative freedoms, independent of the opinions of governmental bodies, political parties”.⁵⁹ The Law on BHRT does not define programming principles. It states only that “programmes shall be tailored to the needs of the constituent peoples and citizens of Bosnia and Herzegovina”.⁶⁰

⁵⁶ Article 41 (2) of the Law on RTRS, Article 20 of the Law on RTV FBiH

⁵⁷ Article 5 of the Law on PB System.

⁵⁸ Article 26 of the Law on PB System, Article 38 of the Law on RTV FBiH, Article 13 of the RTRS.

⁵⁹ *Ibid.*

⁶⁰ Article 8 (2) and (3) of the BHRT.

Analysis

The public service broadcasting legislation in Bosnia and Herzegovina includes requirements aiming at public accountability. This is in line with CoE Resolution on the future of PSB, which sets out that “public service broadcasters must be directly accountable to the public.”⁶¹ The three public service broadcasters have an obligation to regularly report to parliaments and the public on their activities. It is also commendable that the Corporation and the three broadcasters are audited by independent auditing institutions.

Despite these positive aspects, the mechanisms for public accountability of the three public broadcasters and the Corporation are weak and incomplete. The weakness stems from the fact that in contrast to Recommendation CM/Rec (2007) 3 on the remit of public service media,⁶² the Law on RTV FBiH, the Law on RTRS and the Law on BHRT fail to give prominence of the public mission of public service broadcasters. Although the Law on PB System defines the purpose of public service, this is not set out in the individual public service broadcasting laws. As a result it is arguable whether the audience can hold public service broadcasters accountable for their operation. Moreover, the laws do not specify that public service broadcasters remain under public control and can be held responsible for failures to fulfil their mission.

In contrast to CoE Resolution on the future of PSB, the public service broadcasters and the Corporation are not required to disseminate regularly information on their activities. Procedures allowing listeners and viewers to comment on the way public broadcasters carry out their missions are not developed either.

Regrettably neither the public service broadcasting laws nor the Law on PB System establishes a content-related control aimed at guaranteeing the fulfilment of the public service remit. Internal mechanisms for public review of the fulfilment of the public service remit as well as complaint mechanism are available for viewers and listeners of public service broadcasters in other countries. For example, the BBC has a special body, the Editorial Complaints Unit, dealing with serious complaints about breaches of the BBC's editorial standards. If complainants are not satisfied by the Editorial Complaints Unit finding, they can appeal to the Governors' Programme Complaints Committee. It is recommended that public

⁶¹ See CoE Resolution on the future of PSB *ibid*.

⁶² Recommendation CM/Rec (2007) 3 of the Committee of Ministers to member states on the remit of public service media in the information society, see *ibid*

service broadcasters establish internal complaint mechanisms for addressing specific concerns related to the fulfilment of their public service duties.

Recommendations:

The laws pertaining to the public service broadcasting system should indicate that public service broadcasters remain under public control and can be held accountable for failing to fulfil their mission.

The public service broadcasters and the Corporation should be required to disseminate regularly information on their activities.

The public service broadcasters should be required to establish internal complaint mechanisms allowing the audience to comment on the way they carry out their public service duties.

Funding

Outline

The laws of the three public service broadcasters contain provisions on the broadcasters' property. The Law on BHTV and the Law on RTV BiH rule that the property of both broadcasters consists of assets transferred to it in the process of the liquidation of Public Enterprise of Radio and Television of Bosnia and Herzegovina as well as assets legally obtained from other sources.⁶³ The Law on RTRS does not contain a provision dealing with its property.

The Law on PB System provides that each household and each legal entity in Bosnia and Herzegovina that possesses a radio or television receiver is obliged to pay the monthly RTV tax for that receiver.⁶⁴ The core activities of the public service broadcasters are funded by the revenues from the RTV tax.⁶⁵ There is a legal assumption of possession of a receiver in each household.⁶⁶ Once every five years the CRA should review and propose the amount of RTV

⁶³ Article 19 of the Law on BHRT.

⁶⁴ Article 17 of the Law on PB System.

⁶⁵ *Ibid.*

⁶⁶ Article 19 of the Law on PB System.

tax.⁶⁷ The Parliamentary Assembly of Bosnia and Herzegovina decides on the amount of the RTV tax within 30 day of the presentation of the Agency's proposal.⁶⁸

The Law on PB System provides that the RTV tax and the net income of advertising shall be held in a designated single account.⁶⁹ The organisations selling advertising on behalf of the public service broadcasters have an obligation to pay the collected amount to the designated single account. The System Board members are designated as trustees and executors of the designated single account.⁷⁰ The RTV FBiH and RTRS are entitled to 25% of the net income from the sale of advertising and 25% of the total RTV tax. Fifty per cent of both advertising and the RTV tax must be allocated to the BHRT.⁷¹ In contrast the Law on RTV FBiH provides that revenues of RTV FBiH derived from the advertising should be primarily be used to finance its own activities.⁷²

Each public service broadcaster can directly monitor the collection and distribution of the RTV tax at any time.⁷³

Public service broadcasters can broadcast paid advertisements and accept sponsorships of programmes. The CRA Council determines the amount of advertising and its distribution during prime-time.⁷⁴ The Law on PB System sets out detailed rules on advertisement and sponsorship.

Public service broadcasters may generate revenue by operating within their core activities, including commercialization of copy and related rights, production and sale of audio and visual works, offering teletex and other services.⁷⁵

The Law on PB System provides that the costs of the Corporation have to be met by broadcasters "based on usage defined by a contract".⁷⁶

⁶⁷ Article 22 of the Law on PB System

⁶⁸ *Ibid.*,

⁶⁹ Article 23 of the Law on PB System.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Article 18 of the Law on RTV FBiH.

⁷³ Article 23 of the Law on PB System.

⁷⁴ Article 31 of the Law on PB System

⁷⁵ Article 20 (2) of the Law on BHRT, Article 38 (3) of the Law on RTRS, and Article 18 (4) of the Law on RTV FBiH.

⁷⁶ Article 14 of the Law on PB System.

Analysis

The model of funding of public service broadcasting in Bosnia and Herzegovina is mixed. It includes the RTV tax, and advertisement revenues. The mixed sources of funding of public service broadcasting are in line with media standards.⁷⁷

The regulation regarding the funding and of the property of public service broadcasters in Bosnia and Herzegovina is problematic for several reasons. In contrast to international standards⁷⁸ it does not ensure that the three public service broadcasters are provided with the necessary means to complete their mission. The legal framework sets out that the public broadcasts divide the assets of the liquidated Public Enterprise of Radio and Television of Bosnia and Herzegovina. However, no consideration is given whether their property is necessary to fulfil their remit and what additional state subsidies to cover technical and administrative costs are needed for this purpose. Moreover, in contrast to Recommendation (2003) 9 the legislation does not set out mechanisms for state subsidies to cover public service broadcasters' technical and administrative costs and allow them to adapt to the new digital environment and meet the switch-off date of 17 June 2015.

At the same time the legal framework with respect to the funding of public service broadcasters does not protect them from becoming excessively dependent on advertising revenue, and as a result, be diverted from its core public service programming mandate. This can be addressed by an overall limit on the proportion of total funds that may be raised through advertising, for example 25 %. For many public service broadcasters in Europe commercial revenues vary between 10 and 20 percent. This is for example the case for the BNT (Bulgaria – 16,6%), CT (Czech Republic – 12,6%), ARD and ZDF (Germany – 11,3 and 11,9%), France Télévisions (France – 19,8%), ERT (Greece – 13,8%), and Magyar Televizio (Hungary – 10,4%).⁷⁹

Although it is commendable that the RTV tax is proposed by the CRA, the Law on PB System does not envisage participation of the public service broadcasters in the review and

⁷⁷ See Recommendation (2007) 3 of the Committee of Ministers of the Council of Europe of 31 January 2007 on the remit of public service media in the information society which reaffirms the possibility of traditional funding through licence fees, the state budget and advertising.

⁷⁸ In CoE Resolution of the future of PSB states have made a commitment “to maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasters the means necessary to accomplish their missions”. Furthermore, Council of Europe Recommendation (2003) 9⁷⁸ requires the member states to give public service broadcasters the possibility of having access to the necessary financial means to fulfil their public service remit.

⁷⁹ See *The Future or Funeral? A Guide to Public Service Media Regulation in Europe*, p. 88

<http://www.mediapolicy.org/wp-content/uploads/Future-or-Funeral-11-11-2011-final-WEB.pdf>

determination of the RTV tax. This exclusion is in conflict with Recommendation No. R (96) 10, which provides for consultation with the public service broadcasters concerned as to trends in the costs of their activities.

The legal framework contains no rules restricting the use of the RTV tax and other public funds for unfair competition with private broadcasters. There is always a risk that public broadcasters with access to advertising revenues may use their public funding to engage in unfair advertising competition (for example, price dumping). Therefore it is recommended that the public service broadcasting laws directly prohibit price dumping, which could then be invoked by private broadcasters. For the purposes of fair competition the laws should set out an oversight mechanism on the use of the public funding by the public service broadcasters. The European Commission Communication of 2 July 2009 on the application of State aid rules to public service broadcasting⁸⁰ states, with regard to the control of funding systems for public service broadcasting, that the member states:

“[...] shall ensure regular and effective control of the use of public funding, to prevent overcompensation and cross-subsidisation, and to scrutinise the level and the use of ‘public service reserves’.”⁸¹

The key problem with the funding regulations is the determination of shares which each broadcaster can claim from the RTV tax and advertisement revenue. The law envisages no share of the revenue for the Corporation which makes its operation problematic. It is recommended that the public service broadcasters and the Corporation decide periodically how to distribute in accordance with their needs the RTV tax revenue. This recommendation is in line with Recommendation No. R (96) 10 which provides that “where the contribution or licence fee revenue has to be shared among several public service broadcasting organisations, this should be done in a way which satisfies in an equitable manner the needs of each organisation“.

⁸⁰ Commission Communication of 2 July 2009 on the application of State aid rules to public service broadcasting, OJ 2009, C 257, p. 1.

⁸¹ Rec. 77 *Ibid.*

Recommendations

The Law on PB System should set out that public service broadcasters must be provided with the necessary means to complete their mission and define mechanisms for regular reviews of their needs and provision of publicly funds to enable them to operate in the new digital environment.

The Law on PB System should provide that the RTV tax shall be determined in consultation with the public service broadcasters.

The laws pertaining to the public service broadcasting system should prohibit public service broadcasters from engaging in unfair advertising competition and should allow private broadcasters to challenge such practices. The laws should also set out mechanisms for independent oversight on the use of the RTV tax revenue or public funds to ensure that they do not represent unfair competition to private broadcasters.

The Law on the PB System should be amended to ensure that the distribution of the revenue of the RTV tax shall be decided by the public service broadcasters and the Corporation in a way which satisfies in an equitable manner the needs of the broadcasters and the Corporation.

Relations between the public service broadcasters and the Corporation

Outline

The Law on RTRS provides that the RTRS shall cooperate with other public service broadcasters in order to ensure the production of the highest quality program and make it available on the territory of Republika Srpska.⁸² The laws of other two public service broadcasters do not contain a similar provision.

The Law on PB System provides that the Corporation should be established and jointly run by the three public broadcasters.⁸³ With equal rights and obligations towards the latter the Corporation's mandate includes the introduction of new technologies and the operation of the transmission network. It is furthermore responsible for the international presentation of

⁸² Article 10 of the Law on RTRS

⁸³ Article 12 (1) and (2) of the Law on PB System.

broadcasting services, the foreign programming rights, the management of property and technical resources, the management of advertising and, the harmonisation of the different systems, policies and procedures of the current three broadcasters.⁸⁴

On behalf of all three public service broadcasters the Corporation is entitled to:

- sell television, radio and multimedia advertising;
- develop and coordinate legal policy and delivery of the legal services to the public broadcasters;
- promote and coordinate technical development and introduction of new technologies;
- ensure joint utilisation of technical, financial and human resources;
- develop a strategy for the multimedia services of the public service broadcasters;
- enable the common use and management of archive material to conduct internal and external communications;
- acquire foreign programming; to maintain international relations;
- provide administrative and other support to governing bodies;
- order audience research and media market research;
- sell TV, radio and multi-media and advertising services;
- coordinate resources for collecting content for news broadcast, including regional IT centres;
- coordinate the policy and strategy of human resources management of the public broadcasting services;
- coordinate business and development plans, financial operations and internal audit procedures;
- enable the joint annual financial audit; to provide transmission services for the public broadcasting services; and
- coordinate the usage and management of technical resources, property and information technology infrastructure.⁸⁵

It is envisaged that the Corporation's seat is at the Seat of BHRT and that it has organisational units in Sarajevo, Banja Luka and Mostar.⁸⁶

Analysis

The regulation of the relationships between the three public service broadcasters and between them and the Corporation are a matter of political, economic and managerial choice rather than media standards. However the following observations can be made regarding the cooperation of the three public service broadcasters and the coherence of the public service broadcasting system:

⁸⁴ Article 12 (3) and Article 13 (2) of the Law on PB System.

⁸⁵ Article 6 of the Law on PB System.

⁸⁶ Article 13 (3) and Article 12 (4) of the Law on PB System.

The laws of the three public service broadcasters do not regulate in detail the relationship amongst them. To a significant extent the operation of the public service broadcasting system depends on the Corporation, inasmuch as the latter has to ensure and coordinate the cooperation among the public service broadcasters. The Law on PB System gives considerable powers to the Corporation to enable it to coordinate the public service system.

Since the establishment of the Corporation depends on the three public service broadcasters only, their delay to do so indicates that the broadcasters are reluctant to cooperate.

In order to avoid delays it is recommendable that the government establishes a task force consistent of representatives of the three broadcasters and other stakeholders to work toward establishing the Corporation. As stated above, it is recommended that the Corporation is financed through the RTV revenues rather than from broadcasting services.

Recommendation

The Corporation would foster a unified, stronger and more efficient public broadcasting system. The Corporation would also be in a better position to efficiently manage the operation of the transmission network of the three public service broadcasters and the introduction of new technologies, which is particularly important for the digital switch-over. The parliaments and governments at national and entity levels and civil society should therefore urge the three public service broadcasters to end the deadlock and establish the Corporation according to the legal provisions. This can be facilitated through a government-led task force consistent of representatives of the three broadcasters and other stakeholders who should work toward establishing the Corporation.

ANNEX I Overview of the public service broadcasting system of Bosnia and Herzegovina

Key elements of the public service broadcasting system of Bosnia and Herzegovina

Bosnia and Herzegovina's public service media system is complex, reflecting the composite structure of the state, established by the Dayton Peace agreement in December 1995.⁸⁷ It consists of three public broadcasters: the countrywide public service broadcaster Radio and Television of Bosnia and Herzegovina (BHRT), and two entity public broadcasters, Radio and Television of the Federation of Bosnia and Herzegovina (RTV FBiH) and Radio and Television of Republic Srpska (RTRS).

In addition, the public broadcasting system includes the Corporation of the Public Broadcasting Services of Bosnia and Herzegovina (the Corporation)⁸⁸ to be established and run jointly by the three public service broadcasters.⁸⁹ The latter have equal rights and obligations with respect to the Corporation.

The Corporation should have a director general, a management board and a board of governors. The management board should include the director general of the Corporation's sectors.⁹⁰ It is envisaged that the Board of Governors be composed of 12 members and include all members of the public broadcasting services' boards of governors. It should be in charge of both the Corporation and the public broadcasting system.⁹¹

The Corporation is required to introduce new technologies and operate the transmission network of the three public service broadcasters. It is furthermore responsible for the international representation of the public service broadcasters, foreign programming rights, management of the property and technical resources, management of advertising and the harmonisation of the different systems, policies and procedures of the current three broadcasters.⁹²

⁸⁷ Bosnia and Herzegovina is a federation consisting of two entities: the Federation of Bosnia and Herzegovina, administered by the Croats and Bosniaks and covering 51% of the territory and Republika Srpska, administered by the Serbs and covering 49% of the territory.

⁸⁸ Article 3 of the Law on the Public Broadcasting System of Bosnia and Herzegovina and Article 3 of the Law of RTV FBiH.

⁸⁹ Article 12 (1) and (2) of the Law on PB System.

⁹⁰ Article 13(4), and (6) of the Law on PB System.

⁹¹ Article 13 (5) of the Law on PB System

⁹² Article 12(3) and Article 13(2) of the Law on PB System.

The entire broadcasting sector, which includes public, private and community broadcasters, is regulated by the broadcast and telecommunication regulator, the Communication Regulatory Agency (the CRA).

The public service broadcasting system is governed by the Broadcasting System Board which is composed of 12 members and includes all members of the public broadcasting services' boards of governors. The Broadcasting System Board, which also plays the role of Board of Governors of the Corporation,⁹³ is responsible for the RTV tax, the adoption of a system-wide programme code and the harmonisation of the programming schedules and coordination of the three public service broadcasters.⁹⁴ It has also competences relating to the establishment and operation of the Corporation: it appoints and dismisses the director general of the Corporation, approves the persons directly reporting to the Director General, adopts the statute of the Corporation and approves the strategy and policy of operation for the Corporation.⁹⁵

The governing bodies of every public service broadcaster include the Board of Governors, the Management Board and the Director General.

Public service broadcasters are funded by the RTV tax, which should be paid by all citizens who possess television sets, as well as by advertisement revenues and allocations from state budgets earmarked for specific projects. The RTV tax is distributed at a ratio of 50% to BHRT and 25% to each broadcasting entity.⁹⁶

Legal framework of the public service broadcasting system

The basis of the legal framework of the public service broadcasting system in Bosnia and Herzegovina is set out in one generic broadcasting law and three public service broadcasting laws.⁹⁷ The establishment and operation of the CRA, the principles of broadcasting

⁹³ Article 13(5) of the Law on PB System.

⁹⁴ Article 8(1) of the Law on PB System.

⁹⁵ Article 8(2) of the Law on PB System.

⁹⁶ Article 23 of the Law on PB System.

⁹⁷ The institutional structure of the public broadcasting system, its guiding principle and the relations between the three public service broadcasters and the Corporation are regulated by the Law on Public Broadcasting System of Bosnia and Herzegovina (Law on PB System), adopted in 2005 by the Parliamentary Assembly of Bosnia and Herzegovina.⁹⁷ In addition, separate public service broadcasting laws adopted from 2005 to 2008 regulate the establishment and operation of each public service broadcaster: the Law on Public Broadcasting Service of Bosnia and Herzegovina sets out the legal framework of BHRT⁹⁷ (Law on BHRT); the Law on the Radio Television of Federation of BiH regulates the RTFBiH⁹⁷ (Law on RTV FBiH); the Law on the Radio Television of Republika Srpska deals with RTRS⁹⁷ (Law on RTRS). The separate public broadcasting laws were adopted by the different legislative bodies: the Law on BHRT was adopted by the Parliamentary Assembly of Bosnia and Herzegovina, while the Law on RTRS and the Law on RTV FBiH were adopted by the Parliament of Republika Srpska and the Parliament of the Federation of Bosnia and Herzegovina, respectively.

regulation, the licensing procedure and the broadcasting sector's enforcement rules are set out in the Law on Communications of Bosnia and Herzegovina (the Law on Communications).⁹⁸

The CRA has passed a number of by-laws regulating broadcasting activities, such as the granting of licenses and frequencies, content regulation and media advertising. These by-laws apply to the entire broadcasting sector, including public service broadcasters. For example, public service broadcasters' commercial activities must be in accord with the Code of Commercial Communication adopted by the CRA.⁹⁹ Public broadcasters' programmes should meet the content requirements set out in the Broadcasting Code of Practice concerning hate speech, defamation of religion, just and unbiased editorial policy, false and deceptive material, etc. Furthermore, programme requirements, rules for establishment of editorial board councils of public service broadcasters representing the ethnic, cultural and religious composition of the population, and rules concerning the financial responsibility of public service broadcasters and safeguarding their independence from political parties are contained in CRA's Rule 57/2011 on Public Radio and Television Broadcasters.¹⁰⁰

⁹⁸ Adopted in 2003 by the Parliamentary Assembly of Bosnia and Herzegovina. Published in the Official Gazette of BiH, no. 31/03.

⁹⁹ Adopted by the Council of the Communications Regulatory Agency of Bosnia and Herzegovina at its 52nd session held on 15 November 2011.

¹⁰⁰ Adopted by the Council of the Communications Regulatory Agency of Bosnia and Herzegovina at its 52nd session held on 15 November 2011.

ANNEX II. Reports and studies on the operation of the public service broadcasting system of Bosnia and Herzegovina

Several recent studies and reports released in the English language addressed specific challenges to the operation of the public service broadcasting system in Bosnia and Herzegovina. The key findings of the studies and reports are presented below, as they give a vivid impression of the current state of the public service broadcasting sector in the country.

The Media Sustainability Index 2011, published by the International Research & Exchange Board (IREX), notes that the CRA is being subjected to political pressure. The report refers to the fact that the appointment of the general director of the CRA has been delayed for a third consecutive year. The Council of Ministers has given no official justification for its refusal to appoint a director. The report points out that the current acting director is faced with significant administrative difficulties as a result of his status.¹⁰¹

In 2010, the European Union Commission attested that “implementation of the public broadcasting legal framework [was] necessary for reforms in this sector, a European Partnership priority.”¹⁰² The Commission’s progress report on the accession of Bosnia and Herzegovina to the EU pointed out that ensuring the functional independence of the CRA remained a top priority. Other challenges include the failure to establish the Corporation as a result of the disagreement within the Public Broadcasting System Board of Governors over the ownership of equipment and revenue-sharing.¹⁰³

In 2010, the OSCE Mission to Bosnia and Herzegovina raised concerns about the regulatory deadlock in the public service broadcasting system. It pointed out that two members of the Public Broadcasting Board still await replacement because the Parliamentary Assembly has delayed the appointment of new members. It also observed that public broadcasting in BiH remains “fragmented” due to the delayed establishment of the Corporation.¹⁰⁴

In 2011, the EU Commission reported on the progress made in the field of digital broadcasting and in the transposition of the Audiovisual Media Services Directive. The CRA issued a decision on the use of multiplex A for digital terrestrial broadcasting. The report

¹⁰¹ The IREX report on Bosnia and Herzegovina was prepared by Sanela Hodžić, research coordinator, Mediacentar Sarajevo, Sarajevo, and can be found online at http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf.

¹⁰² SEC (2010) 1331, Bosnia and Herzegovina 2010 Progress report, p. 51-52.

¹⁰³ *Ibid.*

¹⁰⁴ OSCE Mission to BiH, Follow-up report on BiH media and media regulators under pressure, 23 September 2010, available online at http://oscebih.org/documents/osce_bih_doc_2010092417401856eng.pdf.

observed that entity laws on public broadcasting services are not in line with laws at the State level. Again, it is noted that the Corporation has not yet been established due to the failure of the Public Broadcasting System Board of Governors to adopt its statute.¹⁰⁵ The EU Commission pointed out that the appointment of a Director General and two Board Members of the CRA and of the CRA Council is pending.¹⁰⁶

In 2011, both the OSCE Representative on Freedom of the Media and the European Commission expressed concerns over the editorial independence of BHRT, as a result of a 2011 amendment to its statute which increases the control of the Management Board over the editorial management.¹⁰⁷

In 2011, the Institute of European Media Law reported that the key challenges to the public service broadcasting system are “the stalemate in the completion of a modern system of public service broadcasting that serves all citizens of BiH and is economically self-sustainable”.¹⁰⁸ It was noted that public service broadcasters are not willing to find a mutually acceptable solution regarding the Corporation. The main disagreements relate to the scope of the powers of the Corporation, the distribution of marketing revenues and subscription fees and the property rights of the public service broadcasters. It has been noted that the three public broadcasters fail to provide a balanced approach to the languages and national interests of all three constituent peoples and the interests of national minorities. In addition, political parties in Parliament attempted to appoint “their people” to the governing bodies of public service broadcasters, “taking sides in the editorial matters and ... encouraging the belief that national interest is the sole guiding line of their public service.”¹⁰⁹

The Balkan Media Barometer Bosnia and Herzegovina 2011 observes that the board of governors of the three public broadcasters “act in line with the political environments they belong to.”¹¹⁰ The RTRS Board of Governors wants a loose cooperation, in line with the

¹⁰⁵ SEC (2011) 1206 Bosnia and Herzegovina 2010 Progress report, p. 50-51, available online at http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf.

¹⁰⁶ SEC (2011), Bosnia and Herzegovina 2010 Progress report, p. 16, 50-51.

¹⁰⁷ Office of the OSCE Representative on Freedom of the Media, Press release, *OSCE media representative says Bosnia and Herzegovina urgently needs to uphold the editorial and political independence of its public service broadcaster*, 25 May 2011, <http://www.osce.org/fom/78105> and SEC (2011), Bosnia and Herzegovina 2010 Progress report, p. 16, 50-51.

¹⁰⁸ See *The Media in South East Europe, Comparative Media Law and Policy Study*, based on country reports from Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Montenegro, Romania and Serbia. The study was conducted on behalf of the Friedrich Ebert Foundation, Regional Project Dialogue South-East Europe and is available online at <http://www.fes.bg/files/custom/library/2011/The%20Media%20in%20South-East%20Europe.pdf>. The report on Bosnia and Herzegovina was prepared Radenko Udovicic. Its full text can be found online at http://www.emr-sb.de/service/EMR_BiH_CountryReport_FES_SEE.pdf.

¹⁰⁹ *Ibid.* p. 44.

¹¹⁰ Balkan Media Barometer, Bosnia and Herzegovina 2011, edited by Nataša Tešanović. The study was facilitated by the Friedrich Ebert Foundation and was still unpublished at the time of the writing of this review.

position of the political leaders in Republika Srpska, who want a weak national state. In contrast BHRT wants a strong cooperation. The study observed that the three public broadcasting services have become separate units with regard to financial, technical and managerial matters. It points out that they lack a real interest in changing the situation because they are “just fine” with their current status.¹¹¹ The study also notes that the Parliamentary Assembly of Bosnia and Herzegovina refuses to approve the candidates submitted in the recent years by the CRA for the selection of Serb and Croat members of the Board of Governors of BHRT. In 2011, the state parliament requested the Agency to re-publish the tender, which the CRA found to be illegal.¹¹² It has been reported that all public broadcasters with the exception of RTRS are in debt due to the failure to collect subscription fees and the fact that those fees are very low (€ 3.63).¹¹³ Finally, the Balkan Media Barometer found that the programmes of the public broadcasters differ very little from those of private broadcasters and that they do not offer balanced information in their news and information programmes.¹¹⁴

¹¹¹ *Ibid.*, p. 40.

¹¹² *Ibid.*, p. 43.

¹¹³ *Ibid.*, p. 46.

¹¹⁴ *Ibid.*, p. 48-49.