

Panel discussion 3. National TV and Radio Broadcasting Council of Ukraine and its authority

Overview of European standards

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Council of Europe

Relevant texts

- Recommendation Rec (2000)23 of the Committee of Ministers of 20 December 2000 on the independence and functions of regulatory authorities for the broadcasting sector
- Declaration of the Committee of Ministers of 26 March 2008 on the independence and functions of regulatory authorities for the broadcasting sector
- Case law of European Court of Human Rights (e.g. Sigma RTV v. Cyprus; Manole v. Moldova; ...)
- Reports of Commissioner for Human Rights of Council of Europe (e.g. 2011 Opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media)

Standards (general)

1. Establishment of independent regulatory authority for broadcasting sector
2. Appointment, composition and functioning
3. Financial independence
4. Powers and competence
5. Accountability

Standards (details)

1. Establishment of independent regulatory authority for broadcasting sector

- States' duty of care under Art. 10 ECHR to safeguard media pluralism implies organization of effective enforcement system;
- Need for appropriate legal framework setting out organization of regulator.

2. Appointment, composition and functioning

- To protect members of regulator against interference from political forces and economic interests, 3 categories of rules required:
 - i. **Incompatibility** rules (prohibiting members from holding political office and from holding commercial interests)
 - ii. **Integrity** rules: democratic and transparent appointment; guarantees for specific know-how; not take any instructions
 - iii. Rules and procedures for **dismissal** (limited and objective grounds only; judicial review possible)

Standards (details)

3. Financial independence

- Adequate funding and (human and other) resources, specified by law

4. Powers and competence

- Four key tasks:
 - i. Adopt regulations and guidelines concerning broadcasting activities
 - ii. Granting and renewal of broadcasting licences
 - iii. Monitoring of broadcasters' compliance (a posteriori)
 - iv. (oversight over public service broadcaster)

5. Accountability

- To the public, e.g. through publication of annual reports
- Decisions and regulations should be duly reasoned, open to review and publicly available.

European Union

Relevant texts

- Audiovisual Media Services Directive 2010/13/EU (Article 30)
“Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, [...] in particular through their competent independent regulatory bodies”.
- European Regulators Group for Audiovisual Media Services (ERGA):
 - Statement on the independence of NRAs in the audiovisual sector of October 2014 – ERGA(2014)03
 - Report on the independence of NRAs of 15 December 2015 - ERGA (2015)11
 - Statement on the necessity of independent media of 11 January 2016 – ERGA(2016)01
- EU Study on Indicators for independence and efficient functioning of audiovisual media services regulatory bodies (‘INDIREG’)



ERGA Report 2015

Summary of the recommendations

A specific provision of a revised AVMS Directive should state that:

1. The institutional frameworks of Member States shall establish independent NRAs¹¹², in particular by:
 - guaranteeing the independence of these NRAs, notably with open and transparent nomination and appointment procedures;
 - ensuring that the dismissal of the NRA's Chair or Board Members is based on transparent and objective grounds as prescribed in the relevant law/regulation;
 - introducing incompatibility and conflict of interest rules in their national laws;
2. NRAs shall have adequate and appropriately qualified human resources to carry out their functions effectively¹¹³,
3. NRAs shall have sufficient/adequate financial resources for the performance of their tasks, and be autonomous in the allocation of the budget¹¹⁴, and their financial statements should be subject to external examination by an independent and qualified institution in compliance with the principle of accountability. Accounting mechanisms for NRAs should be introduced as safeguard for democratic legitimacy and efficient functioning (i.e. external auditing procedures).

4. NRAs shall carry out their work in line with the principle of transparency:
 - the functioning of the NRAs should be regulated by transparent procedures, including for the process of consultation
 - NRAs should ensure where appropriate, consultation and cooperation with the affected parties, especially before taking decisions with relevant impact in the market.
 - NRAs must make their decisions publicly available (while taking into account the privacy requirements of the interested parties) and provide reasoning for them
5. NRAs shall have the power to take autonomous decisions, independent from all bodies and organizations related to the provision and distribution of audio-visual media services.
6. NRAs should be provided with adequate enforcement powers and these powers should be handled autonomously, but also in line with fair, transparent and non-discriminatory published procedures for imposing sanctions.
7. The right to be heard should be ensured by a specific provision and the appeal bodies should be judicial bodies.

INDIREG: formal and *de facto* criteria

- Independence is not exclusively linked to external factors, but is also a matter of internal behavior, such as insisting on clear and transparent regulatory processes and keeping the focus on professional conduct and public interest even in unfavorable circumstances.