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Public service media in Transcaucasian countries

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Foreword

The development of public service media has not progressed at the same pace everywhere. Local market conditions and variable regulatory frameworks have played a critical role in determining how fast and with which features public service media has been consolidated across Europe.

The audiovisual market has developed significantly since the time of monopolies. Thanks to the Internet the options of audiovisual content available to the viewers are now both many and diverse, and this is also true for the provision of public service content. There is, though, a significant differing element: whereas for commercial audiovisual media services the market is the determining aspect, for public service media it is the role of the State.

The role of the State in defining the governance structure and the programming of public service media has been focused on in a central recommendation of the Council of Europe of 2012 on public service media governance. This formal structure, together with the effective management of the organisation and a transparent, open, responsive and responsible operational culture, have been isolated as the essential components for strong public service media, in terms of ensuring independence and accountability. How these criteria have been applied in practice is a national question, and the degree of implementation of the recommendation has varied widely.

In this regard there is naturally a certain delay for those market situations that developed from monopoly to competition relatively late. This has been the case of the post-Soviet regions, where public service broadcasting became a reality first in the early 2000s, when the rest of Europe was already discussing digital economies and converging regulatory frameworks.

Within the post-Soviet developments, a particularly interesting region is the South-Transcaucasian one. The South of the Caucasus includes Georgia, Armenia and Azerbaijan, and is geopolitically a very interesting area. These three countries do not only share a common history, but have also followed a similar evolutionary path when it comes to media development.

A comparative analysis of these three countries is conducted in this *IRIS Extra*, with a wide set of references by Ekaterina Abashina. After detailing the context with some historical notes on their respective media markets and regulatory frameworks, the author discusses the statute of the governing bodies, the financing of PSB, and the appointment procedures of Board members. She then analyses their programming policies and their adaptation to the requirements set by the international organisations of which they are members. Each country is examined individually, with systematic cross-references and a comparative overview of similarities and differences between the three systems.



It might be too early to conclude that there is a South-Transcaucasian PSB model. Nonetheless, it is clearly apparent that recommendations of and assessments by international organisations have been particularly influential in the development of public service broadcasting in Georgia, Armenia and Azerbaijan. In this regard, the analysis presented by Abashina is a very helpful tool for navigating their quite complex regulatory frameworks.¹

Strasbourg, June 2016

Maja Cappello

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1. The evolution of the public service broadcasting concept in Georgia, Armenia and Azerbaijan

During its long history, the institution of public service media has been the subject of several conceptual, legal and ideological revisions to its remit, purpose, goals, and the roles it plays in the media landscape. Initially, public service broadcasting (PSB) was seen as a natural monopoly due to the scarcity of available frequencies – which resulted in seeing PSB as a public good.² In the 1980s, the broadcasting sector in Europe was opened to commercial broadcasters. This new development transformed the broadcasting market, placing European public service broadcasters in the completely different context of “dualistic competition”.³ Following this, rapid technological developments (new communication technologies and online platforms) became a game changer that significantly modified the ways in which media is consumed. This evolution, once again, fostered the rethinking of the concept of public service broadcasting, which was consequently expanded into public service media (PSM).⁴

The three steps of PSM evolution that concerned European public media companies comprise the following:

Public service, in the field of mass media in Europe, has always been connected to media policy and the development of broadcasting. However, its relation to the state and society has varied during the different eras of:

- *monopoly,*
- *dualistic competition,*
- *convergence and the growing importance of new platforms and technologies.*⁵

In the post-Soviet Transcaucasian region (Georgia, Armenia, and Azerbaijan), the PSB/PSM concept evolved and adapted differently due to its late introduction. PSB companies were established in this

² Scannel, P., “Public Service Broadcasting: the History of a Concept” in Goodwin A. and Whannel G. (ed.), *Understanding Television*, Routledge, New York, 1990, pp. 11-29, http://www.academia.edu/3235456/Public_service_broadcasting_the_history_of_a_concept.

³ Głowacki, M., “Public Service Media in Europe – Future or Funeral” in Steenfadt, O. (ed.), *Future or Funeral? A Guide to Public Service Media Regulation in Europe*, Stowarzyszenie Wolnego Słowa, Wrocław, 2011, pp. 10-26, <https://www.article19.org/data/files/medialibrary/2760/11-10-06-europe-media-regulation.pdf>.

⁴ Boev, B., “Public service media and human rights” in *Human rights and a changing media landscape*, Council of Europe, Strasbourg, 2011, pp. 133-174, <http://www.coe.int/t/commissioner/source/prems/MediaLandscape2011.pdf>.

⁵ Głowacki, M., *op.cit.*, p. 12.



region in the early 2000s, while European PSM institutions had already begun their third broadcasting “era” of convergence, new platforms and technologies. In the Transcaucasian countries, the PSB companies replaced the Soviet-style state-run broadcasters (except Azerbaijan, which founded a public broadcasting company but, at the same time, kept the state-controlled broadcaster as well as the legal concept of state broadcasting).⁶

The sector-specific legislation was amended so that state-funded broadcasting companies became subject to new and more detailed rules. These rules were designed to align the practice of those broadcasters with only basic PSB principles and a few content obligations, as well as to introduce the procedure for the formation of their governing bodies. The purpose was to provide these broadcasters with a specific remit, which would make them society-oriented and publicly accountable, and to allow the population to take part in the management of the PSB broadcasters via a number of representatives of various social groups in their governing bodies. Prior to the introduction of these amendments, the state-controlled broadcasters did not have any specific content obligations (except for the government’s official policy) or ways through which to allow the public to participate in their activities; their remit was not to serve the society but the state officials. Moreover, in all three countries, it was not the role of PSB in national media landscapes or the ways of fulfilling its remit in the region that became a matter of concern: rather it was the way the transition from state-private broadcasting systems to public-private ones occurred. Such transition could either result in PSM companies being entrusted with public service remits or become an imitative process with no real reform; in fact the transition from state broadcasting to public broadcasting has not yet been fully accomplished in Georgia, Armenia or Azerbaijan.

The PSM concept was introduced to the media systems of the countries of the Transcaucasian region through the process of the accession of Georgia, Armenia and Azerbaijan to the Council of Europe (CoE). The membership of the abovementioned states to the CoE was contingent upon their commitment to implement a number of democratic reforms, including the development of PSM institutions by adopting and amending their respective national laws.⁷ Therefore, the PSM/PSB definitions, principles, and recommendations elaborated by the CoE appear to be the most relevant for the Transcaucasian region.

The main reference document is the Recommendation of the Parliamentary Assembly of the CoE on “Public Service Broadcasting”,⁸ which reflects general (and universal) principles concerning PSB: independence and autonomy of operation; universality, diversity and distinctiveness of programming; editorial independence and professionalism; and public accountability. These guiding

⁶ Richter, A., Golovanov D., MMLPC. Public Service Broadcasting Regulation in the Commonwealth of Independent States (Special Report on the Legal Framework for Public Service Broadcasting in Azerbaijan, Georgia, Moldova, Russia and Ukraine), European Audiovisual Observatory, Strasbourg, 2006.

⁷ See, Azerbaijan’s application for membership of the Council of Europe: report of Political Affairs Committee, 23 May 2000, http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc00/EDOC8748.htm#P486_58735.

Armenia’s application for membership of the Council of Europe: report of Political Affairs Committee, 23 May 2000, <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=8942&Language=EN>.

Georgia’s application for membership of the Council of Europe: report of Political Affairs Committee, 2 December 1998, <http://assembly.coe.int/Documents/WorkingDocs/doc98/edoc8275.htm>.

⁸ Recommendation 1641 (2004) of the PACE: Public service broadcasting (adopted on 27 January 2004), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17177&lang=en>. See McGonagle T., New Recommendation on Public Service Broadcasting, IRIS, 2004-3/3, <http://merlin.obs.coe.int/iris/2004/3/article3.en.html>. According to this Recommendation, “Public service broadcasting, whether run by public organisations or privately-owned companies, differs from broadcasting for purely commercial or political reasons because of its specific remit, which is essentially to operate independently of those holding economic and political power. It provides the whole of society with information, culture, education and entertainment; it enhances social, political and cultural citizenship and promotes social cohesion. To that end, it is typically universal in terms of content and access; it guarantees editorial independence and impartiality; it provides a benchmark of quality; it offers a variety of programmes and services catering for the needs of all groups in society and it is publicly accountable. These principles apply, whatever changes may have to be introduced to meet the requirements of the twenty-first century”.



principles are applied by the CoE to various aspects of PSM/PSB activity, including governance and operation, funding, programming; all of which are explained in further CoE recommendations and declarations.⁹ These general PSB principles have remained vital throughout the evolution of the concept, and also reveal those aspects of PSM practices that usually require special attention from both independent national regulators and the parliaments. It has also been argued that along with internal principles of PSM there are also some external criteria to distinguish a public service broadcaster from a state or commercial one.¹⁰

Indeed, peculiar features of the practice of any PSB company derive mostly (but not only) from its legal framework, as well as from the method by which relevant legal provisions are implemented. The political neutrality of public broadcasting companies may be linked to governance models (i.e. a set of competencies and powers of governing bodies within a PSB company, procedure of composition of such bodies, and political affiliation of their members) that subsequently affect general programming policies and specific information and editorial policies on news delivery.

This article will examine the regulation of public service broadcasting in Georgia, Armenia and Azerbaijan and will provide a general overview of their PSB systems.

⁹ See Recommendation R (96) 10 of the Committee of Ministers of the Council of Europe on the guarantee of the independence of public service broadcasting,

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=539737&SecMode=1&DocId=547632&Usage=2>. See van Loon A., IRIS 1996-10:4/4, <http://merlin.obs.coe.int/iris/1996/10/article4.en.html>;

Recommendation (2007)3 of the Committee of Ministers of the Council of Europe on the remit of public service media in the information society,

<https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec%282007%293&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true>. See Rossini M., IRIS 2007-3:5/5, <http://merlin.obs.coe.int/iris/2007/3/article5.en.html>.

Recommendation 1878 (2009) of the Parliamentary Assembly of the Council of Europe: The funding of public service broadcasting, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17763&lang=en>. See de Beer K., IRIS 2009-84/3, <http://merlin.obs.coe.int/iris/2009/8/article3.en.html>;

Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4. See Breemen V., IRIS 2012-3:1/2, <http://merlin.obs.coe.int/iris/2012/3/article2.en.html>;

Declaration of the Committee of Ministers on Public Service Media Governance, 15 February 2012,

[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl\(15.02.2012\)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383-%20FR&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl(15.02.2012)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383-%20FR&direct=true);

Committee of Ministers Recommendation No. R (99) 1 on measures to promote media pluralism, adopted on 19 January 1999, <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Rec%2899%291&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true>. See Suárez R.P., IRIS 1999-2:5/5, <http://merlin.obs.coe.int/iris/1999/2/article5.en.html>;

Committee of Ministers Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, adopted on 31 January 2007,

<https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec%282007%292&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true>. See Rossini M., IRIS 2007-3:5/5, <http://merlin.obs.coe.int/iris/2007/3/article5.en.html>.

¹⁰ See, Jakubowicz, K., *Media revolution in Europe: ahead of the curve*, Council of Europe, Strasbourg, 2011, p. 33, according to which “Public service broadcasting is an institution resulting from deliberate state policy to create such an institution responsible for making a certain kind of content available to all inhabitants of a country, and to safeguard conditions required for its existence and operation. It is primarily a public sphere and civil society institution with specific programming remit and philosophy [...]. Autonomy from the state (for which well-developed democracy is required) and from commercial considerations is a prerequisite for public service broadcasters to remain true to their remit.”





2. PSB governance in the Transcaucasian region

A board designed to perform supervisory functions and oversee the operations of a PSB company is seen as a distinct, structural element of any such company. These supervisory boards should direct a PSB to comply with the needs and interests of its audience as well as with the main PSB principles. The board of a PSB company should be composed in such a manner as to guarantee its independence from any political or commercial interest and to protect the independence and autonomy of PSB companies in general.

According to the recommendations of the Council of Europe, the following principles of PSB governance models should be maintained:

- independence of governing bodies from political interference;
- openness and transparency of appointment procedures for PSB board members;
- editorial independence and autonomy.

It has been indicated that PSB governance might be carried out by either a single or a dual board.¹¹ A single board is responsible both for managing the company and ensuring compliance with regulatory and financial requirements, whereas a dual board consists of a supervisory board and an executive board, where the responsibilities of ensuring compliance and management are divided between the two of them. The characteristics of a PSB supervisory board rely heavily on the appointment procedures of its components. What is significant is not only the appointment procedure of PSB board members (through which the PSB board members are selected and which needs to be open and transparent), but also the actors conducting it: it could be an independent audiovisual sector regulator, the public, parliament, the government, all (or some) concurrently, or ad hoc competition commissions.

The following sections explore the governance systems of public broadcasters in Georgia, Armenia and Azerbaijan. Special attention will be paid to the appointment procedures of the supervisory bodies of the respective companies, in the context of a general overview of the PSB systems of the three countries.

¹¹ Hanretty, C., "Five ways to govern a public broadcaster", European University Institute, Florence, 2007, <http://www.chrishanretty.co.uk/publications/Han07b.pdf>.



2.1. PSB governance in Georgia

2.1.1. Statute of the governing bodies and their financing

Georgia included provisions on PSB into the Law on Broadcasting of 2004,¹² pursuant to which the state broadcaster was replaced by the Georgian Public Broadcaster (GPB).

Article 15 of the Law on Broadcasting states that the purpose of the national PSB is the “broadcasting of diverse programmes, free from political and commercial influence and corresponding to public interests”. Article 15 sets out the principles of content diversity and of independence and autonomy of the operation of the PSB. Other CoE principles are reflected in provisions on different aspects of its operation.

The legal status of the public broadcaster of Georgia is stipulated as “independent from the government and accountable before the public, not being subordinated to any public agency” (Article 15). Article 18 sets out the independent and immune status of the Georgian Public broadcaster in a more detailed manner, preventing any governmental authorities from interfering with the editorial, managerial, or financial independence of the PSB, or otherwise putting pressure on it. The principles of content universality, impartiality, and accountability of the PSB to the public are stipulated in Article 16.

The governance system of the Georgian PSB is based on two bodies: the Board of Trustees, consisting of nine members, and the Director-General (Article 22). The law does not prevent the national PSB from using any legal source of financing and also states that the budget of the PSB shall be sourced from a licence fee (Article 33). As financing through licence fees has not been adopted yet, despite respective legal provisions (as in Azerbaijan), the law makes the national budget of Georgia the main source of financing for the public broadcaster.

The Georgian system of state funding PSB provides a safeguard of PSB policies from financial leverage, that does not allow any PSB or state body to single-handedly decide on an annual amount of such funding and makes it dependant on an extrinsic factor. The amount of annual allocation to the Georgian PSB from the state budget is proportionate to the gross domestic product of Georgia, with a minimum level of funding of at least 0.14% of the previous year’s GNP (Articles 33-5).

The Law on Broadcasting contains a number of specific and detailed programming requirements for the PSB, and also requires the Board of Trustees to elaborate on programme priorities on an annual basis. Importantly, it also provides a legal mechanism for protection of the PSB’s independence and immunity: “Any interested Party may apply to the court to avoid and prevent any kind of influence or intervention and also nullify any decision taken as a result of such intervention and influence” (Articles 18-3).

According to Article 30 of the Law on Broadcasting, the duties of the Board of Trustees are, amongst others: an annual elaboration of programming priorities, approval of the bylaws of the public broadcaster; approval of the budget and the report of its implementation; the approval of all transactions amounting to at least 1% of the overall PSB budget; and the submission of an annual report on the PSB performance to the President of the Republic, the Parliament, and the Georgian National Communications Commission (independent audiovisual regulator). The Board also holds an open competition for the appointment of the PSB Director-General, and requires a two-thirds

¹² The Law of Georgia “On Broadcasting” (adopted on 23 December 2004). See Golovanov, D., “Statute on Broadcasting Adopted”, IRIS 2005-7/24, <http://merlin.obs.coe.int/iris/2005/7/article24.en.html>.



majority for appointment (Article 30-1-b, 32-1). The law entitles the Board to approve staffing lists and salary rates concerning other PSB staff upon proposal from the Director-General, and to define basic employment contract terms for PSB employees (Article 30-1-g, h).

2.1.2. The appointment procedure of the members of the Board

Initially, members of the Board were selected and appointed directly by the country's President, who had to organise an open competition for vacancies of the PSB trustee, choose at least three candidates for each open vacancy and submit them to the Parliament for approval, according to the guidelines foreseen by the law (similar appointment procedure for the PSB board is currently applied in Armenia). In 2009 new rules on the composition of the Board have been introduced as a result of the strong pressure from the opposition parties following the PSB's allegedly biased and unbalanced coverage of the 2008 presidential elections. The campaign resulted in the elaboration of a joint memorandum amongst the opposition parties that contained, inter alia, a demand for the implementation of the equality principle in the composition of the Board of Trustees: this was intended to ensure a balanced representation and diversity of political interests within the governing body of the public broadcaster by appointing candidates to the Board that have been proposed by the opposition parties.

The memorandum was implemented in a way that allowed for the Board of Trustees to be dissolved and new members to be appointed upon consultations with the opposition's representatives. Such changes, however, did not ensure unbiased media coverage of the following parliamentary elections, held on 21 May 2008.¹³

In November 2013, yet another set of amendments to the Law on Broadcasting came into force and significantly changed the appointment procedure of the PSB trustees.¹⁴ The 2013 amendments removed the organisation of an open competition from the President's competence, and entrusted other actors to select and appoint the PSB trustees: the Parliament's majority and opposition, the Ombudsman of Georgia (the Public Defender), and the Supreme Council of Ajara Autonomous Republic (a regional statutory body).¹⁵

To be appointed as a PSB trustee a candidate should enjoy public recognition and trust, hold at least a Master's degree, and have at least 10 years of experience in the sphere of journalism, human rights, finances, science, or education (Articles 24-3).

In general, the new rules on the selection of Georgian PSB trustees have been assessed positively,¹⁶ because of the creation of a pluralistic appointment mechanism which could decrease the possibility of any political group having one-sided influence over the composition of the PSB Board of Trustees. However, even though the 2013 amendments gradually shifted to some kind of balance of various political interests within the PSB Board, they lacked transitional provisions. This

¹³ See, Georgia Parliamentary Elections 21 May 2008 // OSCE/ODIHR Election Observation Mission. Final Report. – Warsaw, 9 September 2008. <http://www.osce.org/odihr/elections/georgia/33301?download=true>.

¹⁴ See Richter, A., "Amendments to Broadcasting Law", IRIS 2013-8/23, <http://merlin.obs.coe.int/iris/2013/8/article23.en.html>.

¹⁵ The appointment of PSB trustees by the Parliament of Georgia is based on some kind of political quota which allows the majority and the opposition of the Parliament to nominate PSB trustees separately – three PSB trustees each (Art. 24-26). The amendments entitled the Ombudsman to select two PSB trustees and the Supreme Council of Ajara Autonomous Republic to nominate one trustee. Each nominee shall be approved by the majority vote of payroll members of the Parliament. The 2013 amendments also envisaged the reform of the regional Ajara TV in Batumi making it affiliate with the national PSB and subject to all legal provisions designed for the PSB of Georgia.

¹⁶ Nyman Metcalf, K., Analysis of proposed amendments to the Law of Georgia "On Broadcasting", Vienna: OSCE Representative on Freedom of the Media, 2013, www.osce.org/fom/100314.



resulted in the Georgian PSB facing a governance crisis caused by a sudden dismissal of some PSB trustees, amid calls for immediate “re-staffing” of the Board of Trustees through a new selection procedure.¹⁷

In April 2014 the Georgian Constitutional Court ruled in favour of six dismissed PSB trustees who filed a complaint,¹⁸ clarifying that:

*the GPB Board of Trustees, considering the specificities of its activity and its special role in ensuring the independence of the GPB, enjoys coinciding Constitutional guarantees of protection. Independence is the decisive element of the essence of the GPB Board of Trustees. Accordingly, the Board of Trustees can be dismissed ahead of time only in case of inevitable necessity, for example if it threatens the independence and effective operativity of the Public Broadcaster and its further development. The respondent side has not identified such a necessity.*¹⁹

Following this ruling the dismissed PSB trustees were reinstated. However, while the case was under review, several newly-elected PSB trustees had been appointed to the Board, so the reinstated trustees constituted a new PSB body – the Monitoring Board,²⁰ which however is not envisaged by the Law on Broadcasting. The case, which has been reviewed by the Georgian Constitutional Court, showed that the introduction of a new pluralistic appointment procedure also needs to be accompanied by transitional provisions, which would guarantee a gradual shift to new regulation and would help avoid poor implementation.

2.2. PSB governance in Armenia

2.2.1. Statute of the governing bodies and their financing

Armenia was the first Transcaucasian country to adopt legal norms establishing a national PSB. According to the Law “On Television and Radio” (Broadcasting Law) adopted in 2000,²¹ the public broadcaster replaced the state-run company and inherited its property and facilities, including buildings, studios, equipment.

The remit of the Armenian PSB is defined by Article 28 of the Broadcasting Law, as follows:

¹⁷ Bekerman, M., “From the Field: The Failure of a Success story: Reforming Georgia’s Public Service Broadcaster”. *Global Media Journal: German Edition* 4 (2), 2014. pp. 1-23, http://www.db-thueringen.de/servlets/DerivateServlet/Derivate-31143/GMJ8_Bekerman_final.pdf.

¹⁸ The former PSB trustees argued that their constitutionally protected right to hold public office if he/she meets the legal requirements set by Article 29-1 of the Constitution of Georgia was violated by the Parliament dissolving the old PSB Board of Trustees before its term of duty expired (for some trustees it was supposed to happen in 2015 and for the others in 2017) and engaging in the selection of a new Board of Trustees under the new rules. The Constitution of Georgia (adopted on 24 August 1995). Available in English at: www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf.

¹⁹ Cited in: Bochikashvili, G., “Court annuls amendments on formation of GPB Board of Trustees by new rules”. *Media.ge*, 13 April 2014, www.media.ge/en/portal/news/302499/.

²⁰ See the current composition of the PSB Monitoring Board on the website of the Georgian Public Broadcaster, <http://gpb.ge/en/boardOfTrustees/monitoring>.

²¹ The Republic of Armenia Law “On Television and Radio” (adopted on 9 November 2000). Available in English at: www.parliament.am/legislation.php?sel=show&ID=1464&lang=eng. See Richer A., New Amendments to Broadcast Law, IRIS, 2010-8/8, <http://merlin.obs.coe.int/iris/2010/8/article8.en.html>, Richter A., Amendments to Broadcast Legislation Passed, IRIS, 2010-5/6, <http://merlin.obs.coe.int/iris/2010/5/article6.en.html>, and Richter A., Amendments to Broadcasting Statute Adopted, IRIS 2008-1/6, <http://merlin.obs.coe.int/iris/2008/1/article6.en.html>.



to guarantee the constitutional rights of people to freely receive political, economic, educational, cultural, children's, teenagers', scientific, Armenian language and history, sports, entertainment and other popular information. It is operating according to this law, to its regulations and the Republic of Armenia legislation.

The same article requires the Armenian PSB to follow the principles of objectivity, democracy, and impartiality, and to ensure freedom of speech and creativity.

In Armenia, the PSB is governed by a single board of five members – the Council of Public Television and Radio Company (the Council), which has the following duties: elaborating on bylaws of the company and submitting them to the Parliament for approval; defining the structure and the content of the PSB's programmes (in particular, setting an overall amount of content as well as a number of channels, creating a programming structure, and approving a programme schedule); determining the patterns of spending of PSB's budget as well as the organizational structure of the company; and presenting an annual report on the PSB's operations to the Parliament. The Council also selects and appoints executive directors of the PSB company, but the Broadcasting Law does not contain any specific rules on such procedure and lacks provisions on the duties of the PSB's executive directors, which are to be stipulated by the Council.

While the Council holds quite a broad range of executive powers, it is not entitled to supervise the PSB's day-to-day activity. In fact, since 2010 the activity of the Armenian PSB does not include any specific content-related supervision, monitoring or control. The National Commission of Television and Radio (NCTR, the State's audiovisual agency authorised to implement licensing and conduct the monitoring of television and radio companies) used to monitor both public and private broadcasting companies.²² However, with the adoption in 2010 of amendments to the Broadcasting Law, the Armenian PSB was placed beyond the control of the NCTR, basically releasing the company from any sector-specific supervision. Article 37 of the Broadcasting Law, as amended and currently applied, stipulates that the scope of the NCTR functions of licencing and monitoring extends only to private television and radio companies.²³

The Broadcasting Law allows the Armenian PSB to use every legal source of financing available to other broadcasters, including sponsorship, advertising, sales of audiovisual products, as in addition to financing from the state budget, on an annual basis. The amount of state funding granted to the Armenian PSB shall be approved by the Parliament upon the request of the PSB Council (Article 35), but it lacks any safeguards to guarantee a stable amount of such funding as no minimum amount of funding is reserved for the Armenian PSB and no extrinsic criterion of fixing such amount is stipulated by the Broadcasting law, as is the case with Georgia.

Article 28 of the Broadcasting Law contains provisions that limit the amount of commercial advertising in Armenian PSB programmes: initially it was up to 5%, then it was extended to 7% in 2011, but the 2014 amendment to the law totally eliminated commercial advertising from the programmes of Armenian PSB.²⁴

²² See YPC "Statement regarding the amendments to the RA Law "On Television and Radio", 6 June 2010. Available in English at: <http://ypc.am/expertise/statements-of-yerevan-press-club-and-partner-organizations/statement-of-june-6-2010/>.

²³ See the Republic of Armenia Law on amending the RA Law "On Television and Radio" (adopted on 10 June 2010). Available in Armenian at: <http://www.parliament.am/legislation.php?sel=show&ID=3853&lang=arm>.

²⁴ See the Republic of Armenia Law on amending the RA Law "On Television and Radio" (adopted on 17 December 2014). Available in Armenian at: www.parliament.am/legislation.php?sel=show&ID=5192&lang=arm; Freedom House Country report 2015: Armenia. <https://freedomhouse.org/report/freedom-press/2015/armenia>.



At the same time the Broadcasting Law imposes no specific legal requirements on the programming of PSB, nor does it stipulate any procedure to appeal against violations of the Broadcasting Law by the Armenian PSB. The law also lacks provisions on the liability for interfering with the operation of the PSB company and does not provide for any legal procedure to appeal against or constrain any such interfering actions.

2.2.2. The appointment procedure of the members of the Board

The Council was initially selected and appointed directly by the President of Armenia. This attracted significant criticism from both Armenian and European media and legal experts. In 2003, an open competition mechanism was introduced.²⁵ According to the new rules, still operational today, the President appoints a special competition committee to select new members of the Council. According to Article 29 of the Broadcasting Law, members of the Council are selected among spontaneous candidacies who work in the field of journalism, the judiciary, broadcasting media management, science, culture and fine arts; they should have a higher education degree and speak fluent Armenian. The Armenian Broadcasting Law does not require any specific entity to suggest the candidate to the competition committee; any person may apply to run for an open position in the Council of the PRB of Armenia. However, one may not be a member of the Council if he/she is: the head of a political party, a foreign citizen or a person without citizenship, director of any television or radio company, or has contractual relations with such companies. However, the Broadcasting Law still does not contain any provisions on the selection procedures: such administrative details remain under presidential control. Each time a new Council member is to be appointed, the President of Armenia establishes a competition committee and defines its operation rules by issuing a specific order. The competition committee collects candidates' applications, selects a future member of the Council and submits his/her profile for the President's approval. The new member of the Council of the Armenian PSB is then appointed by Presidential Decree. Armenia's appointment procedure differs from the corresponding regulations of relevant procedures in Georgia and Azerbaijan: in these two countries most of the selection process occurs in national parliaments. The national laws include provisions on the decision-making process and for a clear scope of bodies, which are involved in suggesting and selecting the candidates.

The 2003 amendments to the Broadcasting Law did not make the selection of the Armenian PSB Council more open, transparent, or stable, due to the lack of a legislative regulation of its procedure. However, the introduction of an open competition mechanism reinvigorated, temporarily, the interest of professionals and civil society in participating in the governance of the PSB. While the first call for candidates to the PSB Council in 2005 was not accompanied by the publication of information on candidates, as required by Article 28 of the Broadcasting Law,²⁶ later competition procedures complied with this prescription.²⁷

²⁵ See the Republic of Armenia Law on amending the RA Law "On Television and Radio" (adopted on 3 December 2003). Available in Armenian at: <http://www.parliament.am/legislation.php?sel=show&ID=1873&lang=arm&enc=utf8>.

²⁶ See YPC Weekly Newsletter, issue of 11-17 February, 2005. Available at: <http://ypc.am/oldypc/bulletin/in/en/t/40940>.

²⁷ In 2009 the competition had 21 applicants for two vacancies; in 2011, 11 applicants for two vacancies; in 2012, three applicants for one vacancy; in 2013, two applicants for one vacancy. See the YPC Weekly Newsletter. Available in English at: <http://ypc.am/category/ypc-weekly-newsletter/>.



2.3. PSB governance in Azerbaijan

2.3.1. Statute of the governing bodies and their financing

Azerbaijan adopted a Law “On Public Television and Radio Broadcasting” (PSB Law) in 2004²⁸ but has kept a state broadcaster on the legal basis of the Law “On Television and Radio Broadcasting”.²⁹ Instead of fully transforming the state television and radio company “AzTV” into a PSB, the Government of Azerbaijan bought 51% of “AzTV” shares after its conversion into a joint stock company through the procedure of privatisation. Conversely, the public broadcasting company obtained some property of the same state media company (“AzTV”) by inheriting facilities and equipment of the former Second state TV channel, which has been renamed “Ictimai TV”. As a new entity, the public broadcaster of Azerbaijan (PSB) aired its first programmes under the brand “Ictimai TV” on 29 August 2005.

The PSB television still consists of one channel, “Ictimai TV”, while the state-controlled “AzTV” has expanded into two additional TV channels, specialising in culture and sport. The Law “On Television and Radio Broadcasting” currently allows three forms of broadcasting to co-exist: public, private, and state broadcasting (Article 6-1). Both public and state broadcasting companies are funded from the national budget. However, only the public broadcasting company is subject to the rules establishing, inter alia, its structure, principles of operation, governance and financing mechanisms, main internal procedures of decision-making. State and private broadcasters remain free to decide on these matters.

Article 1 of the PSB Law explains its mission in the following way:

The purpose of public broadcasting is to ensure the interests of the population of the Azerbaijan Republic – the society as a whole and its different groups, in quality information, culture, education, entertainment and other fields, to prepare and disseminate information based on the concepts of freedom of speech and ideas, based on the balancing division, corresponding to high technological and quality standards, respecting the dignity, rights and freedoms of people, and based on the principles of ethics.

The goals and principles of the Azerbaijani PSB that may be garnered from this definition mostly correspond to the standards set by the CoE in relation to PSB, which concern autonomy and independence principles, content diversity and universality. However, they are stated in the law without further specification as to how they might relate to different aspects of the PSB operation, such as governance, funding, and content.

The governing bodies of the national PSB are the Broadcasting Council and the Director-General, who is head of the Managerial Board (Article 16-1).

The PSB Law allows the public service broadcaster to use every legal source of financing available to other broadcasters, such as sponsorship, advertising and sales of audiovisual products. However, the predominant source of funding is the annual state budget subvention (Article 23).

²⁸ The Azerbaijan Republic Law “On Public Television and Radio Broadcasting” (adopted on 28 September 2004). Available in Russian at: http://base.spinform.ru/show_doc.fwx?rgn=9067. See Golovanov D., Public Broadcasting Introduced, IRIS, 2006-1/11, <http://merlin.obs.coe.int/iris/2006/1/article11.en.html>.

²⁹ The Azerbaijan Republic Law “On Television and Radio Broadcasting” (adopted on 25 June 2002). Available in Russian at: <http://www.ntrc.gov.az/ru/content/news/15.html>. See Richter A., Broadcasting Statute Adopted, IRIS 2003-3/15, <http://merlin.obs.coe.int/iris/2003/3/article15.en.html>.



Since its implementation, the funding mechanism based on licence fees, although mandated by the PSB Law, has been postponed several times and has not yet taken place. State funding could be seen as a potential way for the state authorities to influence the independence of the PSB's decision-making and operations. In fact, the PSB Law does not provide for any financial sustainability or effective safeguards to protect the company from such interference.

The PSB Law does not create any clear mechanism of legal action against abuse of authority in relation to the independence and autonomy of the PSB. In case of the PSB violating the relevant regulation, the National Television and Radio Council (state regulator of the broadcasting sector of Azerbaijan, NTRC) is authorised to give the PSB notice to stop the violation. Such notice can be followed by a court claim against the PSB if the latter fails to cease its violation of the law (Article 22).³⁰

The PSB of Azerbaijan has a dual governance system: the Broadcasting Council, consisting of nine members, and a Director-General, who is head of the Managerial Board. The Broadcasting Council holds both general executive and supervisory competencies. The list of executive competencies includes the selection, appointment, and dismissal of the Director-General, and the elaboration and approval of programming concept and programming policy. Supervisory functions of the Council include the monitoring of the PSB's content (not on a regular basis but "if necessary") and submitting a formal notice to the Director-General in case of violation of legal content requirements in order to stop the violation (Article 20-1).

2.3.2. The appointment procedure of the Board members

Members of the Broadcasting Council are selected and appointed by the national Parliament. The candidates shall be proposed by various professional and non-governmental organisations, all listed in the PSB Law (Article 17-2). Depending on the organisation that proposes a candidate to be a member of the Council, the term of his/her duty could be six, four or two years (Article 17-4). The organisations entitled to propose candidates are the Azerbaijan Trade Unions Confederation, the National Academy of Science, the Entrepreneurship Council, the Press Council (a self-regulation body of journalists), as well as youth organisations, women's societies, sports federations, religious institutions and creative associations. As illustrated above, a similar pluralistic appointment procedure, held by the national parliament, exists in Georgia, where four entities are entitled to propose the candidates for the PSB Board/Council. Article 18 of the PSB Law requires the candidates to have Azerbaijani citizenship and be experienced in television and radio broadcasting, print media, cultural issues, finances, or television equipment. During the term of his/her duty a Broadcasting Council member is prohibited from any public service and from working for broadcasters or advertisement agencies.

The Director-General is appointed by the Broadcasting Council for four years and may be re-appointed an indefinite number of times. The Director-General of the PSB shall not be a member of a political party. Both the Director-General and the Managerial Board conduct merely executive and administrative functions of day-to-day management. Any of the Managerial Board's decisions may be declared void by the Broadcasting Council, by at least six (out of 9) votes (Article 21).

The first members of the Broadcasting Council were appointed by the Parliament on 15 March 2005. This very first composition of the Broadcasting Council was then sceptically perceived

³⁰ At the date of the present publication no record of the NTRC taking any action against PSB could be found.



by the national media due to the speed of the selection procedure, and the absence of experienced and well-known experts among the Broadcasting Council candidates.³¹

In 2009 and 2011 some of the members of the Broadcasting Council were reappointed in a manner that did not satisfy the legal requirements. In particular, as reported by the media,³² some parliamentary deputies were appointed to members of the Broadcasting Council, which could be seen as a violation of Article 18-1 of the PSB Law. Nevertheless, the appointed MPs retained their new positions, and these cases have never been subject to any legal claims.

2.4. A comparative reading on PSB governance across the Transcaucasian region

When compared to each other the systems of public broadcasting of Georgia, Armenia and Azerbaijan demonstrate a number of common features in the respective legal provisions: the declaration of commitment to public service broadcasting values and principles through their definition in the relevant legal framework; the application of state funding, detailed regulation of appointment procedures of governing bodies; general content requirements formulated more as guidance principles; lack of monitoring activities, which derives from regulation of competences of the governing bodies of PSB companies; and (in the case of Armenia) of the external broadcasting sector regulators that are not obliged by the law to do the monitoring on a regular basis.

At the same time, a comparative analysis of these systems shows that each of them has its own peculiarities in every aspect. While the declarative nature of the general PSB values and principles, as stated in the respective laws of each state, may be considered a common feature of PSB systems of the three countries of Transcaucasian region, all the other aspects differ.

The dual governance system of PSB had been applied in Georgia and Azerbaijan, while in Armenia the PSB is governed by a single board. As has been pointed out previously, only the Georgian Law on broadcasting contains a list of provisions allowing the appeal in court of the decisions of its governing bodies in addition to the legal procedure of complaining about programming violations made by the public broadcaster. The PSB system of Azerbaijan is provided with an internal appeals mechanism (meaning the right of the PSB Council to annul the Director-General's decision), as well as with an external control by the regulator of the broadcasting sector. This regulator, in case of detection of an actual violation of any relevant broadcasting rules by the PSB, may first give a warning notice to the PSB to refrain from an infringing activity and subsequently

³¹ According to the Press Council of Azerbaijan "Unfortunately, the public was not initiator of Public TV creation and financial means of most of the citizens does not let them afford its funding. The only means of public participating in the process of a public TV entity could be public control, which also failed". See, Расулзаде З. Парламент Азербайджана утвердит членов совета вещания Общественного телевидения // Интернет-СМИ КАВКАЗСКИЙ УЗЕЛ. – 2005, 15 марта. (Rusulzade Z. "Parliament of Azerbaijan appointed the members of the Broadcasting board of the Public television", *Kavkazskiy uzel*, 15 March 2005), available in Russian at <http://www.kavkaz-uzel.ru/articles/73683>; Расулзаде З. В Азербайджане продолжается дискуссия вокруг создания Общественного телевидения // Интернет-СМИ КАВКАЗСКИЙ УЗЕЛ. – 2005, 22 марта (Rusulzade Z. "Debates on establishment of Public television go on in Azerbaijan", *Kavkazskiy uzel*, 22 March 2005), available in Russian at: <http://www.kavkaz-uzel.ru/articles/71789/>; Гулиев Э. Азербайджанские журналисты бойкотируют новый канал // Кавказская информационная служба Института по освещению войны и мира (IWPR, Лондон). – 2005, 28 апр. (Guliev E. "Azeri journalists boycott the new channel", *the Caucasian information agency of the IWPR*, 28 April 2005), available in Russian at: <http://www.kavkaz-uzel.ru/articles/74801>.

³² See Азер Р. Избраны 3 из 9 членов совета вещания Общественного телерадио // газета «Зеркало», 15 апреля 2009 г. (Azer R. "There out of nine members of the Council of Public broadcaster had been appointed", *Zerkalo*, 15 April 2005), available in Russian at <http://www.zerkalo.az/?sec=readarchive&id=41082>; Мустафаев Р. Милли Меджлис внёс поправки // Каспий. – 2011, 19 марта (Mustafaev R. "The Parliament approved the amendments", *Kaspiy*, 19 March 2011), available in Russian at <http://www.anl.az/down/megale/kaspi/2011/mart/164514.htm>.



file a claim to a court if the PSB fails to follow the notice. For now the PSB of Armenia remains beyond any supervision, monitoring or legal control. At the same time, the monitoring functions lie only within the boards of PSB companies of Georgia and Azerbaijan (in the case of Georgia the Board has the right to issue notices on any violation of the PSB rules to the Director-General; for the Council of PSB of Azerbaijan such monitoring function is not mandatory to carry out), while the governing body of the Armenian PSB holds mostly executive competencies.

As for the appointment procedure for the governing Boards of PSB, an open competition format is used in two states of the Transcaucasian region: Georgia and Armenia (the differences are in the body carrying it out). Georgia and Azerbaijan have in common a pluralistic way of nominating the candidates to the Boards of PSB; in Georgia this function is held by the Parliament, the Public Defender and the Supreme Council of Ajara Autonomous Republic and in Azerbaijan by a set of associations and professional organizations. Interestingly, while the Council of Europe strongly recommends depoliticising the composition of the governing bodies of PSB, Georgia was the only country of the Transcaucasian region to allow the application of political interest criteria to be used in the forming of the Board of the Georgian PSB, by entitling the majority and the opposition parties of the Parliament to nominate their candidates separately. However, the procedure is also balanced with the Public Defender of Georgia nominating candidates to hold two seats in the PSB Board and the Supreme Council of the Autonomous Republic of Adjara to hold one seat in the Board.

All three countries have rather similar requirements for such candidates: advanced education, expertise in relevant spheres, national citizenship, and limitations on the right to be a member of political parties or an employee of other media companies.

The funding systems of all three broadcasters of the region are also similar, relying on the state funding system with the possibility of licence fees to be introduced in the future. Other sources of income are also allowed. All lack guarantees and safeguards in terms of stability of funding. Only Georgia provides in law for an extrinsic indicator of the amount of state funding of the public broadcaster and depends on the GNP. At the same time, since 2014 the Armenian PSB is prevented from gaining revenues from commercial advertising, which makes it even more dependant on the Parliament's decision as to the amount of its financing.



3. PSB programming policies in the Transcaucasian region

Along with structural and organisational characteristics, another distinctive feature of any PSB is the burden to follow certain legal programming requirements and distinctive policy, that will be designed to fulfil a specific PSB remit.³³ Explicit programming requirements for PSB companies are usually stipulated by law. The following sections will examine legal programming requirements for the public TV channels of Georgia, Armenia and Azerbaijan.

3.1. PSB programming policies in Georgia

Article 16 of the Georgian Law on Broadcasting contains much more specific programming requirements than the respective laws of Armenia and Azerbaijan. For example, Georgian PSB shall provide a balance between different types of programmes, provide content for children and teenagers, is obliged to broadcast a relevant proportion of programmes prepared by minority groups, in their languages, and is obliged to consider the interests of people with disabilities. The Law on Broadcasting also contains some relatively concrete programming provisions for the Georgian PSB, for example: the obligation to broadcast news and socio-political programmes during prime time, including pre-election debates during election campaigns (Article 16-d), and a requirement to allocate at least 25% of the PSB's airtime to the programmes released by independent producers (Article 16-g).

Article 30 of the Law on Broadcasting also requires the PSB Board of Trustees to produce every year a document entitled "Programme Priorities" for the Public TV of Georgia. The Programme Priorities contain objectives regarding the quotas of different types of broadcasts, as well as specific recommendations on various programming issues. The annual Programme Priorities are public documents of the PSB of Georgia, available on the official website of the public broadcaster (www.gpb.ge). It is important to note that such Programme Priorities are recommendations only, and are not mandatory or binding on the executive bodies of the PSB which actually design the programme schedule.

³³ Jakubowicz, K., "Media revolution in Europe: ahead of the curve", *op. cit.*



3.2. PSB programming policies in Armenia

In Armenia, programming requirements for PSB are stipulated in Article 29 of the Broadcasting Law. Such requirements are defined rather broadly: programmes of the Armenian PSB shall be diverse in terms of genre and communicated opinions, and shall take into account interests of different regions of Armenia, national minorities and various social groups including hearing impaired persons. However, the law does not oblige the Armenian PSB to broadcast a weekly programme in the format of political debate, as in Georgia. Neither does it require the Armenian PSB to prioritise educational and cultural programmes over entertainment content, for example.

The policy, structure and day-to-day schedule of the broadcasts of the Armenian PSB are set by the Council of Public Television and Radio Company. The Council is entitled to decide on the main aspects of the broadcasting and programming, including the overall programme structure, number of channels, and programme schedule. At the same time, no monitoring of the Armenian PSB is required by the Broadcasting Law, and no public body or sector-specific regulator is entitled to monitor the broadcasts of the Armenian PSB and assess its compliance with legal provisions. This places the Armenian PSB in some kind of a supervisory “vacuum”, with no public control over its broadcasts. As there are no content obligations for PSB, there is no public mechanism to supervise it.

3.3. PSB programming policies in Azerbaijan

In Azerbaijan, programming requirements for PSB are drawn up in general terms as follows: according to Article 7 of the PSB Law, the public service broadcaster shall provide the public with unbiased and balanced information as well as broadcast educational, cultural and entertainment programmes that promote national, cultural and universal human values. Article 12-3 also stipulates that programmes in the languages of the national minorities of Azerbaijan shall be broadcast, but no further specification is provided as to their duration, time, frequency, or which national minorities are at question. Article 13 of the PSB Law, titled “Programming requirements of the Public Broadcaster”, contains only basic statements on the obligations of the PSB of Azerbaijan: to support free flow of information and free speech; to provide a platform for diverse opinions; to promote national values and culture; to produce high-quality programmes; to broadcast the best foreign feature films, documentaries, and cartoons (while no rules or criteria of selecting them are stipulated in the law); and to provide the audience with accurate and balanced information. However, no further specifications concerning the PSB programming are provided.

As has been mentioned above, the elaboration on and approval of the programming concept and policy of the PSB of Azerbaijan falls within the competence of the Broadcasting Council. At the same time, the programming concept and policy of the PSB company are not documents which are made publicly available or easily accessible, as they are neither published on the website of the PSB company of Azerbaijan (www.itv.az), nor publicly announced in any other way. These policies may only be assessed by means of broadcast monitoring and content analysis.

Indeed, the programming requirements for the state broadcaster, which functions under the Law “On Television and Radio Broadcasting”, are regulated by Article 7-3 and are even more concise. The law merely stipulates that the state broadcaster provides the audience with information, educational and entertainment programmes compliant with state (governmental) and general public interest.



3.4. A comparative reading on PSB programming across the Transcaucasian region

A comparative analysis of the regulation of PSB programming of Georgia, Armenia and Azerbaijan reveals that the function of elaborating general programming policies and concepts falls within the competencies of the Boards of PSBs of all the three examined Transcaucasian countries. However, in the cases of Armenia and Azerbaijan, such function covers the day-to-day activity of the respective PSBs, as their Boards are also entitled to approve programming schedules and programme structures. The Georgian PSB Board shall issue quite a detailed and annually updated programming concept (“Programming Priorities”) but the Director-General, as an executive body, is not bound by it; the “Programming Priorities” of the Georgian PSB are advisory in nature. The public service broadcasters of Armenia and Azerbaijan do not communicate the respective programming concepts to the public and do not announce or present them to society in any way, while the Georgian PSB makes it available on the website of the broadcaster every year.

Regarding content obligations of the PSBs of the three examined countries, in Armenia and Azerbaijan, the content obligations of their PSBs are defined in general terms and quite broadly, and their respective laws lack specific requirements. By contrast, the Georgian Law on broadcasting, in addition to general PSB principles, contains a list of clear content requirements, which must be executed also in case of yearly amendments to the Programming Priorities of the Georgian PSB.





4. The impact of international organisations on the evolution of PSB in the Transcaucasian countries

Given that the establishment of PSB companies in Georgia, Armenia, and Azerbaijan was prompted by the admission of these countries to the Council of Europe, the Council has supported further development of PSB in the region, along with other international institutions such as the OSCE.

4.1. The role of the Council of Europe

As has been mentioned above, when Georgia, Armenia, and Azerbaijan became members of the CoE,³⁴ all three states committed to implementing a number of democratic reforms, which included the adoption of or amendments to existing national broadcasting laws to incorporate the CoE principles on PSB. To ensure a correct implementation of the PSB concept, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe expanded upon general recommendations on PSB operations on a regular basis. Such general recommendations and declarations, as referred to in Part 1, concern various aspects of PSB policy (such as governance, funding, independence, autonomy) and are updated according to the changing media environment; for example, sweeping technological changes. However, the recommendations in question do not have a binding effect on CoE members, and rather serve as an interpretative tool of the PSB concept and its guiding principles.

Another set of relevant documents issued by the CoE are the reports on the fulfilment of obligations and commitments by the member states. Such progress reports are drawn up individually for each member state by the Committee on the Honouring of Obligations and Commitments by Member States of the CoE (Monitoring Committee). The Monitoring Committee regularly revises the status of the fulfilment of member states' commitments and compiles a report on the outcome of the revision process.³⁵ The reports on Georgia, Armenia, and Azerbaijan concern, inter alia, the establishment and development of PSB systems in these countries.

In the case of Georgia, the Monitoring Committee (and subsequently the PACE) mostly commented on amendments to the Law on Broadcasting: it positively assessed the 2011

³⁴ Armenia and Azerbaijan became CoE members on 25 January 2001; Georgia on 27 April 1999.

³⁵ See the web page of the Monitoring Committee <http://assembly.coe.int/Main.asp?link=/CommitteeDocs/ComDocMenuMonEN.htm>.



amendments,³⁶ but negatively commented on the implementation of the 2013 amendments that lead to the PSB governance crisis and the legal uncertainty regarding its further execution.³⁷

The reports on Armenia, in which PSB issues are considered,³⁸ contain some negative comments on the Council of Public Television and Radio Company, on the relatively active role of the President of Armenia in the appointment of its members, and on the insufficient number of its members, which results in the lack of general representation of public interests.

Until 2011, the main concern about the PSB of Azerbaijan, according to the reports of the Monitoring Committee,³⁹ was the parallel functioning of public and state broadcasters as described above.

The reports of the Monitoring Committee do not impose any additional obligations on Georgia, Armenia, and Azerbaijan. The recommendations on PSB of the examined countries expressed by the CoE were aimed to assess the process of implementation of the PSB concept by the three examined countries with regard to the CoE standards and to inform the countries as to the identified shortcomings. Both general and “individual” CoE recommendations are not designed for direct implementation, but rather to play an interpretative and explanatory role for regulation and operation of public broadcasting in the three Transcaucasian countries.

4.2. The role of the OSCE and of the RFoM

Another international organisation that monitors PSB development in Georgia, Armenia and Azerbaijan, and provides relevant legal and practical expertise, is the Organization for Security and Co-operation in Europe (OSCE), and especially its Representative on Freedom of the Media. All three countries are members of the OSCE, and are therefore committed to the Helsinki Final Act of 1975 and to the subsequent documents concluded at the OSCE ministerial conferences and summits.⁴⁰ Whilst there are no special provisions on PSB in these documents, the PSB concept is supported and promoted by the OSCE within the framework of the protection of high value and respect for human rights and fundamental freedoms. This includes the freedom of thought, conscience and expression, that translate into freedom and pluralism of the media, and of PSB in particular.

In 1997, the OSCE institution of the Representative on Freedom of the Media (RFOM) was created to monitor and observe relevant media developments in OSCE member states, and to advocate and promote full compliance with the organisation’s principles and commitments

³⁶ The functioning of democratic institutions in Georgia: PACE Resolution 1801 (2011) adopted 13 April 2011, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=17976&lang=en>.

³⁷ The functioning of democratic institutions in Georgia: PACE Resolution 2015 (2014) adopted 1 October 2014, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21275&lang=en>.

³⁸ Honouring of obligations and commitments by Armenia: report of Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, 13 September 2002, <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9833&lang=en>.

The functioning of democratic institutions in Armenia: PACE Resolution 1837 (2011) adopted 5 October 2011, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=18032&lang=en>.

³⁹ Functioning of the democratic institutions in Azerbaijan: report of Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, 3 June 2005, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11124&lang=en>;

Honouring the obligations and commitments by Azerbaijan: PACE Resolution 1545 (2007), adopted 16 April 2007, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17527&lang=en>.

⁴⁰ Helsinki Final Act of the Conference on Security and Co-operation in Europe (concluded on 1 August 1975, Helsinki), www.osce.org/mc/39501?download=true.



regarding freedom of expression and freedom of media.⁴¹ The mandate of the OSCE RFOM includes various functions, among which professional legal expertise of media legislation needs to be emphasised.

The national laws regulating the activities of the PSBs in all the three Transcaucasian countries were subject to the assessment and legal analysis commissioned by the OSCE RFOM,⁴² which revealed the particular shortcomings of their PSB systems, as described above.

Since 2004 the Office of the OSCE RFOM also holds the South Caucasus Media Conferences, which are annual regional events for the three states of the Transcaucasian region. There are two declarations of the OSCE media conference (adopted in 2005 and in 2014) dedicated exclusively to the PSB of Georgia, Armenia, and Azerbaijan, which contain recommendations for each state.⁴³

The activities designed specifically for the Transcaucasian region resulted in recommendations on the development of PSB in the region and on the creation of an inter-regional platform for the exchange of ideas and experience on PSB practice within the region. Such OSCE recommendations are not binding for the three examined countries and are not implemented directly, but are taken into consideration by their respective national regulatory and legislative bodies.

⁴¹ The OSCE Decision No. 193 Mandate of the OSCE Representative on Freedom of the Media, adopted at 137th Plenary Meeting on 5 November 1997, www.osce.org/pc/40131?download=true.

⁴² Guide to the Law of Georgia in Freedom of Speech and Expression – ARTICLE 19, London, 2005, www.osce.org/fom/15214?download=true; Comments on the amendments to the law of the Republic of Armenia on broadcasting (prepared by Andrei Richter on behalf of the Office of the OSCE Representative on Freedom of the Media), OSCE, 2010. Available at: www.osce.org/fom/68242?download=true; Analysis of the Concept Paper on migrating to digital radio and TV broadcasting system in Armenia (prepared by Katrin Nyman-Metcalf on behalf of the Office of the OSCE Representative on Freedom of the Media), OSCE, 2010, www.ypc.am/upload/3_OSCE_analysis%20on%20Concept%20Paper_eng.pdf.

⁴³ See, The Tbilisi Declaration on Public Service broadcasting and the Internet. The Second South Caucasus Media Conference, Tbilisi, 17-18 November 2005, www.osce.org/fom/17018?download=true; Recommendations on Public Service Broadcasting in the Digital Age. The 11th South Caucasus Media Conference, Tbilisi, 10-11 November 2014, www.osce.org/fom/126986?download=true.





5. Conclusions

A comparative analysis of the content and implementation of the national PSB systems of Georgia, Armenia and Azerbaijan showed that the common post-Soviet background could produce common weak spots: the lack of safeguards for the independence of PSB companies from political interests due to loopholes in appointment mechanisms for the governing bodies of the respective PSB companies; unstable funding sources; lack of specific legal programming requirements; and absence of effective mechanisms of interaction with its audiences and audience research. Despite this, as described above, each of the examined PSB systems has some features (including regulatory ones) that could be implemented in the neighbouring countries and improve the performance of its public broadcasters.

The legal mechanisms of the composition of the governing bodies (supervisory boards) of the PSB companies of Georgia, Armenia, and Azerbaijan differ from each other. Such procedures as open competition (Armenia and Georgia) and pluralism of bodies that select PSB board members (Azerbaijan and Georgia) may be compliant with the CoE standards, but they still do not necessarily guarantee by themselves an immunity of the PSBs from interference from political interests in practice, as the analysed experience of the Transcaucasian countries demonstrates.⁴⁴ In Azerbaijan members of political parties and the Parliament were appointed to the Council of PSB of Azerbaijan, despite the legal provisions prevented deputies from being employed in PSB governing bodies. Moreover, heavy domination of one party in the Parliament of Azerbaijan,⁴⁵ along with the absence of an articulated statutory concept of legal liability in case of execution of political influence or pressure on the PSB, make those legal guaranties of PSB political independence (the pluralistic appointment procedure) less effective. In Armenia an open competition for membership in the Board of the Armenian PSB is in fact still held by the President of the Republic, who may influence its composition through the specially appointed competition committee. Georgia chose to develop a balance of political interests within the Board of the Georgian PSB, instead of trying to depoliticise it as recommended by the CoE, by engaging the majority and the opposition parties of the Parliament in the appointment procedure. This was in addition to the Public Defender of Georgia and the Supreme Council of the Autonomous Republic of Adjara. Unfortunately, the introduction of a new appointment procedure was followed by unlawful dismissals of some Board members of the Georgia PSB. Such an outcome of the implementation of the 2013 amendments demonstrated that even relatively balanced appointment procedures need to be implemented gradually to avoid any uncertainty regarding their execution, as happened in Georgia.

⁴⁴ See, Абашина Е. В. Механизмы формирования Совета управления общественного вещателя в России и в странах Закавказья // МедиаСкоп. 2013. Выпуск №2 (Abashina E. "Mechanisms of Forming Public Broadcaster's Governing Board in Russia and Transcaucasian Countries", electronic academic journal *Mediascope*, Journalism Faculty of Lomonosov Moscow State University, issue 2, 2013), available in Russian at: <http://www.mediascope.ru/node/1378>.

⁴⁵ See the results of the 2015 Parliamentary election in Azerbaijan, <http://www.electionguide.org/elections/id/2481/>.



It is also worth emphasising that the programming requirements designed for the public broadcasters in the Transcaucasian states contain no specific provisions as recommended by the CoE standards. Georgia is an exception here, thanks to clear rules on programming and content, and Programme Priorities annually defined by the Board of the Georgian PSB.

As to the role of international organisations like the CoE and the OSCE in the implementation of the PSB concept in Georgia, Armenia and Azerbaijan, these organisations cannot influence the PSB systems of the three examined states directly, but are active and consistent promoters of PSB values and best practice in the Transcaucasian region.

