



# Council of Europe Standards on Public Service Media



Digest

COUNCIL OF EUROPE



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Council of Europe  
**Standards on  
Public Service  
Media**

**Digest**

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# 1. Introduction

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**T**he already strong evidence of the need for independent and functional public service media (PSM) in democratic societies was confirmed by their performance and renewed interest of the public in their reporting during the Covid-19 pandemic and, most recently, in relation to the ongoing war in Ukraine.

PSM key contribution to democracy and freedom of expression has long been recognised by the Council of Europe<sup>1</sup> and supported by a set of standards covering their remit, governance and funding. Case law of the European Court of Human Rights (the Court) makes it clear that where a state decides to create a PSM system, the domestic law and practice must guarantee that it provides a pluralistic service, particularly where private stations are still too weak to offer a genuine alternative and the public or state organisation is therefore the sole or the dominant broadcaster within a country or region.<sup>2</sup>

Despite the recognised importance of PSM, their sustainability and independence are challenged in an increasing number of countries.<sup>3</sup> The media sector is affected by polarisation, politicisation and interference in the work of editors and journalists. At the same time, it faces difficulties because of insufficient public funding to support the PSM's independence and limited ability to monetise content in the digital communication environment.

In light of these challenges, the European Broadcasting Union (EBU), the world's leading association of PSM, has on a number of occasions called for better implementation of the Council of Europe's standards, including the Court's case-law, and underlined the importance of the European Commission for Democracy through Law (Venice Commission).<sup>4</sup> The EBU has also alerted to the findings included in the (annual) assessments, in particular those in the Secretary General's annual reports and the reports of the Commissioner for Human Rights.

1. Resolution 1636 (2008) on Indicators for media in a democracy, § 1. <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17684&lang=en>
2. *Manole and others v. Moldova*. <https://hudoc.echr.coe.int/eng?i=001-94075>
3. Safety of journalists platform, <https://fom.coe.int/en/accueil>
4. International conference on Public Service Media and Democracy Prague 2016: Conclusions and recommendations by the conference participants, <https://www.ebu.ch/files/live/sites/ebu/files/News/2016/11/Final%20conclusions%20Prague%2014112016%2017.43.pdf>

This document presents a non-exhaustive selection of the Council of Europe standards, as enshrined in the relevant case law of the Court, Committee of Ministers' recommendations and declarations, and Parliamentary Assembly's resolutions. The selected standards define the scope of PSM protection afforded by Article 10 of the European Convention on Human Rights (the Convention). The Digest also includes several other relevant documents in the field of PSM, all of them underpinned by the right to freedom of expression and media freedom. Its aim is to improve the awareness of these standards and practical tools, so they can be more effectively integrated in the national policymaking on PSM and in different levels of media governance.

The Digest is not a legal document and should not be treated or used as such.

## 2. Committee of Ministers' recommendations

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**B**elow are presented the most relevant recommendations of the Committee of Ministers of the Council of Europe in a summarised form and in chronological order.

### **Recommendation R(96)10 on the guarantee of the independence of public service broadcasting**

Recommendation R(96)10 includes a framework for the management and supervision of public service broadcasting<sup>5</sup> (PSB, now PSM<sup>6</sup>). It makes a clear distinction between PSM's management on the one hand and supervisory bodies on the other, including their respective statuses, competences, and responsibilities. The competences of both should be clearly defined within the national legal frameworks governing PSM. According to the Recommendation, the management is responsible for the day-to-day operation of their organisation, the supervisory board, on the other hand, should not exercise any *a priori* control over programming.<sup>7</sup> Both the management and the supervisory body should have rules defining the appointments, to avoid placing either of them at risk of political or other interference, among others. There should be very limited possibility of early removal or suspension, but also clear provisions on the conflict of interests. Finally, the responsibility of the managerial level for the exercise of their functions as members of their PSM organisation is to the supervisory level.

The Recommendation provides a list of safeguards to prevent political or other interference with PSM's supervisory bodies. They should, among others, guarantee that the members of supervisory bodies:

- ▶ are appointed in an open and pluralistic manner;
- ▶ represent collectively the interests of society in general;
- ▶ may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;

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5. Recommendation no. R(96)10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168050c770>

6. The change in terminology reflects the process of transformation into multimedia environment characterised by globalisation, convergence and digitalisation, accompanied by new tasks and opportunities for PSM.

7. Later on, in the Recommendation Rec(2000)23, the Committee of Ministers noted that also regulatory authorities can assume the tasks usually incumbent on specific supervisory bodies of the PSM.



- ▶ may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions;
- ▶ may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body.

Rules on the payment of members of the supervisory bodies of PSM organisations should be defined in a clear and open manner by the texts governing these bodies.

### **Recommendation R(99)1 on measures to promote media pluralism**

The Recommendation R(99)1 recognises the significance of PSM in safeguarding media pluralism<sup>8</sup>. The recommendations range from the very need to preserve and develop PSM, taking into account technological developments, to establishing a dialogue with the public and ensuring adequate funding, which can include both public resources and commercial revenues, as follows:

- ▶ Member States should maintain PSM and allow it to develop in order to make use of the possibilities offered by the new communication technologies and services.
- ▶ Member States should examine ways of developing forms of consultation of the public by PSM organisations, which may include the creation of advisory programme committees, so as to reflect in their programming policy the needs and requirements of the different groups in society.
- ▶ Member States should define ways of ensuring appropriate and secure funding of PSM, which may include public funding and commercial revenues.

### **Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content**

Recommendation CM/Rec(2007)2<sup>9</sup> recognises the importance of PSM as one of the key contributors to pluralism, diversity, social cohesion and a space for dialogue, and it endorses the development of new interactive services as a part of PSM. The interaction of PSM with the public, safeguards of PSM's editorial independence, established in cooperation with civil society, as well as stable funding, are also called for:

8. Recommendation No. R(99)1 of the Committee of Ministers to member states on measures to promote media pluralism. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016804fa377](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804fa377)

9. Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, § 4. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805d6be3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6be3)

- ▶ Member states should ensure that existing PSM organisations occupy a visible place in the new media landscape. They should allow PSM to develop in order to make their content accessible on a variety of platforms, notably in order to ensure the provision of high-quality and innovative content in the digital environment and to develop a whole range of new services including interactive facilities.<sup>10</sup>
- ▶ Member states should encourage PSM to play an active role in promoting social cohesion and integrating all communities, social groups and generations, including minority groups, young people, the elderly, underprivileged and disadvantaged social categories, disabled persons, etc., while respecting their different identities and needs. In this context, attention should be paid to the content created by and for such groups, and to their access to, and presence and portrayal in, PSM. Due attention should also be paid to gender equality issues.<sup>11</sup>
- ▶ Member states should invite PSM organisations to envisage the introduction of forms of consultation with the public, which may include the creation of advisory structures, where appropriate reflecting the public in its diversity, so as to reflect in their programming policy the wishes and requirements of the public.<sup>12</sup>
- ▶ Member states should adopt the mechanisms needed to guarantee the independence of PSM organisations vital for the safeguard of their editorial independence and for their protection from control by one or more political or social groups. These mechanisms should be established in co-operation with civil society.<sup>13</sup>
- ▶ Member states should define ways of ensuring appropriate and secure funding of PSM from a variety of sources – which may include licence fees, public funding, commercial revenues and/or individual payment – necessary for the discharge of their democratic, social and cultural functions.<sup>14</sup>

### **Recommendation CM/Rec(2007)3 on the remit of public service media in the information society**

In the same year, the Committee of Ministers further stressed the need to entrust PSM with a remit adapted to technological and socio-cultural changes and to elaborate strategies enabling PSM to preserve their role as a factor for social cohesion and integration of all individuals, as well as a contributor to cultural identities, diversity, and a wider democratic debate, including growing participation of the public.<sup>15</sup> The

10. Ibid, § 3.1

11. Ibid, § 3.2

12. Ibid, § 3.3

13. Ibid, § 3.4

14. Ibid, § 3.5

15. Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805d6bc5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6bc5)

text recognises that the contemporary information society relies heavily on digital technologies and that the means of content distribution have diversified beyond traditional broadcasting. It therefore calls on States to ensure that the PSM remit is extended to cover provision of appropriate content also via new communication platforms.

The public service remit should adapt to the information society to become:

- ▶ a reference point for all members of the public, with universal access offered;
- ▶ a factor for social cohesion and integration of all individuals, groups, and communities;
- ▶ a source of impartial and independent information and comment, and of innovatory and varied content which complies with high ethical and quality standards;
- ▶ a forum for public discussion and a means of promoting broader democratic participation of individuals;
- ▶ an active contributor to audio-visual creation and production and a greater appreciation and dissemination of the diversity of national and European cultural heritage.<sup>16</sup>

The Recommendation calls on member states to ensure that the specific legal, technical, financial and organisational conditions required for the PSM to continue their service are fulfilled and adapted to the new digital environment.<sup>17</sup>

Two key recommendations stressing the PSM's role in the digital environment read as follows:

- ▶ Member states have the competence to define and assign a public service remit to one or more specific media organisations, in the public and/or private sector, maintaining the key elements underpinning the traditional public service remit, while adjusting it to new circumstances. This remit should be performed with the use of state-of-the-art technology appropriate for the purpose.<sup>18</sup>
- ▶ Member states should ensure that the specific legal, technical, financial and organisational conditions required to fulfil the public service remit continue to apply in, and are adapted to, the new digital environment. Taking into account the challenges of the information society, member states should be free to organise their own national systems of public service media, suited to the rapidly changing technological and social realities, while at the same time remaining faithful to the fundamental principles of public service.<sup>19</sup>

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16. Ibid, § 1

17. Ibid, § 25

18. Ibid, § 1

19. Ibid, § 25

## **Recommendation CM/Rec(2012)1 on public service media governance**

The Committee of Ministers' Recommendation (2012)<sup>20</sup> lays down a number of guiding principles related to PSM independence, accountability, effective management, responsiveness and responsibility, transparency and openness. This instrument is thus of particular importance for creating a culture of independence in PSM organisations. Its development was guided by the challenges arising from the PSM transition: (a) from State to public service, and (b) from traditional broadcasting to digital content delivery. These developments required the PSM governance systems to adjust, and accordingly, the objective of the Recommendation was to strengthen and enhance the legal and financial environment, including via external governance arrangements aiming to guarantee editorial and operational independence and sustainable funding.

PSM governance systems should determine how these organisations:

- ▶ define the vision of the organisation and ensure that it is best equipped to fulfil their remit;
- ▶ set and monitor the accomplishment of their objectives;
- ▶ conduct relations with stakeholders and secure their endorsement;
- ▶ protect their independence;
- ▶ ensure that the management priorities are aligned with the organisations' overall purpose;
- ▶ ensure that their decisions are consistent with their remit, are appropriately informed, and fully executed.<sup>21</sup>

To apply the new governance arrangements, the Recommendation introduced a three-tier system of guiding principles:

<b>1<sup>st</sup> tier</b>	<b>Structure</b>	
	<b>Independence</b>	<b>Accountability</b>
	<ul style="list-style-type: none"> <li>– No political influence on <b>funding</b></li> <li>– Clear legal / regulatory basis on the <b>scope and remit</b></li> <li>– No political influence on <b>appointments</b></li> </ul>	<p><b>A structure that identifies:</b></p> <ul style="list-style-type: none"> <li>– accountable to <b>whom?</b></li> <li>– accountable for <b>what?</b></li> <li>– <b>how</b> to be held accountable?</li> <li>– <b>when</b> to be held accountable?</li> </ul>

20. Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance, §§ 1-5. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cb4b4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4)

21. Ibid, § 15

<b>2<sup>nd</sup> tier</b>	<b>Management</b>	
	<b>Effective Management</b>	
	<b>A management structure and approach which:</b> <ul style="list-style-type: none"> <li>– are prepared to rethink resource allocation to meet new audience needs</li> <li>– seek and foster new skills in the workforce</li> <li>– have the right senior managerial talent and skills, with diversity and gender-balanced representation</li> </ul>	
<b>3<sup>rd</sup> tier</b>	<b>Culture</b>	
	<b>Responsiveness and responsibility</b>	<b>Transparency and Openness</b>
	<ul style="list-style-type: none"> <li>– Immediate, unmediated and consistent channels of communication with audiences</li> <li>– Active debate with the audience</li> <li>– Integrating and using feedback</li> <li>– Journalistic and general editorial codes</li> </ul>	<ul style="list-style-type: none"> <li>– Making management information more widely available</li> <li>– Publishing agendas and minutes</li> <li>– Developing partnerships</li> <li>– Taking new opportunities to meet and engage with audiences</li> </ul>

Source: Recommendation (2012)1 of the Committee of Ministers to member states on public service media governance<sup>22</sup>

Below, the individual principles are described in more detail.

## 1.a) Independence

Securing and safeguarding independence is the primary role of any framework of PSM governance, also at the heart of all of the relevant Council of Europe standards. Independence should be operationalised in terms of PSM regulation, funding and appointments:

### ***i. Regulatory and policy framework***

The PSM regulatory and policy framework should be set up to define the scope and reach of the organisation(s) concerned, lay out the principles and policy goals behind the policy intervention, as well as to clarify the responsibilities of the regulator and how the independence of the PSM from the State is guaranteed.<sup>23</sup>

The framework should, regardless of its configuration, be such that:

- ▶ there is explicit recognition of the scope and reach of the PSM remit, and absolute clarity about whose role it is to set it and review it;

22. Ibid, § 17

23. Ibid, §§ 24, 25

- ▶ the policy goals for public intervention are clearly and consistently laid out, including unambiguous support for the principles of freedom of expression and journalistic enquiry;
- ▶ there is clarity about the responsibility of the regulator in relation to the public service media;
- ▶ the regulator is required to operate openly and transparently in respect of regulatory action, and is itself guaranteed independence from the State in its decision-making powers.<sup>24</sup>

## **ii. Funding**

The requirement for the State to ensure appropriate and secure funding of PSM was already laid down by Committee of Ministers' Recommendation No. R (99)1 on measures to promote media pluralism,<sup>25</sup> however Recommendation CM/Rec(2012)1<sup>26</sup> provides details as to how the funding systems should be designed so as to protect the independence of the PSM, to ensure that no editorial influence is exerted and to avoid the institutional autonomy being threatened:<sup>27</sup>

- ▶ Member States should define ways of ensuring appropriate and secure funding of PSM, which may include public funding and commercial revenues.<sup>28</sup>
- ▶ While it inevitably remains the State's responsibility to set both the method and the level of funding, it is nevertheless imperative that the system should be so designed that:
  - it cannot be used to exert editorial influence or threaten institutional autonomy – either of which would undermine the operational independence of the public service media;
  - the PSM is consulted over the level of funding required to meet their mission and purposes, and their views are taken into account when setting the level of funding;
  - the funding provided is adequate to meet the agreed role and remit of PSM, including offering sufficient security for the future as to allow reasonable future planning;
  - the process for deciding the level of funding should not be able to interfere with PSM's editorial autonomy.<sup>29</sup>

24. Ibid, § 25

25. Recommendation No. R (99)1 of the Committee of Ministers to member states on measures to promote media pluralism. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016804fa377](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804fa377)

26. Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance, § 26. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cb4b4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4)

27. Provisions on funding are to be found also in Recommendation 1878 (2009) Funding of public service broadcasting (PACE), and in Recommendation CM/Rec(2022)11 of the Committee of Ministers to member states on principles for media and communication governance.

28. Recommendation No. R (99)1 of the Committee of Ministers to member states on measures to promote media pluralism. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016804fa377](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804fa377)

29. Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance, § 26. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cb4b4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb4b4)

### **iii. Appointments**

The Recommendation recognises the legitimacy of the State to be involved in the appointment of the highest supervisory or decision-making authority within PSM at executive or editorial management level. Any such appointment procedure should be designed in a way that there are clear criteria for the appointment, so that the appointments cannot be turned into a tool of political or other influence over PSM. Furthermore, the appointments should be limited in terms of the duration and circumstances and considering equal representation of men and women in such bodies.<sup>30</sup>

### **1.b) Accountability**

PSM are ultimately, and fundamentally, accountable to the public.<sup>31</sup> But who exactly is responsible to whom for what, how the accountability is held and when? These are the four main questions to which any PSM framework should provide clear answers. All accountability relations should be clearly established, the organisations identified. PSM organisations should be prepared to give account of themselves to different public organisations, including human rights organisations, minority and ethnic groups, any social demographic groups, unions and other specific interest groups.<sup>32</sup>

The outcomes for which PSM will be held accountable should also be clearly set out, but should include a wider range of responsibilities, including financial efficiency and diligence.<sup>33</sup>

The accountability framework should clearly define the scope of information that the PSM is required to supply and a clear timetable for annual report and other audits.<sup>34</sup>

## **2. Management**

The second tier of the proposed system of governance in Recommendation CM/Rec(2012)1 is effective management. It is not the intent of the instrument to explain how PSM should be managed, but to define the goals that should be met by the management structures in view of the challenges that PSM might face: securing the requisite level of independence from the State, transforming from a broadcasting organisation to a public service media and justifying its position vis-à-vis the commercial media in the market.<sup>35</sup>

It is essential that PSM can feel confident that the management decisions are appropriate. PSM should put in place internal management and resource allocation framework that enables them to innovate in how they allocate resources and meet new audience needs arising from the digitalised and convergent environment. They should also pay close attention to seeking, training and fostering new talent and skills and focus on how best to meet senior management challenges.<sup>36</sup>

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30. Ibid, § 27

31. Ibid, § 28

32. Ibid, § 30

33. Ibid

34. Ibid

35. Ibid, §§ 1-7

36. Ibid, §§ 32-34

### 3. Culture

The PSM governance system, including the legal framework, the protection of the independence, funding, the management and allocation of resources, all of these elements need to be employed by PSM organisations to the benefit of the human aspect, notably to engage with their audience and deal with their staff. The Recommendation identifies four values which, operationalised into PSM interdependent systems and behaviours, define the operational culture of an organisation: transparency, openness, responsiveness and responsibility.<sup>37</sup>

#### **Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership**

The conditions for pluralism and democracy have often been addressed by the Committee of Ministers recommendations.<sup>38</sup> Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership proposes a further commitment to the guiding principles from previous recommendations and the development of a framework to meet the demands of ongoing technological, financial, regulatory and other changes<sup>39</sup> in the digital communication environment. This is of particular importance as this environment is governed by platforms which provide access to a growing range of information from diverse sources, also such with questionable reliability.<sup>40</sup>

Because of their remit and organisation, PSM are understood as particularly well-suited for addressing the informational needs and interests of various segments of society<sup>41</sup> as one of the possible ways of mitigating the public's relying on online platforms as sources of their information. This is why States should reaffirm the role of PSM as independent organisations in fostering public debate, political pluralism and awareness of diverse opinions.<sup>42</sup>

The key recommendations directly referring to PSM are the following:

- ▶ Independent and sustainable public service and not-for-profit community media can serve as a counterbalance to increased media concentration. By virtue of their remit and organisation, public service media are particularly suited to address the informational needs and interests of all sections of society, as is true of community media in respect of their constituent users. It is of utmost importance that the mandates of public service media include

37. Ibid, §§ 35 - 49

38. E.g., Recommendation No. R(99)1 of the Committee of Ministers to member states on measures to promote media pluralism. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016804fa377](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804fa377); Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805d6be3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d6be3)

39. Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680790e13](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13)

40. Ibid, p.mbl. § 7, cf. PACE Recommendation 1878 (2009) Funding of public service broadcasting.

41. Ibid, p.mbl. § 9

42. Ibid, § 2.8



the responsibility to reflect political pluralism and foster awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious, sexual or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas.<sup>43</sup>

- ▶ States should recognise the crucial role of independent public service media organisations in fostering public debate, political pluralism and awareness of diverse opinions. States should accordingly guarantee adequate conditions for public service media to continue to play this role in the multimedia landscape, including by providing them with appropriate support for innovation and the development of digital strategies and new services.<sup>44</sup>
- ▶ States should also ensure stable, sustainable, transparent and adequate funding for public service media on a multiyear basis in order to guarantee their independence from governmental, political and market pressures and enable them to provide a broad range of pluralistic information and diverse content. This can also help to counterbalance any risks caused by a situation of media concentration. States are moreover urged to address, in line with their positive obligation to guarantee media pluralism, any situations of systemic underfunding of public service media which jeopardise such pluralism.<sup>45</sup>

### **Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age**

In the long-awaited recommendation on quality journalism in the digital age,<sup>46</sup> the Committee of Ministers reiterated the role and importance of PSM as a trusted source of information, in promoting diversity and setting quality standards.

The Recommendation recognises the role of PSM in producing quality content, including news and current affairs programming and services specifically targeting children and young people. In this context, PSM are encouraged to promote opportunities for young people's involvement in quality content production and engagement with such content, by using genres, formats and distribution channels that speak to and interest young audience.

The Recommendation calls on States ensure stable and sufficient funding for PSM in order to guarantee their editorial and institutional independence, high standards of professional integrity and their capacity to innovate and to remain universally available, including online. States should enable PSM to properly fulfil their remit and deliver quality journalism. An important highlight in the section on sustainable funding, which details numerous structural and support measures to ensure the (long-term) sustainability of the media sector as a whole, is also that diverting PSM funding schemes for other purposes, such as support measures or schemes aimed at other media sectors, could compromise these aims.

43. Ibid, pmb1. § 9

44. Ibid, § 2.8

45. Ibid, § 2.10

46. Recommendation CM/Rec(2022)4 of the Committee of Ministers to member states on promoting a favourable environment for quality journalism in the digital age [https://search.coe.int/cm/pages/result\\_details.aspx?objectId=0900001680a5ddd0](https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a5ddd0)

The key recommendations referring to PSM are the following:

- ▶ [...] it is important to ensure that everyone has access to a diverse range of journalistic content, irrespective of income levels and socio-economic barriers. Public service media and not-for-profit community media must be able to maintain their crucial role in that regard. They should be supported in their progress towards digital transformation, including through adequate means and funding, in order to retain their social value and relevance. Public service media, largely considered as a trusted and reliable source of information, can have a stabilising effect on the media sector, insofar as its independence from political and commercial pressures is ensured.
- ▶ **Public service media:** as noted in numerous recommendations of the Council of Europe's Committee of Ministers addressed to member States, and other relevant instruments, public service media have a special role to play in promoting diversity and setting quality standards. States should ensure stable and sufficient funding for public service media in order to guarantee their editorial and institutional independence, their capacity to innovate, high standards of professional integrity, and to enable them to properly fulfil their remit and deliver quality journalism. These aims and objectives should not be compromised by diverting public service media funding schemes for other purposes, such as support measures or schemes aimed at other media sectors.
- ▶ **Children:** the information needs of children of different age categories should be specifically addressed through the availability, via all relevant media and platforms, of wide-ranging quality content suited to their interests, literacy levels, linguistic preferences and cultural background. Such quality content should include informative and factual content and educational and cultural content, as well as content with entertainment value. Newsrooms, especially within PSM, are encouraged to invest in the production and dissemination of news and current affairs programming and services specifically targeting children and young people. In doing so, they are encouraged to promote opportunities for young people's involvement in quality content production and engagement with such content, for instance by using genres, formats and distribution channels that speak to and interest young audiences. Community media activities involving different age groups in journalistic training and production contribute to exchange and dialogue across generations, and also need specific support.
- ▶ **Public service media's contribution to society:** independent PSM, in particular, have an important social function as a trusted source of information. They play a central role in portraying events in a comprehensive and inclusive manner, explaining complex situations and changes, allowing the public to distinguish the important from the trivial and highlighting constructive solutions to important challenges. States have the specific obligation of ensuring that public service media enjoy editorial autonomy and are able to operate independently, and that their content is universally available, including online.

## **Recommendation CM/Rec(2022)11 on principles for media and communication governance**

In the latest Committee of Ministers' Recommendation, fifteen procedural and substantive principles for media and communication governance are laid down that have implications for all governance structures and processes in the digital media environment. The principles summarise and update the existing body of standards to provide a comprehensive framework of governance underpinned by the human rights dimension; three of the principles explicitly refer to the role of PSM.

Principle no. 8 underlines the importance of funding of PSM in the context of promoting media pluralism and safeguarding the sustainability of journalism.<sup>47</sup> The underlying argument echoes Recommendation CM/Rec(2018)1<sup>48</sup> in that PSM play a crucial role in promoting pluralism and diversity, but also relies on the ideas laid down in Recommendation CM/Rec(2012)1.<sup>49</sup> The Explanatory Memorandum further emphasises that PSM's remit should be extended in a way that allows innovation and high-quality service and content, including provision of personalised content, on-demand services and content via third-party platforms.<sup>50</sup>

Principle no. 13 recognises that strengthening the role of PSM in terms of offering personalised services also presents a line of defence against the risks posed by algorithmic curation, selection and prioritisation oriented towards maximum engagement of target audiences. Personalised recommendations provided by PSM can be used to enhance exposure diversity and improve the discoverability and prominence of quality journalism, thereby serving the public interest.<sup>51</sup> Indeed, this is in line with the recommendations made by PSM themselves, namely that platforms should be better utilised for promoting PSM national content to a global audience, which includes the exchange of content between national PSM, also as a promotion of excellence and a culture of tolerance.<sup>52</sup> Principle no. 14 complements this by calling for availability, accessibility and affordability of diverse content for all groups of the population, without any discrimination, emphasising the need to safeguard the role of PSM in this connection.

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47. Recommendation CM/Rec(2022)11 of the Committee of Ministers to member states on principles for media and communication governance. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a61712](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712)

48. Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680790e13](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13)

49. Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance, §§ 1-5. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805cb4b4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cb4b4)

50. Explanatory Memorandum to Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance, CM(2022)44-addfinal, § 8.5. [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a5bd7c](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5bd7c)

51. Recommendation CM/Rec(2022)11 of the Committee of Ministers to member states on principles for media and communication governance, Principle 13. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a61712](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a61712)

52. International conference on Public Service Media and Democracy Prague 2016: Conclusions and recommendations by the conference participants, <https://www.ebu.ch/files/live/sites/ebu/files/News/2016/11/Final%20conclusions%20Prague%2014112016%2017.43.pdf>

# 3. Parliamentary Assembly Recommendations and Resolutions

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**T**he Parliamentary Assembly of the Council of Europe (PACE) retains a consistent attention on various aspects of PSM and their role in our societies. The most relevant recommendations and resolutions are summarised below.

## **Recommendation 1641 (2004) on public service broadcasting**

PACE, reiterating the important role of PSM organisations not only for providing information, education and entertainment, but also enhancing social, political and cultural citizenship, alerts to the fact that their operation should be free from any particular interest and independent from those holding either economic or political power.<sup>53</sup>

However, PACE also observes that the situation varies across Europe, with some PSM still under strict governmental control and little prospect of transforming into genuine public broadcasters in the foreseeable future. Another concern expressed is that the shift to multi-platform, on-demand services would be considered as empowering the market to cater for all needs and rendering PSM unnecessary. However, as stressed by PACE, there is no guarantee about the quality, independence or universality of such provision.

PACE thus recommends to the Committee of Ministers to propose a new major policy regarding PSM because of its special role in the society and to call on States to bring about renewed commitment to strong and vibrant PSM, as follows:

- ▶ Therefore the Parliamentary Assembly recommends that the Committee of Ministers [to]:
- ▶ 17.2. mobilise the relevant structures of the Council of Europe to ensure proper and transparent monitoring, assistance and, where necessary, pressure, so that member states undertake the appropriate legislative, political and practical measures in support of PSM;<sup>54</sup>
- ▶ 17.7. call on the governments of member states to
  - a. reaffirm their commitment to maintaining a strong and vibrant independent PSM service,

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53. Recommendation 1641 (2004) on Public service broadcasting, § 2. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17177&lang=en>

54. Ibid, § 17.2

- b. define an appropriate legal, institutional and financial framework for the functioning of PSM and its adaptation and modernisation,
- c. design education and training programmes, adapted to the digital media environment, for journalists.<sup>55</sup>

### **Recommendation 2001 (2012) on protection of and access to the audiovisual cultural heritage**

Besides their essential role in serving the information needs of the public, PSM play an equally important role of bearers of the national audiovisual heritage which is of considerable value to the public. In 2009, PACE called upon the governments to sign the European Convention for the Protection of the Audiovisual Heritage (ETS No. 183) and take measures to preserve the audiovisual archives of their respective PSM.<sup>56</sup> In its Recommendation 2001 (2012), it stresses that these materials should be preserved and made publicly available:

- ▶ Public service broadcasters and production companies have generated large quantities of audiovisual material and hold a vast collection of archives of the audiovisual heritage. This material is of considerable value to the public. Every effort should be made to overcome outstanding copyright issues and to ensure that authors, performers and other rights holders receive fair and proper reward for their work while ensuring that such material is also, wherever possible, both preserved and made publicly available through archives. The Assembly urges that consideration be given to arrangements which ensure that the audiovisual heritage is not permanently hidden from public view, but is properly recorded and preserved with a view to professional preservation and possible public display.<sup>57</sup>

### **Resolution 1636 (2008) on indicators for media in a democracy**

In its resolution on indicators for media in a democracy, PACE recalls that freedom of expression and information in the media is an essential requirement of democracy<sup>58</sup> and emphasises that measures must be taken to protect PSM from political interference. In this context PACE clearly states that senior management positions in PSM should be refused to people with clear party-political affiliations.<sup>59</sup> Additionally, the Resolution calls for the establishment of in-house conduct codes for journalistic work and editorial independence in PSM in order to protect them from political interference.<sup>60</sup>

55. Ibid, § 17.7

56. Recommendation 1878 (2009) on Funding of public service broadcasting, § 16.6. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17763&lang=en>

57. Recommendation 2001 (2012) on protection of and access to the audiovisual cultural heritage, § 8. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18725&lang=en>

58. Resolution 1636 (2008) on Indicators for media in a democracy, § 1. <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17684&lang=en>; ibid, § 2

59. Ibid, § 8.20

60. Ibid, § 8.21

## **Resolution 2141 (2017) on attacks against journalists and media freedom in Europe**

PACE notes in its Resolution on attacks against journalists that the situation of PSM in several member states is difficult and recalls that their independence from governments has to be ensured through law and practice.<sup>61</sup> Referring to the PSM, it reiterates and summarises its established position<sup>62</sup> that governments and parliaments should not interfere in the daily management and editorial work of such broadcasters; that PSM should establish in-house codes of conduct for journalistic work and editorial independence from political interference; and that senior management positions should be refused to people with clear party political affiliations.

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61. Resolution 2141 (2017) on Attacks against journalists and media freedom in Europe, § 21. <https://pace.coe.int/en/files/23400/html>

62. As previously stated in Resolution 1636 (2008) on Indicators for media in a democracy.

## 4. Case-law of the European Court of Human Rights

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**T**he Court has established a rich body of case law on freedom of expression, and in this scope, also specific rules on audiovisual media and on PSM. Considering that the general principles on freedom of expression and of the media, along with its limits, constitute a basic framework applicable to all cases, it may be useful to reiterate them here.

*“Freedom of expression, as secured in Article 10 § 1, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress.”<sup>63</sup>*

Regarding the importance of news media in the architecture of this right, the Court has stressed that “[f]reedom of the press and other news media afford the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues and on other subjects of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them.”<sup>64</sup>

The immediate effect of the audiovisual media and the use of radio and television as sources of entertainment were considered by the Court to afford this type of media particular impact on the audiences’ opinion formation: *“The audiovisual media, such as radio and television, have a particularly important role in this respect. Because of their power to convey messages through sound and images, such media have a more immediate and powerful effect than print.”<sup>65</sup> The function of television and radio as familiar sources of entertainment in the intimacy of the listener or viewer’s home further reinforces their impact. Moreover, particularly in remote regions, television and radio may be more easily accessible than other media.”<sup>66</sup>*

63. *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103.

64. *Handyside v. the United Kingdom*, § 49, 7 December 1976, Series A no. 24.

65. *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 79, ECHR 2004-XI.

66. *Manole and Others v. Moldova*, no. 13936/02, § 97, ECHR 2009 (extracts).

In view of the wide reach and impact of the audiovisual media, the requirement of editorial independence is of particular importance: *“A situation whereby a powerful economic or political group in a society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive.”*<sup>67</sup>

Another important issue in terms of ensuring adequate and sufficient level of protection of the right to freedom of expression is the nature of the State’s obligations in this regard. The Court has established that the so-called negative obligation of refraining from arbitrary interference may not always suffice; accordingly, member states must in addition fulfil a range of positive obligations: *“Genuine, effective exercise of freedom of expression does not depend merely on the State’s duty not to interfere but may require it to take positive measures of protection, through its law or practice.”*<sup>68</sup>

In the context of media freedom, States have a fundamental positive obligation to ensure a pluralist media environment, or as the Court has termed it, to serve as the ultimate guarantors of media pluralism: *“Given the importance of what is at stake under Article 10, the State must be the ultimate guarantor of pluralism.”*<sup>69</sup> The Court furthermore found that this observation is especially valid in relation to the audiovisual media, whose programmes are often broadcast very widely.

In connection to the audiovisual media, the Court has also developed several principles that apply specifically to them, including PSM. First of all, it has specified how the general principles on freedom of expression and media freedom apply in the field of audiovisual media: *“The Court considers that, in the field of audiovisual broadcasting, the above principles place a duty on the State to ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment. The choice of the means by which to achieve these aims must vary according to local conditions and, therefore, falls within the State’s margin of appreciation.”*<sup>70</sup>

That said, the Court has recognised that *“a public service broadcasting system is capable of contributing to the quality and balance of programmes.”*<sup>71</sup>

The Convention system being subsidiary to the safeguarding of human rights in national systems, the Court has refrained from prescribing a specific model for

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67. VGT Verein gegen Tierfabriken v. Switzerland, no. 24699/94, §§ 73 and 75, ECHR 2001-VI.

68. Özgür Gündem v. Turkey, no. 23144/93, §§ 42-46, ECHR 2000-III; Fuentes Bobo v. Spain, no. 39293/98, § 38, 29 February 2000; Appleby and Others v. the United Kingdom, no. 44306/98, §§ 39-40, ECHR 2003-VI.

69. Manole and Others v. Moldova, no. 13936/02, § 97, ECHR 2009 (extracts) , <https://hudoc.echr.coe.int/eng?i=001-94075>.

70. Ibid., § 100

71. Informationsverein Lentia and Others, Informationsverein Lentia and Others v. Austria, 24 November 1993, § 33, Series A no. 276.



how the media should be organised in each State. Therefore, no obligation can be imposed on States to create a PSM system, provided that some other means are used to achieve the quality and balance of news and information.<sup>72</sup>

However, as evidenced by the judgment in *Manole and others v. Moldova*, if there is such a system in place or if the State decides to create PSM, it must guarantee that the system provides a pluralistic audiovisual service: “Where a State does decide to create a public broadcasting system, it follows from the principles outlined above that domestic law and practice must guarantee that the system provides a pluralistic service. Particularly where private stations are still too weak to offer a genuine alternative and the public or State organisation is therefore the sole or the dominant broadcaster within a country or region, it is indispensable for the proper functioning of democracy that it transmits impartial, independent and balanced news, information and comment and in addition provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed.”<sup>73</sup>

In this connection, the Court made an important clarification, referring to the Committee of Ministers’ standards for guidance on how to interpret States’ responsibilities with regard to PSM: “[s]tandards relating to public service broadcasting which have been agreed by the Contracting States through the Committee of Ministers of the Council of Europe ... provide guidance as to the approach which should be taken to interpreting Article 10 in this field.”

Below, the most important Court judgments and decisions regarding PSM are presented in chronological order.

### **Informationsverein Lentia and others v. Austria, judgment of 24 November 1993<sup>74</sup>**

No justification for a broadcasting monopoly of PSM organisation

This case concerns the impossibility to set up a radio and a television station, as under the Austrian legislation in force at the relevant time, this right was restricted to the Austrian Broadcasting Corporation (PSM organisation). According to the Austrian Government, only the system in force based on the monopoly of PSM made it possible for the authorities to guarantee the objectivity and impartiality of reporting, the diversity of opinions, balanced programming and the independence of persons and bodies responsible for programmes.

The Court found this restriction to contravene Article 10 of the Convention. It stated that a public monopoly imposed the greatest restrictions on freedom of expression, namely the total impossibility of broadcasting otherwise than through a national (state) station. Due to far-reaching character of such restrictions, they can only be justified where they correspond to a pressing need.

72. *Manole and Others v. Moldova*, § 100.

73. *Ibid.*, § 101

74. *Informationsverein Lentia and others v. Austria*. <https://hudoc.echr.coe.int/eng?i=001-57854>

The Court stressed that as a result of the technical progress made over the last decades, justification for these restrictions could no longer be found in limited radio frequencies resources. Citing the practice of other countries which either issued licenses subject to specified conditions of variable content or enabled private participation in the activities of the national corporation, the Court noted that it could not be argued that there were no equivalent less restrictive solutions.

According to the Court, the experience of several European States of a comparable size to Austria, in which private and public stations coexisted, showed that the fears expressed by the Government, namely that the national market was too small to sustain a sufficient number of stations to avoid regroupings and the constitution of “private monopolies”, were without merit.

### ***Verein gegen Tierfabriken v. Switzerland,*** **judgment of 28 June 2001<sup>75</sup>**

Prohibition of broadcasting political advertisement on animal cruelty via PSM not “necessary in a democratic society”

VgT, an association for the protection of animals, produced a television advertisement denouncing the industrial rearing of pigs and encouraging people to eat less meat. The authority responsible for the broadcasting of commercials at the Swiss PSM refused to broadcast it on account of its “clear political character”, relying, as did subsequently the Swiss Federal Court, on the prohibition on “political advertising” in Swiss law. Such a prohibition was to prevent financially powerful groups from obtaining a competitive political advantage, protect the formation of public opinion from undue commercial influence, and contribute towards the independence of radio and television broadcasters in editorial matters. VgT, aiming to reach the entire Swiss public, had no other means than the national broadcaster at its disposal, since regional private and foreign television channels could not be received throughout Switzerland.

The Court found that the refusal was prescribed by law and pursued a legitimate aim. As to the necessity of the interference, the Court found that the State’s margin of appreciation was particularly essential in commercial matters, but since this case concerned participation in a debate affecting the general interest rather than purely commercial interests, the margin of appreciation was reduced. A prohibition of “political advertising” may be compatible with Article 10 of the Convention in certain situations, but the reasons must be relevant and sufficient to justify the interference, and the Court did not find that to be the case. VgT was not a powerful financial group and did not intend to hinder the broadcaster’s independence or unduly influence public opinion, so the complete prohibition to broadcast the advertisement amounted to a restriction that was not necessary in a democratic society.

As the Swiss authorities refused to reopen the proceedings, and the violation of VgT’s freedom of expression thus continued, VgT applied to the Court again and in 2009 Switzerland was held responsible for another violation of its freedom of expression,

75. Vgt Verein gegen Tierfabriken v. Switzerland. <https://hudoc.echr.coe.int/eng/?i=001-59535>

the Government not having been able to prove that the Court's earlier decision was no longer valid or relevant.

### **Radio France and others v. France, decision of 23 September 2003<sup>76</sup>**

Independent PSM recognised as non-governmental organisation vis-à-vis the State

PSM independence from the Government is at the centre of the Court's admissibility decision in *Radio France and others v. France*, with the recognition that the non-governmental nature of a PSM organisation can be derived from its legal status and the rights stemming from it. If the legislature – in accordance with Recommendation No. R (96)10 on the guarantee of the independence of public service broadcasting – has devised a framework that guarantees PSM's editorial independence and its institutional autonomy, the organisation can be considered as independent from the Government, even if it considerably depends on its financing.

Deciding on whether Radio France, the national radio broadcaster, could bring an application against the State as a "non-governmental" organisation, the Court relied on the following factors: the organisation was not under the supervision of the State but under the control of the "independent authority" of the *Conseil supérieur de l'Audiovisuel*; the organisation did not have a monopoly in sound broadcasting but operated in a sector open to competition; it was, essentially, subject to the legislation on incorporated companies; it exercised no powers which would be exempt from the ordinary law and its activities were subject to the jurisdiction of the ordinary courts.

According to the Court, although the French law assigned public-service tasks to Radio France and although the organisation was largely dependent on the State for its finance, the French legislature had established a regime whose objective was to guarantee its editorial independence and institutional autonomy. The Court thus found that there was little difference between Radio France and private radio stations. The law which placed sound broadcasting in a competitive context did not confer on the applicant company a dominant position in that sector.

### **Faccio v. Italy, decision of 31 March 2009<sup>77</sup>**

Proportionate nature of the obligation for owners of TV sets to pay the licence fee

The applicant applied to the Radiotelevisione italiana (RAI) subscriptions bureau to cancel his subscription to the public television service in 1999. In August 2003, the tax police affixed seals to his television set, preventing it from being used. This was considered by the applicant to excessively interfere with his freedom to receive information and other content from commercial channels and violate Article 10 of the Convention.

The licence fee constitutes a tax that is used for the financing of PSM service. In the Court's view, regardless of whether or not the applicant wished to watch programmes

76. *Radio France and others v. France*. <https://hudoc.echr.coe.int/eng?i=001-61686>

77. *Faccio v. Italy*. <https://hudoc.echr.coe.int/eng?i=001-92184>

on public channels, the mere possession of a television set obliged him to pay the tax in question. Conversely, even accepting that it would be technically possible to set up a system enabling viewers to watch only private channels without paying the licence fee, this would be tantamount to stripping the tax of its very essence, namely a contribution to a community service rather than the price paid by an individual in exchange for the reception of a given channel.

The Court noted that taxation matters belonged to the prerogatives of the State authorities, and that the public nature of the relationship between the taxpayer and the community remained predominant. In light of these considerations and of the reasonable amount of the fee in question, the Court found that the obligation for owners of TV sets to pay the licence fee was proportionate to the objective pursued by the State.

### ***Wojtas-Kaleta v. Poland, no. 20436/02, judgment of 16 July 2009***<sup>78</sup>

Journalists' right to express critical opinion on their PSM employer protected by the right to freedom of expression

This case is important from the perspective of the balance between (PSM) journalists' freedom of expression and loyalty to their employers. The Court determined that in the case of the applicant the right to freedom of expression outweighed the duties of employees towards their employers.

The applicant, a journalist with a public television company and also the President of the Polish Public Television Journalists' Union, was reprimanded by the company after criticising, in comments to the press and in an open letter, its decision to take two classical music programmes off the air.

The applicant's case raised the issue of how the limits of loyalty of journalists working for PSM should be delineated and what restrictions could be imposed on them in public debate. The Court found that the obligation of discretion and constraint does not apply with equal force to journalists as it is in the nature of their functions to impart information and ideas. Moreover, the PSM's programming policy is an issue of public interest and concern, thus allowing a narrow scope for restrictions.

The applicant's employer had been entrusted with a special statutory mission which included assisting cultural development with special emphasis on national intellectual and artistic achievements. The applicant argued that the changes in its programming policy were not consistent with that mission and echoed widely shared concerns about the declining quality of music programmes. Although she claimed to have done so in her role as a journalist commenting on a matter of public interest, the company had taken the view that merely participating in the debate was sufficient to establish a breach of her obligations as an employee, without weighing those obligations against the company's role as a public service. Similarly, the domestic courts had endorsed that conclusion without examining whether and how the

78. *Wojtas-Kaleta v. Poland*. <https://hudoc.echr.coe.int/eng?i=001-93417>

subject matter and context of her comments could have affected the permissible scope of her freedom of expression.

The Court observed that the domestic courts took no note of the applicant's argument that she had been acting in the public interest. In the Court's view, it was also relevant that the applicant's comments had had a sufficient factual basis, while at the same time amounting to value judgments not susceptible of proof; that the tone had been measured; that no personal accusations had been made; and that her good faith was not in dispute.

In sum, having weighed up the various competing interests, including the right to freedom of expression on matters of general interest, the applicant's professional obligations and responsibilities as a journalist and the duties and responsibilities of employees towards their employers, the Court concluded that the interference had not been "necessary in a democratic society" and there has been a violation of Article 10 of the Convention.

### ***Manole and others v. Moldova, judgment of 17 September 2009***<sup>79</sup>

The State as the ultimate guarantor of pluralism is required to put in place statutory guarantees of PSM independence to ensure that the public has access to a range of opinion, reflecting the political diversity in the country.

Nine applicants, journalists, editors and producers employed at Teleradio-Moldova (TRM), a state-owned company which at that time was the only national broadcaster in Moldova, complained about a number of acts showing that the public broadcaster was effectively controlled by the Government and the ruling political party, resulting in a censorship regime for the journalists. The political control of the majority party was evidenced by the replacement of the TRM management, only a trusted group of journalists could report on political issues, with a clear bias towards the ruling party, and other journalists were reprimanded, programmes were taken off the air and the opposition parties had but limited opportunities to have their views heard.

After a strike by TRM journalists, a structural reorganisation of TRM was carried out and a large number of journalists were not retained in their posts. The journalists claimed that they were dismissed for political reasons and appealed the decision before the domestic courts, without success.

The Court found a violation of Article 10 of the Convention, establishing that the legislative framework had been insufficient and failed to provide safeguards against the control of TRM's senior management, and thus its editorial policy, by the Government.

In this benchmark case, the Court laid down a list of provisions concerning the audiovisual media. According to the Court, any situation in which any powerful group obtains position of dominance over the audiovisual media and starts exercising pressure on other broadcasters, curtailing their editorial freedom, represents undermining of the fundamental role of freedom of expression.<sup>80</sup>

79. *Manole and others v. Moldova*, <https://hudoc.echr.coe.int/eng?i=001-94075>

80. *Ibid*, § 98

In the Court's opinion, the State should not only self-limit its interference in the exercise of freedom of expression, but also take positive measures to protect it through law or practice<sup>81</sup> and thus become the ultimate guarantor of pluralism.<sup>82</sup>

If the State decides to create a public broadcasting system and it becomes the main broadcaster in the region, it is indispensable that it ensures the provision of impartial, independent and balanced news, information and comment and also provides a forum for public discussion with broad spectrum of views and opinions.<sup>83</sup>

The Court ruled that the domestic law did not provide any guarantee of political balance in the composition of TRM's senior management and supervisory body. General measures, including legislative reform, were required to ensure that the legal framework complied with the requirements of Article 10 and guarantee a pluralistic audiovisual service.

This could be done, for example, by the inclusion of members appointed by the political opposition in the composition of TRM's senior management and supervisory body, or by providing safeguards against interference from the ruling political party in these bodies' decision-making and functioning. In particular, the Court considered it necessary that the rules for appointing the members of the supervisory council provide adequate safeguards against political bias.

As for the question of guidance over the standards relating to PSM, the Court pointed to the Committee of Ministers' recommendations R(96)10 and Rec(2000)23<sup>84</sup> and the Committee's Declaration on the guarantee of the independence of PSM,<sup>85</sup> giving these non-binding documents of the Council of Europe additional weight.<sup>86</sup>

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81. Ibid, § 99

82. Informationsverein Lentia and others v. Austria, § 38. <https://hudoc.echr.coe.int/eng?i=001-57854>

83. Ibid, § 101

84. Recommendation no. R(96)10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168050c770>; Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016804e0322](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804e0322)

85. Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states. <https://rm.coe.int/16805d7431>

86. Manole and others v. Moldova, §§ 51-54, 102.

# 5. Venice Commission opinions

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The European Commission for Democracy through Law (Venice Commission) issued a number of opinions on freedom of expression and media freedom, some of which include specific references to PSM.<sup>87</sup> They are summarised below, in a thematic order.

## 5.1. PSM values: neutrality, quality, diversity

Outlining freedom of expression and media pluralism considerations in the opinion on the compatibility of two Italian legislative instruments, a law on the governance of PSM,<sup>88</sup> the so-called Gasparri Law, and a bill on resolving conflicts of interest between media ownership and discharge of public office at the highest level,<sup>89</sup> the so-called Frattini Bill, the Venice Commission also emphasised that PSM must be free from both the state and the market forces.<sup>90</sup> Being a public service, PSM have different obligations on the one hand, and they enjoy different privileges on the other,<sup>91</sup> but the foundations consist of:

- ▶ universality of content and access;
- ▶ editorial independence and impartiality;
- ▶ benchmark quality;
- ▶ variety of programmes and services catering to all groups in society;
- ▶ public accountability.<sup>92</sup>

Among the key references to PSM as regards their neutrality, quality and diversity, provided in different Venice Commission's opinions, is the following:

- ▶ Public service broadcasting must be free from the constraining forces of the state and, on the other hand, enjoy autonomy and independence from the marketplace. Its specific remit is essentially to operate independently of those holding economic and political power. Public service broadcasting “provides

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87. Compilations of excerpts are available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)008-e) and the links to the relevant documents here <https://www.venice.coe.int/webforms/documents/?topic=35&year=all>

88. Principles governing the broadcasting system and RAI-Radiotelevisione Italiana SpA, and the authority delegated to the Government to issue the consolidated legislation on television broadcasting

89. CDL-AD(2005)017, Opinion on the compatibility of the laws “Gasparri” and “Frattini” of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)017-e)

90. Ibid, § 54, *ibid*, § 162

91. Ibid, § 52

92. Ibid, § 54

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 is publicly accountable. These principles apply, whatever changes may have to be introduced to meet the requirements of the twenty-first century.”<sup>93</sup> Forms of consultation of the public within the public service broadcasting organisations may be envisaged in order to reflect in their programming policy the needs and requirements of the different groups in society.<sup>94</sup>

In the 2015 opinion of media legislation in Hungary, the Venice Commission argued that despite the need for journalistic standards, it is almost impossible to define “balanced and neutral reporting” without ultimately turning the provisions of “balance and neutrality” into a tool of suppression of the free speech.<sup>95</sup> The Commission recommended amending the Media Act so as to permit PSM to choose news sources according to its own professional standards and avoid creating a monopoly of news delivery by a body with a politically-appointed director:<sup>96</sup>

- ▶ Balanced and neutral news reporting is, indeed, a commendable professional standard for every journalist. Furthermore, it is perfectly legitimate to require that ‘media system on the whole’ is organised in such a manner as ‘to provide credible information, quickly and accurately’ [...].<sup>97</sup>
- ▶ However, it is questionable whether ‘balance’ should become an enforceable legal obligation of every particular media taken alone. The norms under consideration create a very complex obligation on the media and lack precision. How can information be ‘balanced’? One can understand balance of opinion, but information (facts) needs to be thorough and accurate, not ‘balanced’. How quickly has the ‘balance’ to be achieved when the programme is a ‘series of programmes regularly shown’? Should the ‘balance’ be assessed in quantitative or more in qualitative terms? In addition, ‘facts’ cannot always be clearly distinguished from ‘opinions’; after all, it is difficult to imagine an anchor-man not using any adjective, while every adjective gives a flavour of an ‘opinion’ to a statement of fact. In sum, the vagueness of the terms employed in two acts may turn those provisions into a tool of suppression of the free speech [...].<sup>98</sup>

93. See Parliamentary Assembly Recommendation 1641 (2004) on public service broadcasting.

94. Ibid, § 54

95. CDL-AD(2015)015, Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, §§ 49-50. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)015-e)

96. Ibid., § 90

97. Ibid., §§ 49-50

98. Ibid.



- ▶ The Venice Commission recommends amending the Media Act so as to permit individual public service media to choose its own news sources, or even set up its own newsroom. There should be no monopoly of news provision by a body with a politically-appointed director.”<sup>99</sup>

## 5.2. Internal organisation of the PSM

In the 2015 evaluation of the Hungarian Media Act, the Venice Commission recognised that where States fail to secure the pluralistic composition of PSM supervisory bodies and to protect these bodies from the political influences, there is a space for covert intrusion into journalistic freedom. This intrusion is also not always easily discernible because it is not formalised and as such also cannot be remedied through judicial review. In the absence of a common European model for PSM governance, it is up to the State – Hungary in the particular case – to develop the legal framework which would protect the pluralism in the supervising bodies and the independence of PSM.<sup>100</sup> The Venice Commission further indicated that a reform to that end should simplify the structure of bodies governing the PSM sector, reduce the influence of the ruling party in the process of appointment of members of the PSM supervising bodies and PSM executives, and secure a fair representation of all important political, social and relevant professional groups within those bodies.”

## 5.3. Economic independence of public service media: funding PSM

In reviewing the Frattini law and the potential privatisation of the Italian public broadcasting company RAI in 2005, the Venice Commission tackled the dilemma of choosing between the pure market model of PSM and the public-policy model. The latter is not supposed to be in the business of maximising income: coming under pressure to compete for the revenues with other commercial entities might interfere with its fundamental task of serving the public interest:<sup>101</sup>

- ▶ The Commission observes that, should the interest in the purchase of RAI shares [in the process of privatisation] be indeed low, the Minister of Economy will retain some control of the Board of Governors. There is also the possibility that the Governors representing the private shareholders will belong to the political parties of the majority. [...]”<sup>102</sup>
- ▶ Methods of funding RAI (setting the level of the licence fee for only a year; possible contracts with public authorities for paid services) are not fully consistent with Recommendation No. R(96) 10 on the Guarantee of the Independence of Public Service Broadcasting, which states in its Appendix that:

99. Ibid., § 90

100. Ibid., §§ 86 and 88

101. CDL-AD(2005)017, Opinion on the compatibility of the laws “Gasparri” and “Frattini” of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media, §§ 170-173. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)017-e)

102. Ibid., § 168

- the decision-making power of authorities regarding funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the PSB organisation; [...]
  - payment of the contribution or licence fee should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning; and
  - the use of the contribution or licence fee by the public service broadcasting organisation should respect the principle of independence and autonomy.
- ▶ In more general terms, with reference to the privatisation of RAI, the Commission recalls the dilemma between the pure market model and the public-policy model.
  - ▶ The Commission also wishes to refer to the warning which AGCOM<sup>103</sup> has recently issued with reference to the circumstance that RAI, as a stock company, will be under great pressure to maximise the advertising income, which will interfere with the achievement of the public-policy aims. [...] [The] privatisation does not appear suitable to ensure that RAI will efficiently carry out its public-policy tasks and at the same time efficiently compete with other operators [...] in the area of advertising revenues.
  - ▶ AGCOM has indeed pointed to the solution in force in the UK, where the Public Broadcasting Service is publicly owned and financed by licence fees, while commercial operators, including public ones, are financed through advertising."<sup>104</sup>

## 5.4. Composition, mandate, and procedures of media national regulatory authorities

In the same opinion on the governance of the Italian PSM, the Venice Commission, citing the Committee of Ministers' Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector,<sup>105</sup> pointed out that that any role of a political body – like the parliamentary commission in the particular case – might be problematic in terms of preserving editorial independence; the authorities should not exercise *a priori* control over programming.<sup>106</sup> The role of the parliamentary body should be limited to the establishment of guidelines and the solution to certain problems of public opinion and should not be extended in a manner to pose a threat to the editorial autonomy or independence of PSM to recruit or dismiss journalists.<sup>107</sup>

103. Italian media regulator "L'Autorità per le Garanzie nelle Comunicazioni".

104. Ibid, §§ 170-173

105. Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016804e0322](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804e0322)

106. CDL-AD(2005)017, Opinion on the compatibility of the laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media, §§ 148 and 150. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)017-e)

107. Ibid, § 153

The Commission also recalled that this particular kind of parliamentary involvement in the boards of PSM is present not only in Italy but also in other European countries.<sup>108</sup>

In the case of Hungary, where the media legislation stipulated that the members of the Media Council, which also acts as the supervisory body for the Hungarian PSM, must receive the support of a qualified majority in Parliament to be elected, the Venice Commission noted that in normal circumstances this would result in cross-party support for the candidates, but it becomes a threat to pluralism and political detachment of the regulatory body in cases when a political group has that supermajority.<sup>109</sup> Hence, the Commission recommended changing the system and introducing a transparent and fair procedure, so that the composition of the supervisory body would reflect political diversity, ensure that all major political parties and social groups have fair representation there and prevent strong ties with the Government.<sup>110</sup>

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108. *Ibid*, § 152

109. CDL-AD(2015)015, Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, § 64. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)015-e)

110. *Ibid*, § 70

## 6. Other Council of Europe Resources

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### **Council of Europe’s Commissioner for Human Rights: Public service broadcasting under threat in Europe**

*In 2017, the then Commissioner for Human Rights of the Council of Europe Nils Muižnieks expressed concerns over an emerging trend of threats to the independence of PSM or their regulatory bodies in his widely quoted report “Public service broadcasting under threat in Europe”<sup>111</sup>. Commissioner Muižnieks reiterated that PSM is not only about providing information, education, culture and entertainment, but also an essential factor of pluralistic communication and one of the main characteristics of a democratic society.*

He also recognised the role of PSM in addressing the problem of disinformation. According to his report, the problem of disinformation would not be adequately addressed by restricting content or arbitrary blocking, but by ensuring that the public has access to impartial and accurate information through public broadcasters which enjoy their trust. According to the Commissioner, the real answer to deliberate propagation of misinformation lies in ensuring media freedom and pluralism, notably by developing high-quality PSM with high professional standards and by building the trust of the audiences through truthful, responsible and ethical reporting.

Commissioner Muižnieks called on member states to draw on existing Council of Europe instruments and implement all of the principles and standards contained in the various recommendations to reinforce PSM organisations, and in particular guarantee their editorial independence and institutional autonomy, avoid politicisation, provide them with sustainable funding, appoint management and supervisory bodies’ members through a transparent and merit-based process and ensure the necessary resources for PSM to produce quality programmes which reflect cultural and linguistic diversity, paying attention to minority languages.

### **Conclusions of the 2016 Conference “Public Service Media and Democracy”**

The EBU, the Council of Europe and its Parliamentary Assembly (PACE), the Czech Parliament and Czech TV organised an international conference on Public Service Media (PSM) and Democracy in 2016. The conference addressed the role of parliaments in protecting the media; the impact of PSM on society; governance; how broadcasters deal with hate speech and the long term independence and sustainability of PSM in the region.

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111. Public service broadcasting under threat in Europe <https://www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe>

Conclusions and recommendations suggested by the conference participants are summarised below.

## **Independence and funding**

The general conclusions of the conference “Public service media and democracy” in Prague shed light on the observation that despite the numerous adopted and ratified international documents and domestic laws two key problems persist: political interference in PSM’s independence and their insufficient funding.<sup>112</sup>

The participants concluded in that connection that States should not only ensure the independence and sustainability of PSM, but also those of regulatory authorities.<sup>113</sup>

The participants noted that the implementation of relevant Council of Europe instruments should be strengthened, especially the following:

- ▶ Recommendation on guarantee of the independence of PSM,
- ▶ Recommendation CM/Rec (2007) 3 on the remit of PSM in the information society,
- ▶ Recommendations (97) 20 and (97) 21 on “hate speech” and on the promotion of a culture of tolerance.

## **Lawmaking**

As regards changing the media laws, the participants resolved that any changes should be done after broad public debate and not in an urgent manner or through so-called “omnibus” legislation.

## **Appointments, supervisory bodies**

Balanced and transparent processes for the appointment of supervisory bodies’ members are necessary. The PSM remit in promoting diversity and pluralism of European societies is not only relevant for PSM content production but should also apply to the members of the PSM management and supervisory bodies.

## **Transparency of ownership**

The transparency of private media ownership is vital for PSM as well. Special attention should be paid to the interests of politicians who are linked to or have vested interests in particular private broadcasters, since this can weaken the role and funding of PSM.

## **Codes of conduct**

PSM should have clear editorial guidelines and ethical codes across all platforms where they provide their content, with the aim of increasing their responsiveness and accountability towards their audiences and consequently solidifying public trust.

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112. International conference on Public Service Media and Democracy Prague 2016: Conclusions and recommendations by the conference participants, <https://www.ebu.ch/files/live/sites/ebu/files/News/2016/11/Final%20conclusions%20Prague%2014112016%2017.43.pdf>

113. Ibid

## Hate speech

PSM can play an important role in countering hate speech and should abide by the restrictions deriving from the national laws, international conventions and other legal instruments and the Court's case law. Furthermore, PSM staff should be educated on the topic to ensure a high professional standard of reporting on hate speech, discrimination and stereotypes.

## European Audiovisual Observatory: IRIS Plus report Governance and independence of public service media

This report addresses the various aspects of governance of public service media and its role in safeguarding the independence of these media. It traces the history and transition from public service broadcasting to the broader concept of public service media.

Independent public service media (PSM) are the cornerstone of a healthy democratic system; they provide citizens with a reliable and trustworthy source of information, fulfil the function of a public watchdog and provide a public forum where different opinions can be expressed. However, they can only fulfil this role if they enjoy independence from the government and other political and economic powers.

The report describes the different types of PSM and their respective funding models, as well as examining the key principles of PSM, according to the European Broadcasting Union: independence, accountability, transparency and sustainability.

The public service media are high on the European agenda at present, with a proposal for a European Media Freedom Act, an instrument of the European Union which includes safeguards to protect the independence of PSM, and ongoing work of the Council of Europe, which has established standards through different legal instruments of the Committee of Ministers and the Parliamentary Assembly, and through judgements of the European Court of Human Rights. The report thus continues with the presentation of the European regulatory framework applicable to PSM, and in particular the Council of Europe's Recommendation on Public Service Media Governance.

The report also analyses the case law relating to public service media, comparing the approaches of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union on the other.

As the regulation of PSM is nevertheless largely within the domain of States and therefore primarily addressed at national level, there is a great diversity of national models in terms of the PSM structure, funding, remit and governance. Some States have a long tradition of independence, while other are struggling to free themselves from the governmental control. Real independence, however, depends not only on the existence of an appropriate legal framework but even more so on its effective implementation.

In this light, the report also presents PSM governance in twelve Council of Europe and European Union countries: Austria, Bulgaria, Czech Republic, Finland, France,

Germany, Greece, Hungary, Italy, Latvia, Poland, and Slovenia. Each country profile includes an analysis of the structure of the national public service broadcaster and its legal form, its managerial and supervisory structure, the way key appointments are made, the safeguards concerning dismissals and ways in which the independence of the PSM is protected from political interference. The report also focuses on self-regulation and best practices to safeguard PSM independence, citing examples of the Spanish, German, Estonian and French-speaking Belgian broadcasters.

The report concludes with the key challenges to governance and independence of PSM, ranging from the impact of the progressive erosion of democratic foundations and the related threats to the institutional independence and editorial autonomy of PSM, to the threats generated by the market pressures and the digital content delivery with powerful platforms as new gatekeepers of media content, including that of PSM.

The report is accompanied by a comprehensive overview table on existing safeguards for the independence of PSM with regard to their governance.

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## European Audiovisual Observatory

- ▶ IRIS Plus report 2022-1: Governance and independence of public service media

PSM key contribution to democracy and freedom of expression has long been recognised by the Council of Europe. This document presents a non-exhaustive selection of the Council of Europe standards, as enshrined in the relevant case law of the Court, Committee of Ministers' recommendations and declarations, and Parliamentary Assembly's resolutions. The selected standards define the scope of PSM protection afforded by Article 10 of the European Convention on Human Rights (the Convention).

The Digest also includes several other relevant documents in the field of PSM, all of them underpinned by the right to freedom of expression and media freedom. Its aim is to improve the awareness of these standards and practical tools, so they can be more effectively integrated in the national policymaking on PSM and in different levels of media governance.

[www.coe.int](http://www.coe.int)

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE



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