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Olexiy Khabyuk

Introducing State-Distant Public Broadcasting in Ukraine

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Institut für Rundfunkökonomie
an der Universität zu Köln

Hohenstaufenring 57a

50674 Köln

Germany

Telefon: +49 (221) 23 35 36

Telefax: +49 (221) 24 11 34

Olexiy Khabyuk

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Introducing State-Distant Public Broadcasting in Ukraine*

1. Introduction

Debates about public service broadcasting in Ukraine have been underway since the country's independence was proclaimed in 1991. They have produced, inter alia, an adopted but yet not implemented Law on Public Broadcasting (1997), various draft laws, approximately ten major concepts of public broadcasting and dozens of articles, conferences and seminars. The question is, then, why media-related discussions in Ukraine are so heavily geared towards such a reform. The primary reason for this seems to be that existing media structures still leave a variety of societal needs unsatisfied. On the one hand, the commercial media sector is still affected by market failure. Although some major players are now making profits, they are still exploited by their politically-oriented, difficult to identify owners. The small market size also complicates the production of national media, and favours the reuse of media products originally produced for the Russian market. This in turn leads to the dominating presence of Russian language in every media outlet and the latent propaganda of Russian culture. On the other hand, the chronically under-funded¹ and tightly leashed state broadcasting doesn't reach the citizens.² Public broadcasting is expected to provide, above all, a balanced coverage of political events, high-quality information and entertainment content tailored to a Ukrainian audience, and offerings that aim to overcome historic linguistic and cultural divisions. But although most parties consider the matter important, after twenty years of independence Ukraine still lacks a broadcaster that addresses social interests and problems in a state-distant manner. This article explores the background of this situation. We have also listed a chronology of key milestones (appendix 1) and a synopsis of the main concepts proposed to date (appendix 2).

2. Early Reform Efforts

(The Presidency of Leonid Kutschma, 1995 – 2004)

At the statutory level, the term "public broadcasting" ("public television and radio") first emerged in the 1995 Law "On Television and Radio",³ but only after Parliament overruled the president's veto in the third round of voting.⁴ The rules

* Extended version of an article published in the German Online Journal "Ukraine Analysen", 27.10.2011: <http://www.laender-analysen.de/dlcounter/dlcounter.php?url=../ukraine/pdf/UkraineAnalysen96.pdf>.

¹ Budget in 2008 = U.S. \$36.55 million (STATE BROADCASTING COMMITTEE 2009)

² 1.8 % audience share in the year 2009 , Adults 18+ (IP 2010, p. 428)

³ Amendment to the Law "On Television and Radio" (article 1 sentence 1, sub point 14, articles 11, 13, 24, 30) adopted on 2. 6. 1995 (LAW 1995)

⁴ WITHOUT AUTHOR 1998



envisioned a parallel existence of state and public broadcasting sectors. Inspired by the Russian “public” television “ORT”,¹ the new broadcaster should not be governed by the state alone, but also by public organisations, broadcasting organisations and individuals.

In 1997, the Law “On the System of Public Television and Radio”² suggested a different direction. Public broadcasting was defined as a countrywide, non-profit system of mass communication belonging to the Ukrainian people. The broadcaster is established by parliamentary Resolution, for which Parliament receives far-reaching influence by adopting the broadcaster’s statutes and programming mandate and deciding the powers and (significantly) composition of its bodies: The Public Council, as a regulatory body with the power to assign the members of the Administrative Board; the Administrative Board, as a management body; and the Qualification Council, as a body for submitting proposals for Administrative Council’s member candidates.

The Public Council should not intervene in operations and programmes. However, this body is not particularly state-distant in constitution as 1) its members are mainly sourced by the state sector,³ and 2) the Parliament names the civic associations. The members of the Qualifications Councils are even selected by the Parliament and the president equally. The diversification of finance-related effects should be achieved through a combination of the state programme order,⁴ the collection of licence fees, programme sales and time-limited “commercial presentations”. The advertising ban and the limitation of the paid content ordered by state should be temporarily lifted during a transitional period defined by the Parliament.

Although no such public broadcaster had been freed from state influence and the law itself only contained scarce provision, it was considered progressive. Unfortunately, its adoption was not so much a result of the world-improving efforts of the deputies, but their impulse reaction to the then aggressive policies of President Leonid Kutschma.⁵

Only four months later, the Parliament adopted the Resolution “On the Founding of the Broadcasting Organisation of Public Broadcasting of Ukraine” (“HURT”).⁶ The Resolution made reference to the above law, but had very little

¹ That belonged to 51 % to the state and to 49 % to a banking consortium, but in fact was controlled by B. Beresowski.

² Law No. 485/97-WR "On the System of Public Television and Radio of Ukraine", introduced by V. Shevchenko, W. Ponedilko, S. Tkachenko, adopted on 18.7.1997 (LAW 1997)

³ Political parties in the Parliament, the President of Ukraine, the Cabinet of Ministers, the National Bank, the Attorney General's Office, the National Council for Television and Radio, the Anti-Monopoly Committee and the State Agency for Author Rights delegate each one representative.

⁴ Restricted to a maximum of 20 % of the broadcasting time

⁵ DOVZHENKO / DERKACH 2011

⁶ Parliamentary decision "About the Founding of the Organisation of Public Broadcasting of Ukraine" ("HURT") (as a closed joint-stock corporation), adopted on 21. 11. 1997 (VERKHOWNA RADA 1997a)

to do with it. Its primarily declarative character (like: “Development of a variety of pluralistic and innovative broadcasting programmes, which should be of high ethical standards and artistic-aesthetical quality) had the objective of assigning public broadcaster status to the closed joint stock company “HURT” (founded by 16 shareholders)¹ in order to secure desirable nationwide frequencies and transitional government funding. At the time, Oleksandr Moroz seemed to be an advocate of the “HURT” project. Moroz, a Parliamentary speaker, intended to use the media support for the 1999 presidential election campaign.² The Parliament even constituted a Public Council which should consist of 39 members, including representatives from 28 political parties and state institutions.³

The National Council for Broadcasting⁴ prevented the “HURT” resolution from being implemented by refusing to issue broadcasting licenses,⁵ and the Government found reasons to decline funding.⁶ Discussions about “HURT”, like those on “true” public broadcasting,⁷ died down. The main author of the 1997 Law and later chairman of the National Council for Broadcasting, Vitaliy Shevchenko, tried to move “his” law to implementation through appropriate legislative initiatives. He even managed to bring the 1999 draft law on “The foundation of the System of Public Television and Radio”, which envisaged the transformation of state radio and television companies to public broadcasting, through Parliament, but ultimately failed due to Kutschma’s presidential veto.⁸

In 2002, Olexander Kryvenko, a famous journalist and politician (who died in a car accident one year later), founded the project “Public Radio”. Its programmes evolved into an independent platform for public discussions on a smaller scale. Despite repeated re-transmission problems, failures in the frequency tender process and periodic solely internet broadcasts, listener’s calls enjoyed great popularity.⁹ The broadcaster was supported financially by the Soros Foundation “Renaissance”, and to a lesser extent, by the Delegation of the European Commission to

¹ WITHOUT AUTHOR 1998

² DOVZHENKO / DERKACH 2011

³ Again, some “civil society” organisations delegated MPs. See the Parliamentary Resolution “On Creation of a Public Council of the Public Broadcasting Organisation of Ukraine”, adopted on 15. 1. 1998 (VERKHOWNA RADA 1998).

⁴ This body is responsible for supervision of commercial broadcasters and distribution of frequencies; the President and the Parliament each appoint half of the members.

⁵ On 22. 1. 1998 (WITHOUT AUTHOR 1998).

⁶ ZDIORUK / HNATYUK 2008

⁷ DOVZHENKO / DERKACH 2011

⁸ Draft law No. 2105-2 “On the Foundation of the System of Public Television and Radio”, introduced on 28. 9. 1998 (newer version introduced on 22. 11. 1999) by V. Shevchenko, failed to overrule the presidential veto from 18. 11. 2000. The President justified this by saying that the establishment of a public broadcaster should not lie solely within the competence of the legislative power (DRAFT LAWS 1998/1999). This was confirmed nine years later in a case by the Constitutional Court, see below (RULING 2009).

⁹ SYUMAR 2005



Ukraine and the U.S. Embassy.¹ However, broadcasting was discontinued in 2005 after the Soros Foundation withdrew its financial support with respect to presumed democratic breakthrough, and because the new political leader, Viktor Yushchenko (who participated in his time as opposition to various shows and promised his support to the radio organisers),² had not secured financing. As one expert aptly remarked, “Public Radio” “died” during discussions about public television.³

3. Failed Discussions (The Presidency of Viktor Yushchenko, 2005 – 2010)

After the so-called “Orange Revolution” in 2004, the censorship and suppression of expression that had prevailed under the Kuchma regime declined sharply. There was a spirit of optimism, which also covered the issue of public broadcasting. One of the most important impetuses for the discussions came from the Coalition of civil society organisations “Public Broadcasting”, which was founded almost immediately after it was clear that the Orange Revolution had succeeded.⁴ In preparation for the parliamentary hearings on the “Perspectives of the founding of a public broadcasting in Ukraine” that were scheduled for April 2005, several meetings of working groups took place, in which well-designed and very detailed concepts of programming and editorial policy (which *inter alia* treated the reporting of conflicting events such as protests) and a draft law⁵ were formulated.⁶ Results and other discussion papers have been published online on the website of the participating NGO “Telekrytyka”,⁷ which remains to this day the most important platform for discussions on public broadcasting. Other scientists and individuals who cooperated in part in the initiative presented their concepts.⁸ There was also support from the then Deputy Prime Minister, Mykola Tomenko,⁹ who tried to influence the situation by presenting a sur-

¹ KHABYUK 2004, p. 27f.

² SYUMAR 2005

³ After KUIT 2008, p. 145f.

⁴ On 20. 12. 2004

⁵ The development and presentation of various documents: “The Concept of Program Policy of the Public Broadcasting”, “Principles of Editorial Policy of the Information department of Public Broadcasting”, “The Concept of Public Broadcasting”, “Proposals for Legislative Regulation of the Legal Status of Public Broadcasting Organisations and Their Governing Bodies” (COALITION PB 2005).

⁶ The group discussions were especially supported by Tatiana Lebedeva, former chairman of the National Association of Independent Broadcasters (NAM), and Natalia Ligatschowa, chairman of the NGO “Telekrytyka”.

⁷ <http://www.telekritika.ua/media-suspilstvo/suspilne-movlennya/>

⁸ Here should be mentioned, among others, the television manager Oleksandr Tkachenko and his advertising revenue fixed approach, and the media lawyer Taras Shevchenko, who brought in his conceptual findings from other media systems.

⁹ DOVZHENKO / DERKACH 2011

vey in which 68 % of the citizens who responded supported the introduction of public broadcasting.

Following the Parliamentary hearings on 13. 4. 2005,¹ Taras Stezkiv, Vitaliy Shevchenko and Serhiy Pravdenko registered a draft project for revising the 1997 public service law on 23. 5. 2005.² Simultaneously, Taras Stezkiv und Andriy Shevchenko (son of Vitaliy Shevchenko; he became famous during the Orange Revolution as a journalist of the opposition TV station's "5th channel") were delegated to the state television company in order to prepare its transition to public station.³

In the summer of 2005 Viktor Yushchenko announced the introduction of public broadcasting parallel to state broadcasting.⁴ This presumably came at the urging of Olexander Zinchenko (former Chairman of the Media Committee, supporter of the implementation of the 1997 Public Broadcasting Law and then Secretary to the President of Ukraine) and Petro Poroshenko (owner of the "5th channel" and Secretary of the Council for National Security and Defence), but also in light of the forthcoming Parliamentary elections in March 2006. The state broadcaster would therefore remain under the control of the President. Regarding the lack of economic resources and scarcity of terrestrial frequencies, this meant the end of the reform efforts. By autumn 2005, the team headed by Taras Stezkiv had already left the state broadcaster. After all, the information service of the broadcaster had been improved and democratised.

Parliamentary debate has gradually been scaled back. The draft law mentioned above failed to pass Parliament in the second reading on 23. 12. 2005.⁵ Allegedly, the insurmountable stumbling block for which the deputies of the governmental coalition refused to vote was the President's demand to appoint 10 of the 30 members of the supervision board.⁶ The draft law's co-author and then chairman of the media committee, Serhiy Pravdenko, commented that: "Those (MPs) who are in power, are not willing to release their National (State) station, while those who will come to power (tomorrow) hope that the station will belong to them."⁷

The unfinished, but still viable draft law strongly changed the 1997 public service law. It also included many elements from concepts of the Coalition of civil society organisations "Public Broadcasting" and the Institute for Media Law. According to the draft law of public broadcasting, two separate state radio and television corporations, which should not be open to privatisation, should be es-

¹ PARLIAMENTARY HEARINGS 2005

² Draft law No. 7539 to revise the Law "On the System of Public Television and Radio of Ukraine", introduced on 23. 5. 2005 by S. Pravdenko, V. Shevchenko, T. Stezkiv, rejected in the repeated second reading on 22. 12. 2005 (DRAFT LAW 2005)

³ DOVZHENKO / DERKACH 2011

⁴ DOVZHENKO / DERKACH 2011, DOLGOPOLOVA 2010

⁵ SHECHENKO 2005

⁶ KURASHYNA 2005

⁷ Ibid



tablished, and equipment and other property should be handed over following an inventory by the State Property Fund (with the publication of results).

The corporations receive separate bodies, each consisting of the supervisory council, the board of directors, the director general and the administrative council. The supervisory council is responsible for fundamental decisions and the appointment and dismissal of the director general and the board of directors in particular. The seven-person board of directors has the particular task of supervising the activities of the director general and the administrative council. The director general is responsible for the implementation of programme policy and the general management. He is also the Chairman of board of directors, and can appoint and dismiss its members, to whom he delegates responsibilities.

The supervisory council consists of 30 persons; one half should be appointed by Parliamentary fractions (including 8 of the government parties and 7 of the opposition), the other half by nationwide registered civil society organisations with work experience of no less than 3 years. MPs, governmental officials, military personnel and employees of intelligence services, prosecutorial offices and other broadcasters are excluded from membership. The representatives nominated by civil society organisations should be approved by the Parliamentary Media Committee and subsequently determined by public draw. Members will be appointed for six years, with one third being appointed every two years. A member can only be dismissed by the Supervisory Council, and provided that such member has missed more than three consecutive meetings unexcused.

The programme mission is to provide all groups of the population with diverse and balanced programmes. The freedom to form opinions as an element of the democratic process must be supported. In the case of governmental communications, the opposition has the right to distribute their own information. The companies, however, have the autonomy to decide which socially relevant events are reported, and in which way. However, they are obliged to provide certain high-ranking state officials with transmission time for contributions on major issues. The funding should consist of revenues from licensing fees (whose amount and collection should be set by a separate law), advertising, paid content ordered by state and allocations from the state budget etc.¹

Despite their failings to pass the above draft law, the governing parties managed to adopt a selective democratisation of the state broadcasting companies through a 2006 revision of the Law “On Television and Radio”,² in which each existing radio and television company should be given to a Council of 17 members, including 9 appointed by Parliament, 4 by the President and 4 by media associations. The president of each company should be appointed by the Pres-

¹ DRAFT LAW 2005

² Revision of the Law No. 3317-15 “On Television and Radio” (adopted on 12. 1. 2006), with a new procedure for appointing public council members and the head of the state television and radio companies through Parliament and the President (LAW 2006).

ident of Ukraine, having been nominated by the Council and approved by Parliament. The law, however, haven't defined neither the powers of the new body nor the terms of members. After the Parliamentary elections in March 2006 a new governmental majority has constituted ("the Anticrisis Coalition"), which stood in opposition to the "orange" parties, and refused to send their representatives to the Council.¹

In 2007, various politicians tried to agree on party and institutional boundaries: Eduard Prutnik, head of the State Broadcasting Committee (a central body subordinated to the Cabinet of Ministers which manages state media holdings); Vitaliy Shevchenko, chairman of the National Council for Broadcasting; Andriy Shevchenko, chairman of the Parliamentary Media Committee; and Taras Petriv, chairman of the National Commission for Freedom of Speech at the President of Ukraine. Under OSCE assistance, the working group then developed a concept, which was, however, not mature enough to be proposed as a draft law into the Parliament.²

At the same time, the State Broadcasting Committee, under Eduard Prutnik, tried to establish a new TV news program ("First Public") as a cooperation between regional state television studios. The program was launched shortly before the early Parliamentary elections in September 2007 but was stopped in spring 2008.³

Of note are two legislative initiatives by Andriy Shevchenko. With his 2008 draft law that amended the Law "On Television and Radio", he tried to fill the legal gaps, especially by defining the competencies of the Council and the President of the state broadcasting companies or establishing companies' funding in a separate budget to the amount of at least 0.1 %, or rather 0.05 %, of the whole state budget. The 2008 draft law was abolished in the first reading.⁴ This was followed by an attempt to revise the Law "On the System of Public Television and Radio"⁵ in 2009. The 2009 draft law contains similar provisions to the previous draft law; however, in this version, it was related to a public broadcaster but founded by the Cabinet of Ministers. Funding is also partially revoked: It should indeed come from the state budget (i.e. without an intermediary institution), but at a minimal amount comparable the first year of public broadcasting. The 2009 draft law was also rejected.⁶

¹ Also, the State Broadcasting Committee blocked the formation of the Council (TELEKRYTKA 2007a). A draft law No. 3140, introduced on 11. 9. 2008 even suggested abolishing public councils and only nominating the companies' presidents in Parliament. In the second, repeated reading, the draft was radically changed: it envisioned that only oppositional factions and media associations could delegate representatives. (DRAFT LAW 2008a)

² DOVZHENKO / DERKACH 2011

³ TELEKRYTYKA 2008

⁴ Introduced on 25. 4. 2008 (DRAFT LAW 2008b).

⁵ Introduced on 12. 3. 2009.

⁶ DRAFT LAW 2009



In 2009, the Constitutional Court ruled that the new provisions of the Law “On Television and Radio” regarding the Council and the appointment procedure of the company’s presidents were contradictory to the Ukrainian Constitution. The decision’s explanatory statement refers to the fact that, in the Constitution, the powers of the Parliament and the President are enumerative and exhaustive. Thus, the Parliament has the power to appoint the head of the State Broadcasting Committee at the proposal of the Premier Minister. Accordingly, only the National Broadcasting Committee is responsible for the designation of the heads of broadcasting companies.¹ It is unclear, however, whether the posting of representatives from civil society is covered by the Constitution. The Constitutional Court has not taken this position into consideration because this wasn’t part of the constitutional complaint.

Not only did Parliament fail, it was the former “white hope” Yushchenko, who first failed to fulfil this important election pledge. His activity was limited to convoking different working groups.² The decree of 21. 2. 2008 envisioned the constitution of a group of representatives of state bodies and broadcasters as well as artistic and civic organisations, but without the involvement of Parliament.³ The group has yet to deliver any results. The advisory body appointed by Yushchenko, the “National Commission for Freedom of Speech under the President of Ukraine” adopted the implementations principles of PSB standards on 19. 12. 2006.⁴ Serhiy Kvit, a member of the commission, has said that public broadcasting was the subject of debate in 2006 and then again in 2010. Accordingly, the President never intended to introduce public broadcasting.⁵ A draft law, developed under the aegis of the Commission but only published after its dismissal by the journalists’ movement “Stop Censorship” on 24. 6. 2010, is quite innovative on several points.⁶ Yushchenko used his decrees on public broadcasting to imitate the implementation of requirements of the Council of Europe⁷ and NATO,⁸ but also to pressure the non-viable Tymoshenko government by issuing tasks⁹ and demonstrating its failure to act.^{1,2}

¹ Decision of the Constitutional Court No. 21-rp/2009 from 15. 9. 2009 about the non-constitutionality of provisions of the Law “On Television and Radio” regarding the appointment procedure of the public council and the heads of the national television and radio companies through the Parliament and the President (RULING 2009)

² For example, a group convoked by the Secretariat of the President on 30. 9. 2005 has yet to convene (DECISION 2005a, DECISION 2005b).

³ DECREE 2008

⁴ TELEKRYTYKA 2006

⁵ Kvit 2011

⁶ LAW CONCEPT 2010a

⁷ The decree from 20.01.2006 (DECREE 2006) in response to the PACE Resolution 1466 (2005) (PACE 2005).

⁸ The Decree of 03. 2. 2010 (DECREE 2010a)

⁹ The Decree of 21. 2. 2008 planned to introduce the public broadcasting in parallel to the state broadcasting (DECREE 2008).

4. Recent Efforts

Against the Background of Growing Public Pressure on the Media (The Presidency of Viktor Yanukovych, 2010 to present)

“Public Service Broadcasting will be established if people come into power for whom democracy is not a mask, but a conviction,” said the former spokesperson of Viktor Yanukovych and current deputy head of presidential administration Hanna Herman (previous long-term employee of the U.S. radio stations “Radio Liberty”).³ However, journalists associate the inauguration of the new president with a return to the methods of the Kuchma era, which tend to replace the liberalised, bribable reporting of the Yushchenko period.⁴ It has been reported that censorship has returned to the TV channel “1+1”,⁵ information programmes on state television have been brought in line with coverage on the “Inter” station (its alleged owner Valeryi Chroshkovskyj is currently head of the secret service “SBU”),⁶ violence against journalists has returned⁷ and that the Ukrainian version of “Euronews” contains “translation biases” etc.^{8,9} And although the state television company (NTKU) announced, in April 2010, that it will apply public programming principles in the near future,¹⁰ its vice-president Walid Arfusch made it clear that they will only cover the actions of the state power in a positive manner, and that they have a duty to support public authority.¹¹

A new wave of discussions on the introduction of public broadcasting comes from the newly established “Humanitarian Council under the President of Ukraine”. A working group within the council, led by the scientist Valeriy Bebig, presented an initial concept for public discussion on 24. 6. 2010,¹² which was adopted in a largely unchanged form despite major criticism.^{13,14} As expected, work took place without representatives from civil society organisations.

¹ The Decree of 18. 2. 2010 (DECREE 2010b)

² DOVZHENKO / DERKACH 2011

³ 02. 08. 2008, <http://www.partyofregions.org.ua/pr-east-west/47ac67c064e7f/>

⁴ BELYAKOV 2009

⁵ KORRESPONDENT.NET 2010a

⁶ DOVZHENKO / DERKACH 2011, SYUMAR 2010

⁷ <http://goo.gl/iaic5>

⁸ DOVZHENKO 2011

⁹ These and other infringements of journalists’ rights have led to the founding of the movement “Stop Censorship”, which now counts more than 500 members and 100 organisations: <http://goo.gl/vZEZO>.

¹⁰ KORRESPONDENT.NET 2010b

¹¹ Cited after DUTSYK 2011.

¹² DRAFT GENERAL CONCEPT 2010

¹³ OSTAPA 2010

¹⁴ Adoption of the general concept “Founding of the National Television and Radio” by the Humanitarian Council under the President V. Yanukovych on 30. 9. 2010 (GENERAL CONCEPT 2010).



The concept's strong, declaratory provisions envision public broadcasting as a body governed by public law with non-profit purposes. Its bodies are the Supervisory Council and the Board of Directors. The Supervisory Council consists of one presidential representative and representatives selected from the Parliamentary groups and Cabinets of 13 groups of nationwide NGOs¹ or NGOs with more than 100 thousand members. If a group of NGOs cannot agree on a representative, the corresponding Parliamentary committee will decide. The duties of the Supervisory Council include the appointment of the Chairman (in a competition procedure) and Board of Directors, the adoption of an editorial statute and forming a budget. During a transitional period of two years, the public broadcasters will be financed by the state budget to at least the same amount as previous state operators. Over the next two years, state funding will be reduced gradually, and shall be compensated by income from the licensing fee established in the first year. Income from advertising activities is permitted in the transitional period if the license fee income is insufficient.²

Although the Humanitarian Council does not have to present a draft law until early December, Valeriy Bebyk published a draft based on the previous declarations on 18. 10. 2010,³ and without coordinating its contents with the Presidential administration. This was probably for tactical reasons, as Andriy Shevchenko first brought a draft law to Parliament on 11. 10. 2010⁴ and the time for the registration of an alternative law project (25. 10. 2010) was running out. Such a procedure, however, was met with resentment, and the draft law was forwarded to the Cabinet of Ministers for review by the State Broadcasting Committee.⁵

Half year later, the Cabinet of Ministers sent back a revised draft, which contained many provisions that strongly enable state influence.⁶ Of particular note are the revised rules regarding property, which the Cabinet of Ministers now lends to public broadcasters and may revoke at any time for legally undefined, non-appropriate use.

¹ The groups are divided into the following areas: education, science, religion, sports, journalism, legal protection, entrepreneurship, youth, local government associations, labor unions, minorities, disabled people, WWII veterans.

² GENERAL CONCEPT 2010

³ (Unauthorised) law concept "On National Public Broadcasting Company of Ukraine" by the Humanitarian Council under the President V. Yanukovych / V. Bebyk, published on 18. 10. 2010 (LAW CONCEPT 2010b).

⁴ DRAFT LAW 2010 Authors of the draft law are besides Andriy Shevchenko three non-MPs: Dmytro Kotlyar (lawyer), Roman Holovenko (lawyer at the Institute for Mass Information) and Taras Shevchenko (Director of the Institute for Media Law). The latter participated already in the consultations of the Coalition "Public Broadcasting" in 2005 and presented then an own draft concept (see page 8, footnote 8).

⁵ Law concept of the Cabinet of Ministers /State Committee for Broadcasting "On the Public Television and Radio of Ukraine", on 1. 7. 2011 (LAW CONCEPT 2011)

⁶ Law concept of the Cabinet of Ministers /State Committee for Broadcasting "On the Public Television and Radio of Ukraine", on 1. 7. 2011 (LAW CONCEPT 2011)

Modifications were also made in the composition of the Supervisory Council: seven representatives of various executive state bodies, in the competence of Cabinet of Ministers, were added to the 14 representatives of civil society organisations. Also, in the new draft, parliamentary parties are not allowed to appoint any representative. If a group of NGOs cannot agree on a unified candidate, a public draw will be carried out by a commission of Parliamentary human rights ombudsman, the Media Committee, the Secretariat of the Prime Minister and various central executive authorities.

The requirements for membership in the Supervisory Council were, on the one hand tightened, so that various officials of various government bodies were excluded from membership. In contrast, civil servants of lower rank than ministers (such as employees of the Cabinet) could theoretically sit on the Council. An addition is that members should be Ukrainian citizens, have a university degree and at least 5 years of permanent residence (similar to MPs). The Supervisory Council decides the most important fields of activity, monitors the implementation of statutes and appoints and dismisses the Executive Board and Chairman as well as the Chairman and members of the Audit Commission. The latter monitors the financial and economic activities of the Executive Board. The Executive Board is primarily responsible for operational management.

The financial provisions have been extended to potential revenues from a special levy of 1 %, which the broadcaster receives from advertising activity, etc. Paid content was again introduced (up to max. 20 % of the broadcast volume), as a possible form of financing. The regulations for the collection of license fees were not clearly specified and are to be decided by the Cabinet of Ministers.¹

The draft has been criticised by media experts, but also by Valeriy Bebig, who spoke of a draft changed beyond recognition. Hanna Herman also expressed her dissatisfaction. In contrast, the CoE expert Eve Salomon found the draft to be good after preliminary investigation. An official assessment can only be conducted after the draft law has been registered in Parliament.²

The draft law proposed by Andriy Shevchenko on 11. 10. 2010 has yet to be discussed in Parliament. According to this draft, a Supervisory Council adopts and controls the implementation of the programme guidelines and the Editorial Charter; decides on the establishment, reorganisation and liquidation of public broadcasting legal entities; supervises the administrative, financial and economic activities of public broadcasting and of its subsidiaries; appoints, in a selection procedure, and dismisses the Director General and subsidiary heads; approves contracts with a combined total of 5 million Hryvnia (approximately 0.5 million €); adopts the consolidated budget and examines the report on its implementation; decides on the staffing plan and reads the Director General's quarterly report; adopts the annual report (detailed transparency requirements

¹ Law concept of the Cabinet of Ministers /State Committee for Broadcasting "On the Public Television and Radio of Ukraine", on 1. 7. 2011 (LAW CONCEPT 2011)

² OSTAPA 2011



in the draft law); establishes and dismisses public councils and other advisory bodies (the latter should be established to improve the social representation); prepares proposals for the improvement of legal regulation; decides on the participation of public broadcasting in public organisations; elects the chairman, vice chairman and a secretary from among its members; appoints the auditor, etc.

The Supervisory Council has 9 representatives from Parliamentary factions: 6 (+ 3 reserve representatives) from the journalism and media sector representatives conference of civil society organisations. The delegation will be conducted for 3 years with one possible re-appointment.

Here, Parliamentary factions can appoint civil servants and MPs, but no owners or employees of other broadcasters who thus have a conflict of interest. Civil society representatives may also appoint neither deputies nor employees of the state and local governments. All potential members have to be Ukrainian citizens and have a university degree.

In this conception, the Director General is also responsible for operational management. However, only he and the head of the legal entities are appointed in a selection procedure. The Director General appoints the directors without the participation of the Supervisory Council. His dismissal is, in contrast to the “Blanco check” in the governmental draft, only possible in case of a violation of the labour contract and an unsolved conflict of interest lasting one month. In addition to the usual powers the Director General may participate in meetings of the Supervisory Council in an advisory capacity.

Funding is a fixed amount of at least 0.05 % of each annual State budget. The sale of own productions, fees for exploitation of rights, and benefits, etc. are permitted. Funding from advertising is prohibited, as are commercial economic activities and investment in commercial companies.

All in all, we can say that, according to the draft law of A. Shevchenko et al., the public broadcaster cannot escape state influence. This has also been criticised by various experts, inter alia by the famous media lawyer Nataliya Petrova.¹ The provisions of the draft law of A. Shevchenko et al. are, however, better developed than those in either the government document or Valeriy Bebik’s draft, and the powers of the Council and the Director General are regulated in great detail. The draft law also contains detailed provisions for the appointment of members to the Supervision Council in case one Parliamentary group declines nominating a representative (as has happened in the past, see above) in order to torpedo the convening of such a body. The rules for the convening and occurrence of civil society organisation conferences are both well prepared and protected from government influence. Another highlight is the passage, allowing the broadcaster autonomy in the use of state funds.

The disadvantages are that the Cabinet of Ministers is responsible for the founding, adopting the statute and formally appointing and dismissing Supervi-

¹ PETROVA 2011a

sory Board members in accordance with law. Presumably this is a tactical move to make the draft law on a majority. Nor is it clear how the draft law takes into account the decision of the Constitutional Court into account, after which the head of state broadcaster is appointed by the Cabinet of Ministers or its subordinated body. Even the legality of sending representatives to the Supervisory Board by the Parliament and the civil society in the field of media law remain unclear. Perhaps the Constitution should be changed here; however, that would require a two thirds majority from the deputies. Alternatively, the Constitutional Court's decision can be ignored, as has often happened in the past.

5. Main Elements of State-Distant German Public Broadcasting¹

Normative statements on the design of a concrete broadcaster or a broadcasting order are a mixed blessing. On the one hand, it is interesting to observe which mechanism have been developed in other countries to secure state independent broadcasting. However, on the other hand, it cannot be assumed that some elements present in other countries can be implemented with a similar success. We nevertheless analyse the most important elements of the German public service broadcasting which is referred to as one of the best-practices of public broadcasting worldwide.

1. Decentralised structure

Because of the fact that the public broadcasting in Germany is historically organised at the (regional) level of federal states, most broadcasters are founded at this level. This also means that general legislation across all federal states (such as the Interstate Treaty on Broadcasting and Telemedia² and some related treaties) as well as federal state laws and Treaties between two or more federal states.

The federal state legislation is similar, but to some extent different e.g. regarding the number of members in the internal bodies of public broadcasters. The main advantage of a regionalised public broadcasting structure is reduced control through state bodies. The regional structure leads to the representation of regional culture and variety for all 16 German federal states – both in informative and entertainment means.³

Such a federalised structure is, on the other hand, very costly. Parallel structures are expensive with regard to high fixed costs (equipment, personnel etc.). As such, the consolidation of regional broadcasters is to be discussed. Moreover,

¹ This section relies partly on KHABYUK 2010, 2011.

² "Interstate Treaty on Broadcasting and Telemedia". Its current German version can be found here: http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13._RStV_01.04.2010_01.pdf. An unofficial English translation of an older version of the Interstate Broadcasting Treaty is available here: www.alm.de/fileadmin/Englisch/9_RAESTV_Englisch.pdf.

³ KLEINSTEUBER 2011, p. 61



the 9 regional broadcasters¹ are organised under the ARD, which provides a nationwide television programme. The coordination within the ARD and with the other two nationwide radio² and television broadcasters also incurs large costs.³ Similarly laborious is the legislative procedure for Interstate treaties, where the Prime ministers of all 16 federal states have to agree on the legal act, followed by the ratification of the 16 federal Parliaments. As the legislation of the 15th Amending Treaty to the Interstate Treaty on Broadcasting and Telemedia shows, such legislative procedure is long lasting and highly uncertain for public broadcasters.

2. Foundation / legal regulation / property

German public broadcasters are founded by one or more federal states through federal state laws (in case of one founder) or interstate treaties (in case of multiple founders) as legal corporations that generally serve the public. The legal relationships within the organisation are regulated by a Statute that is adopted by its bodies. Although German public broadcasters are rather strongly regulated by laws and statutes, they enjoy great autonomy because the federal state government only exercises a narrow definition of “legal supervision,” which excludes programming issues. According to this, the Broadcasting Council adopts the broadcaster’s Statute, which the federal state government has to approve. The federal state government also has the right to delegate a representative to all meetings of the broadcasting councils with the exception of programme committee meetings. Its measures may only concern infringements that have not been removed or perceived by the broadcasters’ supervisory bodies in a timely manner. The Federal Constitutional Court, whose rulings have strongly influenced legislation in favour of the independence of public service broadcasting, plays an important role in Germany.

Assets belong to public broadcasters on a property basis. This even goes so far that, after World War II, broadcasting transmitters were passed to the direct ownership of public service broadcasters. Due to the introduction of commercial broadcasting in mid-eighties, this has changed for most public broadcasters. However, HR and WDR still operate their own broadcasting transmitters.⁴ In addition, public broadcasting is given priority in the procedure of licence granting, and federal state laws contain “must carry rules” that give the highest priority to public service channels, e.g. for the terrestrial distribution of signals and for distribution through cable networks.

¹ “Bayerischer Rundfunk” (BR), “Hessischer Rundfunk” (HR), “Mitteldeutscher Rundfunk” (MDR), “Norddeutscher Rundfunk” (NDR), “Radio Bremen” (RB), “Rundfunk Berlin Brandenburg” (RBB), “Saarländischer Rundfunk” (SR), “Südwestdeutscher Rundfunk” (SWR), “Westdeutscher Rundfunk” (WDR)

² “Deutschlandradio” (DRadio)

³ “Zweites Deutsches Fernsehen” (ZDF)

⁴ DEPFRICH ET AL. 2007, text number 15

3. Governance structure

The organisational structure of German public broadcasters is similar; it consists of a broadcasting council, an administrative council and a Director General. As mentioned above, federal states provide special provisions for regional broadcasters. The governance structure of the largest regional broadcaster – Westdeutscher Rundfunk (WDR) – shall be described here as an example.

According to the federal state “Law Regarding the Westdeutscher Rundfunk Cologne (WDR)” persons cannot be members of broadcasting and administrative councils simultaneously. To exclude conflicts of interest, the following persons cannot belong to the bodies: members of federal or federal state governments, staff of the top-level federal or federal state authorities (e.g. federal ministries, federal state ministries), public officers that may be placed on interim retired status at any time, elected municipal public officers (e.g. city mayors), WDR employees (except employee representatives), employees of an affiliated company or a company controlled by an affiliated company and members of supervisory bodies and employees of other public service broadcasters, commercial broadcasters and commercial broadcasting regulating authorities. In addition, members of supervisory bodies are neither directly nor indirectly allowed to conduct business with the WDR. The broadcasting council consists of 47 members: 13 members are appointed from the federal state Parliament, 21 members from different societal groups and institutions (churches, trade unions, communal representation, social welfare organizations, etc.), 10 members from the sectors of journalism, culture, arts and science, and 3 members representing the elderly, disabled, and people of immigrant origin. The number of members of the European, federal and federal state Parliaments is restricted to 9 persons. Two employee representatives may also take part in the meetings of the broadcasting council. For every member, a deputy must be delegated.

The broadcasting council advises and decides on all questions of fundamental importance for the broadcaster, especially programming. In particular, it adopts the statutes of the WDR, elects and dismisses the Director General and the directors (the latter only upon the Director General’s suggestion) and decides on medium-term financial planning, program guidelines, the budget, annual WDR statements, acquisition and realisation of holdings and the adoption of the annual report. The broadcasting council can declare violations of programming principles in programs in written form, although it is not permitted pre-control of programs before transmission. It approves the activities of the Director General, which are significant for programming and the development of the WDR.

The administrative council consists of 9 members, of which 7 are appointed by the broadcasting council (max. 2 may be members of Parliaments) and 2 are employee representatives. Membership in the broadcasting council precludes membership in the administrative council. The administrative council monitors the Director General in all management activities except programming decisions. It can demand reports from the Director General, inspect accounts, calculations and writings etc. Its approval is required in cases of labour contract conclusions with directors and the Director General, and for acquisitions and sales



of companies, shares, major transactions, bank loans, extraordinary expenses, changes in the organisational structure of the corporation etc.

The Director General governs the WDR independently. He is responsible for the programming, all of the broadcaster's strategic operations and the programmes' compliance with legal requirements. The definition of the PSB programme remit is rather broad. Following the Director General's proposal, the WDR issues programme directives, especially concerning details about the implementation of the remit and principles of journalistic and qualitative standards. Every two years the WDR also publishes a report about the fulfilment of its remit, the quality and quantity of the existing offerings and the main points of the planned offerings. The Director General reports annually to the Broadcasting Council about the implementation of the remit.

The Director General has the sole right to propose candidates for election as directors through the broadcasting council. Decision-making among the board of directors does not encourage collective responsibility, but is subordinated to the Director General. He is relatively free to make programming decisions, but is more dependent with regard to economic and technical decisions (controlled by the administrative council). The power balance in the WDR is clearly distributed in favour of the Director General; such governance structure is called "Director General's Corporate Governance".

The organisational structure of the WDR as a typical regional public broadcaster comprises all radio, television and internet activities. Generally said, it is divided into five directorates, each governed by one director: for production, technical, radio, television and administrative issues. The internet division changes its subordination every two years between the radio and television directorates. Above all, a division into radio and television companies is economically viable because of the fixed costs of media production and convergence of media outlets and content.

4. Funding

In Germany, public service broadcasters are predominantly financed by licence fees. Since 2009, the TV fee has been €17.98 per month (€5.76 for radio only or for PC with internet access). Revenues from advertising and other commercial sources are allowed, but less importantly - they only amount to 4 % of the total revenues (average for all public broadcasters).

The amount of the licence fee is calculated by a commission of experts ("KEF") every four years, who check the funding demands claimed by the public service broadcasters with regard to proper calculation. They also have to check funding demands with regard to the legitimacy of the broadcasters' programming decisions, which is a difficult job as they have to respect the broadcasters' programming authority. It also considers the compliance of economic efficiency and austerity principles including the associated potential for rationalisation, as well as general economic development and the budgets of public authorities. After these checks, the KEF suggests the appropriate amount for the licence fee to the federal state Parliaments, which may only deviate from these suggestions under narrow conditions.

The KEF consists of 16 independent experts delegated by the federal states for five years. A delegation can be withdrawn for an important reason. However, members are not obliged to perform particular duties or follow certain instructions. Excluded from membership are members or employees of Parliaments, public service or commercial broadcasting regulatory authorities as well as affiliated corporations. The KEF is considered to be independent. When in 2005 the federal state Parliaments deviated from the KEF recommendations for the first time in history (they approved an increase of €0.88 instead of the €1.09 the KEF had suggested), the Federal Constitutional Court determined that this deviation was illegal and did not fit with the narrow conditions that would allow such a deviation. Formerly, the licence fee in Germany was collected by the Federal Post. In 1976 the public service broadcasters founded a separate organisation for this task, the “GEZ” (“Gebühreneinzugszentrale”), in order to become independent from the Federal Post and optimise the collection procedure (the GEZ is more efficient and less expensive than the German taxing authorities). Almost every household that possesses a receiving device is registered with the GEZ.

6. Recommendations from the German Point of View

Taking German public broadcasting experience into consideration, one can say that a decentralised structure of broadcasting would support its independence. From the Ukrainian point of view, this is probably less practicable; first of all because of Ukraine’s unitary state structure, and secondly, because Ukraine is divided into 24 administrative regions, the Autonomous Republic Crimea and two cities with the special status of a region. The costs for production and coordination would be very high. Instead of this, the founding of 6 regional broadcasters for Western, Eastern, Northern, Southern and Central Ukraine and one for Crimea is considered more appropriate. Regional identity could still be represented and would generate stronger independence from local state elites than under a one-region broadcaster.

As one can see in the German model, public broadcasting cannot completely abstain from state involvement. It has to be founded by a law and within an adequate legal form. The government also has to exercise minimal supervision. The governance structure of the German regional broadcasters allows the Director General to defend his interests before the broadcasting council and politicians. Thus far, restricting the number of politicians from the legislative branch to one third of the group and the exclusion of representatives from the executive branch has proved beneficial.¹

¹ Compare: the governance structure of the “Second German Television” (ZDF) allows potential states quota in the ZDF’s television council of 79 %, and a high state quota in its administrative council (6 of 14 members are delegated by the federal states governments and the federal government and eight by the broadcasting council). With this background, the scandals of state interference such as in the Brender case are unsurprising. The ZDF Interstate Treaty is, moreover, under judicial review in the Constitutional Court.



If they do not possess their own property, public broadcasters remain open to blackmail by the administrator of the required property. It is a pity that the Constitutional Court in Ukraine still lacks sufficient legal power to play a major role in the democratisation process, and to support state-distant public broadcasting like that in Germany. Another problem is the selection of appropriate civil society organisations in the regions. Without a developed civil society this is the most difficult challenge. Many of the larger organisations have developed from soviet ones and still function according to old rules.

Funding is a very important issue because “he who pays the piper calls the tune”. Bad infrastructure, poverty in rural regions, an absence of area-wide access to banking services and a profound aversion to paying taxes makes collecting the license fee very difficult and inefficient. An alternative possibility would be to levy an “appendix” tax, which would be collected from each household with other payments, e.g. with the electricity bill. It would also allow the newly founded public broadcaster to collect funds directly, which is of key importance for its independence.

It is still possible to insist on payments from the state budget, but the experience of other countries shows that the legislator usually fails to adhere to its own laws or changes them to its own benefit. Independence from the future funding source is highly recommended for either establishing a new body or giving special powers to the National Council for Broadcasting in order to assess funding the requirements of public broadcasters with disclosure standards. Bringing more transparency in this stage through “outsourcing” to an external organisation is a mighty instrument as one can see in Germany.

7. Concluding Remarks

From previous activities aimed at establishing a public broadcasting in Ukraine, we can draw the following conclusions:

1. The Ukrainian political system severely limits the capacity for state reform in general and media reform in particular because the president, as a directly elected official, belongs to neither executive nor legislative power. Moreover, as the President usually belongs to a larger political group, Parliamentary majority can be blocked or absolute power seized if his own party holds majority. Thus far, the President’s attitude to public broadcasting has been crucial in reform efforts. This article clearly illustrates the congruence between presidential periods and the discussion of public broadcasting.
2. The majority of political elites still consider media as a central instrument for manipulating public opinion; however, opposition politicians often support the idea of public broadcasting. The government tends to support (the rather insignificant) state broadcasting through proposals for the reform of public broadcasting, and tries to secure or expand state influence on broadcasting. Unfortunately, a handful of idealists cannot bring any change to the prevailing opinion.

3. Fortunately, long-standing debates illustrate that the critical attitude of journalists and civil society organisations has increased through new media developments. The demands for public, state-independent broadcasting have been advanced and defended. As the comparison of legislative projects and concepts show, suggestions from civil society organisations have been incorporated over time.
4. Discussions should be continued. They should be designed to involve as many civil society and political groups as well as state actors, especially the Ukrainian President, and convince them of the importance of state-distant public broadcasting. The aim of the talks should be the elaboration of a common denominator. The previously introduced broadcasting and legal concepts should primarily be discussed with regard to securing the independence from state interference. German experience can assist the understanding of the mechanisms used by journalists to defend their independence: decentralised structure, strong governance structure in favour of the Director General, restricted number of state representatives in the bodies in favour of civil society organisations, and an independent fee fixing and collection procedure. With regard to previous efforts in using foreign experience, it should be noted that ‘the devil is in the details’. An extensive study of a broadcasting system cannot be achieved by reading articles and attending conferences. Moreover, a strong dialogue with politicians, journalists, and managers of public broadcasting is necessary for understanding their public broadcasting systems.
5. Public broadcasting has to address the social, cultural, political and economic framework of society. It is also embedded in society and influenced by this dependency. For Ukraine, this includes various issues that affect its ability to function, particularly corruption, poverty, the failure of politicians and the inefficacy of the legal system. As such, even a perfect draft law cannot guarantee perfect public broadcasting; all these problems have to be solved regardless of their urgency for society, but also as accompanying measures for the introduction of public broadcasting.
6. Of the two draft laws and concepts presented, the draft presented by Andriy Shevchenko et al. is clearly better formulated. However, it is expected that the government’s draft has a higher chance of being realised. A common, consensual version of the documents should be sought. In search of a common denominator the parties should probably even step back to the already adopted but yet not implemented 1997 law and try to develop it consistently instead of proposing completely new draft laws.¹ If these legislative efforts fail, perhaps another way would be appropriate: the establishment of a new “Public Radio” could help citizens understand what a state independent civil society broadcaster, financed through grants, could provide.

¹ As advocated by Nataliya Petrova (PETROVA 2011a, PETROVA 2011b).

Appendix 1:
Key Milestones in Discussions
on the Introduction of Public Broadcasting in Ukraine

2. 6. 1995	Introduction of the term "public television and radio" in the amended Law "On Television and Radio" (article 1 sentence 1, point 14, article 11, 13, 24, 30); (LAW 1995)
18. 7. 1997	Law No. 485/97-WR "On the System of Public Television and Radio Broadcasting of Ukraine" (introduced by V. Shevchenko, W. Ponedilko, S. Tkachenko); (LAW 1997)
21. 11. 1997	Parliamentary decision "About the Founding of the Organisation of Public Broadcasting of Ukraine" ("HURT") (as a closed joint-stock corporation); (VERKHOWNA RADA 1997)
15. 1. 1998	Parliament resolution "On Creation of a Public Council of the Public Broadcasting Organisation of Ukraine" (VERKHOWNA RADA 1998)
22. 1. 1998	The National Council for Broadcasting refused to issue a license to HURT (WITHOUT AUTHOR 1998)
16. 9. 1998	Draft decision No. 2085 "On Creation of a Public Council of the Public Television and Radio ", introduced by V. Shevchenko, not adopted
28. 9. 1998 (22. 11. 99)	Draft law No. 2105-2 "On the Foundation of the System of Public Television and Radio" by V. Shevchenko, failed to overrule the presidential veto from 18. 11. 2000 (DRAFT LAWS 1998/1999)
26. 12. 2000	Rejection of the constitutional complaint against the HURT Parliamentary resolution from 21. 11. 1997 (see above) by the Constitutional Court
25. 1. 2001	PACE Resolution No. 1239 (2001) "Freedom of expression and the functioning of Parliamentary democracy in Ukraine", p. 5: "The Assembly calls on the relevant Ukrainian authorities to undertake the following actions ... : promotion of public service broadcasting" (PACE 2001)
31. 8. 2001	Draft law No. 8035 "On Establishment of the System of Public Television and Radio of Ukraine", introduced by V. Shevchenko, not adopted
11. 6. 2002	Draft law No. 1187 "On establishment of the System of Public Television and Radio", introduced by J. Schowtjak, B. Bezpalyj, not adopted
4. 12. 2002	Parliamentary hearing "Society, Mass Media, State: Freedom of Speech and Censorship in Ukraine"
2002 - 2005	NGO "Public Radio", initiated by O. Kryvenko
29. 9. 2003	PACE Resolution No. 1346 (2003) "Honouring of obligations and commitments by Ukraine", p. 14: "It is of great importance to establish an objective and functioning public broadcasting system in Ukraine." (PACE 2003)
20. 12. 2004	Establishment of the Coalition of civil society organisations "Public Broadcasting"; during 2005 development and presentation of various documents: "The Concept of Program Policy of the Public Broadcasting", "Principles of Editorial Policy of the Information Department of Public Broadcasting", "Concept of the Public Broadcasting", "Proposals for Legislative Regulation of the Legal Status of Public Broadcasting Organisations and Their Governing Bodies" (COALITION PB 2005)
2005	Presentation of different concepts, particularly through A. Shevchenko, T. Stezkiv, O. Tkachenko, Institute for Media Law (T. Shevchenko) and others
13. 4. 2005	Parliamentary hearing "Perspectives of the Founding of Public Broadcasting in Ukraine"; recommendations adopted on 21. 6. 2005 (PARLIAMENTARY HEARINGS 2005)



23. 5. 2005	Draft law No. 7539 to revise the Law "On the System of Public Television and Radio of Ukraine", introduced by S. Pravdenko, V. Shevchenko, T. Stezkiv, rejected in the repeated second reading on 22. 12. 2005 (DRAFT LAW 2005)
30. 9. 2005	Convening a working group to develop a concept of public service broadcasting by the Secretariat of the President (DECISION 2005a, 2005b)
5. 10. 2005	PACE Resolution No. 1466 (2005) "Honouring of obligations and commitments by Ukraine", sub point 12.4: "the Assembly calls on the Ukrainian authorities to:... transform the state broadcasters into public service broadcasting channels in line with relevant Council of Europe standards" (PACE 2005)
12. 1. 2006	Revision of the Law No. 3317-15 "On Television and Radio", with a new procedure for appointment of public council members and the head of the state television and radio companies through the Parliament and the President (LAW 2006)
19. 12. 2006	Adoption of "Principles of Implementing Standards of Public Broadcasting of Ukraine" by the National Commission for Maintaining Freedom of Speech and Information Field Development under the President of Ukraine (TELEKRYTYKA 2006)
20. 1. 2006	Presidential Decree (by V. Yushchenko) No. 39/2006 (DECREE 2006) on the implementation of commitments given to Council of Europe, inter alia from the sub point 12.4 of the PACE Resolution No. 1466 (2005); (PACE 2005)
15. 3. 2007	Memorandum of Understanding for the Implementation of Public Broadcasting by E. Prutnik, Head of the State Broadcasting Committee, V. Shevchenko, Chairman of the National Council of Broadcasting, A. Shevchenko, Chairman of the Parliamentary Media Committee, and T. Petriv, Chairman of the National Commission for Maintaining Freedom of Speech and Information Field Development under the President of Ukraine (TELEKRYTYKA 2007b)
13. 8. 2007	Start of the television programme "First Public" as a cooperative project of the regional state TV studios under the guidance of E. Prutnik, Head of the State Broadcasting Committee
21. 2. 2008	Presidential Decree (by V. Yushchenko) No. 148/2008 on establishing the system of public broadcasting of Ukraine (DECREE 2008)
25. 4. 2008	Draft law No. 2445 "On Amending and Supplementing the Law "On Television and Radio"", introduced by A. Shevchenko, not adopted
7. 5. 2008	Order of the Cabinet of Ministers No. 694 on the convening of working group to develop a public broadcasting concept
11. 9. 2008	Draft law No. 3140 amending the Law "On Television and Radio", introduced by O. Lukash, E. Prutnik, A. Portnov, not adopted
15. 10. 2008	Proposals of the National Council for Broadcasting on the establishment of public broadcasting (documented in Decision No. 1978)
09. 1. 2009	General concept of public broadcasting by the State Committee for Broadcasting, submitted on behalf for the Cabinet of Ministers
12. 3. 2009	Draft Law No. 4198 on Revision of the Law "On the System of Public Television and Radio Broadcasting of Ukraine", introduced by A. Shevchenko, rejected on 12. 6. 2009 (DRAFT LAW 2009)



15. 9. 2009	Decision of the Constitutional Court No. 21-rp/2009 about the non-constitutionality of provisions of the Law "On Television and Radio" regarding the appointment procedure of the public council and the heads of the national television and radio companies through the Parliament and the President (RULING 2009)
11. 9. 2009	Decision of the Council for Security and Defence of Ukraine on the establishment of public broadcasting and on digital switch, in force by Presidential Decree No. 189/2010 from 18. 2. 2010 (by V. Yushchenko); (DECREE 2010b)
3. 2. 2010	Presidential Decree (by V. Yushchenko) No. 92/2010 on preparation for obtaining of the NATO membership, inter alia drafting of amendments to the Law "On the System of the Public Television and Radio Broadcasting of Ukraine" (DECREE 2010a)
24. 6. 2010	Law concept "On the System of Public Television and Radio of Ukraine", prepared under the auspices of the National Commission for Maintaining Freedom of Speech and Information Field Development (LAW CONCEPT 2010a)
29. 6. 2010	General concept on "Founding of the National Television and Radio" by the Humanitarian Council under the President V. Yanukovych, submitted to public discussion (DRAFT GENERAL CONCEPT 2010)
30. 9. 2010	Adoption of the general concept "Founding of the National Television and Radio" by the Humanitarian Council under the President V. Yanukovych (GENERAL CONCEPT 2010)
11. 10. 2010	Draft law No. 7241 amending the Law "On the System of Public Television and Radio of Ukraine", introduced by A. Shevchenko, V. Kasjkiw, J. Suslow (DRAFT LAW 2010)
18. 10. 2010	(Unauthorised) law concept "On National Public Broadcasting Company of Ukraine" by the Humanitarian Council under the President V. Yanukovych / V. Bebik (LAW CONCEPT 2010b)
12. 1. 2011	Presidential Decree (by V. Yanukovych) No. 24/2011 (DECREE 2011) on the implementation of commitments before the Council of Europe, inter alia on the sub point 12.4 of the PACE Resolution No. 1466 (2005); (PACE 2005)
1. 7. 2011	Law concept of the Cabinet of Ministers /State Committee for Broadcasting "On the Public Television and Radio of Ukraine" (LAW CONCEPT 2011)

Appendix 2: Main Concepts of Public Broadcasting in Overview

Name of the Document	Law "On the System of Public Television and Radio Broadcasting of Ukraine" from 18. 7. 1997	Parliamentary Resolutions on HURT from 21. 11. 1997, 15. 1. 1998
Founded by	Parliament	As in the Law from 18. 7. 1997
Organisation. Structure	Uniformly	Uniformly
Statute Adoption	Parliament	As in the Law from 18. 7. 1997
State Broadcasting	not specified	Shall exist further
Legal Form	Legal entity owned by Ukrainian People	Closed JSC "HURT", max. 10 % of shares per shareholder
Property	not specified	Government provides technical facilities; remaining property by "HURT"
Body 1	Public Council	Public Council
- Number of Members	Variable, will be set in the first year of legislative period	39
- Appointment	Political parties in Parliament, nationwide artistic and public associations (if approved by Parliament), President, Government, National Bank, Attorney General, National Council for Broadcasting, Antimonopoly Committee, State Agency on Copyrights <i>each appoint one representative</i>	24 party representatives, 11 civil society representatives (of 12 licensed organisations), 4 (+3 unnamed) government representatives
- No Membership	Not specified	Not specified
- Duration of Appointm.	Parliament's legislative period	Not specified
- Rotation	Not specified	Not specified
- Dismissal	Not specified	Not specified
- Core Competencies	Control of programme mandate, financing, personnel policy, appointment of the Administrative Councils, its Chairman, no interferences in business operations or programmes	Not specified
Body 2	Qualifications Council	Qualifications Council
- Number of Members	6	Not specified
- Appointment	3 by President of Ukraine, 3 by Parliament	Not specified
- No Membership	not specified	Not specified
- Duration of Appointment	Permanent	Not specified
- Rotation		
- Dismissal	Once per legislative term or term of cadence	Not specified
- Core Competencies	Proposal of candidates for Administrative Council and its Chairman	Not specified
Body 3	Administrative Council	Administrative Council
- Number of Members	Not specified	Not specified
- Appointment	By Public Council on proposal of Qualification Council	Not specified
- No Membership	Not specified	Not specified
- Duration of Appointm.	Not specified	Not specified
- Dismissal	Not specified	Not specified
- Core Competencies	Constantly active executive body, tasks defined by the statutes	Not specified
Permitted Financing	Fees for use of broadcasting receivers, grants, revenues from printed materials, sales of own recordings and programmes, others.	Economic activity, grants, state budget
- State order	Yes, max. 20 % of the broadcasting time / in transitional period more	
- Advertising	Not allowed / permitted in transitional period	Not allowed / permitted in transitional period max. 10 %



Name of the Doc.	Documents of the Coalition "Public Broadcasting", 2005	Draft Law "On the System of Public TV and Radio" from 23. 5. 2005
Founded by	Parliament	By Law
Organ. Structure	Separate radio and TV companies	Separate radio and TV companies
Statute Adoption	Public Council	Supervisory Council
State Broadcasting	Will be replaced by Public Broadcasting	Replaced through public broadcasting
Legal Form	State organisation, state excluded from administration and management	State corporation, not allowed to privatise
Property	Property to be provided by the state will be defined in the act of foundation	State broadcasting sector's property will be transferred after inventory
Body 1	Public Council	Supervisory Council
- Num. of Members	30	30
- Appointment	15 by parties according to seating in the Parliament, 15 by NGOs; NGOs are determined by lottery at the conference of civil society organisations; Approved organisations must be registered nationwide and have worked for minimum 3 years.	15 by Parliamentary groups (8 of the majority, 7 of the opposition), 15 by the countrywide registered (min. 3 years) NGOs through public draw media committee in the Parliamentary Media Committee
- No Membership	MPs, Civil servants and previously convicted persons	MPs, civil servants, army personnel, employees of the intelligence services, of the prosecution, of other broadcasters, previously convicted persons
- Duration of App.	6 years for civil society members, political members permanent	6 years
- Rotation	Only for civil society members: 5 members every 2 years	One-third of all members every two years
- Dismissal	If tasks will not be performed, e.g. in case of absence; political members can be dismissed by their party without reasons	Through a majority of two-thirds of members, e.g. in case of absence
- Core Competencies	Adoption of founding documents, programme guidelines, balance sheet, appointment and dismissal of members of the supervisory board, of the president, of the auditor, no prior programme control	Appointment and dismissal of the DG, of the management board members, decision of programme guidelines, appointment of an auditor, no ex ante programme control.
Body 2	Supervisory Council	Executive Board
- Num. of Members	15	7
- Appointment	By NGOs from culture, art media (same requirements as for Public Council membership); Candidate at least 5 years business management experience	By Supervisory Council in selection procedure
- No Membership	MPs, civil servants	as above + top manager of PB and those, who conduct the finance control
- Duration of App.	6 years	4 years
- Rotation	5 members every 2 years	Not specified
- Dismissal	If tasks are not performed, e.g. in case of absence	By Supervisory Council for 3 month absence
- Core Competencies	Appointment and (in consultation with Public Council) dismissal of the President, greater budgetary changes, decision on accounting, programme monitoring	Control of financial activity for the corporation, taking note of DG reports, personnel policy, no ex ante programme control
Body 3	President	Director General (Administrative Council)
- Num. of Members	1	1 + members of the Administrative Council
- Appointment	By the Supervisory Council, candidate minimum 10 years of business management experience in the media	By Supervisory Council in an selection procedure, min. 10 years of business management experiences required; members of the administrative council will be appointed by DG.
- No Membership	MPs, civil servants or previously convicted persons	Like Supervisory Council and Executive Board
- Duration of App.	5 years	Not specified
- Dismissal	Non possible in the first year of appointment	DG: by Supervisory Council
- Core Competencies	Individual decision-making (Director General - DG), represents the broadcaster in the external relationship, provides staff and dismisses members of the Management Board	Represents the corporation in external relations, implements the programme policy and budget, establishes competencies of administrative councils' members.
Permitted Financing	No uniform recommendation, govern. budgets funds possible funding source	License fee, state budget, exploitations rights, grants
- State order	Not specified	Allowed
- Advertising	Not specified	Allowed



Name of the Document	Law Concept of the National Commission for Freedom of Speech (...) under the President of Ukraine from 24. 6. 2010	General Concept of the Humanitarian Council under the President of W. Yanukovych from 30. 9. 2010
- Founded by	Cabinet of Ministers	By Law, Founder are excluded from management
- Organ. Structure	Uniformly	Uniformly
- Statute Adoption	Cabinet of Ministers	Not specified
- State Broadcasting	Replaced through public broadcasting	Replaced through public broadcasting
- Legal Form	Corporation under public law (definition suggested for the Economic Law Codex)	Corporation under public law without profit-making aim (still to be defined)
- Property	state broadcasting sector's property will be transferred; debts will be compensated	Property from the state broadcasting sector transferred after inventory.
Body 1	Supervisory Council	Supervisory Council
- Num. of Members	21	Variable
- Appointment	7 by President of Ukraine on proposal of the universities, 7 by Parliament on recommendation by the professional associations of journalists and cinematographers, 1 by all-Ukrainian Council of churches, each 1 representative of convents of different NGOs	One representative from President, the Parliamentary factions, Cabinet of Ministers and the Government and 13 from countrywide NGO groups and NGOs with minimum 100.000 members (if the NGOs cannot agree on a common candidate, the corresponding Parliamentary Committee decides)
- No Membership	MPs, civil servants, internal affairs' employees, army personnel, non-Ukrainian citizens, convicted persons	Not specified
- Duration of App.	3 years, one renewal possible	Not specified
- Rotation	No	Not specified
- Dismissal	No, except in cases of death	Not specified
- Core Competencies	Adoption of the programme mandate, control of financial activities, personnel policy, appointment of DG and members of the Management Board, no ex ante programme control, interference in op. activity	Appoints in a selection procedure the Chairman of the Management Board, two deputies, members of the MB; decides on editorial statute and budget
Body 2	Director General (Management Board)	Management Board (MB)
- Num. of Members	1+	Not specified
- Appointment	DG, financial and information directors will be appointed in a selection procedure with min. 15 votes of the Supervisory Council	By Supervisory Council in a selection procedure
- No Membership	3 years, one renewal possible	Not specified
- Duration of App.	No	Not specified
- Rotation	By Supervisory Council	Not specified
- Dismissal	Operational Management, implementation of the programme mandate, personnel management, ensures the independence of the editorial team and is responsible for its injury	Not specified
- Core Competencies	Economic-administrative Commission	-
Body 3	Min 3, odd number	-
- Num. of Members	Professionals with at least 3 years of professional experience in certain areas, appointed in a selection procedure by Supervisory Council	-
- Appointment	Not specified	-
- No Membership	18 months with possibility of re-designation	-
- Duration of App.	Not specified	-
- Dismissal	Monitoring of operational activities of DG and of Management Board	-
- Core Competencies	From the state budget in a minimum amount of 300,000 minimum wages with regard to financial requirements of public broadcasting, revenues from printed products, sells of own recordings and programmes.	During the transition period (2 years) from the state budget to min. current amount: afterward from the license fee (which will be introduced in the first year), grants etc.
Permitted Financ.	Allowed, max. 20 % of broadcasting time	Not allowed
- State order	Not allowed	Not allowed / allowed on in the transitional period
- Advertising	Not allowed	Not allowed / allowed on in the transitional period



Name of the Document	Draft Law "On the System of Public Television and Radio of Ukraine from 11. 10. 2010 by A. Shevchenko et al.	Law Concept of the Cabinet of Ministers / State Committee for Broadcasting from 1. 7. 2011
Founded by	Cabinet of Ministers	Cabinet of Ministers
Org. Structure	Uniformly	Uniformly as corporation, separated organisational entities
Statute Adoption	Cabinet of Ministers	Cabinet of Ministers
State Broadcasting	Replaced through public broadcasting	Replaced through public broadcasting
Legal Form	Non-profit legal person under public law	Legal person under public law
Property	state broadcasting sector's (including he property of the state film company and the state information agency) property will be transferred	Remains in state's property, only the usage will be permitted; appropriate use will be controlled, government can take the property back, must approve the sale
Body 1	Council	Supervisory Council
- Num. of Members	15	21
- Appointment	9 on proposal of Parliamentary groups (detailed provisions, including cases where a Parliamentary faction doesn't want to nominate representatives) and 6 on proposal of the conference of representatives of journalistic and similar NGOs (+ 3 reserve representatives)	7 appointed by the Cabinet of Ministers, 14 by nationwide NGOs per sector (admitted by the National Council for Broadcasting; if no agreement among NGOs about a representative can be reached, then draw by representatives of legislative and executive bodies)
- No Membership	Previously convicted persons, in case of interest's conflict, foreigners, people with no university degree, additionally for NGOs: servants of the state and local government, MPs, party officials.	Various state officials, stakeholders in broadcasting companies, previously convicted persons, Ukrainian citizens with less than 5 years of domestic residence or non-graduates
- Duration of App.	3 years, max. one-time renewal	4 years, no renewal possible
- Rotation	No	No
- Dismissal	By the government in cases of resignation, death, judicial sentencing, conflict of interests, unexcused absences, other reasons are not allowed	Death, at own request, non-fulfilment of membership requirements, non-performance of tasks for six months and longer, non-executive capacity
- Core Competencies	Decides the programme guidelines and the editorial statutes, appoints and dismisses DG, heads of subsidiaries, approves larger contracts, approves the consolidated budget, the personnel plan, the annual report (detailed transparency requirements), convenes and dismisses public councils and other advisory bodies, which should improve the social representation, appoints auditors etc.	Decision on most import fields of activity, the editorial charter and the implementation of the statute, appoints and dismisses the Board and its Chairman as well as members and the Chairman of the Audit Commission, adopts internal regulations, the establishment plan, the annual report, appoints the auditors etc.
Body 2	Director General	Chairman of the Executive Board / Board
- Number of Members	1	1+
- Appointment	DG and heads of subsidiaries will be appointed in a selection procedure by the Council; min. 5 years of business management experience in the media required	By Supervisory Council
- No Membership	Employees, representatives or co-owners of other broadcasters or companies with business relationship with a broadcaster	As the Supervisory Board, but without the requirement for citizenship and the university degree
- Duration of App.	3 years, one-time renewal without selection procedure	-
- Rotation	-	-
- Dismissal	Violation of a contract, conflict of interest that haven't been dissolved within one month	Generally possible for reasons not made explicit / explained
- Core Competencies	Operational management, compliance with programme guidelines and editorial statutes; prepares the budget, reports on the Council, staff management, represents the broadcaster in external relationships, attends meetings of the Council with advisory capacity etc.	Operational management, submission of proposals on the financial plan, implementation of decisions of the Supervisory Council etc.; organises the work of the Executive Board, recruits personnel, representation in external relations according to the statute etc.



Name of the Document	Draft Law "On the System of Public Television and Radio of Ukraine" from 11. 10. 2010 by A. Shevchenko et al.	Law Concept of the Cabinet of Ministers / State Committee for Broadcasting from 1. 7. 2011
Body 3	-	Audit Commission
- Num. of Members	-	Will be appointed by Supervisory Council
- Appointment	-	Will be appointed by Supervisory Council
- No Membership	-	4 years
- Duration of App.	-	Will be appointed by Supervisory Council
- Dismissal	-	Will be appointed by Supervisory Council
- Core Competencies	-	Controls the financial and economic activities of the Executive Board; the accuracy of financial reporting and the compliance of powers for financial transactions, use of funds etc. will be verified.
Permitted Financing	State budget by separate position to the amount of at least 0.05 % of each annual budget, sale of own production, compensations for exploitation of rights, grants etc. Decisions on the use of state funds rests solely with the broadcaster, no commercial activity and shares in profit-oriented companies	In the 4 years from the state budget, then from the license / subscription fee, which is payable for services provided by public broadcasters, selling of own media production, voluntary donations, special levy of 1 % of the revenues that for use of television networks etc.
- State order	Not allowed	Yes / max. 20 % of transmission time
- Advertising	Not allowed	Not allowed

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