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an der Universität zu Köln**

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**The Introduction of Public Service Broadcasting in Ukraine:
Preconditions and Missed Opportunities**

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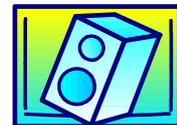
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Olexiy Khabyuk

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1. Preface

The presidential elections in the year 2004 created a "hot" winter for the Ukrainian people. The peaceful turning-point found international approval; hopes raised for a quick transformation, for the development of the civil society and final democratization. But, within a short time, it was recognizable that the "newborn" elite on the one hand neither intended nor was able to enforce the wished reforms. Although parliamentary elections in the year 2006 were processed considerably democratically in comparison to similar events in the past, nevertheless led to the victory a political party that was accused of election fraud in 2004.

It is believed that the Ukrainian media has reached more independence since the "Orange revolution".¹ The prescription of reporting direction through the "Temnyky"² exists no longer and the pressure on the editorial staff has diminished as well.³ In spite of these changes Ukraine still stands far from independent media. As a possible step into this direction, the introduction of public service broadcasting has been discussed for a long time. Discussions took a new start in March 2007 as the mutual declaration on establishing of public service broadcasting was signed by politicians responsible for broadcasting regulation.

The essay at hand shows the expediency and possibility of such a reform of the Ukrainian media sector. For this purpose in chapter 2 general preconditions for public service broadcasting are defined. Chapter 3 describes the evolution of the introduction of public service broadcasting. Chapter 4 evaluates how far the preconditions, introduced in chapter 2, are to be fulfilled. In conclusion, in chapter 5 the main results will be summarized to give recommendations concerning further progress.

2. General Preconditions for the Implementation of Public Service Broadcasting

The question arises as to which preconditions are to be fulfilled to allow the introduction of public service broadcasting. According to the principles of the

¹ For example, Ukraine in the „Freedom House“-Ranking moved from 150 in 2004 to 113 in 2006. It changed from the category "Not free" to "Partly free" (FREEDOM HOUSE 2004, FREEDOM HOUSE 2006). Also "Reporters without frontiers" graded up Ukraine's rating from place 138 in 2004 to 105 in 2006 (ROG 2004, ROG 2006).

² Secret instructions directed at mass media advising them what they should cover and what they should ignore (see, e.g. HUMAN RIGHTS WATCH 2003 and KUZIO 2004).

³ IBAHOB 2007



"World Radio and Television Council" there are four core elements of genuine public service broadcasting:⁴

- Program universality, i.e. comparability for all citizens, independent of the income level and social affiliation;
- Diversity and balance in content, genres and audience;⁵
- Distinctiveness of programs from those of non-public broadcasters by higher quality, content promoting culture, high innovation etc.;
- Independence of broadcasters from political and market pressures.

The general economic conditions in a country are of fundamental importance for the financial endowment of a public service broadcaster, which, in turn, is crucial for its independence and obtaining the public service broadcasting program principles (universality, diversity and distinctiveness). As MCKINSEY & COMPANY 1999 state, an optimal funding of a public service broadcaster shall meet the next postulations:

- independence from undue state and market influence,
- medium-term predictability,
- at least parallel growing to the rate of cost,
- substantial revenue to be prepared for the competition with commercial broadcasters,
- sufficiently simple and equitable payment with maximum society acceptance.⁶

We are going to show below that these criteria are best fulfilled by a license fee. The crucial benefit of this kind of funding consists of its suitability to provide the broadcaster's independence. Tax-financed broadcasting is permanently jeopardized by undue state influence; broadcasters, whose revenues largely are made up of advertising, are in contrast forced to adjust their programs more to the advertising industries' preferences than to those of the society.⁷

A medium-term predictability of revenues is necessary because the program aims are not to be reached in a short term and go along with a permanent high capital expenditure. Among other things the program diversity demands a suffi-

⁴ Quotation after PRICE & RABOY 2001, p. 5 et seqq. Similar criteria can be found in different international comparative studies of public service broadcasting models (e.g. in JARREN ET AL. 2002, pp. 283-286, OSI & EUMAP 2005, pp. 54-65, MCKINSEY & COMPANY 1999, pp. 11-19) as well as in the recommendations of the Council of Europe (e.g. see COUNCIL OF EUROPE 2007).

⁵ It is difficult to separate the first two points. However, a state broadcaster can address its programs to the whole population without supplying diverse content. Contrariwise, a commercial broadcaster can offer diverse content only to groups of people with higher income. However, in this way mass communication cannot possibly take place. In some respects both elements correlate with each other because the higher the extent of the universality criteria, the more diverse the program has to be.

⁶ MCKINSEY & COMPANY 1999, p. 27-34

⁷ KOPS 2001, KOPS 2006, p. 32 et seqq.

cient in-house production capacity, which implies a high professionalism of the employees. Last but not least, a qualitative program transmission with appropriate technical capacities is required. Public service broadcasting must also be allowed to participate in the newest media-technical developments in order to be in a position to offer innovative formats.

Regarding to the empirical evidence that a tax- and advertising funding underlie a higher volatility than funding by a license fee the higher predictability of a license fee can be assumed.⁸ In the same context the demand for the higher growth rate of revenues, compared with the costs, and the sufficient funding can be valued. Due to the enduring increase of the license fee, the latter is better suited than the other mentioned alternatives although such an adjustment is not guaranteed automatically. The fluctuating tax and advertising revenues can complicate the building-up of a sustainable competitive position for a public service broadcaster; hence the funding through a license fee is in this regard advantageous. The experience with state-funded broadcasters is more likely to show that a higher priority is given to the reduction of state budget deficits than the properly functioning of media.

Besides the advantages of the license fee it has one important peculiarity – it requires the acceptance within the society. If the citizens, as the carrier and beneficiary of public service broadcasting, are not aware how significant the latter is for communication in the society, they will not be willing to pay. Their payment willingness also strongly depends on their wealth because – as experience shows – the citizens will finance their high-ranked individual needs such as societal communication only when their elementary needs are satisfied.⁹ Moreover, receipt of a license fee is only possible with legal force. Its intensity can be lower if the societal acceptance of a public service broadcasting funded by a license fee is high, it must be high, if this acceptance is low. In the latter case, however, the dependence on the state is higher.

In addition to the independence of fund-raising an independence of fund disposition shall be ensured. Moreover, supervision is needed to revise the fulfillment of the public service broadcasting program mandate. It shall be bound to the relevant civil society forces and may not be dominated either by the state or by any civil society groups.

To enforce these postulations, different conditions have to be fulfilled, especially the so-called "rule of law". According to PRICE/KRUG 2002 this concept incorporates, at a minimum, clarity and accessibility of legal rules to the public, the abidance of legal norms with principles fairness, impartiality and objectivity through public administration as well as the judicial support.¹⁰ Furthermore, an effective protection of journalists shall be assured. To give the public service

⁸ MCKINSEY & COMPANY 1999, p. 30 et seqq.

⁹ See KOPS (2005) for detailed description of the citizen's (in terminology of the referred source – the voluntary sector's) payment behaviour in broadcasting funding.

¹⁰ PRICE/KRUG 2002, p. 15 et seqq.



broadcasters the possibility to refer to its by law prescribed duties, a right of continuance and development shall be anchored legally. This shall also consider the right of each public service broadcaster to enforce its funds by legal action in case of lack of financing. Also international rules, e.g. the WTO and the Single European Market, may not interfere with these instructions. Parallel to the institutional self-government the public service broadcaster has to be legally committed to obey the program mandate. An independent sovereign institution, which performs effective control over the law abidance, e.g. the Federal Constitutional Court in the Federal Republic of Germany, is beneficial. However, it is not an inevitable precondition.¹¹

In addition to the already discussed postulations, the influential socio-political groups have to agree on the design of the public service broadcasting to be established. If a discourse and consensus culture is lacking and the mentality "the winner takes it all" applies, a high uncertainty about the personal utility of the introduction of the public service broadcasting persists between the political parties. There is a certain risk that political representatives agree implicitly to default the introduction efforts in order to secure their edge on information for the citizens. These information asymmetries could be abolished by involvement of intermediary institutions, e.g. accepted NGOs with an international mission and reputation (such as UNESCO).

3. The History of the Unsuccessful Implementation of Public Service Broadcasting in Ukraine

In the year 1997 a law on public service broadcasting was passed by Parliament, but has yet to be implemented.¹² Since then this topic has occasionally been picked up. In spring 2005 the most intensive discussion ever, concerning this matter, was started. It was initiated by different NGOs and media experts. Some of them later allied to the NGO-Coalition "Public Broadcasting". Joint solutions were proposed within regular meetings of working groups. The broad scope of offered conceptions of the Ukrainian public service broadcasting (from close-to-commercial to alternative-to-state) as well as its funding facilities (revenues from gambling, lotto and sweepstakes, license fees, advertising, sponsoring and state budget)¹³ testify the incomprehension of the idea of public service broadcasting, but also the lack of active support from the set of western public service broadcasters.

¹¹ The development of the BBC has been taking place without such an institution because the British public recognized quite early the necessity of the impartial and state-distant information source (HUMPHREYS 2004, p. 329 et seqq.). However, it seems to be internationally, an exception.

¹² The law was vetoed by the President, the license issue blocked by the National Council for Broadcasting (RICHTER/GOLOVANOV/NIKOLTSHEV 2006, pp. 35-39). These actions can be traced back to the incompatibility with existing laws and incompleteness of the new public service broadcasting instructions (KHABYUK 2004, pp. 27-28).

¹³ DW-RADIO/Ukrainisch 2005

It seems that the President and the close to the government political parties were quite sympathetic to the implementation of public service broadcasting at that time.¹⁴ One can assume that the mentioned decision makers did not give top priority to such a reform due to its high complexity, which required the rearrangement of the whole media system, and unstable political situation.¹⁵ Instead, the political elite confined itself to democratize the state broadcasting, especially the TV channel "UT-1". The discussions came to the end as the latest after law project on public service broadcasting was rejected by parliament in the second reading on 25.12.2005. The voting failed ironically on the votes of the "orange" deputies. Supposedly, an unfinished law was not to be adopted.¹⁶

An adoption of the new, even if partly unfinished, broadcasting law can also be regarded as an achievement of the "Orange government". It envisions a gradual reform of broadcasting. For example, Article 14 of the new broadcasting law designs a creation of two broadcasting councils consisting of 17 members in each, 9 of which proposed by the parliamentary fractions, 4 by the president and 4 by national associations. Their primary mission, to submit a proposal to parliament for the nomination and dismissal of the director of the (still) state TV and Radio Holdings "NTKU" and "NRKU".¹⁷ However, the appointment of the members of broadcasting councils currently blocked the parliamentary committee for freedom of opinion and information.¹⁸ The State Broadcasting Committee also regards the displacement of this action for necessary because the duties and responsibilities of the broadcasting councils are insufficiently defined.¹⁹

Discussions on the introduction of public service broadcasting took a new turn on March 15th, 2007 as the mutual declaration on establishing of public service broadcasting was signed by directors and chairmen of the responsible broadcasting regulation bodies.²⁰ Parallel to these efforts, the director of the State Broadcasting Committee, Prutnik, is still attempting to establish a new broadcaster through building-up a cooperation of the 26 regional state broadcasters. The programs should be transmitted synchronistically by single broadcasting frequencies of the regional broadcasters.²¹ A similar proposal had been submitted

¹⁴ See e.g. ТОМЕНКО 2005

¹⁵ Among other uncertainty factors can be regarded the overruns of competence through the State Broadcasting Committee, the absent collaboration willingness on the part of opposition, as well as the power struggle between the representatives of the ruling coalition. Furthermore, the civil society groups were too weak and discordant to claim such a measure from the State.

¹⁶ КУРАШИНА 2005

¹⁷ The latter are treated by the law very restrictively, so only a few organizations can participate (ІНСТИТУТ МЕДІА ПРАВА 2006).

¹⁸ ОСТАПА 2007

¹⁹ ГАНЖА 2007

²⁰ БЕЗ АВТОРА 2007а

²¹ ПРУТНИК 2007



earlier by Tschysch, a former director of the State Broadcasting Committee.²² The new broadcaster is, however, expected to provide biased reports because its funding will be completely controlled through the State Broadcasting Committee.²³

4. Preconditions for Public Service Broadcasting in Ukraine

To come to the conclusions about the chances of an introduction of public service broadcasting in Ukraine, we will examine below to which extent the preconditions considered in chapter 2 apply.

The general economic conditions in Ukraine are rather disadvantageous; more than half of the population lives below the poverty line.²⁴ It has been already pointed out that this has a negative impact on the societal acceptance of a license fee.²⁵ Unfavorable is also the lack of understanding of the mission of public service broadcasting and trust in politics.

A partial funding by advertising of public service broadcasting would be rather difficult. Revenues, disposable through market advertising are not even enough for existing commercial media enterprises to be profitable.²⁶ By contrast, high revenues could be achieved by providing political advertising.²⁷ However, this would jeopardize the balance and independence of public service broadcaster.

The official aggregated budget of the Ukrainian state broadcasting amount by now to about 234m. Euro.²⁸ These revenues do not allow state broadcasting to build up a serious competitive position to the commercial broadcasting because of its duty to provide a dozen of programs. Moreover, these revenues cannot be forecasted in

²² ДАНЬКОВА 2005

²³ БЕЗ АВТОРА 2007б

²⁴ In 2004 the Ukrainian Parliament defined the poverty line at the monthly income of 342 Hryvna equivalent to about 50 Euro (ХІНКУЛОВА 2004).

²⁵ Accordingly to a poll, conducted by the Institute of Politics in the year 2005, only 2 % of the respondents supported a solely funding through the license fee, 41 % argued for a funding from the state budget, 18 % - for a mixed funding from state budget and advertising, and 15 % - for a mixed funding from budget and licence fee (ІНСТИТУТ ПОЛІТИКИ 2005).

²⁶ IWANOW 2004, ІВАНОВ 2007. The advertising market net amounted to about 433m. Euro in the year 2005 (IP 2006, p. 420).

²⁷ In commercial broadcasting such an experience is common practice because higher profits can be achieved, if the broadcasting enterprises are used additionally for the purpose of mass manipulation instead of simple attainment of advertising or recipient revenues. This was seen in the election campaign of the year 2006 where large amounts of money were invested (LINDNER 2006, p. 20). The existence of such a demand willing to pay jeopardizes the opinion of pluralism because the position of the client certainly should not be presented in the same order with other opinions.

²⁸ N.U. 2006

a mid-term because the inquired needs of the state broadcasting were often not met in the past.²⁹

The condition of the civil society does not correspond with the standards drafted above.³⁰ Indeed, in the civic culture sector enormous changes have occurred. For instance, the democratic opposition showed impressively its basic democratic capability since it mobilized more than 250 thousand people for many weeks during the peaceful protests at the end of 2004. In the last few years improvements have been asserted concerning the situation of "rule of law" as well.

On the other hand, jurisprudence is still considered as mostly corrupt.³¹ Also the unsecured legal status of journalists is still a significant problem. They are often accused of injuring the honor and dignity of persons, especially politicians. Spreading personal data of an official like education, marital status, birth data etc., can already meet this matter of fact.³²

These weaknesses of the "rule of law" (but also the newest political crisis, which culminated prior to the maturity annulment through the president) could be resolved by the Supreme Constitutional Court, especially the latter has already demonstrated its impartiality in the verdict concerning the election fraud in 2004.³³ However, it has scarcely been judicially active since then. Another disadvantage is the "vertical of power", which exists in the political system of the country: directly elected representatives not only appoint the directors at the lower level, but also interfere with their decisions of any sort.

²⁹ See e.g. KHABYUK 2004, p. 24 et seqq.

³⁰ To analyze its development we use here the criteria of the "civilizational competence", distinguished by SZTOMPKA 1993 (p. 88 et seqq.): *Enterprise culture* (indispensable for participation in market economy: innovative persistence, achievement orientation, individualistic competitiveness etc.), *civic culture* (indispensable for participation in democratic polity: political activism, readiness to participate, "rule of law", respect for opponents etc.), *discourse culture* (indispensable for participation in free intellectual flow: tolerance, acceptance of diversity and pluralism, criticism etc.) and *everyday culture* (indispensable for daily existence in advanced, urbanized, technologically saturated and consumer-oriented society: cleanliness, orderliness, punctuality etc.). Enterprise and everyday culture were not taken into consideration below due to their low importance for this topic.

³¹ BERTELSMANN 2006, p. 5 et seqq. An amusing table with the usual "bribe prices" of the Kutschma era can be found in MOROZENKO 2005. One can assume that in this section no major changes have been found. The corruption can partly put down to the peculiarity of Ukrainian law, namely to the contradictory complex instructions, which almost preclude a law-abiding conduct of citizens and enterprises. This phenomenon produces many legal gaps. The "Bezpredel" (here: (Russ.) "lawlessness") roots in parliament: as a deputy of the last legislature period unofficially admitted, only 3-5 laws will be discussed in the caucuses in advance from the 30-40 laws, passed on one session day (КОВАЛЬЧУК 2003).

³² However, verdicts for the benefit of journalists fortunately increase (ІБАНОВ 2007).

³³ BERTELSMANN 2006, p. 7



A special adverse consequence of the communist regime is the lack of a discourse culture. The deviation from the uniform party line was not welcomed in the former USSR. The relative short "Glasnost"-period could not banish the thinking learned over decades from the peoples' heads. Many older people still long for the restrained, but clear conditions of the Soviet era. Even if it is not so strongly developed today as in the first years of the transformation,³⁴ the "Homo Sovjeticus" still nurtures. The other extreme represent the once-suppressed society circles, which can express their opinion openly since Ukraine's independence. Their demand for promissory letter complies with "Homo Sovjeticus", who support the old system. This group lacks a discourse culture as well.

The controversy between these groups is partly "slugged out" over the language. Additionally, it is also heated up through political and economical influences from the Russian State. The extensive program import from Russia, which benefits from minimal "culture discount" effects (developed from hegemonic Russian culture and language in the USSR) and the low development status of the domestic market for program production, strengthen the Russian language.³⁵ Political parties are not interested in the arbitration of the language controversy. By contrast, they try to tighten it: e.g. during the election campaign in 2004 some mass media depicted the language differences between West- and East-Ukraine exaggerated and one-sided.³⁶

The production and transmission of programs, which decrease the historically developed linguistic and cultural splitting of the Ukrainian people, should analyze the painful past and spur on the mutual integration – a function, which public service broadcasters would almost be predestined for.

In the technical section, there is fault found in particular with the frequency scarcity and the state of underdevelopment of the transmission paths. The analogue terrestrial transmission is still the most important transmission form (58 % in 2005).³⁷ A digital switch is intended for 2015. However, only now a DVB-T pilot project is being conducted.³⁸

5. Summary and Outlook

It is predominantly argued that the Ukrainian media has reached more independence since the "Orange revolution". But still impartial reports remain a distant

³⁴ In the year 1997 poll concerning the multi-party system, 35 % argued against, 29 % for and 36 % were unsure (LINDNER 1998, p. 16).

³⁵ In the mass media, in case of availability of official data, the Russian language has a dominant position, especially in the eastern regions. The National Broadcasting Council estimates that radio broadcasts are transmitted merely 30-35 % in Ukrainian in the Donetsk region (НАЦІОНАЛЬНА РАДА 2006).

³⁶ The Ukrainian-speaking citizens are shown as those, who allegedly speak the hybrid language of Ukrainian and Russian – "surshyk" – and are not able to learn Russian (BESTERS-DILGER 2007).

³⁷ IP 2006, p. 414

³⁸ НАЦІОНАЛЬНА РАДА 2007

aim. As a possible solution to this problem the introduction of public service broadcasting has been discussed for a long time.

The question comes up which preconditions should be met to allow the introduction of a public service broadcasting that is universal, diverse, distinctive and independent. The preconditions for a compliance with these core elements can generally be classified as economic, socio-political, legal and technological factors. The general economic conditions in a country are of fundamental importance for the financial endowment of a public service broadcaster, which, in turn, is crucial for its independence. Its funding by a license fee is favorable as it protects the broadcaster from undue state and market influence, and as it provides sufficient as well as predictable revenues that are necessary for the competition with commercial broadcasters. However, funding by a license fee requires the acceptance within the society. This depends, among other things, strongly on the citizens' resources, disposable for the satisfaction of their elementary needs, compared with the satisfaction of high-ranked needs (here: societal communication). To enforce these postulations, some elementary general conditions are essential, especially the existence of the "rule of law".

In the year 1997 a law on public service broadcasting was passed by the Ukrainian Parliament, but has yet to be implemented. In spring 2005 a new intensive discussion on this topic was initiated by different NGOs and media experts (also known as the NGO-Coalition "Public Broadcasting"). It seems that the President and the "close to" government political parties supported this idea. But the necessary measures were not made, supposedly due to the unstable political situation and high complexity of such a reform.

In March 2007 directors and chairmen of the responsible broadcasting regulation bodies made a new start to introduce public service broadcasting by a mutual declaration. However, the environment for the introduction of public service broadcasting in Ukraine is still disadvantageous, since most of the important preconditions have not yet been fulfilled: The general economic conditions for the financially independent and competitive public service broadcasting do not exist, moreover the society is split and it lacks an essential discourse culture. Although public service broadcasting would be significantly important in this situation, in order to resolve the historically developed linguistic and cultural-splitting of the Ukrainian people, it cannot be established as long as the required basic societal reforms, especially concerning the strengthening of the influence of the civil society, have not been completed.

It is unfortunate that in the age of information society in Ukraine such an institution is missing. But the actors should not capitulate. In fact, it requires and allows for little steps to establish an elementary, narrow-functional and little-funded first instance public service broadcasting, which could act as the speaking tube of the civil society, which in turn, could positively change the preconditions for the establishing of such a civil society. Such small steps have to be made.

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