



**Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media**

**COMMENTARY ON THE DECREE OF THE PROVISIONAL
GOVERNMENT OF THE KYRGYZ REPUBLIC
“On Establishment of the Public Television and Radio Broadcasting in Kyrgyz
Republic”
and
THE KYRGYZ REPUBLIC STATUTE
“On the Public Broadcasting Corporation of the Kyrgyz Republic”
approved by the Decree**

This commentary has been prepared by Andrei Richter, Director of the Media Law and Policy Institute (Moscow), Doctor of Philology (Moscow State University Department of Journalism), and commissioned by the Office of the OSCE Representative on Freedom of the Media

Having analyzed the Decree of the Provisional Government of the Kyrgyz Republic “On Establishment of the Public Television and Radio Broadcasting in Kyrgyz Republic” (hereinafter referred to as “the Decree”) and the Kyrgyz Republic Statute “On the Public Broadcasting Corporation of the Kyrgyz Republic” approved by the Decree (hereinafter referred to as ‘the Statute’) in the context of the Constitution (and the draft new Constitution) and current legislation of the Kyrgyz Republic as well as international regulations on freedom of information and the standards of public broadcasting, the expert commissioned by the Office of the OSCE Representative on Freedom of the Media has come to the following conclusions.

BRIEF SUMMARY OF THE COMMENTARY AND RECOMMENDATIONS

The right to freedom of expression and the right to freedom of the media are guaranteed by instruments of the United Nations and the Organization for Security and Cooperation in Europe, with which the Kyrgyz Republic has expressed its agreement.

The International Covenant on Civil and Political Rights imposes on UN member states the duty of “adopting such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This means that they should not only refrain from violating these rights but also take positive steps to ensure they are respected. This includes the right to freedom of expression. Government bodies are in fact required to create conditions in which diverse, independent media can develop, thereby guaranteeing the public’s right to information. These conditions include creating a public broadcasting service as well.

The 30 April 2010 Decree of the Provisional Government of the Kyrgyz Republic “On Creating a Public Broadcasting Service in the Kyrgyz Republic” assigns public broadcaster status to the existing National Television and Radio Broadcasting Corporation (NTRBC), renaming it the Public Broadcasting Corporation of the Kyrgyz Republic (hereinafter referred to as the PBC). The Decree approves the Kyrgyz Republic Statute “On the Public Broadcasting Corporation of the Kyrgyz Republic,” which is essentially the law on the public broadcasting organization.

In its wording, however, this new act coincides almost completely with the old Kyrgyz Republic Law “On the National Broadcasting Corporation” of 2007, which ceased to be valid in 2008. With the abolition of this law, a procedure was introduced for the appointment of the NTRBC general director and deputy directors by the president of the Kyrgyz Republic and for electing members to the Supervisory Board of the National Television and Radio Broadcasting Corporation of the Kyrgyz Republic according to the recommendations of the president only. This was condemned at the time by the OSCE Representative on Freedom of the Media.

The return to the earlier (2007–2008) system of management and supervision of the operations of the former National Television and Radio Broadcasting Corporation was indisputably a positive legal development.

Given the inconsistencies between the Decree and the Statute with regard to the initial appointments and elections to the governing bodies, it is important to be guided by such norms of the Statute as the qualifications required of candidates for membership in the Supervisory Board, and that elections of the PBC general director be held on an alternative, competitive basis.

The powers defined in the Statute *in re* the Public Broadcasting Corporation’s governing bodies are sufficient for it to be efficiently managed and to perform its mandated functions as the Kyrgyz Republic’s national public broadcasting service. The legal framework regulating the operations of a public broadcasting organization clearly and unambiguously defines the sphere of

competence of its supervisory bodies. The Supervisory Board does not have the right to exercise any preemptive censorship of programmes.

The norms of the Statute that contain requirements for the Public Broadcasting Corporation's programme content are scattered among several different articles; if they do not contradict one another, they clearly do not coincide. This could lead to different interpretations of the PBC's mandate and to problems in the broadcaster's efficient operation. At the same time, the overall desire to fix the Public Broadcasting Corporation's duty to present detailed, objective, and balanced news reports and current events programmes is to be welcomed.

The Statute contains a number of important norms for a public broadcasting service to perform its functions. These concern quotas for the productions of other television and radio organizations independent of the Public Broadcasting Corporation.

The Statute does not guarantee the observance of any minimum standards whatsoever for the financing of a public broadcasting service, something that is vital to the broadcaster's economic independence. The Statute stipulates only that the relevant item of the state budget is protected from being cut. This issue requires further consideration in light of the recommendations presented in this commentary.

The Statute's duplication of the norms in the Kyrgyz Republic Law "On Advertising" introduces unwarranted confusion, as a number of the Statute's novel norms could also be applied to the programming of private broadcasting. On the whole, the norms on advertising and sponsorship in the Kyrgyz Republic's public broadcasting service correspond to the standards of the European Convention on Transfrontier Television, and are in certain cases even stricter than the provisions of the Convention.

Presented below is a brief summary of the main recommendations with regard to the acts under review:

- *For the second and subsequent elections to the Public Broadcasting Corporation's Supervisory Board, it would be preferable to establish a system of representation that would prevent state agencies from gaining a preponderance of power within it.*
- *In making appointments to the first and subsequent Supervisory Boards, the qualification requirements for candidates should be taken into consideration.*
- *The elections of the first and subsequent general directors should be held on an alternative, competitive basis.*
- *The incongruities between the provisions of the Statute articles in regard to the requirements for the Public Broadcasting Corporation's programming content should be eliminated on the basis of public broadcasting's international standards of objectivity.*
- *The contradictions and inconsistencies in regard to the size of quotas for broadcasters independent of the PBC should be eliminated.*
- *The norm on the financing of the Public Broadcasting Corporation should be refined or reexamined in light of international experience.*
- *The unwarranted duplication in the Statute and the Kyrgyz Republic Law "On Advertising" with respect to the regulation of advertising and sponsorship should be eliminated by amending the Law "On Advertising."*

The main aspects of the Decree and Statute that are cause for expert approval or concern are discussed in greater detail below, after a brief review of the Kyrgyz Republic's international and constitutional obligations in regard to freedom of expression.

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INTRODUCTION

At the request of the OSCE Office of the Representative on Freedom of the Media, this commentary was prepared by Andrei Richter, Doctor of Philology. Dr. Richter is the director of the Media Law and Policy Institute and the head of the Department of History and Legal Regulation of Domestic Media at the Department of Journalism of Lomonosov Moscow State University. He is a member of the International Commission of Jurists (ICJ, Geneva) and of the International Council of the International Association of Mass Communication Researchers (IAMCR).

This commentary contains an analysis of the Decree of the Provisional Government of the Kyrgyz Republic “On Creating a Public Broadcasting Service in the Kyrgyz Republic” and the Kyrgyz Republic Statute “On the Public Broadcasting Corporation of the Kyrgyz Republic” approved by the Decree in the context of its correspondence to international standards relating to the right to freedom of expression and to freedom of the media. The texts of the acts under review were provided by the OSCE Representative on Freedom of the Media.

The Decree was adopted at an extended session of the Provisional Government of the Kyrgyz Republic on 30 April 2010.¹ The body adopting the Decree – the Provisional Government of the Kyrgyz Republic – “in order to create an effective system of state governance in the name of the people of Kyrgyzstan” assumed the authority and functions specified in the KR Constitution for the president, parliament, and government of the Kyrgyz Republic.² In terms of its legal status, the KR Provisional Government’s decree thereby became a valid law of the Kyrgyz Republic.

Section 1 of this commentary examines the international obligations of the Kyrgyz Republic with respect to the right to freedom of expression and freedom of the media, and sets forth the international standards relating to public broadcasting. These obligations and standards are defined and established in international law, e.g., in the International Covenant on Civil and Political Rights, and in other instruments of the United Nations and the international organizations associated with it. They are also found in various OSCE commitments to which the Kyrgyz Republic is a party; in the decisions of international courts and tribunals on human rights; in intergovernmental declarations and in statements by the OSCE Representative on Freedom of the Media. They are also commensurable with the constitutional law of the Kyrgyz Republic on issues of human rights and freedoms.

Section 2 contains an analysis of the Decree of the Provisional Government of the Kyrgyz Republic “On Creating a Public Broadcasting Service in the Kyrgyz Republic” and the Kyrgyz Republic Statute “On the Public Broadcasting Corporation of the Kyrgyz Republic” approved by the Decree.

¹ See the Provisional Government’s official website: http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=114&Itemid=36

² See Decree No. 1 of the Provisional Government of Kyrgyzstan, 7 April 2010, at the Provisional Government’s official website: http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=68&Itemid=36

I. INTERNATIONAL AND CONSTITUTIONAL STANDARDS RELATING TO FREEDOM OF EXPRESSION

1.1. Recognition of the Importance of Media Freedom of Expression

Freedom of expression has long been recognized as one of the fundamental human rights. It is of paramount importance to the functioning of democracy, and is a necessary condition for the exercise of other rights, and is in and of itself an indispensable component of human dignity.

The Kyrgyz Republic is a full-fledged member of the international community and a participant in the United Nations and the Organization for Security and Cooperation in Europe (OSCE). It has therefore assumed the same obligations as all the other participating states.

The Universal Declaration of Human Rights (UDHR), the basic instrument on human rights adopted by the General Assembly of the United Nations in 1948, protects the right to the free expression of one's opinions in the following wording of Article 19:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*³

The Kyrgyz Republic ratified the International Covenant on Civil and Political Rights (ICCPR),⁴ a UN treaty of binding legal force. It is worth noting that the ICCPR also contains guarantees as to the right to freedom of expression, as can be seen from the text of its Article 19:

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

In this context, it should also be recalled that Section 3 of Article 12 of the Constitution of the Kyrgyz Republic states:

International treaties and agreements to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be a constituent part of the legal system of the Kyrgyz Republic.

This wording is repeated verbatim in the draft new Constitution of the Kyrgyz Republic (dated 3 May 2010) in Section 3 of Article 12.⁵

The UN Human Rights Committee, meeting alternately in New York and Geneva, is responsible for monitoring compliance with the International Covenant on Civil and Political Rights. The

³ Resolution 217A(III) of the General Assembly of the United Nations, adopted 10 December 1948. A/64, pp. 39–42. See the full English text at <http://www.un.org/en/documents/udhr/>.

⁴ International Covenant on Civil and Political Rights. Adopted by Resolution 2200 A (XXI) of the General Assembly 16 December 1966. Entered into force 23 March 1976. See the full official English text at the UN website <http://www.ohchr.org/english/law/ccpr.htm>.

⁵ The text of the draft new Constitution of the Kyrgyz Republic can be found at the Provisional Government's website: http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=120&Itemid=41

committee's experts are entitled to review petitions from private individuals claiming to have been victims of violations of the rights enunciated in the Covenant, including the rights specified in Article 19. The UN Human Rights Committee has established:

*The right to freedom of expression is of paramount importance in any democratic society.*⁶

Free media, as the UN Human Rights Committee has stressed, play a vital role in the political process:

*[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.*⁷

Statements of this sort also abound in the decisions of human rights courts everywhere in the world and serve as precedents for understanding the generally recognized principles and norms of international law mentioned in Section 3 of Article 12 of the Constitution of the Kyrgyz Republic. The European Court of Human Rights stated, for instance:

*Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.*⁸

As was noted in the cited judgement, freedom of expression is of fundamental importance both in and of itself and as the foundation for exercising all other human rights. Full-fledged democracy is only possible in societies where the free flow of information and ideas is allowed and guaranteed. Freedom of expression is also of paramount importance in identifying and exposing violations of this and other human rights, and in combating such violations.

The European Court of Human Rights, created to monitor compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms, has consistently emphasized the "pre-eminent role of the press in a State governed by the rule of law."⁹ It has noted in particular:

*Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.*¹⁰

⁶ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998. Case No. 628/1995, pt. 10.3. See the official text at <http://www.ohchr.org/Documents/Publications/SDecisionsVol6en.pdf>.

⁷ General Comment No. 25 of the Human Rights Committee (para 25), 12 July 1996. See the official text at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>.

⁸ *Handyside v. the United Kingdom*, 7 December 1976. Application No. 5493/72, para. 49. See the official text of this judgement at the ECHR website: <http://www.medialaw.ru/article10/6/2/52.htm>.

⁹ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63. See the official text of this judgement at the ECHR website: <http://www.medialaw.ru/article10/6/2/25.htm>.

¹⁰ See *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65). The official texts of these judgements can be found at the ECHR website: <http://www.medialaw.ru/article10/6/index.htm#2>.

For its part, the overseas analogue of the ECHR, the Inter-American Court of Human Rights, believes “It is the mass media that make the exercise of freedom of expression a reality.”¹¹ The European Court of Human Rights has also stated that the media bear a responsibility to disseminate information and ideas concerning all areas of public interest:

Although [the press] must not overstep various bounds set, inter alia, for [protecting the interests enumerated in Article 10 (2)]¹² of the European Convention on Human Rights], it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog."¹³

1.2. Obligations of the OSCE Participating States with respect to freedom of the media

The right to freely express one’s opinions is inseparably bound to the right of freedom of the media. Freedom of the media is guaranteed by various documents of the Organization for Security and Cooperation in Europe (OSCE) which the Kyrgyz Republic signed when joining the OSCE.

The Organization for Security and Cooperation in Europe is the world’s largest regional security organization and comprises 56 nations of Europe, Asia, and North America. Founded on the basis of the Final Act of the Conference on Security and Cooperation in Europe (1975), the Organization has assumed the tasks of identifying the potential for the outbreak of conflicts, and of preventing, settling, and dealing with the aftermaths of conflicts. The protection of human rights, the development of democratic institutions, and the monitoring of elections are among the Organization’s main methods for guaranteeing security and performing its basic tasks.

The Final Act of the Conference on Security and Cooperation in Europe (CSCE) in Helsinki¹⁴ states: “[T]he participating States will act in conformity with the purposes and principles of the ... Universal Declaration of Human Rights.”¹⁵

The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE¹⁶ also proclaims:

¹¹ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

¹² Article 10 (2) says: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

¹³ See *Castells v. Spain*, note 25, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65). The official texts of these judgements can be found at the ECHR website: <http://www.medialaw.ru/article10/6/index.htm#2>.

¹⁴ Final Act of the Conference on Security and Cooperation in Europe, Helsinki, 1 August 1975. See the complete official text at <http://www.osce.org/item/4046.html?lc=ru> and in extracts concerning freedom of expression at http://www.medialaw.ru/laws/other_laws/european/zakl_akt.htm.

¹⁵ Section VII of the 1975 Helsinki Final Act.

¹⁶ Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990. See in particular Paras. 9.1 and 10.1. The full official text is available at http://www.osce.org/fom/item_11_30426.html.

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Para 9.1 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE also says that the OSCE participating states reaffirm that

*... everyone will have the right to freedom of expression.... This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.*¹⁷

The OSCE Charter for European Security (1999) states:

*We reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.*¹⁸

Finally, at the Moscow Meeting of the Conference on the Human Dimension of the CSCE (October 1991), the participating states unanimously agreed that they

... reaffirm the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.

Given the obligation of the Kyrgyz Republic, stemming from the foresaid, as to “[a]ny restriction in the exercise of this right will be prescribed by law and in accordance with international standards” and the constitutional norm stating that “the universally recognized principles and norms of international law shall be a constituent part of the legal system of the Kyrgyz Republic,” it is worth recalling these generally recognized norms, standards, and principles of international law.

1.3 Permissible Restrictions on Freedom of Expression

The right to freedom of expression is inarguably not absolute: in a few specific instances, it may be subject to restrictions. Due to the fundamental nature of this right, however, any restrictions must be precise and clearly defined according to the principles of a state governed by the rule of

¹⁷ Ibid.

¹⁸ See Para 26 of the Charter for European Security, adopted at the OSCE Istanbul Summit, November 1999. The full official text is available at <http://www.osce.org/item/4051.html?>.

law. In addition, restrictions must serve legitimate purposes and be necessary to the well-being of a democratic society.¹⁹

The right cannot be restricted simply because a particular statement or expression is considered offensive, or because it casts doubt on accepted dogmas. The European Court of Human Rights has therefore stressed that such statements are worthy of protection:

*Freedom of expression ... is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society.”*²⁰

The limits to which legal restrictions on freedom of expression are permissible are established in Paragraph 3 of the above Article 19 of the ICCPR:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

It is worth noting that the matter does not concern the *need* or *duty* of states to establish appropriate restrictions on this freedom but only the *admissibility* or *possibility* of doing so while continuing to observe certain conditions. This regulation is interpreted as establishing a threefold criterion demanding that any restrictions (1) be prescribed by law, (2) serve a legitimate purpose, and (3) are necessary for the well-being of a democratic society.²¹ This international standard also implies that vague and imprecisely formulated restrictions, or restrictions that may be interpreted as enabling the state to exercise sweeping powers, are incompatible with the right to freedom of expression.

If the state interferes with the right to freedom of the media, such interference must serve one of the purposes enumerated in Article 19 (Para 3). The list is succinct, and interference not associated with one or another of the specified aims is consequently a violation of the Covenant's Article 19. In addition, the interference must be “necessary” to achieve one of the aims. The word “necessary” has special meaning in this context. It signifies that there must be a “pressing social need” for such interference;²² that the reasons for it adduced by the state must be “relevant and sufficient,” and that the state must show that the interference was proportionate to the aims pursued. As the UN Committee on Human Rights has declared, “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction

¹⁹ See Section II.26 of the Report from the Seminar of Experts on Democratic Institutions to the CSCE Council (Oslo, November 1991). The official text can be found at the OSCE website: http://www.osce.org/fom/item_11_30426.html.

²⁰ *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49. See the official text of this judgement at the ECHR website: <http://www.medialaw.ru/article10/6/2/52.htm>.

²¹ See, e.g., Paragraph 6.8 of the UN Committee on Human Rights judgment in the case *Rafael Marques de Morais v. Angola*, № 1128/2002, 18 April 2005: <http://humanrights.law.monash.edu.au/undocs/1128-2002.html>.

²² See, e.g., *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40 at the ECHR website: <http://www.echr.coe.int/eng/Press/2004/July/ChamberJudgmentHricovSlovakia200704.htm>.

imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”²³ Restrictions imposed with observation of the above conditions must be proportional to the legitimate aim pursued.

In this respect, it is worth noting that Article 18 of the Kyrgyz Republic Constitution (duplicated in Article 36 of the draft new Constitution) states:

1. In the Kyrgyz Republic, no laws abolishing human rights and freedom shall be issued.

2. Restrictions on human rights and freedoms shall be permitted under the Constitution and laws solely for the purposes of protecting the rights and freedoms of others, public security and order, territorial integrity, and defence of the constitutional order. Where such measures are taken, constitutional rights and freedoms shall not be affected in their essence.

In regard to freedom of the media, Section 6 of Article 65 of the Constitution of the Kyrgyz Republic (also duplicated in the draft new Constitution) states:

No laws restricting freedom of speech and freedom of the press may be adopted.

Article 14 (Section 6) of the Constitution of the Kyrgyz Republic (and the corresponding Article 28 in the draft new Constitution) in turn define the right to freedom of expression and freedom of the media in the following way:

Everyone shall have the right to freedom of thought, speech, and the press, and to freely express these thoughts and convictions. No one shall be compelled to express his thoughts and convictions.

At the same time, it cannot be ignored that the provision banning censorship was for no apparent reason removed from the text of the current version of the KR Constitution adopted in 2007. The draft new Constitution does not, unfortunately, correct the situation. Thus, the Kyrgyz Republic is, along with Turkmenistan and Armenia, an exception among the post-Soviet states: everywhere in the remainder, there are constitutional bans on censorship.

1.4. Regulating Media Operations

To protect the constitutional right to freedom of expression, it is vital that the media have the opportunity to carry out their activities independently of government control. This ensures their functioning as a public watchdog and the people’s access to a broad range of opinions, especially on issues of public interest. The primary aim of regulating media operations in a democratic society ought therefore to be promoting independent and pluralistic media, guaranteeing thereby the exercise of the public’s right to receive information from a wide variety of sources.

Article 2 of the ICCPR assigns participating states the duty of adopting “such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” This means that participating states are required not only to refrain from violating these rights but also to take positive measures to guarantee that such rights are respected, including the right to freedom of expression. The states are *de facto* obliged to create conditions in which a variety of media can develop, thus ensuring the public’s right to information. These conditions apply to creating a public service broadcasting as well.

²³ See the Judgment in the case *Rafael Marques de Morais v. Angola*, note 31, para. 6.8.

An important aspect of the states' positive obligations to help bring about freedom of expression and freedom of the media is the need to develop pluralism within the media themselves and to guarantee equal access to the media for each and every person. The European Court of Human Rights has noted:

*The imparting] of information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism....*²⁴

The Inter-American Court of Human Rights states that freedom of expression demands “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”²⁵

In this respect, it is worth noting that this is universally recognized today: any public agency empowered with the authority to regulate media operations ought to be fully independent of the government and protected against interference by political and business circles. Otherwise, any system of media regulation can easily become an object of abuse for political or commercial purposes. With respect to this, three special representatives stated:

*All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.*²⁶

1.5. Principles Regulating the Operations of Public Broadcasting.

The idea of public broadcasting has received powerful support in a whole series of intergovernmental declarations adopted in recent years. As early as 1992, the Almaty Declaration on Promoting Independent and Pluralistic Media in Asia,²⁷ which called on the governments in the region to help promote nongovernmental and educational broadcasting services in their countries, was adopted with the support of UNESCO.

The vital function of public service broadcasting, accessible to all at the national and regional levels through the creation of a basic universal broadcasting service comprising information, education, culture, and entertainment, is emphasized as an essential factor of pluralism in communications in Recommendation No. R (96) 10 on guarantees of public broadcasting's independence, adopted under the aegis of the Council of Europe.²⁸

The need for all broadcasters in general, and those belonging to a public broadcasting service in particular, to enjoy a high degree of independence (especially from interference by government agencies) that would allow them to effectively fulfil their responsibilities to the public has been stressed repeatedly in documents of international law. The Resolution “On the Future of Public Service Broadcasting” adopted at the 4th European Ministerial Conference on Media Policy

²⁴ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application No. 13914/88 and 15041/89, para. 38). The text of this Judgement can be found at <http://www.medialaw.ru/article10/6/2/14.htm>.

²⁵ Recommendation on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Note 27, Para. 34). See also the Decree on International Mechanisms for Promoting Freedom of Expression: http://www.osce.org/documents/html/pdftohtml/27439_en.pdf.html

²⁶ See http://www.osce.org/documents/html/pdftohtml/27439_en.pdf.html

²⁷ The text (in Russian) can be found at <http://www.bestpravo.ru/fed1992/data01/tex11569.htm>

²⁸ The full English text of the recommendation can be found at the official Council of Europe website: http://www.ebu.ch/CMSimages/en/leg_ref_coe_r96_10_psb_110996_tcm6-4322.pdf

emphasizes that the participating states undertake to ensure the independence of public service broadcasters against “political and economic interference.”

UNESCO in particular has publicly stressed the need for such independence many times. In the 1991 Declaration of Windhoek, UNESCO confirmed its criteria for this, stating that “All funding should aim to encourage pluralism as well as independence” (para 11).²⁹ In another document, the 1997 Declaration of Sofia, UNESCO stated (para 7):

*State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted statutes of journalistic and editorial independence as open public service institutions. If supervisory regulatory broadcasting authorities are established, they must be fully independent of government.*³⁰

In the opinion of the heads of this international organization, “UNESCO is committed to promote Public Service Broadcasting and empower citizens with knowledge to participate actively in the decision making process.”³¹ Though UNESCO declarations “are not binding documents, the fact that they have been endorsed by UNESCO’s General Conference reflects the will of the international community.”³²

The 1st Conference of Ministers on Information and Broadcasting in the Asia–Pacific Region, organized by the Asia–Pacific Institute for Broadcasting Development with the assistance of the United Nations, UNESCO, the International Telecommunication Union, and other organizations, was held in Bangkok, Thailand, 27–28 May 2003. It was conducted in a format of topic discussion and regional preparatory meeting prior to the World Summit on the Information Society, held in Geneva, Switzerland, 2003. A statement containing a number of important recommendations on various aspects of public broadcasting (including regulation), stressed the important role of public service broadcasting in the region.

The Bangkok Declaration adopted at the conference states in particular:

Recommendation 3: Public Service Broadcasting

3.1 Public Service Broadcasters are encouraged to:

- 1. Promote and develop education, including community education, spread of information, empowerment and people's participation in society and development addressing all groups of society;*
- 2. Create programs which carry credibility with pluralistic groups and which promote cultural diversity and bring positive effects of globalization to all communities;*

²⁹ The English text of the declaration can be found at the official UN website: http://www.unesco.org/webworld/fed/temp/communication_democracy/windhoek.htm

³⁰ The Declaration of Sofia, approved by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe) held in Sofia, Bulgaria, from 10 to 13 September 1997. The English text can be found at the official UN website: http://portal.unesco.org/ci/en/ev.php-RL_ID=5352&URL_DO=DO_TOPIC&URL_SECTION=201.html

³¹ *Public Service Broadcasting: A Best Practices Sourcebook*. Indrajit Banerjee and Kalinga Seneviratne, eds. UNESCO, 2005. P. 5. The English text can be found at the official UNESCO website: <http://unesdoc.unesco.org/images/0014/001415/141584e.pdf>

³² *Ibid.* P. 80.

3. *Create rich and quality content for all, and in particular by and for women, youth and children that counters the influence of violence, communal hatred and carry such content on prime time;*
4. *Initiate public debate and common ground talks between policy-makers, academics and media professionals to counter negative effects of violence in media. Broadcasters can promote the culture of dialogue among civilizations with the view to promote understanding and peace;*
5. *Exploit new technologies to expand coverage and accessibility to information and healthy entertainment;*
6. *Promote protection of copyrights of content by coming out strongly against piracy and unauthorized use of content.*

3.2 Authorities are encouraged to:

1. *Allow autonomy in content creation, management, finance and administration of public service broadcasters;*
2. *Study and consider the following funding mechanisms for public service broadcasting:*
 1. *One-time fee while buying a radio/television/electronic appliances/mobile phones*
 2. *Introduction of a license fee either as a stand-alone or as an addition to the electricity bill*
 3. *Government grants for infrastructure*
 4. *Advertising/commercial revenue, but it should not undermine the mandate of public service broadcasting*
 5. *Sponsorship*
 6. *Contribute to production of programs for clearly defined developmental needs;*
3. *Regularly review the mandate of public service broadcasting in view of national, regional and global events in order to foster mutual understanding, tolerance and trust;*
4. *Allocate preferential frequencies to public service broadcasters;*
5. *Create legal structures to allow independence of decision making to public broadcasters;*
6. *Ensure allocation of adequate time by private networks for public service programs and for pluralistic content for all groups of society;*
7. *Ensure complete editorial independence.*³³

The Parliamentary Assembly of the Council of Europe (PACE) defined the following basic principles of public broadcasting in its Recommendation No.1641 (2004), “Public Service Broadcasting”:

³³ The full English text can be found at http://www.aibd.org.my/the_institute/profile/bangkok_declaration.html

*2. Public service broadcasting, whether run by public organisations or privately-owned companies, differs from broadcasting for purely commercial or political reasons because of its specific remit, which is essentially to operate independently of those holding economic and political power. It provides the whole of society with information, culture, education and entertainment; it enhances social, political and cultural citizenship and promotes social cohesion. To that end, it is typically universal in terms of content and access; it guarantees editorial independence and impartiality; it provides a benchmark of quality; it offers a variety of programmes and services catering for the needs of all groups in society and it is publicly accountable. These principles apply, whatever changes may have to be introduced to meet the requirements of the twenty-first century.*³⁴

The Parliamentary Assembly also considers it necessary for a number of principles concerning media freedom to be respected. A list of such principles can be found in PACE Resolution No. 1636 (2008), “Indicators for Media in a Democracy.”³⁵ A list of such principles would facilitate analyses of national media environments in respect of media freedom, which could identify problematic issues and potential shortcomings. This will enable member states to discuss, at European level, possible actions to address those problems. In its resolution, the Parliamentary Assembly invites national parliaments to analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles:

8.20. public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations;

8.21. public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides;

Recommendation No. R (96) 10 of the Council of Europe’s Committee of Ministers on the guarantee of the independence of public service broadcasting recommends the governments of the member states to include in their domestic law or in instruments governing public service broadcasting organizations provisions guaranteeing their independence in accordance with the guidelines set out in the appendix to this recommendation.³⁶ We relied on the recommendation’s data in performing our own analysis.

Finally, the Tenth Central Asia Media Conference, organized by the Office of the OSCE Representative on Freedom of the Media in 2008, stated in its Declaration “The Future of Public-Service Broadcasting and the Digital Switchover in Central Asia” that “public-service broadcasting is one of the basic tools of democracies”:

They are indispensable in ensuring the freedom and transparency of elections, in fighting against hate speech, and in protecting the minority cultures of a country by offering objective news reporting and by broadcasting high quality programs.

³⁴ The full English text can be found at the official PACE website:
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/erec1641.htm>

³⁵ The full English text of the resolution can be found at the official PACE website:
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1636.htm>

³⁶ The full English text of the recommendation can be found at the official Council of Europe website:
http://www.ebu.ch/CMSimages/en/leg_ref_coe_r96_10_psb_110996_tcm6-4322.pdf

*When establishing public-service broadcasters, Central Asian countries should make sure that they create a legally protected broadcasting infrastructure, with guaranteed editorial autonomy, and with a financing system that allows the public-service broadcasters to be independent from both political and commercial interests.*³⁷

The participants urge the Kyrgyz government to abide by international standards of independence of public service broadcasting from government, and provide a positive example for the region.

³⁷ The full English txt of the declaration can be found at the official OSCE website:
http://www.osce.org/documents/rfm/2007/10/34491_en.pdf

II. ANALYSIS OF THE DECREE OF THE PROVISIONAL GOVERNMENT OF THE KYRGYZ REPUBLIC “ON ESTABLISHMENT OF THE PUBLIC TELEVISION AND RADIO BROADCASTING IN THE KYRGYZ REPUBLIC” AND THE KYRGYZ REPUBLIC STATUTE “ON THE PUBLIC BROADCASTING CORPORATION OF THE KYRGYZ REPUBLIC” APPROVED BY THE DECREE

The Decree under analysis, “On Establishment of the Public Television and Radio Broadcasting in Kyrgyz Republic,” was adopted at an extended session of the Provisional Government of the Kyrgyz Republic on 30 April 2010. The Decree approved the Kyrgyz Republic Statute “On the Public Broadcasting Corporation of the Republic of Kyrgyzstan.”

The body adopting the Decree – the Provisional Government of the Kyrgyz Republic – “in order to create an efficient system of state administration on behalf of the people of Kyrgyzstan” – assumed the authority and functions specified in the KR Constitution for president, parliament, and the government of the Kyrgyz Republic.³⁸ In terms of its legal status, the KR Provisional Government’s Decree thereby became a valid law of the Kyrgyz Republic.

The initial memorandum on the drafting of the Decree, signed by the deputy chairman of the Provisional Government of the Kyrgyz Republic, indicates that the operations of the Public Broadcasting Corporation will be built upon two principles:

- state financing;
- public control over broadcasting operations and content.

Below is a commentary with corresponding recommendations to bring the national legislation closer to the Kyrgyz Republic’s international obligations and the generally recognised standards of international law on freedom of expression and public service broadcasting. Before reading the commentary, note the earlier remarks by the Office of the OSCE Representative on Freedom of the Media regarding other proposed changes to the Kyrgyz Republic’s laws on the media.³⁹

2.1. Scope of Application of the Decree and the Management System for the Public Broadcasting Corporation

The KR Provisional Government’s Decree on creating a public broadcasting service in the Kyrgyz Republic gives public broadcaster status to the National Broadcasting Corporation, renamed the Kyrgyz Republic Public Broadcasting Corporation (para 1).

The Decree approves the KR Statute “On the Public Broadcasting Corporation of the Kyrgyz Republic,” which is essentially the law on public broadcasting organizations (para 2).

The Decree stipulates that the first members of the KR Public Broadcasting Corporation’s Supervisory Board shall be appointed for three years (and not five, as stated in the Statute) by the Provisional Government (and not parliament). The members of the Supervisory Board shall be appointed exclusively from candidates proposed by non-profit organizations (and not the president, parliament, or the public at large, as in the Statute) (para 3).

³⁸ See Decree No. 1 of the Provisional Government of Kyrgyzstan (in Russian), dated 7 April 2010, at the Kyrgyzstan Provisional Government’s website: http://www.kyrgyz-el.kg/index.php?option=com_content&task=view&id=68&Itemid=36

³⁹ See, e.g., Commentary on the Draft Law of the Kyrgyz Republic "On Amendments and Addenda to the Kyrgyz Republic 'Law on the Mass Media'" (2009) at the official OSCE website: http://www.osce.org/documents/rfm/2009/11/41315_en.pdf

In the event of a clash of norms between the Statute and the Decree (they are all listed above), those of the Decree take precedence, while in the event of a clash between the norms of the Decree and current legislation or other legal norms of the Kyrgyz Republic, those of the Decree and the Statute approved by it prevail (para 4). The Decree entered into force from the moment it was signed.

Note that the text of the KR Statute “On the Public Broadcasting Corporation of the Kyrgyz Republic” largely coincides with KR Law No. 41 of 2 April 2007, “On the National Public Broadcasting Corporation,” which was adopted by the parliament of the Kyrgyz Republic on 8 June 2006 but was superseded by KR Law No. 106 of 2 June 2008. The Statute and the indicated Law differ only in that the former has no chapter titled “Final Provisions,” while the National Broadcasting Corporation (or in some articles, the State Broadcasting Corporation) is referred to as “The Public Broadcasting Corporation” (but not everywhere).

The 2008 repeal of the KR Law “On the National Public Broadcasting Corporation” at that time evoked concern from the OSCE Representative on Freedom of the Media. In a public statement, he pointed out the incompatibility between the OSCE states’ accepted principles of democratic public service broadcasting and the procedures introduced by KR Law No. 106 of 2 June 2008, “On Television and Radio Broadcasting,” for the president of the Kyrgyz Republic to appoint a chief executive and his deputy, and to select members of the KR National Broadcasting Corporation’s Supervisory Board according to the recommendations of the president.⁴⁰

The return to the earlier system of management and supervision for the operations of the former National Broadcasting Corporation is undoubtedly a positive legal development.

Nevertheless, should the new convocation of parliament examine the KR Law “On the National Public Broadcasting Corporation” on the basis of the adopted Decree and Statute, it would be preferable to create a correlation of forces in the Public Broadcasting Corporation’s Supervisory Board (representatives of the president, parliament, and the public at large) that would provide a counterweight to the representatives of government agencies. This could be done, e.g., by stipulating quotas for representatives of the parliamentary opposition within the Supervisory Board.

In making appointments to the Supervisory Board, the qualification requirements for candidate members must be considered (Article 3 of the Statute) since they remain in force, despite the special procedure for appointing the initial members of the board. The election of the general director must be held on an alternative, competitive basis, as the Statute (Article 19) does not contradict the Decree in this matter.

The powers defined in the Statute for the Public Broadcasting Corporation’s managing bodies (Chapter III) are sufficient for its effective management and for it to perform the functions of the KR National Public Broadcasting Service. The legal framework regulating the operations of the public service broadcaster carefully and clearly defines the areas of responsibility for their supervisory bodies. The Supervisory Board does not have the right to assume any advance control over programming.

Members of the Supervisory Board cannot be dismissed, temporarily suspended, or replaced during their tenure by any official or body other than the agency that appointed them, except in cases where they are either incapable of executing their duties or do not have the opportunity to do so, or if they have committed a crime (Article 12).

⁴⁰ See the press release (in English) at the official OSCE website: http://www.osce.org/fom/item_1_31063.html

In order to avoid the likelihood of a conflict of interest with the functions they perform in the Supervisory Board, members do not have the right, either directly or indirectly, to perform functions, accept payments, or have a financial interest in businesses or other broadcasting media organizations, or in the telecommunications sector associated with broadcasting.

Along with creating the KR Public Broadcasting Corporation on the base of the National Broadcasting Corporation, it is necessary to define the legal status of the Public Television Broadcasting Company (PTBC), created on the base of the Osh-3000 State Television and Radio Broadcasting Company on 10 December 2005 by a KR presidential edict. It does not contradict the Decree for it to function with this status, but it loses its sense in the context of adopting this act.

Recommendations:

- *For the second and subsequent elections to the Public Broadcasting Supervisory Board, it would be preferable to establish a system of representation that would prevent state agencies from gaining a preponderance of power within it. This could be done, e.g., by setting a quota for representatives of the parliamentary opposition among the Supervisory Board's members.*
- *In making appointments to the first and subsequent Supervisory Boards, the qualification requirements for candidates must be considered.*
- *The elections of the first and subsequent general directors should be held on an alternative, competitive basis.*
- *Along with creating the KR Public Broadcasting Corporation on the base of the National Broadcasting Corporation, it is necessary to define the legal status of the Public Television Broadcasting Company (PTBC), created on the base of the Osh-3000 State Television and Radio Broadcasting Company on 10 December 2005 by a KR presidential edict.*

2.2. Regulating Public Broadcasting's Programming Content

The formalisation in the Statute of the prohibition on censorship and creating organizational structures whose duties include censorship functions (Article 5) is to be welcomed. Considering the absence of a prohibition on censorship in the Constitution of the Kyrgyz Republic (see the above), this norm is destined to play an important role in strengthening the editorial independence of the Public Broadcasting Corporation (referred to below as the PBC).

Norms concerning requirements for PBC programming content are set in several articles; even if they do not contradict one another, they clearly do not coincide. This is especially true of Article 6, Section 2 ("Goal and Objectives of the Corporation"); Article 7, Section 1 ("Rights and Duties of the Corporation"); Article 21 ("Corporation Programming Policy"); and Article 23 ("Corporation Information Broadcasting").

Article 6, in particular, requires that the Public Broadcasting Corporation implement an information policy that allows it to maintain the information security of the state; that it follow an active marketing, information, and advertising policy aimed at shaping and supporting a positive image of Kyrgyzstan as a democratic state; and that it be able to provide consumers with timely coverage of the operations of government agencies.

In turn, the norms of Article 7 require it to “perform the dissemination of reliable, objective information.” Article 21 mentions the broadcasting of exclusively “comprehensive, objective, and balanced news reports and current events programmes.” Article 22 requires PBC journalists to be guided by the ethical standards of presenting information: precision, reliability, balance, depth, and comprehensibility. Article 23 prescribes that the PBC “is to provide complete and up-to-date information on all events of significance to the public that take place in the Kyrgyz Republic and around the world. The news should be unbiased, balanced, and independent. Commentary must be clearly separated from fact.” In the same article, the Statute requires that air time be provided free of charge to the heads of the public authorities for extraordinary announcements.

There is major inconsistency between the norms of Article 6 and those of other articles. This must be corrected on the basis of the international standards of objectivity for public service broadcasting.

For example, Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting, adopted under the aegis of the Council of Europe, states the following:

The legal framework governing public service broadcasting organizations should clearly stipulate that they shall ensure that news programmes fairly present facts and events and encourage the free formation of opinions.

The cases in which public service broadcasting organizations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations.

Any official announcements should be clearly described as such and should be broadcast under the sole responsibility of the commissioning authority.⁴¹

The Statute contains a number of important norms required for the Public Service Broadcaster to perform its functions. These concern quotas for the productions of other broadcasting companies independent of the Public Broadcasting Corporation. Article 7 (Section 3) states that the PBC “has the right to tender 30% of its airtime annually for productions (non-commercial cultural or educational programmes) of outside television and/or radio broadcasting companies.” Article 25, however, establishes this quota as a duty of the PBC, and states “no less than 20% and no more than 30% of the Corporation’s airtime shall be devoted to the broadcasting of outside programming annually.” It is recommended that the above contradictions and inconsistencies be eliminated in future legislative efforts.

Recommendations:

- *The inconsistencies between the norms of Article 6 and those of other articles of the Statute in regard to the requirements for the Public Broadcasting Corporation’s programming content should be eliminated on the basis of international standards of objectivity for public service broadcasting.*
- *Any official announcements in PBC programming should be clearly described as such and should be broadcast under the sole responsibility of the commissioning authority.*
- *The contradictions and inconsistencies in regard to the size of quotas for broadcasters*

⁴¹ The full English text of the recommendation can be found at the official COE website: http://www.ebu.ch/CMSimages/en/leg_ref_coe_r96_10_psb_110996_tcm6-4322.pdf

2.3. Financing the Public Broadcasting Corporation: Advertising and Sponsorship

Article 20 (“Property and Financing of the Corporation’s Operations”) of the Statute states the following:

1. The Corporation shall be financed from a protected provision of the state budget of the Kyrgyz Republic.
2. The Corporation may also be financed by
 - advertising, grants, and funds provided by sponsors;
 - its own funds, obtained through the sale of products, labour, services, and other types of economic activity;
 - income associated with copyright use;
 - other income not prohibited under the laws of the Kyrgyz Republic.

The mention of the protected budget provision means that funds cannot be sequestered while they are being used. This is an important guarantee of the PBC operation, especially in difficult economic times. Nevertheless, the Statute does not guarantee that any sort of minimum standards of financing will be observed for public service broadcasting, as is vital to ensuring its economic independence. It is recommended that this norm be reviewed in light of the recommendations of the Bangkok Declaration (see Part I). It is also possible that the experience of public service broadcasting in Georgia, where as of 2010 the volume of financing from the state budget cannot be less than 0.12% of the gross domestic product, should be taken into account.

The COE Ministerial Committee’s Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting states the need to adopt rules governing the funding of public service broadcasting organizations based on the principle that the state undertakes to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organizations the means necessary to accomplish their missions.⁴²

In cases where (as in the Kyrgyz Republic) the financing of public service broadcasting organizations is based on funds from the state budget, it is recommended that the following principles be observed:

- *the decision-making power of authorities external to the public service broadcasting organization in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation;*
- *the level of the contribution or license fee should be fixed after consultation with the public service broadcasting organization concerned, taking account of trends in the costs*

⁴² The full English text of the recommendation can be found at the official COE website: http://www.ebu.ch/CMSimages/en/leg_ref_coe_r96_10_psb_110996_tcm6-4322.pdf

of its activities, and in a way which allows the organization to carry out fully its various missions;

- *payment of the contribution or license fee should be made in a way which guarantees the continuity of the activities of the public service broadcasting organization and which allows it to engage in long-term planning;*
- *the use of the contribution or license fee by the public service broadcasting organization should respect the principle of independence and autonomy mentioned in guideline No. 1;*
- *where the contribution or license fee revenue has to be shared among several public service broadcasting organizations, this should be done in a way which satisfies in an equitable manner the needs of each organization.*⁴³

The Statute deals in detail with the question of advertising in the Public Broadcasting Corporation's programming as one source of financing for PBC operations. This takes place despite the existence of KR Law No. 155, "On Advertising" (24 December 1998), a revised version of laws No. 134 (30 November 1999), No. 130 (25 July 2002), No. 17 (27 January 2006), and No. 35 (6 February 2006), specially designed for just such matters. It contains a multitude of norms for regulating questions of sponsorship and airing advertisements in radio and television broadcasts. Many of the norms in the Law "On Advertising" are needlessly duplicated in the Statute. Other norms (e.g., with regard to the length of advertisements) apply only to the Public Broadcasting Corporation. Some of the Statute's norms on advertising and sponsorship could apply to all media or to all television and radio programmes. Among these are important provisions borrowed from the European Convention on Transfrontier Television. This introduces unneeded chaos into the legislation. It is recommended that the necessary amendments and additions be made to the KR Law "On Advertising" as a result of the adoption of the Decree and the Statute, eliminating from the latter all norms regarding questions of advertising and sponsorship.

Similar remarks may be made in regard to the need to unify, in all media legislation, the norms on the right of rebuttal (or refutation) (Article 26) and on protecting journalists' confidential sources of information (Article 24). The Statute could serve here as a model for other KR media laws.

On the whole, the norms on advertising and sponsorship meet the standards of the European Convention on Transfrontier Television, and in some aspects are even stricter than those of the Convention.

Recommendations:

- *The norm on financing should be specified or revised in light of international experience.*
- *The unwarranted duplication in the Statute and the KR Law "On Advertising" should be eliminated with respect to the regulation of advertising and sponsorship, and the Law "On Advertising" should be amended.*

⁴³ Ibid.