

POLITICIZATION OF THE MEDIA IN THE FIRST DECADE OF POLISH MEMBERSHIP IN THE EUROPEAN UNION

di Maciej Miżejewski*

SUMMARY: 1. Introduction. – 2. National Broadcasting Council as a guarantor of the political independence of the public media. – 3. The National Broadcasting Council as a constitutional body: its contemporary political activity in practice. – 4. Attempts at amending the Media Act to conform to new European regulations. – 5. Judicature of the Constitutional Tribunal concerning the mass media and its political implications. – 6. Adjustment of Polish media law to European Union regulations. – 7. Summary.

1. Introduction.

Public media cannot be perceived just as a sector of social life, they constitute an important tool necessary for democracy to work properly. If the media relinquish their public role by caving to political pressure or gradual commercialisation, the position of democracy in the country becomes seriously endangered. Democracy does not only require independent media to control the actions of the authorities, but also to show the citizens how to understand the world. The citizens need this knowledge to make conscious political choices and it also helps in legitimization of the rule. Commercial media cannot take over this fundamental role of the public media. To fulfil their mission, the media need to be free both from political influences and the pressure of the market.

It is a commonly held belief in the European Union that only public media can be an effective remedy for the continual tabloidization that results in the deterioration in the quality of public debate.

Meanwhile, Poland is currently at the very end of the list of the European Union countries when it comes to the level of public media funding. An average Pole spends about PLN1 on it, which is 100 times less than a German or a British person does, where the proceeds from the licence fees amount to 80% of gross income of public broadcasters such as ZDF, ARD or BBC (Miżejewski, 2013). In Poland it is the other way round. Paradoxically, Polish public television, TVP, is funded from the sale of advertising time to a

* *Assistant Professor* - Jagiellonian University in Kraków, Faculty of International and Political Studies, Institute of Political Science and International Relations .

greater extent than two major commercial channels - Polsat and TVN that, incidentally, are funded not only from the commercials, but also from monthly fees paid by the satellite platform subscribers (Luft, 2014).

The status of Polskie Radio (Polish Radio) is quite different. The phenomenon of the regional stations of Polish Radio, with 80% of their funding coming from the licence fee, make them *de facto* the only local forum for a public debate. The difference between the gross income of public radio stations and television channels is vast. At the present moment, the operating costs of TVP SA made it impossible for the public television to even consider forgoing the commercials. The ban on interrupting scheduled TV programming with commercials resulted in almost PLN400 million in lost income a year on the part of TVP.

The improvement that can be seen in levying the licence fee, connected with more effective debt collecting actions on the part of Poczta Polska (Polish Postal Services), is only temporary. The final solution that would guarantee financial stability to the public media in Poland has not been devised yet.

To lower the operating costs of the company, the management of TVP is currently implementing a radical idea of outsourcing, which is subject to criticism from the trade unions and political opposition. The idea is to delegate certain functions and projects outside the company, and as a result, to transfer some of the employees working on particular projects. In 2013 the public broadcaster transferred 411 employees to a company selected through a tender procedure, with journalists comprising half of the group. Not only did trade unions object to outsourcing being used as the method of restructuring the company, but also programme committees of various divisions of the public television voted against it unanimously (Druki Sejmowe VI kadencja, 2009, pp. 25-27).

During a parliament vote on the report of the National Broadcasting Council for the year 2013, opposition MPs criticised outsourcing, comparing it to disposing of the last shreds of journalistic independence that took place without any reaction of the Council, though it is constitutionally bound to act. The chairman of the National Broadcasting Council, Jan Dworak, referring to the aforementioned charges, stated that it is not the responsibility of the Council and added that the auditors of the National Labour Inspectorate (PIP) and Polish Supreme Chamber of Control (NIK) have not identified any breach of law on the part of TVP management (Druki Sejmowe VI kadencja, 2009, p. 27).

2. National Broadcasting Council as a guarantor of the political independence of the public media.

It was the backdrop of young Polish democracy, emerging from the communist era, and the concern to maintain appropriate standards of public debate that led to the development of institutional barriers that would separate the media from immediate political pressure. It

was one of the reasons why the National Broadcasting Council, a regulatory institution of the audiovisual sector, was established in 1992. From the perspective of the past years, especially the first decade of Polish membership in European Union, a question arises whether the actions of this body have been effective, taking into consideration growing political pressure on the public media, and simultaneous lack of final legal solutions that would make it possible for the public broadcasters to develop steadily and fulfil their mission.

The National Broadcasting Council, in accordance with article 5 of the Media Act (The Act of Law, 1992, art. 5-12), became a constitutional body from the moment the Constitution of the Republic of Poland was adopted in 1997. The regulations on KRRiTV constitute a part of chapter 9 of the Constitution, together with state control and law protection agencies. The role and the responsibilities of the Council are delineated both in the Constitution of the Republic of Poland, and in the Broadcasting Act (Constitution, 1997) and (Act of Law, 1992).

Formally it is classified as one of the central bodies of executive authority, though it is not a government administration authority. Under Article 213 (1) of the Constitution “The National Broadcasting Council upholds freedom of expression, right to information and the public interest in broadcasting.” The protection of these values justifies “the separation of public circulation of information concerning public matters from the decisions of the government. The agency that controls circulation of information cannot in a democratic country be managing the policy of state at the same time” (Dobosz, 2011, p. 118; see also P. Sarnecki, 2005; and Chruściak, 2004, pp. 27-141).

Constitutional Tribunal confirmed that “The National Broadcasting Council is a constitutional body that does not conform to the formula of the tripartite separation of powers. Its internal structure guarantees balance between the legislative and executive authorities when it comes to the fulfilment of its constitutionally delineated responsibilities (Article 10 of the Constitution). Even though its responsibilities involve, to a considerable degree, the actions of administrative and executive nature, it is somehow situated in between the executive and the legislative, with a clear distance maintained from the government” (Verdict of the Constitutional Tribunal, 2006; Garlicki, 2005, p. 342). To fulfil its duties in regards to the electronic media, being independent of the government is the *raison d'être* of the special agency that the National Broadcasting Council is. As a result, the agency can enjoy its independent status and is not formally subject to other state authorities, and in particular, it is autonomous of the Cabinet and its Prime Minister.

Media policy in Poland falls within the jurisdiction of the Minister of Culture and National Heritage (Act of Law, 1997). The National Broadcasting Council does not have the right to initiate legislation, therefore its role in the strategic projects of the government is only that of an expert when it comes to planning audiovisual policy, delineating strategies concerning the digitalization of the public media and its funding scheme. Following the

instructions from the government and the *Sejm*, the Council only gives its opinion on the projects of normative acts and international agreements concerning the matters of broadcasting and television (Article 6 (7) of the Broadcasting Act), and also consults government projects regarding the implementation of the European audiovisual policy.¹

3. The National Broadcasting Council as a constitutional body: its contemporary political activity in practice.

The President of the National Broadcasting Council, Jan Dworak, admitted in the report for the year 2013 that he did not manage to prepare, nor bring forward to the Parliament the bill of an act reforming the funding system of the public media. The modification of the funding system, contrary to appearances, does not only concern the public media, but the whole market. Considering stagnation in advertising, and even ad market decline, the potential of public television to get revenues from advertising has a direct effect on the development of the commercial market (Sprawozdanie KRRiT, 2014). The amendment to the Broadcasting Act of 2010, implemented a new procedure regarding the way in which programme and funding agreements are concluded with public broadcasters, as a result the National Council was made co-responsible for defining its mission-related tasks and a shift was made from entity-based to activity-based funding (Kronika sejmowa, pp. 25-27).

During the parliament debate on the report of the National Council for the year 2013, the President of the National Broadcasting Council analysed the measures taken to improve the efficiency of the current funding model for public broadcasters, and stated that in 2013 the budgetary revenues from the activities of the National Council amounted to over PLN43 million (almost 80% more than it was expected in the budget law). Whereas the concession fees brought altogether the revenue of PLN42.7 million (which entirely constituted the revenue of the state budget). The licence fees in 2013 brought PLN630.2 million. The aforementioned amount exceeded the expected revenue by PLN249 million. The increase in fee collection rate was made possible mainly by improved administrative levying procedures. Polish Postal Services sent more than 566 thousand letters of reminder to the subscribers who had not settled their arrears. As of 31 December 2013, almost 6.8 million of households had registered radios and television sets, 43% of them were exempted from the licence fee, whereas the remaining 3.8 million should have issued their payments. However, only one in four households paid their licence fees in 2013.

In 2013 the National Broadcasting Council provided the public radio and television with a total of PLN650 million, almost PLN20 million of this amount did not come from licence fees. TVP received PLN281.4 million. Polish Radio was given PLN193.7 million, and PLN173.9 million was distributed among the local broadcasting companies. The report

¹ In 2011 legislative proposals concerning the bill of amendment of the Broadcasting Act of the time regarding the transposition of the Audiovisual Media Services Directive were brought forward to the *Sejm* and government by the National Council.

presented by the National Council confirms that Polish public radio broadcasting is 70-80% funded by the licence fees, whereas in the case of public television it is only 20%, which implies that advertising still constitutes a major source of income for TVP.

During a parliament debate on the report of the National Council, the attention was drawn to major delays in the work of the government on the act concerning audiovisual fees, the lack of equality regarding the access to the media of various social groups, and great differences concerning the amount of viewing time devoted to particular political parties and the prevalence of the politicians from the ruling coalition in public media were stressed. Although the National Broadcasting Council faced criticism from the members of the parliament, and the opposition proposed an amendment to reject the report, the *Sejm* voted to adopt the report of the National Council in a resolution in 2013 (with 252 votes to 184 with 12 abstentions).

On 31 March 2014 the National Broadcasting Council published a Regulatory Strategy for the years 2014-2016 that delineates major areas of interest of the regulatory authority in the next years and the methods that are going to be applied (Strategia KRRiTV, 2014, p. 40). The document is a follow-up to the Regulatory Strategy for the years 2011-13, and was dedicated to the memory of an eminent Polish media studies expert, dr Karol Jakubowicz, who died in 2013 and was the initiator and co-author of the Regulatory Strategy for the years 2011-13, in recognition of his contribution to the media in Poland and in the world.

The authors of the strategy indicate, among other things, that a new funding model of the public media based on a general audiovisual fee needs to be implemented and simultaneously the advertising market share of the public media sector needs to be limited gradually. The National Broadcasting Council confirms that currently Poland is in the last place among European countries collecting licence fees - only 10% households pay them on time. In contrast, 4% of Austrians, 5% of Czechs, 2% of Germans, 5.2% of British citizens evade paying licence fees, whereas in Italy the figure amounts to 26%. In Poland public media funding depends more and more on the licence fees collected by tax authorities through administrative levying procedures, which means that the current media funding model is soon going to collapse.

The National Council postulates changing the licence fee (payable for having a device) into a general audiovisual fee, levied for the opportunity of general access to public broadcasters' programmes, available by means of any electronic device, computer, mobile phones, tablets, etc. Should the parliament adopt the law introducing audiovisual fee (subscription), it is to enter into force after the adjustment and transition period of at least two years, during which budget resources required to support the public media and compensate for the decline in income in public broadcasting sector need to be provided.

4. Attempts at amending the Media Act to conform to new European regulations.

Government attempts to amend the media law after the accession of Poland to the European Union so far have been heading in the direction that was quite opposite to the one recommended by the Committee of Ministers of the Council of Europe; it was suggested that the legal changes should lead to the separation of the media from direct political pressure, thus defining its funding model.

Meanwhile, in 2008 the cabinet of Donald Tusk suggested a solution that would lead to subordinating the media to the authorities, according to which the National Broadcasting Council would lose its most important statutory remit, that is the one of granting concession to broadcasters, and this right would be transferred to a government administration authority, Urząd Komunikacji Elektronicznej (the Office of Electronic Communications) (see art. 33 of Act of Law, 1992).

The President of the National Broadcasting Council said in a statement sent to the Speaker of the Sejm that “granting the competences regarding concession to the President of the Office of Electronic Communications is a breach of Article 213 of the Constitution of the Republic of Poland, saying that “The National Broadcasting Council upholds freedom of expression, right to information and the public interest in broadcasting” (Kołodziejski, 2008). The procedure of granting concession to electronic media obviously reflects the idea of public interest in broadcasting and television. As it constitutes a concern of the State for the protection of pluralism in the media.

The suggestion of the ruling coalition was also contrary to the recommendation of the Committee of Ministers of the Council of Europe, which speaking of independence and functions of the regulatory authorities for the sector of broadcasting services, clearly indicates that they should not belong to government administration authorities (Zalecenie REC (2000)23, 2000). Having a government administration authority granting a concession to broadcasters in Poland would be contrary to the standards of European Union, as it would not embody the ideal of pluralism in the media and would introduce a dangerous practice of subordinating the media to the authorities (current legal bases for the concession procedure are analysed in the context of the Broadcasting Act, the Telecommunication Law and the judicature of the Supreme Administrative Court by Dobosz, 2011, pp.129-143). In May 2008, president Lech Kaczyński vetoed the act and the parliament did not manage to accumulate the required majority of 3/5 votes, necessary to override the presidential veto.

Another bill of amendment to the Broadcasting Act, proposed by the ruling coalition in 2009 suggested changes of a revolutionary nature when it comes to the funding of public broadcasters in Poland; the assumption was made that the funding should be contingent on the amount of government grants, which would result in total government control over the public media (Bill of Law, 2009). It was suggested in the bill that as of the 1st January 2010, the licence fees, as a major source of funding for public broadcasters, should be abolished.

Polish Television and Polish Radio were supposed to be funded from the newly-established Fund for Public Tasks (Fundusz Zadań Publicznych), and the National Broadcasting Council would be responsible for providing the financial resources. The author remarks that the activities of KRRiTV, according to the art. 11 (3) of the Broadcasting Act, are financed from the State budget, therefore the solution suggested earlier would result in a full financial dependency of the broadcasters on the authorities, and consequently their political allegiance.

According to the project of the time, the composition of the National Broadcasting Council was to be expanded from the current five to seven members. Three of them would have been appointed by the Sejm, two by the Senate, and two by the President of the Republic of Poland. The members were to be replaced on a rotation basis: those designated by the Sejm - every two years, and those recommended by the Senate and the President - every three years.

The draft also suggested two-year-long broadcasting licences, granted by the National Broadcasting Council, which would delineate programme-related directives and be funded from the Fund for Public Tasks. The commercial broadcasters interested in producing programmes fulfilling “the mission” would also be able to apply for the licence. The organisational structure of Polish Television was to be changed as well. The intention of the authors of the bill was to decentralize the regional branches by the appointment of 16 regional broadcasting companies.

The opposition criticised the bill, interpreting it as an attempt of the ruling coalition parties to take over the public media and to share influences among them, disregarding the members of the opposition. Dr Karol Jakubowicz, a media studies expert, expressed his criticism towards the bill, saying that it would increase public media operating costs, would not ensure proper funding and would eventually lead to a gradual commercialisation of the media or their collapse. Jakubowicz also condemned the bill for making the mechanisms of subordination of the public media to the cabinet of Donal Tusk even more apparent than they used to be (Debata “Media publiczne – nowy ład”, 2009).

In 2010 yet another media bill was introduced in the Parliament, the bill was written by outstanding Polish artists, including Andrzej Wajda. The bill drafted by the artists constituted a response to a long-standing politicization, commercialisation and mismanagement of the public media. The bill of the media act introduced drastic changes regarding the management of the public media (the unabridged text of the artists’ bill is available at www.audiowizualni.pl). According to the bill, the public media would no longer be comprised of companies with Treasury shareholding, but would become state legal persons, so they would not be subject to the regulations of the Code of Commercial Companies and Partnerships.

Under the current state of law, the activity of public broadcasters, seen as commercial code companies, is regulated both by the Broadcasting Act (Act of Law, 1992, art. 2(2); see

also Dobosz, 2011, pp. 79-86), but also the Code of Commercial Companies and Partnerships (regarding the companies of public broadcasting services the regulations of the Act of 15 September 2000 (Act of Law, 2000) shall apply subject to Articles 27-30 of this Act). The author of this article is of the opinion that the ruling of the Constitutional Tribunal of 13th December 1995, adopted on a request from President Lech Wałęsa, concerning the decision on a generally binding interpretation of the articles 26 and 28 of the Broadcasting Act, reduced the inherent contradiction, indicating that the commercial operations of the public broadcasting services form an ancillary and subordinate part of their responsibilities defined in the act (Resolution of the Constitutional Tribunal, 1995) and (Act of Law, 1992, art. 28 ust.1, second sentence). According to Karol Jakubowicz, the Broadcasting Act already specified the non-commercial programme objectives of public broadcasters, it is therefore wrong to interpret the regulations of the Code of Commercial Companies and Partnerships as requiring public broadcasters to make profit (Jakubowicz, 1996).

Moreover, the aforementioned bill proposed by the artists, suggested that licence fees should be abolished and replaced with so-called audiovisual fee, modelled on a French *redevance audiovisuelle*, that would be paid together with tax return. It was supposed to make the public media independent of the ruling authorities when it comes to funding and programme decisions. The bill drafted by the artists meant the National Broadcasting Council would no longer be in charge of the public mass media, by taking the right to choose the members of supervisory boards in public television away from it (Kublik).

Citizens' Committee for Public Media (Komitet Obywatelski Mediów Publicznych) was appointed for this purpose. The Committee's proposal suggested forming a 250-people-strong Electoral College, comprised of people appointed by non-governmental organisations, conferences of rectors of higher education institutions, creative associations, journalists and local governments, among others. A 50-person Committee for Public Media (Komitet Mediów Publicznych), randomly chosen out of the members of the aforementioned college, would be in charge of selecting a 7-person Council for Public Media (Rada Mediów Publicznych) through a competition.

The Council for Public Media, during its five-year period of office, was supposed to protect the independence of the media, delineate their responsibilities, pass the code of media ethics and make public broadcasters account for their expenses. The Council would select in a competitive process the presidents of television, radio and that of a newly-formed body - the portal for the public media, which would accumulate the archives of the public broadcasters and make them available to those who pay the audiovisual fees.

The coalition politicians feared that the Council for Public Media would become a body that is not subject to any form of external scrutiny (i.e. political control). Under the current state of law, the National Broadcasting Council is a constitutional body, its activities are

controlled by the Parliament and the President of the Republic of Poland, that is the authorities that appoint its members.

5. Judicature of the Constitutional Tribunal concerning the mass media and its political implications.

The proposals to abolish licence fees, presented both in the government's bill and MPs' bill (the artists' bill), coincided with the verdict of the Constitutional Tribunal (Verdict of the Constitutional Tribunal, 2010) that having examined the case on 17th November and 10th December 2009 and 16th March 2010, with the participation of the petitioner and the representatives of the Sejm of the Republic of Poland and the Public Prosecutor General, at the request of the Ombudsman to examine the compatibility of art. 7 of the Act on licence fees of 21 April 2005 with art. 1, art. 2 and art. 84 pursuant to art. 217 of the Constitution of the Republic of Poland, in March 2010 stated that: art.7 (3) and (6) of the 21st April 2005 on the licence fees are compatible with art. 2 of the Constitution of the Republic of Poland, reading "the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice". In the justification of the sentence the Constitutional Tribunal analysed the legal nature of the licence fees and the competencies of the authorities competent to collect the aforementioned fees. The sources of income of the public media that were mentioned included in the first place licence fees, therefore it stands to reason that the legislator deemed it to be the most important source of public media funding (Act of Law, 2005). Therefore, the legislator was then supposed to focus on making the methods of licence fees collecting more effective, and not on the abolishment of the primary funding source of public broadcasters.

Especially considering that the previous verdict of 9th September 2004 of the Constitutional Tribunal ruled that the licence fee is "an obligatory, non-returnable public cash liability, serving the fulfilment of the constitutional obligations of the State" (Verdict of the Constitutional Tribunal, 2004). It is a public levy, different from other levies defined in art. 217 of the Constitution of the Republic of Poland in its targeted nature "that does not constitute revenue for the State that is strictly budgetary". It is meant to guarantee stability and predictability of the expenses spent on fulfilling the public mission for both the public authority body - the National Broadcasting Council, and the public media. Treating licence fees as a public levy resulted in the disciplines concerning its introduction (including the Act), and also the obligation of overt and publically controlled use of the revenue derived from it.

The Constitutional Tribunal stated that the very choice of Polish Postal Services as the entity responsible for the registration of receivers and collecting the licence fees does not engender reservations about the admissibility of such regulation, nor does it declare the undertaken actions ineffective. "The actual ineffectiveness of the execution, reported by the parties taking part in the proceedings, though it is reprehensible, it is no tantamount to

declaring the regulation shaping it unconstitutional, whereas the lack of action on the part of certain institutions is not subject to control in constitutional terms”, the decision of the Tribunal reads.

According to the Constitutional Tribunal, the execution - both of the penalty fee and the receivables on licence fees - is admissible and, from the point of view of the applicable law, possible, and the opposite position of the authorities of the State, testifying before the Ombudsman, shows the attitude that bears all the characteristics of *impossibilism*, as in practice, it makes the applicable regulations of the licence fee act dead letters.

The Constitutional Tribunal declared that during the trial, the representative of the Public Prosecutor General signalled that it is impossible to exercise effective control measures, as there is no regulation allowing authorised employees of the Polish Postal Services to enter the premises where an unregistered receiver might be located. According to the Constitutional Tribunal it must undoubtedly affect the effectiveness of detecting those who failed to fulfil the statutory obligation of registering a receiver, and the legislator should be aware of the fact that these officers have no authority to control households without the permission of their residents.

It was the Tribunal’s opinion that the legislator should consider that the failure to register a receiver – though the act is illegal and subject to sanctions - does not constitute either a criminal, nor a minor offence, thus the legal measures connected with searching the premises, under the procedures delineated by the Code of Criminal Procedure, are in this case incommensurate.

6. Adjustment of Polish media law to European Union regulations.

On 5th September 2012, the bill concerning the amendment to the Broadcasting Act was submitted to the Sejm (Druk sejmowy nr 693). The bill was meant to execute the regulations of the European Union, as it concerned the implementation of the Audiovisual Media Services Directive into the Polish legal system.

The adoption of a transposing law, introduced through the amendment of the Broadcasting Act, made the National Broadcasting Council a guarantor responsible for ensuring compliance with the newly introduced rules (EU Directive, 2010). The Act was adopted by the Sejm at the session no 23, on 12th October 2012. The President Bronisław Komorowski signed the Act on Amendment to the Broadcasting Act into law on 16th November 2012 (Act of Law, 2012).

As there were no effective legal solutions that would guarantee public broadcasters maintaining financial liquidity and stable operating conditions in the face of fierce commercial competition, in autumn 2013 the work on the amendment to the Media Act was reconvened; the intention was to change the previous model of public media funding, and as

a result to improve its effectiveness. In accordance with the regulations of the government bill, the obligation to register a receiver and to pay the licence fees would be removed in favour of a general audiovisual fee. The Ministry of Culture and National Heritage prepared its bill based on the calculations of the Central Statistical Office (GUS), and it has been reported that 97.9 % of Polish people have at least one television set at home. The author of the article is convinced that the aforementioned figures are outdated, as other electronic devices enabling the reception of radio or television service, such as computers, tablets, mobile phones, etc. were not take into consideration.

The Ministry of Culture suggested that two versions of the new media act should be prepared, specifying, among other things, the procedures of licence fee levying, and thus the model of public media funding. In the first case, the audiovisual fee would be levied from a certain address, based on the local tax records. As a result, the new obligations would be imposed on the property tax payers, within the meaning of the Act on Local Taxes and Fees (Act of Law, 2010). According to the second option, the fees were to be levied from those, whose personal data would be transferred by electricity suppliers (as it is done in the Czech Republic). The Ministry of Culture was convinced that a household that is not registered with an electricity supplier, does not have access to the broadcasting service.

The audiovisual fee was also meant to have been levied from the owners of companies, who in spite of being obliged by law to pay for every receiver they had, also for the ones in their company cars, had been evading payment of the licence fee. The amounts of the new fees would depend on the size of the company, specified by the number of employees (just like in Germany) (see Miżejewski, 2013, pp. 242-243). In 2013 only 200 thousand institutional subscribers registered the fact of having a radio or TV receiver, out of 4 million registered Polish companies. The change suggested by the government was to involve the way audiovisual fee would be calculated. Large companies would pay most, because they generally have more receivers, for instance in their company cars. People conducting business activity who employ fewer than three workers would be exempt from the obligation to pay the audiovisual fee the way entrepreneurs have to.

In 2014 the government bill was submitted to the Sejm, but was sent back again to the Ministry of Culture and National Heritage. Yet another time, the political ill will impeded the beginning of a legislative process. The National Broadcasting Council, as a body without a legislative initiative, recommended the government to consider implementing in Poland the model of public media funding that had already been tested in Germany, where the obligation to register radio and TV receivers was abolished.

Under the provision of the Interstate Broadcasting Treaty (Rundfunkstaatsvertrag), with effect as of 1st January 2013, approved the previous year by Bundestag, a uniform monthly licence fee of €17.89 was introduced in Germany, which is paid by every household regardless of the number of residents or the number of receivers allowing the reception of broadcasting services (Przegląd Międzynarodowy, 2013). The amount of money paid by

institutions and private companies is dependent on the number of the people employed. Small companies (employing up to 49 people) and medium-sized ones (employing up to 249 people) pay three times and five times the amount of the fee (Mediadem).

In Germany local public broadcasters constitute main beneficiaries of the licence fees, they operate in a network as ARD or a public broadcaster ZDF. When it comes to their income, licence fees constitute about 85%. On this account ARD receives over €5 billion a year, ZDF €1.6 billion (Thomass & Kleinsteuber) see also (Miżejewski, 2013). The income from advertising and sponsorship adds up to only 6%. The profits made through coproduction constitute the remaining part. The proportion of licence fees in the income of public broadcasters in Germany is one of the highest in Europe.

7. Summary.

Since the public media in a democratic system are not an institution of the State, they should not, in the author's opinion, be funded by the State. Which supports the claim that the way the media are funded, that is by the licence fees, should be retained, providing that the levying procedures are improved. It is going to be possible when the licence fee is made public, and is collected for the opportunity of general access to public broadcasters' programmes, regardless of the electronic devices one has. The example of Germany, cited by the author, demonstrates how consistent media policy provides the broadcasters with the funds necessary to fulfil mission-related tasks, gives them stable conditions to develop through investment projects and the improvement of the quality of the programme offer. As a result, media pluralism of a high quality can be assured.

Both European Union and the Council of Europe in numerous declarations (Declaration, 2006; Declaration, 2012; Declaration, 2007) indicated the need of creating stable working conditions for the broadcasters, but neither of the organisations opted for a particular model of their funding, leaving this matter for the Member States to decide. The European Union in the Amsterdam Treaty of 1997 (see Protocol, 1997) sanctioned the freedom of Member States to choose the funding system of their broadcasting services. In accordance with the articles of the Treaty, public funding will be provided to the broadcasters on account of the mission they fulfil, which is defined in the acts of law of particular Member States. The funding model accepted by a given Member State should comply with the general principles of economic relations and competition within the Community.

The Recommendation of the Council of Europe of 2006 (Declaration, 2006) guaranteed freedom to the public media regarding their financial decisions and their programme choices. The Member States were also expected to create effective funding mechanism for public broadcasters, appropriate to their statutory obligations concerning the fulfilment of the mission. The programmes of public broadcasters should constitute a forum for a public

debate and realise in practice the guarantees of pluralism, which can be achieved by allowing the citizens to develop their own opinions freely.

The Recommendation of the Council of Europe puts special emphasis on the independence of public broadcasters from political bias. The best way to ensure this independence is to have a stable funding source provided for the public media by the State, for example in the form of licence fees. It eliminates the risk of political interference in the programme policy of public broadcasters. The licence fees help to establish a direct connection between society and the public broadcaster, whose programme is directly funded by the citizens. The model of public media funding should therefore limit the influences of the State on the media as much as it is possible.

The way in which the media work in Poland, in the state based on the rule of law, gives rise to a situation where the democratic order realised through the pluralism of attitudes and opinions is characterised by a strong influence of the State on the media, especially on the public media, perceived as a forum for a public debate. However, the first decade of Polish membership in the European Union created the required political and legal conditions to search for solutions that, at the formal level, would guarantee the media political neutrality and conditions to act independently.

In the meantime, the current shape of the media law, in the author's opinion, exacerbates the clash of interests between the public media and the politicians, regarding the total control that they want to exercise over the media, both in respect to institutional decisions and programme-wise. It makes it impossible for the media to distance themselves from the world of politics. The viewers need this distance to be able to evaluate political decisions, which is a necessary condition in the process of the legitimization of the State and establishing a real, not just formal, forum for a public debate. Without meeting these conditions, the programmes of the public media in Poland cannot become an effective instrument for implementing the civic right to information.

ABSTRACT:

The first decade of Polish membership in the European Union no doubt constituted a new chapter in the process of media transformation in the democratic state based on the rule of law. The process of adapting institutional and legal solutions to the requirements and recommendations of the Community has given rise to many political controversies, which resulted in the public debate over the new shape of the media law that has been ongoing for the last few years in Poland. Currently, it concerns two major issues. Firstly, improving the effectiveness of public broadcasting funding model, and secondly, limiting the scope of political influences on the public media. A major role in the process has been played by Krajowa Rada Radiofonii i Telewizji (National Broadcasting Council, commonly referred to as KRRiT), the agency with constitutional empowerment, but without the right to initiate legislation, whose role is limited to that of an acting expert.

KEYWORDS: media politics, public media, funding model, politicization of the media

References

- Act of Law. (1992, December 29). Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji. *tekst jednolity*: Dz. U. z 2004 Nr 253 poz. 2531 z późn. zm.
- Act of Law. (1997, 09 04). Ustawa z dnia 4 września 1997 r. o działach administracji rządowej, art. 14 ust. 1 pkt 9. Dz. U. z 2007 r. Nr 65 poz. 437.
- Act of Law. (2000, September 15). Code of Commercial Partnerships and Companies. *Kodeks spółek handlowych* (Dz. U. z 2000r. Nr 94, poz. 1037 z późn. zm.).
- Act of Law. (2005, April 21). Ustawa z dnia 21 kwietnia 2005 r. o opłatach abonamentowych. Dz. U. 2005 Nr 85, poz. 728, z późn. zm.
- Act of Law. (2005, April 21). Ustawa z dnia 21 kwietnia 2005 r. o opłatach abonamentowych. Dz. U. 2005 Nr 85, poz. 728, z późn. zm.
- Act of Law. (2010). Act on Local Taxes and Fees (Dz. U. z 2010 r. nr 95 poz. 613).
- Act of Law. (2012). The Amendment to the Broadcasting Act (Dz. U. 2012, poz. 1315).
- Biała Księga: Polityka państwa polskiego w dziedzinie mediów elektronicznych w kontekście europejskiej polityki audiowizualnej - założenia nowej ustawy o mediach elektronicznych. (2004). *www.krrit.gov.pl*. Retrieved January 15, 2015
- Bill of Law. (2009, March 18). Projekt ustawy o zadaniach publicznych w dziedzinie usług medialnych. *Druk nr 1847*. Warszawa: Sejm Rzeczypospolitej Polskiej.
- R. Chruściak, (2004). *Konstytucjonalizacja wolności mediów, wolności wypowiedzi oraz Krajowej Rady Radiofonii i Telewizji. Kształtowanie przepisów konstytucyjnych i ustawowych*. Warszawa.
- Debate „Media publiczne – nowy ład”. (2009, April 20). Retrieved January 15, 2015, from <http://www.batory.org.pl>:
http://www.batory.org.pl/programy_operacyjne/debaty/2009/media_publiczne_nowy_lad
- Declaration. (2006, September 27). *Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states (Adopted by the Committee of Ministers at the 974th meeting of the Ministers' Deputies)*. Retrieved January 31, 2015, from http://www.coe.int/t/dghl/standardsetting/media/Doc/CM_en.asp
- Declaration. (2007, January 31). *Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration (Adopted by the Committee of Ministers at the 985th meeting of the Ministers' Deputies)*. Retrieved January 31, 2015, from http://www.coe.int/t/dghl/standardsetting/media/Doc/CM_en.asp
- Declaration. (2012, February 15). *Declaration of the Committee of Ministers on Public Service Media Governance (Adopted by the Committee of Ministers at the 1134th meeting of the Ministers' Deputies)*.

Pobrano January 31, 2015 z lokalizacji
http://www.coe.int/t/dghl/standardsetting/media/Doc/CM_en.asp

Deklaracja Komitetu Ministrów Rady Europy z dnia 12 lutego 2004r. w sprawie swobody debaty publicznej w mediach. (2004). Pobrano January 15, 2015 z lokalizacji www.coe.int.

Deklaracja Komitetu Ministrów Rady Europy z dnia 12 lutego 2004r. w sprawie swobody debaty publicznej w mediach. (2015, January 15). *www.coe.int*.

Dobosz, I. (2011). *Prawo prasowe*. Warszawa.

Druk sejmowy nr 693. (n.d.). Druk sejmowy nr 693.

Druki Sejmowe VI kadencja. (2009, January 15). *Druk 2306; Druk 2530*. Retrieved 01 15, 2014, from <http://orka.sejm.gov.pl/>

EU Directive. (2010, March 10). Dyrektywa Parlamentu Europejskiego i Rady Unii Europejskiej 2010/13/UE z dnia 10 marca 2010 r. w sprawie koordynacji niektórych przepisów ustawowych, wykonawczych i administracyjnych państw członkowskich dotyczących świadczenia audiowizualnych usług media.

L. Garlicki, (2005). *Polskie prawo konstytucyjne. Zarys wykładu*. 9, 342. Warszawa.

K. Jakubowicz, (1996). Publiczna i prywatna telewizja. In G.Kopper, I.Rutkiewicz, & K. Schliep (Eds.), *Media i dziennikarstwo w Polsce 1989-1995*. Kraków: OBP UJ.

K. Jakubowicz, (2007). *Media publiczne. Początek końca czy nowy początek*., Warszawa.

K. Jakubowicz, (2008). *Polityka medialna a media elektroniczne*. Warszawa.

K. Jakubowicz, (2010). *Unia Europejska a media. Między kulturą a gospodarką*. Warszawa.

W. Kołodziejcki, (2008, January 21). *Stanowisko przewodniczącego Krajowej Rady Radiofonii i Telewizji Witolda Kołodziejckiego przesłane marszałkowi Sejmu RP Bronisławowi Komorowskiemu na temat poselskiego projektu ustawy w sprawie nowelizacji ustawy o radiofonii i telewizji*. Retrieved 01 15, 2015, from www.krrit.gov.pl

Komunikowanie i obywatelskość. Mass media w społeczeństwie, czyli atak na system nadawców publicznych,. (2007). In P. Dahlgren, & C. Sparks (Eds.). Wrocław.

Kublik, A. (n.d.). *Telewizja twórców gotowa*. Retrieved 2013, from http://wyborcza.pl/1,76842,7623630,Telewizja_tworcow_gotowa.html.

K. Luft, (2014, 03 25). Abonament do remontu. *Gazeta Wyborcza*.

P. i Mancini, D. C. Hallin, (2007). *Systemy medialne. Trzy modele mediów i polityki w ujęciu porównawczym*. (M. Lorek, Tłum.) Kraków.

Mediadem. (n.d.). *New funding regime for Public service Broadcasting in Germany*. Retrieved 2015, from www.mediadem.de: www.mediadem.de

M. Miżejewski, (2004). Il sistema radiotelevisivo polacco sullo sfondo delle trasformazioni politiche. *Nomos. Le attualità nel diritto*(2).

M. Miżejewski, (2005). *Transformacja telewizji w Polsce po roku 1989 na tle zmian politycznych*. Przemysł.

M. Miżejewski, (2013). Finansowanie mediów publicznych w polityce medialnej Unii Europejskiej. Przykład Polski, Węgier, Francji i Niemiec. *Politeja*(23), 219-249.

M. Miżejewski, (2013). *Ochrona pluralizmu w polityce medialnej Włoch*. Kraków.

Protocol. (1997). Protocol on the System of Public Broadcasting in the Member States annexed to the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 1997.

Przegląd Międzynarodowy. (2013). *Nowy model finansowania mediów publicznych*. Pobrano z lokalizacji www.krrit.gov.pl: www.krrit.gov.pl

Recommendation Rec (2007) 2 of the Committee of Ministers to member states on media pluralism and diversity of media content. (2007, January 31). *www: wcd.coe.int*. Pobrano January 15, 2015

Recommendation Rec (2007)3 of the Committee of ministers to member states on the remit of public service media in the information society. (2007, January 31). *www: wcd.coe.int*. Pobrano January 15, 2015

Recommendation REC(2000)23. (2000, December 20). *Recommendation No.R (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector and its Explanatory Memorandum*. Retrieved January 15, 2015, from www.krritv.gov.pl.

Resolution of the Constitutional Tribunal. (1995, December 13). Uchwała Trybunału Konstytucyjnego z dnia 13 grudnia 1995 r. dotycząca ustalenia powszechnie obowiązującej wykładni przepisów art. 26 ust. 4.

Rezolucja Parlamentu Europejskiego z dnia 25 września 2008 r. w sprawie koncentracji i pluralizmu mediów w Unii Europejskiej (2007/ 2253/INI, 2010/C8E/16). (brak daty). *www.europarl.europa.eu*. Pobrano January 15, 2015

RP Constitution. (1997, 04 02). Konstytucja RP z dnia 2 kwietnia 1997 r. *Dz. U. z 1997 r. Nr 78, poz. 483, art. 213-215*.

P. Sarnecki, (2005). Regulacja problematyki środków społecznego przekazu w Konstytucji Rzeczypospolitej Polskiej. In J. Barta, A. Matlak, & R. Markiewicz (Eds.), *Prawo mediów* (p. 31). Warszawa.

Sprawozdanie KRRiT. (2014, 03). *Sprawozdanie Krajowej Rady Radiofonii i Telewizji za rok 2013*. Retrieved 01 15, 2014, from krrit.gov.pl: krrit.gov.pl

E. Stasiak-Jazukiewicz, & M. Jas-Koziarkiewicz, (2011). *Polityka medialna w Unii Europejskiej*. Warszawa.

P. Stępa, & et al. (2005). Instrumenty promujące niezależność mediów publicznych na przykładzie wybranych państw europejskich. *Analiza KRR i TV*(5).

P. Stępa, A. Woźniak, & E. Murawska-Najmec, (2010). Finansowanie mediów audiowizualnych ze środków publicznych- analiza porównawcza na przykładzie wybranych państw europejskich. *Analiza KRR i TV*(3).

Strategia KRRiT. (2014, 03). *Strategia regulacyjna KRRiT na lata 2014-2016*. Retrieved 01 15, 2015, from www.krrit.gov.pl

Strategia Państwa Polskiego w dziedzinie mediów elektronicznych na lata 2005-2020. (2005). *www.krrit.gov.pl*. Retrieved January 15, 2015

Strategia regulacyjna KRRiT TV na lata 2011-2013. (2011). *www.krritv.gov.pl*. Retrieved January 15, 2015

B. Thomass, & H. Kleinstüber, (n.d.). *Media landscape: Germany*. Retrieved 01 15, 2015, from www.ejc.net/media_landscape/article/germany/#118

Verdict of the Constitutional Tribunal. (2004, September 9). Wyrok Trybunału Konstytucyjnego z 9 września 2004 r., sygn. akt K 2/2003.

Verdict of the Constitutional Tribunal. (2006, March 23). *Wyrok TK z dnia 23 marca 2006 r., sygn. akt K 4/06 (OTK ZU nr 3/A/2006, poz. 32)*.

Verdict of the Constitutional Tribunal. (2010, March 16). Wyrok TK z 16 marca 2010 roku, sygn. akt K 24/08 22/3/A/2010.