

The Levan Mikeladze Foundation

**Civil Monitoring for Improvement
of TV Media Environment**

Open Society Georgia Foundation

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Contents

About the Project

Key Findings

Introduction

Regulation of Broadcasting in Georgia

Annual Report of the Georgian National Communications Commission and Approval of the Budget

The Commission's Authority to Protect Copyright and Neighboring Rights

Transition to Digital Broadcasting

Mixed Approach

Modification of Licenses

Modification of Licenses to Bring Them in Compliance with Legislation

"Stereo +" LLC

Consumers' Rights

Must Carry

The Commission's Resolution on the "Procedure for Participation and Use of Media in Electoral Process"

Conflict of Interests in the Georgian National Communications Commission

Recommendations

About the Project

The Levan Mikeladze Foundation and the Georgian Young Lawyers' Association, with financial support of the "Open Society Georgia" Foundation, from April 2012 until February 2013 have implemented monitoring of practical activities of the Georgian National Communications Commission. The project aimed to determine the legitimacy of regulation of broadcasting and promote the protection of interests of the TV broadcasters.

Monitoring group has examined all legal acts on TV media issues (on broadcasters and cable operators carrying out a broadcasting transit) adopted by the Commission within the reporting period.

Notably, civil monitoring to improve TV media environment is carried out since May 2011.¹

¹ http://mikeladzefoundation.org/multimedia/ups/satelevizio_mediis_regulireba_saqartveloshi.pdf.

Key Findings

- Georgian legislation does not secure on one hand such mechanisms of staffing of the Commission, which would safeguard the regulatory body from the influence of political forces, and on the other hand, the effective control and participation in the Commission's activities by the civil sector. Legislator does not clearly define the extent of the Commission's authority to control the observance of requirements of the Law of Georgia on the "Copyright and Neighboring Rights" by the transit broadcasters.
- The study has once again identified the conflict of interests of the Chairman of the Georgian National Communications Commission – Mr. Irakli Chikovani, which undermines as an impartial and effective work of the Commission, as well as the development of telecommunications sector.
- The study has demonstrated that the number of decisions of the Georgian National Communications Commission is discriminatory. Unfortunately, the Commission is not actively involved in either the current debates on the Law of Georgia on "Broadcasting" or the activities of working groups and the council set up to promote the transition to digital broadcasting.

Introduction

As the year of parliamentary elections, 2012 was marked with harsh confrontation between the ruling force and the strong opposition coalition. Steps of the authorities made in the pre-election period have affected the telecommunications sector as well. Majority of the population was deprived of an opportunity to have access to broadcasters critical to the authorities, whereas the channels associated with the ruling force were available to the absolute majority. Possibility of providing alternative information to the audience was restricted by generally well-known arrest of satellite dishes belonging to “Global TV” and TV Company “Maestro” during the pre-election period; companies were inspected and fined in connection with the newly created opposition television – 9th Channel. Yet, following the long-term advocacy by the NGO sector also in 2012, introduction by the Parliament of Georgia of the “Must Carry” principle during the pre-election period was one of the most important legislative acts, by which a major portion of population especially in the regions was given an opportunity to receive alternative information.

The Georgian National Communications Commission, which pursuant to the legislation is an independent regulatory body of the Georgian telecommunications sector, was publicly criticized in recent years for number of times, especially after the Commission made a host of discriminatory decisions, which obviously had a negative impact on the telecommunications sector.

The issue of conflict of interests of the Chairman of the National Communications Commission once again became of concern in 2012, especially after the former employee of the Commission has released a secret audio recording, in which allegedly Irakli Chikovani stated in a conversation with the representative of one of the broadcaster operators that he would be unable to offer protection to the activities of this company. “Leaving on vacation for three months” since November 2012 by Irakli Chikovani without making any public explanations has resulted in additional criticism.

Decisions adopted by the regulatory body in the broadcasting sector were examined during the monitoring period of the National Communications Commission. Along with positive actions taken by the Commission, number of other problematic issues was identified discussed in a separate chapter of the present report.

Regulation of Broadcasting in Georgia

Legislation of Georgia is consistent with a majority of recommendations of the European institutes on the independence, transparency of activities and accountability of the broadcasting regulatory authorities.

The Law of Georgia on “Broadcasting” safeguards the Commission’s independence. The Law states that illegal influence on the activities of the Commission’s members and the administration staff and interference in these activities shall be prohibited, while a decision adopted as a result of such influence or interference shall be void (Article 6, Paragraph 1). Further, this legislative act regulates in detail the issues of conflict of interests of the Commission’s members and the staff of the Commission’s administration. Remarkably, the Commission member has a conflict of interests if s/he is an official of another administrative authority, member of a political party and has a direct or indirect economic interest in respect of a person, whose activities fall within the Commission’s regulation.

Legislation of Georgia provides for the accountability mechanisms of the Commission before the Parliament of Georgia, which in addition obligates the Commission to annually publish and publicly discuss the last year’s activity report.

The Commission consists of 5 members appointed by the President of Georgia with consent of the Parliament of Georgia. One of the Commission members is a member of the parliamentary majority, and one is appointed from the quote of a parliamentary faction affiliated with the majority.

Annual Report of the Georgian National Communications Commission and Approval of the Budget

Pursuant to Paragraph 2 of Article 13 of the Law of Georgia on “Electronic Communications”, no later than June 1st of each year the National Communications Commission publishes and submits to the President and Parliament of Georgia the last year’s activity report and results of a financial audit. The Commission has posted the draft annual report for 2011 on the web page on 31 May 2012. Although the agenda of the June 1st sitting was posted on the Commission’s web page, it did not cover the above-described issues. Information on the approval of an annual report was not added to the agenda pursuant to the law either before the start of the sitting.

Paragraph 1 of Article 12 of the Law of Georgia on “Electronic Communications” stipulates that “by December 1st of each year the Commission prepares and publishes the next year’s budget, which shall reflect all expenses of the Commission including the remuneration expenses of the Commission and its administration as well as the income.” The National Communications Commission has approved the 2013 budget late – on 7 December 2012. Further, although the agenda of the December 7th sitting was posted on the Commission’s web page, it did not include this issue. Information on the approval of the budget was not added to the agenda pursuant to the law either before the start of the sitting.

The Commission has breached Paragraphs 5 and 6 of Article 7 of the Law of Georgia on “Broadcasting”, pursuant to which the Commission shall be obligated to publish the information on the next sitting, its location, time and agenda 3 days earlier, while in case of adoption of a respective decision – on the closure of a sitting. In case of urgency the Commission is authorized to convene a sitting without observing the rules provided in Paragraph 5 of this Article. In such case the Commission is obligated to publish the information on the location, time and agenda of the sitting immediately. It is less probable that the examination of above-described issues was decided in such a short period of time before the start of the sitting that the Commission did not have enough time to publish the information stipulated by law.

We believe that adoption of the budget (especially when it has increased by 727 thousand from last year)², as well as approval of an annual report are issues triggering huge public interest. Hence, it is crucial to make the dates of such discussions public. Further, draft documents must be posted online reasonably earlier so that the interested persons are able to get familiar with them and participate in their examination.

² http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=111872;
http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=113408.

The Commission's Authority to Protect Copyright and Other Related Rights

Our previous report also focused on the authority of the Georgian National Communications Commission to protect the copyright and neighboring rights. It was noted in a summary conclusion that the Commission makes sanctioning decisions due to the breach of the copyright and neighboring rights based only on those general articles of the Law of Georgia on "Electronic Communications", which grant it the authority to control the activities of authorized persons in the electronic communications sector and to react to violations of legislation of Georgia in this sector.

Since February 1, 2012 Sub-Paragraph "a" of Paragraph 2 of Article 19 of the Law of Georgia on "Electronic Communications" was amended, which obligates an authorized person to submit to the Commission within the period requested by it the documents confirming the observance of requirements established under the legislation of Georgia on the copyright and neighboring rights.

It is uncertain whether this amendment has clarified the Commission's authority or it has gained a new function. We consider that Sub-Paragraph "a" of Paragraph 2 of Article 19 of the Law of Georgia on "Electronic Communications" (as of 18 January 2012) was subject to broad interpretation and this norm entitled the Commission back then as well to request from authorized persons documents confirming the observance of requirements established under the legislation of Georgia on the copyright and neighboring rights.

Transition to Digital Broadcasting

In 2006, under the "Geneva-06" plan the International Telecommunication Union (ITU) has set June 17, 2015 as deadline for many countries worldwide including Georgia for transiting to the Digital Terrestrial Television (DTT) broadcasting.

Pursuant to Paragraph 1 of Article 6 of the Law of Georgia on "Electronic Telecommunications", the Government of Georgia shall develop and submit for approval to the Parliament of Georgia the key trends of the state policy in the electronic communications sector, by taking into consideration the proposals of the Ministry of Economy and Sustainable Development of Georgia. Based on this norm, elaboration of issues connected to transition to digital broadcasting is the competence of the Ministry of Economy and Sustainable Development of Georgia. Notably, an advisory body is set up - the council for transition to digital broadcasting, which along with the governmental representatives consists of NGO representatives, persons working on media-related issues, representatives of the Georgian National Communications Commission and experts.

On October 30, 2012 the Georgian National Communications Commission has presented its own vision on the process of transition to digital broadcasting.³ Part of the presentation delivered by the Commission was dedicated to the Commission's opinion on the model by which Georgia must transit to digital broadcasting.

We find it important that the National Communications Commission participates in the process of transition to digital broadcasting more actively: develops recommendations, expresses its position on the broadcasting licenses, especially when the Commission continues issuing licenses to the broadcasters and making decisions on extension of terms of validity. The licenses are issued and terms are extended for 10 years when less than 2 years are left before transition to digital broadcasting. Now the broadcasters pay the cost for 10 years, while after the transition to digital broadcasting these relations may be regulated otherwise.

³ http://gncc.ge/index.php?lang_id=GEO&sec_id=2101&info_id=113188.

Mixed Approach

On April 10, 2012 the Georgian National Communications Commission has fined "Magticom" LLC for misleading advertising by 90,000 GEL.⁴

In its decision the Commission noted that "Global Media Group" LLC had submitted to the Commission the application that informed that "Magticom" was disseminating an improper advertisement. Based on this fact simple administrative proceedings were initiated in the Commission on April 3, 2012 on the sanctioning of "Magticom" LLC.

In the same decision the Commission stated that airing of an advertising video of "Magticom" LLC indicated in the application of "Global Media Group" LLC was stopped on April 1, 2012, prior to the launch of proceedings.

On December 24, 2010 the Commission made the decision, which due to elimination of violation, was left without reaction by the Commission. "Rustavi 2" has violated Paragraph 5 of Article 63 of the Law of Georgia on "Broadcasting", pursuant to which any participation of the anchor of news or public-political and pre-election debate program or journalist in advertising or TV shopping is prohibited. In particular, Nino Shubladze, the anchor of one of the ranked programs "Position" and one of the faces of the TV company was shot in the advertising of the Chachava Clinic, which was aired by the TV company.

Accordingly, a mixed approach towards two entities on the same (advertising) issue is apparent in these two cases. In one case the Commission has found that elimination of violation is the basis for terminating the proceedings, while in the other case it did not take elimination into account and rendered the sanction. The above action is a clear violation of Article 4 of the General Administrative Code of Georgia, which safeguards the equality before law.

⁴ http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=112432.

Modification of Licenses

In accordance with Paragraph 1 of Article 45 of the Law of Georgia on "Broadcasting", a license may be modified based on:

- a) Amendment and/or supplement to the legislation of Georgia or priorities of the broadcasting sector;
- b) Justified request of the Commission or license-holder on making amendments or supplements to the license.

On 22 May 2008 the Commission made the decision #279/22,⁵ in which it noted that in view of changes made in recent years to the TV-radio broadcasting market in the country, when issuing licenses the Commission would no longer be guided by the TV-radio broadcasting priorities, as the two-year term of their validity established by the law has expired.

In the same decision the Commission noted that "pursuant to Sub-Paragraph "a" of Paragraph 1 of Article 45 of the Law of Georgia on "Broadcasting", making amendments to the TV-radio broadcasting priorities is at the same time basis for making amendments/supplements to the effective licenses. In view of the fact that the applications requesting the modification of a type of license are submitted to the Commission (namely, the 8 April 2008 application of "Studio Maestro" LLC), which in itself is based on inquiries unknown to the Commission, the Commission believes that determination of the TV-radio broadcasting priorities will also facilitate the regulation of the change of a type of already issued broadcasting licenses and the license modification issues to this end pursuant to the public interests."

Based on all the above, modification of broadcasting licenses was suspended until 2011 along with issuing of such licenses, if this concerned the modification of a type of licenses.

"Studio Maestro" has challenged this fact in court. The settlement act was executed in the Appellate Court between Maestro and the National Communication Commission, pursuant to which the Commission undertook an obligation to ensure modification of license of "Studio Maestro",⁶ by which it has confronted its own act.

Similar decision⁷ (137/2) was rendered with respect to TV-company "Mze" as well. The Commission referred to Article 4 of the General Administrative Code of Georgia as the basis of its

⁵ http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=6014.

⁶ http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=6690.

⁷ http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=7029.

decision, according to which it did not want to place entities within the domain of its regulation in different positions. Further, during May 22, 2008 – April 8, 2011 the Commission has modified the licenses in respect of the following broadcasting channels:

1. "Rustavi 2"⁸ has amended the private broadcasting license so that the company became able to transmit the broadcasting grid foreseen by the license through the cable network as well.⁹
2. The license of TV-company "Sakartvelo" was modified so that it could have been able to transmit the television signal through the terrestrial and orbital stations of the satellite systems; later, it would receive the right to broadcast through a cable network as well.¹⁰

⁸ http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=8721.

⁹ http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=8538.

¹⁰ http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=8736.

Modification of Licenses to Bring Them in Compliance with Legislation

Pursuant to Paragraph 12 of Article 76 of the Law of Georgia on "Broadcasting", within 1 year from the enactment of the Law of Georgia on "Broadcasting", the Commission should have modified the issued licenses for bringing them in compliance with legislation, including with respect to the broadcasting obligations. In 2006 (N527/2) the Commission has brought number of broadcasting channels in compliance with the legislation.

During May 22, 2008 until April 8, 2011 the Georgian National Communications Commission has modified the licenses of several broadcasting channels based on Paragraph 12 of Article 76 of the Law of Georgia on "Broadcasting", including:

1. "TV-Broadcasting Company 9th Channel" LLC;¹¹
2. "TV-Company Aisi" LLC;¹²
3. "Global Media Group" LLC.¹³

The Commission has justified the fact that the licenses of "TV-Broadcasting Company 9th Channel" LLC, "TV-Company Aisi" LLC and "Global Media Group" LLC were not in compliance with legislation for 1 year by referring to the fact that these companies themselves have not addressed the Commission with requests on modification of licenses, bringing them into compliance with law and clarification of the type and kinds of licenses. In 2010 the companies have clarified the type and kinds of broadcasting carried out by them, following which the Commission has modified their licenses.

Modification of licenses of "TV-Broadcasting Company 9th Channel" LLC, "TV-Company Aisi" LLC and "Global Media Group" LLC in order to bring them in compliance with legislation should not be justified, as pursuant to Paragraph 12 of Article 76 of the Law of Georgia on "Broadcasting", the Commission should have brought the licenses in compliance with legislation within 1 year from the adoption of legislation. As the Commission notes, it has not fulfilled its obligation established by the above law only because the companies have not addressed it with the request to specify the type of licenses. Accordingly, for years they have operated through licenses inconsistent with the new legislation. The Commission should have been aware of this information, but its own decision illustrates that the Commission has not reacted respectively until the broadcaster itself had addressed the Commission.

¹¹ http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=6941.

¹² http://www.gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=6945.

¹³ http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=8725.

This case has identified the following problem: the Commission has not modified the licenses of "TV-Broadcasting Company **9th Channel**" LLC, "TV-Company Aisi" LLC and "Global Media Group" LLC to bring them in compliance with legislation within the term fixed by law.

“Stereo +” LLC

On 6 June 2012, the Georgian National Communications Commission has warned "Stereo +" LLC for violating the terms of the license for use of radio spectrum frequency (NF13). In addition, the Commission has fined "Stereo +" LLC by 5,000 GEL for operating without authorization and using the radio spectrum frequency without granting, permission or license.¹⁴

The sanction was based on the following circumstances:

On 4 June 2012, the Commission became aware through the mass information means and social networks that from the evening of 4 June 2012, the broadcasting of TV-company **9th Channel** became possible in Tbilisi on metric frequency through the television antennas. According to the Director of "9th Channel" LLC Kakha Bekauri, the television channel managed to start broadcasting based on the agreement executed with the company "Stereo +".

Monitoring carried out by the Commission has revealed that the broadcasting programs of **9th Channel** were aired through the 71.0 MHz +- 3 MHz frequency spectrum, as well as the radio spectrum frequency (66.8 MHz - 74.0 MHz) covered by the NF13 license belonging to "Stereo +" LLC. Based on the above, television broadcasting of **9th Channel** LLC became available to final users in an open air, through the so-called "open link" as well.

NF13 license does not grant "Stereo +" LLC the authority to freely and unrestrictedly provide to final users the broadcasting signal. Holder of the NF13 license is authorized to provide services of receiving/transmitting the digital audio/video data received from the fixed and/or mobile station/s to the other fixed/mobile station/s to the persons carrying out broadcasting. Notably, "Stereo +" does not have the authority to use the radio spectrum frequency of 66.8 MHz - 68.0 MHz either.

The Director of "Stereo +" (Davit Zilfimian) has not denied the fact of using the radio spectrum frequency of 66.8 MHz - 68.0 MHz. He has noted also that he would immediately remedy the violation identified by monitoring, and accordingly would immediately stop using the radio spectrum frequency of 66.8 MHz - 68.0 MHz. He explained in addition that this may have been caused by recently developing circumstances in "Stereo +". As Davit Zilfimian has stated, he found the filters that regulate non-transition to other frequency zones to be damaged. The Commission has not judged these circumstances, by which it has violated Paragraph 6 of Article 38

¹⁴ http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=112606.

of the June 27, 2003 Resolution N1, pursuant to which "during the examination of cases of administrative offences the Commission shall be obligated to establish whether: a person is guilty; there are any mitigating or aggravating circumstances of responsibility; there are any other circumstances significant for the right decision on the case."

Further, Davit Zilfimian has stated that if after remedying this violation the broadcasting production of "9th Channel" would have been still available openly to the final users-subscribers, "Stereo +" LLC would not be responsible for this, as the new generation of receivers (TV sets) have the ability to perceive the BG standard signal, thus making the broadcasting production of "9th Channel" available to the final customers, which was not a broadcasting transit by itself.

To prove the above Davit Zilfimian has motioned to appoint the expert examination, but the Commission has decided to reject the motion as the question put forth for expert examination was irrelevant in respect of examination of the issue by "Stereo +" LLC. In view of various pieces of information disseminated in media about "Stereo +" LLC, later the Commission has addressed the Faculty of Energy and Communications of the Georgian Technical University and requested the technical expert opinion as another piece of evidence. The above opinion upholds the Commission's position, but the other party still does not agree to it.

Pursuant to Paragraph 14 of Article 36 of the June 27, 2003 Resolution N1 of the Georgian National Communications Commission on the Approval of Rules Regulating the Activities of the Georgian National Communications Commission, the administrative proceedings on warning and fining are initiated from the moment of sending (by insured post or a telephone message) the notification on initiation of administrative proceedings to an interested party by the Commission.

The notification, which was delivered to Davit Zilfimian approximately at 20:00 on June 5th was of a general character and did not clearly indicate that the issue concerned sanctioning and that the proceedings should have been initiated around this issue.

Materials of administrative proceedings, namely the Protocol of administrative offences - 000183 drawn up by the Department for Management of Radio Frequencies of the Commission's administration, as well as the inspection act - 10, were sent to "Stereo +" LLC on 6 June 2012, and were delivered to the Deputy Director of "Stereo +" LLC Malkhaz Kvaratskhelia few minutes prior to the start of the hearing.

In light of the above fact it is clear that the party did not have reasonable time to get familiar with the protocol of administrative offence and the inspection act, prepare respective arguments and submit relevant evidence, by which the requirements of Article 99 of the General Administrative Code of Georgia were violated.

The Georgian National Communications Commission has rendered another sanction against "Stereo +" LLC on October 26, 2012, fining this company by 3,000 GEL for violating Sub-Paragraph

"b" of Paragraph 2 of Article 19 of the Law of Georgia on "Electronic Communications" and the terms of licensing conditions of the NF13 license of using the radio spectrum frequency.¹⁵

According to the explanatory note of the Department for Management of Radio Frequencies, monitoring has revealed that "Stereo +" LLC has not crossed the frequency zone of 71.0 MHz +- 3 MHz (68.0 MHz - 74.0 MHz) defined under the NF13 license. Yet, it was established that "Stereo +" LLC was using the radio spectrum frequency of 71.0 MHz +- 3 MHz (68.0 MHz - 74.0 MHz) improperly, namely, for transiting the broadcasting signal through the open and unrestricted receipt of the broadcasting signal by final users, which is in violation of Sub-Paragraph "b" of Paragraph 2 of Article 19 of the Law of Georgia on "Electronic Communications" and the terms of licensing conditions of the NF13 license of using the radio spectrum frequency.

According to the explanations of the Director of "Stereo +" LLC D. Zilfimian, which are reported in the inspection act, "Stereo +" LLC has not violated the law, as: "the NF13 license does not define (indicate) the concrete type of service, namely, the license is silent on any restrictions on providing services through mobile and/or fixed radio lines, while the phrase "mobile and/or fixed" implies radiation through any type and technology under all international standards. Definition of broadcasting covers the following: content creation and delivery. Therefore the fact that "Stereo +" LLC renders services by providing the signal is not sufficient for qualifying it as a broadcaster."

¹⁵ http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=113243.

Consumers' Rights

Under the Law of Georgia on "Independent National Regulatory Bodies", the public defender of the consumer's interests must function in the Georgian National Communications Commission. Notably, despite the fact that the administration of public defender of consumers' interests functions for several years already, the public defender itself is still not appointed.

On October 30, 2012 the complaints were filed in the administration of public defender of consumers' rights due to the termination of the news and public-political programs of the third Russian-language channel "TV-Company PIK" LLC of the LEPL "Public Broadcaster". The Commission found that there was no basis for initiating the formal proceedings, as this issue must have been decided within the scope of self-regulatory mechanisms.¹⁶

Remarkably, one of the citizens in his application requested the restoration of Russian-language news programs by the "TV-Company PIK" LLC. The Commission decided that as he did not request to render sanctions against the company, while it is clear from the explanatory note of the Department of Broadcasting Regulation of the Commission's administration that the Russian-language news programs of "TV-Company PIK" LLC were restored since 19 November 2012, initiating the proceedings on this issue would be also inexpedient.

It is noteworthy that in October 2012 LEPL "Public Broadcaster" and "TV-Company PIK" LLC have terminated the relations. This fact has suspended the news and public-political programs of "TV-Company PIK" because the journalists were dismissed. Later, materials prepared during the earlier periods were aired.

Pursuant to Sub-Paragraph "d" of Article 2 of the Law of Georgia on "Broadcasting", regulation shall mean the adoption (issuing) of legal acts and carrying out of monitoring, supervision, control and coordination by the Commission within the scope of authority established by this Law. Accordingly, reference in the Commission's decision to the fact that the party does not request sanctioning is wrong. Further, it is an established fact that the violation was reported. Within the scope authority granted by law, the Commission could probe into the factual circumstance and examine whether "TV-Company PIK" adhered to the obligation imposed by legislation, etc. However, the Commission did not apply this leverage.

¹⁶ http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=113465.

Must Carry

In recent years number of broadcasters critical to the authorities experienced problems related to airing of their own programs, while the television was a major source of information for the absolute majority of the population.¹⁷ At the same time, the general national broadcasters favoring the former ruling party could cover the major portion of the country.

Following the suspension of issuing of broadcasting frequency licenses by the Georgian National Communications Commission, operators authorized to broadcast remained as the only means for airing the private televisions, which, unfortunately did not include in their grid of programs all broadcasters, and especially ones that were critical to the authorities.

As a result of active campaign of the civil sector representatives, the Parliament of Georgia has amended the Election Code, pursuant to which from the moment of enactment of a legal act of the President of Georgia on appointment of the date of elections until the polling day the persons authorized to broadcasting transit are obligated to include the Public Broadcaster, licensed general broadcaster and broadcasters available to at least 20% of the population in their package offered to the consumers.¹⁸ The Georgian National Communications Commission was assigned to regulate the enforcement of the so-called "Must Carry" principle.

Operators functioning in Georgia must enforce the legislative principle of "mandatory transit" without significant violations or delays. The Georgian National Communications Commission has held numerous meetings-consultations concerning the enforcement of the newly adopted principle. Yet, the Commission's actions were ineffective on number of occasions.

The amendments were made to the Election Code on July 16, 2012. The Commission was obligated to publish within one week the information on those operators and broadcasters, to which the requirements of the "mandatory transit" have applied. However, the regulatory

¹⁷ See the 2011 Media Report of the Caucasus Research Resources Center, <http://www.crrc.ge/oda/?dataset=7&row=22&column=1>.

¹⁸ Excerpt from the Law: "From the moment of enactment of a legal act of the President of Georgia on appointment of the date of elections until the polling day a person authorized to broadcasting transit shall be obligated to include the Public Broadcaster, a general broadcaster licensed pursuant to the Law of Georgia on "Broadcasting", which broadcasts within the zone of service of a person authorized to broadcasting transit (the broadcasting zone for satellite broadcasting for the purposes of this article is the entire territory of Georgia), as well as a holder of a general broadcasting license, which is available to at least 20% of the population of Georgia in the package offered to the consumers; in such case a broadcaster shall not be entitled to request from a person authorized to broadcasting transit the compensation for the transit dissemination of a broadcaster's channel, while a person authorized to broadcasting transit shall be obligated to provide to consumers the channels of broadcasters listed in this Paragraph under the equal and non-discriminatory financial terms."

authority has published this information late and in an incomplete form only on August 1. Taking into account the fact that the Must Carry obligation concerned the pre-election period and each day was of huge importance, the information published late definitely speaks to the ineffective work of the Commission.

Legislation is silent on the obligation of broadcasters to make written notifications to the authorized operators for including the channel in the package offered to the consumers. Yet, the explanation of the Commission made at the meeting with operators concerning the mandatory notification has caused uncertainty during the pre-election period. Several authorized persons refused to include channels critical to the authorities without the respective address, which later became a subject of dispute and examination of complaints within the Commission.

After the parliamentary elections the operators continued airing of broadcasters despite the fact that the "mandatory transit" principle is in effect only during the pre-election period. This position of operators is to be welcomed, but the absence of permanent norms of mandatory transit in the legislation is rather noteworthy and significant. At the same time, it is crucial to introduce this principle not only during the pre-election but other periods as well, and to describe the effect of "Must Carry" in detail, which should be reflected in the amendments made to the Law of Georgia on "Broadcasting".

Remarkably, to regulate the described issues the initiative group "Coalition for Media Advocacy" has submitted a draft law to the Parliament.

The Commission’s Resolution on the “Procedure for Participation and Use of Media in Electoral Process”

Pursuant to the Election Code of Georgia, carrying out media monitoring during the pre-election period is the function of the Georgian National Communications Commission. On August 15, 2012 the Georgian National Communications Commission has adopted the Resolution on the "Procedure for Participation and Use of Media in Electoral Process". This act has defined the rules for posting the pre-election propaganda and advertising by the broadcasters and newspapers funded from the central or local budget during the election process.

The Georgian National Communications Commission adopts the decisions through the public administrative proceedings. Interested persons were given an opportunity to submit their opinions and comments to the draft published by the Commission - on the "Procedure for participation and use of media in electoral process". Representatives of the Georgian Young Lawyers' Association and The Levan Mikeladze Foundation have participated in the process of adoption of this act. The Commission's action must be hailed when it took into consideration GYLA's opinion concerning the reduction of time-frames for consideration of complaint on electoral issues within the regulatory body, and clarified the method of monitoring; namely, the Commission undertook an obligation to act in compliance with the current regulatory rules.

Conflict of Interests in the Georgian National Communications Commission

Irakli Chikovani was appointed as the Chairman of the National Communications Commission in 2009. Prior to that he was the General Director of TV-company Rustavi 2. He also was one of the co-owners of the television. Although Irakli Chikovani has alienated his share in TV-company Rustavi 2 after his appointment in the regulatory body, but he is still involved in the media business.

In our previous report¹⁹ we talked about the potential conflict of interests that Mr. Chikovani may have with his functions. Along with the former Director of Rustavi 2 Giorgi Gegeshidze he is the co-owner of advertising agency "Magi Style Media". For a long period of time the Georgian National Communications Commission turned a blind eye to legislative requirements on the intervals established for the advertising cuts, which left the ignorance of legislative requirements by the national broadcasters such as TV-companies "Rustavi 2" and "Imedi" without due reaction.²⁰ Further, the advertising agency "Magi Style Media" has cooperated with both broadcasters for years.

In November 2012 the former employee of the National Communications Commission G. Ratishvili²¹ has released in media a secret audio recording, which allegedly illustrates the conversation between Irakli Chikovani and the representative of one of the large operators functioning in Georgia, and which makes it clear along with other issues that for years Irakli Chikovani was "offering protection" to the violation of legislative requirements by "Caucasus Online". In particular, authorized persons were transiting number of channels without permission, to which the Commission did not react, whereas other operators (e.g. "Global TV") were subject to strict punishments for the same offences. This recording has once again raised the conflict of interests of Irakli Chikovani as the Chairman of the National Communications Commission.

Unusually long vacation of Mr. Chikovani turned into another problematic issue. After the release of secret audio recordings, the Chairman of the National Communications Commission left on vacation. By enjoying the vacations of 2011, 2012 and the current year prescribed by law, it is three months already that Mr. Chikovani does not do his job.²² Although the National

¹⁹ http://mikeladzefoundation.org/multimedia/ups/satelevizio_mediis_regulireba_saqartveloshi.pdf.

²⁰ After the "Studio Monitor" together with the "Georgian Young Lawyers' Association" has filed two complaints in the Commission concerning the violation of the Law on "Broadcasting", the regulatory authority has first warned and then fined both broadcasters. Yet, shortly after the Parliament has amended the legislation, increasing the advertising time.

²¹ <http://www.media.ge/stories/maestroiraklichikovanism>.

²² <http://www.media.ge/stories/gnccistavmjdomareiraklic>.

Communications Commission does not find a long vacation to be a problem,²³ when the broad public discussion is underway on the amendments to the Law on "Broadcasting" and after years of delay the Government of Georgia has for the first time set up the supplementary council for transition to digital broadcasting, it is crucial that not only the Commission's servants but the Chairman of the Commission and other commissioners are also involved in this process.

X²⁴ X²⁵ X²⁶ X²⁷ X²⁸

²³ <http://www.media.ge/stories/gnccistavmjdomareiraklic>.

Recommendations

To the Parliament of Georgia

- Within the scope of authority granted by the Law of Georgia on "Broadcasting", the Parliament of Georgia should probe into the possible conflict of interests of the Chairman of the Georgian National Communications Commission in view of the newly revealed circumstances.
- With participation of relevant interested parties the Parliament of Georgia should discuss and develop recommendations on creation of legislative guarantees that will ensure participation of the civil sector in and control over the activities of the regulatory authority.
- The Parliament of Georgia should establish such mechanism of staffing of the Commission, which will rule out the influence of political entities over the Commission's activities.
- The legislator should clearly define the extent of the authority of the Georgian National Communications Commission to control the observance of requirements of the Law of Georgia on the "Copyright and Neighboring Rights" by the transit broadcasters.

To the Georgian National Communications Commission

- The Georgian National Communications Commission, as the only regulatory authority, must be impartial in its activities. Any decision of the Commission should be non-discriminatory and meet the requirements of law.
- The Georgian National Communications Commission should involve in the discussions over the Law of Georgia on "Broadcasting" and making amendments/supplements to it concerning four important issues: procedure of formation of the Board of the "Public Broadcaster", procedure of creation and formation of the Broadcaster of the Adjara Autonomous Republic, principles of financial transparency of broadcasters and the introduction of permanent mandatory transit (Must Carry).
- The Georgian National Communications Commission should be more actively involved in and play the lead function in the council or working groups set up at the initiative of the Ministry of Economy and Sustainable Development of Georgia for promoting the transition to digital broadcasting.

- The Commission should have an equal and non-discriminatory approach when making decisions with respect to entities under its regulatory domain.
- The Commission should ensure live broadcasting of its sittings through its web site, as well as create the video and/or audio archive of the Commission's sittings.
- The Commission should post on its web site the biographies of all Commission members.
- To fully inform the citizens about the scheduled sittings, the Commission should publish on its web site the issues on the sitting agenda with brief description of issues to be examined. It should take measures (social advertising, publication of newsletters, etc.) to raise public awareness on the consumers' rights.