

Analysis of the proposed amendments to the Law of Georgia on Broadcasting

The Parliament of Georgia has recently starting working on amendments to the Law of Georgia on Broadcasting. According to the First Channel of the Georgian Public Broadcaster (GPB), the draft law has already been registered in the Parliament.

First of all, it should be emphasized that during the preparation of the draft law the participation and involvement of all interested parties was not ensured. The text of the draft law was not made public during its development process. This issue is especially problematic, taking into account the fact that the Georgian Parliament is an active member of Open Government Partnership initiative and has taken the commitment to improve accountability and transparency of the legislative process. Suggested amendments contradict the principles of democratic and transparent governance. Namely:

- **The draft law limits access to public information from the Public Broadcaster** and sets much lower standards than prescribed by the Constitution of Georgia and the General Administrative Code.
- **The Public Broadcaster will be exempt from regulations of the Law of Georgia on Public Procurement while purchasing services and goods.** Only a small part of procurements will remain under the jurisdiction of the Law on Public Procurement. If adopted, the draft will undermine not only the accountability of the Public Broadcaster, but the entire system of public procurement as well.
- **The authority of the GPB Director General will be increased at the expense of the decrease in function of its Board of Trustees,** which threatens the mechanisms of conducting full democratic control of the Broadcaster.
- **The current version of draft law includes 50% reduction of airtime for social advertisement.**
- **The draft law impairs labor protections for employees at the Public Broadcaster.**

The detailed description of each problem and the positions of signatory organizations are presented below. However, it should be reiterated that current amendments are in contradiction with standards set by the Georgian Constitution regarding the transparency of information held by public institutions. Consequently, if adopted in its current form, IDFI will challenge the law in the Constitutional Court of Georgia.

Public Procurement

Article 16, Subparagraph g)

Current version:

“The Public Broadcaster shall: g) allot at least 25% of over-the-air broadcasting to programmes produced by legal entities under private law, which shall be procured as determined the Law of Georgia on Public Procurement and this Law.”

Proposed wording:

“The Public Broadcaster shall: allot at least 25% of Public Broadcaster production to programmes produced legal entities under private law. The procurement of these programmes is not covered by the Law of Georgia on Public Procurement.”

Article 20¹

Current version:

“TV and radio products (programmes, shows, films, reports, cultural events) and/or related services shall be procured by the Public Broadcaster in accordance with the Law of Georgia on Public Procurement, except when TV and radio products (programmes, shows, films, reports, cultural events) and/or related services, and services related to the transmission and/or reception of TV and radio products (programmes, shows, films, reports, cultural events) by satellite are procured by a non-resident person.”

Proposed wording:

1. “Procurement of production of shows, TV series, films and documentary films by the Public Broadcaster shall be exempt from the Law of Georgia on Public Procurement.
2. TV and radio products (programmes, shows, films, reports, cultural events) and/or related services shall be procured by the Public Broadcaster in accordance with the Law of Georgia on Public Procurement, except when TV and radio products (programmes, shows, films, reports, cultural events) and/or related services, and services related to the transmission and/or reception of TV and radio products (programmes, shows, films, reports, cultural events) by satellite are procured by a non-resident person.”

Assessment

The proposed amendments exempt the GPB from using the Law on Public Procurement when purchasing services from non-resident entities and legal entities of private law, mean that only a small part of procurements by the GPB will be regulated by law.

According to the draft law explanatory note: “due to unintended circumstances, the procurements are not planned in advance, and it is impossible to follow procedures set by the Law of Georgia on Public Procurement in short timeframes. Therefore, despite the fact that the Public Broadcaster is publicly funded, procurement of production of shows, TV series, films and documentary films by the Public Broadcaster should be exempt from the Law of Georgia on Public Procurement.”

The exempting of Public Broadcaster's procurement system from the Procurement Law is unacceptable, because it will make the procurements of Public Broadcaster unclear, and weaken the accountability standard. The Public Broadcaster is a legal entity of public law and entirely depends on public funding. Therefore, the Public Broadcaster must have a high level of transparency and accountability. The current version of draft law lowers the transparency standard, creates risks of corruption in procurements, and allows uncontrolled expenditures.

The arguments given in the explanatory note: 1) problems with procurement planning; 2) problems with short timeframes, are not enough for allowing this exemption.

The Law on Public Procurement permits avoiding a tender, and conducting direct procurement in cases of unforeseen circumstances (Article 10¹). These circumstances include cases of urgent necessity. Therefore, despite problems in planning, the law already allows public entities to conduct procurement without a tender.

For years, problems in planning have not caused the Broadcaster to stop functioning. Moreover, since 2012, the number programs and shows has steadily increased. Consequently, it is unclear what concrete impediments could Law on Public Procurement create for the Public Broadcaster.

The increase of exemptions from the Law on Public Procurement contradicts the fourth round recommendations of OECD-ACN, which urge the Georgian government to decrease the list of exemptions.

The adoption of suggested changes also creates a negative precedent, when a legal entity of public law demands exemptions from Law on Public Procurement. The amendments could start a negative process in the entire sphere of public procurement, when other public institutions also start demanding exemptions from the law due to their activities. As a result, the Georgian public procurement system, recognized worldwide as being one of the most transparency and effective, could be damaged.

Transparency of the Georgian Public Broadcaster

Article 21

Current version:

“The Public Broadcaster shall ensure publicity of its activities, hold regular meetings with the public and consider proposals from citizens to better reflect public interests in its activities.”

Proposed wording:

1. “The Public Broadcaster shall ensure publicity of its activities, hold regular meetings with the public and consider proposals from citizens to better reflect public interests in its activities.
2. Information or document containing information that is kept, processed, generated, received by the Public Broadcaster, which relates to action plans, innovation, intellectual novelty or describing the internal management process and the disclosure of which harms the Public Broadcaster in relation to other broadcasting companies, does not represent public information and is not covered by Chapter III of the General Administrative Code.
3. The decision about the release of information mentioned in the Paragraph 2 of this Article is made by the Director General.”

Assessment

The standard of transparency offered for the Public Broadcaster contradicts the Constitution of Georgia and its overall legislation. Article 41 of the Constitution states that all citizens are entitled to have access to the documentation kept in public institutions, unless the documentation contains state, professional or commerce secrets. General Administrative Code offers more precision; namely, information in public institutions represents open public information. The release of information could only be denied if it comprises state, professional or commerce secrets and contains personal information or is protected by executive privilege. Denial of public information for any reason is illegal and illegitimate.

The Law on Broadcasting cannot set a new definition for public information specifically for that information which is held by the Public Broadcaster. The Law on Broadcasting cannot limit the jurisdiction of the General Administrative Code over matters of public information.

It is unacceptable to have Director General with sole authority to decide which information to release and which not. Allowing such precedent endangers the entire system of accessibility of public information in the country.

According to the explanatory note, the proposed changes are necessary in order to protect competition. Despite the fact that such interest is legitimate, the adoption of the amendments to the Law on Broadcasting is unacceptable. The existing legislation already recognized concepts of professional and commercial secret, one of the main aims of which is to protect competition.

Authority of the Director General and the Board of Trustees

Article 30, Paragraph 1, Subparagraph b) and c)

Current version:

“The Board of Trustees shall:

- b) Adopt, by at least two third of votes of the members of the Board on the current nominal list, the statute of the Public Broadcaster upon the recommendation of the Director General, which shall ensure the editorial independence of relevant structural units, and be authorised to make amendments to the statute on its own initiative or upon the recommendation of the Director General;
- c) Adopt the budget of the Public Broadcaster upon the recommendation of the Director General and approve the report on the budget performance, and be authorised to make amendments to the budget on its own initiative or upon the recommendation of the Director General;
- h) Define basic provisions of employment contracts with employees of the Public Broadcaster, including provisions for early termination of employment contracts, taking into account that the duration of employment contracts shall be at least one year, except for contracts of engineering and technical staff, the duration of which shall be at least five years (with the exception of such contracts that are related to carrying out programmes with the duration of less than one year).”

Proposed wording:

“The Board of Trustees shall:

- a) Adopt, by at least two third of votes of the members of the Board on the current nominal list, the statute of the Public Broadcaster, and amendments to it, upon the recommendation of the Director General, which shall ensure the editorial independence of relevant structural units, and be authorized to make amendments to the statute, **except in cases when the amendments deal with the structure of the Public Broadcaster.**
- b) Adopt the budget of the Public Broadcaster, and amendments to it, upon the recommendation of the Director General and approve the report on budget performance.”

Subparagraph h) of Article 30, Paragraph 1 shall be removed.

Assessment

The current version of the Law on Broadcasting allows the Board to introduce amendments to the budget by its own initiative. The proposed law strips the Board from this right, leaving the right to introduce the budget and amendments to it only with the Director General.

In addition, the Board will be deprived of the right to amend the statute of the Public Broadcaster by its own initiative. The possibility remains only upon indication of amendments by Director General.

According to the explanatory note, the purpose of the amendments is to clearly delineate the authorities of the Board and Director General. Instead, if the current version is adopted, the authority of the Director General will unjustifiably increase, at the expense of the powers of the Board. This decreases the possibility to ensure full democratic control of the Public Broadcaster, which contradicts the spirit of the 2013 reform of the Broadcaster.

According to the existing legislation, the Board sets the main rules for employee contracts. The suggested amendments not only weaken the role of the Board in the governance of the Public Broadcaster, but the Broadcaster will be exempt from labor protection obligations as well. This is unacceptable and is a setback in employee protection, which is especially worrying taking into account recently discovered problems in the Broadcaster.

Social Advertising

Article 65, Paragraph 2

Current version:

“2. The Public Broadcaster, Adjara TV and Radio of the Public Broadcaster, and community broadcasters shall allot at least 60 seconds per hour free of charge and without discrimination to a social advertisement submitted for placement, at least 10 seconds of which the Public Broadcaster shall allot to a social advertisement related to the integration of Georgia into NATO and the European Union, provided that an appropriate advertisement video has been submitted. The Public Broadcaster, Ajara TV and Radio of the Public Broadcaster, and community broadcasters shall deliver information on electoral subjects and significant election procedures to the public as a social advertisement during the electoral campaign taking place within their service areas. Information shall be accurate and contain the following data:

- a) Addresses of electoral precincts;
- b) Date of elections;
- c) Electoral procedural rights and obligations.”

Proposed wording:

“2. The Public Broadcaster, the Adjara TV and Radio of the Public Broadcaster, and a community broadcaster shall allot at least 90 seconds in three hours free of charge and without discrimination to a social advertisement submitted for placement, at least 10 seconds of which the Public Broadcaster shall allot to a social advertisement related to the integration of Georgia into NATO and the European Union, provided that an appropriate advertisement video has been submitted. The Public Broadcaster, the Ajara TV and Radio of the Public Broadcaster, and a community broadcaster shall deliver information on electoral subjects and significant election procedures to the public as a social

advertisement during the electoral campaign taking place within their service areas. Information shall be accurate and contain the following data:

- a) Addresses of electoral precincts;
- b) Date of elections;
- c) Electoral procedural rights and obligations.”

Assessment

According to the explanatory note, the aim of changing norms regulating social advertisement is to specify norms and establish common technical/air standards for social advertisement. The explanatory note avoids mentioning important change, such as reducing airtime for social advertisement. Namely, according to the draft law, the Public Broadcaster has to allocate twice less time to social advertisement. Again, it should be underscored that the Public Broadcaster (TV and Radio) is a publicly funded legal entity of public law. One of the main functions of the Public Broadcaster is to transmit social advertisement. It is unactable to reduce time for social advertisement, especially in the situation when no justification was given in the explanatory note for that change.