

BOARD OF TRUSTEES OF THE PUBLIC BROADCASTER

– A PROBLEM OF APPOINTMENT OF CANDIDATES NOMINATED BY POLITICAL OPPOSITION

8

One of the legislative reforms the new government carried out after the 2012 parliamentary elections was the new rule of manning the Board of Trustees of the Georgian Public Broadcaster (GPB). However, problems started to emerge during the implementation of this legislative change.

The amendments providing for the new rule of manning the Board of Trustees were made to the Law of Georgia on Broadcasting in July and November 2013. They transformed the existing model of the GPB Board of Trustees and decreased the number of trustees from 15 to nine.¹ Moreover, the rule of election of trustees changed too. Under the previous model, all candidates for the trustees were selected through a competition announced by the President of Georgia whilst the trustees from these candidates were elected by the parliament. According to the new model, the Speaker of Parliament announces an open competition for the selection of candidates and sets up a selection commission which comprises representatives of civil society. Through public hearings, the commission shortlists candidates and submits them to the parliament while legislators, for their part, nominate candidates for trustees out of that shortlist. By the majority of vote, members of parliament elect two trustees nominated by the Public Defender, three trustees nominated by the Parliamentary majority, three trustees nominated by members of parliament not belonging to the parliamentary majority (i.e. parliamentary opposition), and one trustee nominated by the Supreme Council of Autonomous Republic of Adjara.²

The change in the election rule of trustees was assessed by the OSCE Representative on Freedom of the Media Dunja Mijatovic as a positive step. According to her, the legislative changes “improve the current law, ensuring greater pluralism and transparency in the work of the public broadcaster.”³ According to the analysis of legislative amendments, prepared by the OSCE Office of the Representative on Freedom of the Media,⁴ a smaller Board was considered potentially more effective whilst the new rule of election more approximated with the models practiced in European and other developed countries where the system of fully electing through an open competition is very rare as it allows for manipulation and poses a risk of unjustified intervention of various informal interested parties in the selection of candidates.

¹ Paragraph 1 of Article 24 of the Law of Georgia on Broadcasting.

² Paragraph 2 of Article 24 of the Law of Georgia on Broadcasting.

³ <http://www.civil.ge/eng/article.php?id=25889&search=>

⁴ Analysis of proposed amendments to the Law of Georgia “On Broadcasting”, OSCE, March, 2013. <http://www.osce.org/fom/100314?download=true>

In its essence, the new model is pluralistic as the board is formed by consensus of parties with opposing interests. That three candidates are to be nominated by political forces outside the parliamentary majority was also assessed as a positive step as it ensures the balance of political influence and interests inside the Board. According to the OSCE analysis, such explicit inclusion of the opposition is important in situations in which the ruling party has a large majority, which otherwise would mean that they could dominate the appointment process. The new regulation tries to safeguard against this domination. However, the incomplete implementation of the new model two years later of adopting the law has deprived this norm of its sense.

It has been more than two years after the enactment of the law that the parliament of Georgia has failed to achieve consensus on candidates nominated by the political opposition and the Board of Trustees still has two vacant places that are allocated to the opposition, therewith undermining the balance and diversity in the governing body of the broadcaster as it was initially envisaged by the legislation. The current composition of the Board of Trustees looks as follows:

Table 1. The composition of the Board of Trustees of Georgian Public Broadcasters and vacant places of the opposition

BOARD OF TRUSTEES

MAJORITY: "GEORGIAN DREAM"	OPPOSITION	PUBLIC DEFENDER	SUPREME COUNCIL OF AUTONOMOUS REPUBLIC OF AJDARA
Natela Sakhokia	Ketevan Mskhiladze	Marina Muskhelishvili	Giorgi Kokhreidze
Grigol Gogelia	X	Lela Gaprindashvili	
Aleksandre Vakhtangov	X		

The parliament of Georgia voted on candidates for the trustees as many as four times but failed to achieve consensus regarding the nominees of the opposition in any of them. The chronology of votes on members to the Board of Trustees by the parliament is the following:

Table 2. The chronology of votes on candidates for the trustees in the parliament of Georgia (2013–2014).

DATE	MEMBERS ELECTED	MEMBERS NOT ELECTED
27 December 2013	<p>Majority: Natela Sakhokia Public Defender: Marina Muskhelishvili Opposition: Ketevan Mskhiladze</p>	<p>Supreme Council of Ajara: Genadi Geladze Public Defender: Lela Gaprindashvili Opposition: Ninia Kakabadze</p>
24 January 2014	<p>Public Defender: Lela Gaprindashvili</p>	<p>Supreme Council of Ajara: Genadi Geladze</p>
11 March 2014	<p>Majority: Grigol Gogelia, Aleksandre Vakhtangov Supreme Council of Ajara: Giorgi Kokhreidze</p>	<p>Opposition: Ninia Kakabadze, Davit Kiziria</p>
2 May 2014		<p>Opposition: Ninia Kakabadze, Davit Kiziria</p>

The former prime minister of Georgia and founder of nongovernmental organization Citizen, Bidzina Ivanishvili, linked the failure to man the Board of Trustees on the first attempt to the lack of information to society and publicly criticized the Speaker of Parliament David Usupashvili for speeding up the process:

“With regard to the Public Broadcaster let me recall a Georgian proverb: ‘haste makes waste.’ This is what happened to Davit Usupashvili. He hurried a little and did not provide enough information,” Ivanishvili said.⁵

After the May 2014 vote, in which the parliament voted against every opposition nominee, the secretariat of the Parliament Speaker did not announce a new competition for two vacancies in the Board of Trustees.

Within the framework of the 12th annual South Caucasus media conference, held in Tbilisi in September 2015, OSCE Representative on Freedom of the Media Dunja Mijatovic called on the parliament again to complete the manning of the Board of Trustees of Public Broadcaster as, according to her, it was necessary for the Board to operate effectively.⁶

The law does not provide for a mechanism to overcome a crisis in situations when parliamentary factions fail to arrive at consensus on various quotas as well as when the parliament fails to fulfill its obligation to announce a competition.

ROTATION OF TRUSTEES

The GPB Board of Trustees, comprising seven members elected at various times (see Table 2), held its first meeting on 21 May 2014, therewith starting to perform its powers defined in the law. However, with its decision of 14 June 2014,⁷ the Board postponed, until the election of remaining two trustees, the

⁵ Pirveli Radio, 4 February 2014; 2014 <http://pirveliradio.ge/?newsid=19557>

⁶ Media.ge, 30 September 2015. <http://www.media.ge/ge/portal/news/303847>

⁷ Minutes #273 of the Board of Trustees of Public Broadcaster; 14 June 2014. <http://gpb.ge/uploads/documents/05659515-1758-4088-b141-7056b4a81e9f12%20ivnisi.pdf>

enactment of that norm of the law which requires to draw lots to determine tenures of trustees. The Board Chairman justified this decision by saying that this would put members to be elected in future in an unequal condition and referred to the law which does not specify the exact time for casting lots.

By 2015 the terms in office of incumbent trustees were not defined. Pursuant to Paragraph 4 of Article 24 of the Law of Georgia on Broadcasting, the tenure of a trustee is six years whilst according to Paragraph 6 of the same Article, one third of trustees shall be rotated once every two years.

To ensure the rotation and the replacement of one third of trustees every two years, transitional provisions of the law of 2013 wording set different tenures for trustees elected for the first time after the enactment of the law. According to Paragraph 10 of the transitional provisions, the members of the Board of Trustees appointed after the entry into force of the law shall draw lots by which the tenures of the trustees shall be determined in the following manner: one third of the trustees shall be appointed for a two-year term, one third for a four-year term and one third for a six-year term. This rule, which is of one-off nature by its content and applies to the first composition of the Board of Trustees, was designed to ensure that trustees finish their terms in office and by that time new trustees have been elected, thereby achieving an automatic process of rotation of one third of the composition of the Board. In other words, had the Board be fully manned in 2014, a two-year term of three trustees would have expired in 2016 and they would have been replaced by new trustees, another three trustees would have finished their four-year tenures in 2018 whilst the remaining three trustees would have finished their six-year terms in 2020. Thus the principle of rotation would have been observed.

Given that the parliament failed to fully man the Board in time, at its meeting held on 12 June 2014, the seven-member Board of Trustees took a decision to postpone the draw (envisaged by the law) defining the tenures of trustees by lot until after two remaining trustees have been elected. This decision was justified on the ground that the law does not specify the time for casting lots.

The result of all this is the situation in which the tenures of trustees were not determined while the Board has been performing its duties since May 2014.

In its decision on postponing the draw, the current Board of Trustees indicated that the time of draw is not specified in the law. Indeed, the law does not specify a concrete term for casting lots, but the analysis of the norm makes it clear that the draw must be conducted upon the election of trustees. The law considers the manning of the Board as an entire process which must be completed within a reasonable timespan. The protraction of the process gave rise to a crisis whilst the non-conduct of the draw brought about the result when the tenure of a trustee may, at best, be determined at the time of its expiry.

A gradual replacement of trustees is an important norm which decouples this replacement from political changes. In due time, the OSCE Representative on Freedom of the Media Dunja Mijatovic criticized the new draft law for the dismissal of trustees altogether instead of gradual replacement.⁸ In its 2014 ruling concerning the unconstitutionality of early termination of tenure of members of the previous Board of Trustees,⁹ the Constitutional Court of Georgia noted that the tenure determined by the law is related to public interest such as non-interference in the activity of a high official. “For example, a judge, Public Defender, General Auditor of State Audit Service and members of independent regulatory bodies belong to the category of high public officials whose tenure, specified by the law, is a necessary condition for ensuring noninterference in their activities and their independence,” the constitutional ruling says.

The Board of Trustees responded upon the publication of MDF’s report on this topic on February 8, 2016. On February 25, 2016 at the meeting of the GPB Board of Trustees drawing of lots were conducted and terms for acting as well as non-elected members were defined.

RECOMMENDATION

In order to ensure the fulfillment of positive aims envisaged in the new regulation, it is necessary to implement them in practice. Any norm of material content loses this content if the procedures do not guarantee their fully-fledged implementation.

- The parliament of Georgia should fulfill the requirements of the law, announce a competition for two vacant places allocated for the opposition and fully man the Board of Trustees in order to ensure the balance of different political influence and interests in the management of the Public broadcaster, as it is required by the new model in the law.
- The parliament of Georgia should revise the law and provide for legal mechanisms to overcome crisis situations in order to exclude any possibility to disregard legal norms in future, as it happened in the implementation.

⁸ Analysis of proposed amendments to the Law of Georgia “On Broadcasting”, OSCE, March, 2013. <http://www.osce.org/fom/100314?download=true>

⁹ The ruling of the Constitutional Court on the case Citizens of Georgia Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Gogvadze, Giorgi Meladze and Mamuka Pachuashvili vs Parliament of Georgia; 11 April 2014. <http://constcourt.ge/ge/legal-acts/judgments/saqartvelos-moqalaaqeebi-davit-kandelaki-natalia-dvali-zurab-davitashvili-emzar-gogvadze-giorgi-meladze-da-mamuka-fachuashvili-saqartvelos-parlamentis-winaagmdeg-832.page>