

# **Human Rights and Media**

**Freedom of expression and  
information for public service media**

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# Content and scope of Article 10 ECHR

- **Article 10 ECHR guarantees the right to freedom of expression, including**
  - freedom to hold, receive and impart **information**,
  - **freedom of the media.**
- **This freedom may be subject to restrictions**
  - that are **necessary in a democratic society** for the protection of **public interests** and the **freedoms and rights of others** →
- **Application of the principle of proportionality**
  - Any restriction of the freedom requires a **justified reason** and a **fair balance** between the conflicting rights and interests

# Content and scope of Article 11 Charter

- Article 11 § 1 EU Fundamental Rights Charter **similar to Article 10 ECHR**
- **But Article 11 § 2 Charter guarantees explicitly:**
  - “The freedom and pluralism of the media shall be respected.” →
  - Comprehensive right to communication covering PSM
- **Article 52 Charter states**
  - that Article 11 Charter has to be interpreted in accordance with Article 10 ECHR and the respective ECtHR case-law,
  - but that EU law may provide **more extensive protection** than Article 10 ECHR, therefore →
  - represents **minimum standard** of Article 11 Charter

# General opinions of the ECtHR I

- Freedom of expression is an **essential foundation** of a living and pluralistic **democratic society** and one of the **basic conditions** for its progress and the development of every human being.
- **Pluralism, tolerance, and broad-mindedness** are typical features of every democratic society.
- **Media as “public watch-dog”** plays an important role in that regard.
- The **limits of acceptable criticism** are wider with regard to **politicians** acting in their public capacity (“**public figure” doctrine**).

# General opinions of the Court II

- **Freedom of expression protects**
  - the **substance** and any form of **ideas** and **information**.
- **Freedom of expression is applicable**
  - not only to information and ideas favourably received
  - **but also to those that offend, provoke, shock or disturb.**
- **“Value judgements” are free**
  - if they are **based on true facts** and objectively understandable explanations, but only
  - **facts** that are disseminated and imparted have to be **true** respectively must be **proved**.

# Remit and status of PSM

- **Public service tasks of PSM comprises**
  - independent and impartial **information** of the public
  - **political, cultural and educational remit**
  - forum for a **pluralistic and diverse public discussion**
  - integration of **society and social cohesion**
- **Public service tasks of PSM may justify**
  - preferred legal and financial (fee-based) position
- **Guarantees for PSM**
  - **Internal:** freedom of communication and independence from state, diversity of ideas and opinions
  - **External:** variety of media and information sources, plurality of ideas and opinions, „public watch-dog function“

# European PSB Standards – Dual system

- **CoE and EU soft law** relating to PSB is **guidance for interpretation of Art 10 ECHR & Art 11 Charter**
  - see ECtHR judgement *Manole et.al. v. Moldova*
  - also CoE Parliamentary Assembly sets standards
  - EU recommendations and resolutions may be used
- **Dual broadcasting system (DBS)** in all EU MS and most other CoE states
- **EP Res 2010/2028 on DBS**
  - **DBS important impact** on ensuring pluralism and spreading information in public interest
  - True **balance** between PSB and commercials needed
  - DBS shall be **part of EU *acquis*** in accession negotiations

# European PSB Standards – Dual system, Independence and Funding

- **CoE and EU standards in terms of**
  - **independent, adequate state-funded PBS,**
  - **with a broad pluralist and diverse mandate.**
- **People should be enabled to exercise the rights to seek and receive information and to education.**
- **This goal can be achieved best within the DBS.**
- **This system requires in each state the existence of an effective and objective PSB to preserve media pluralism and diversity.**

# Current threats for PSM in Europe I

## ■ **Competition with private media**

- **convergence** with format of **private media** → more entertainment, less informational and educational contents
- **reduced advertising revenues** based on weak audience ratings due to competitive context with private media

## ■ **Almost all governments try**

- to influence PSM to report in favour of it in order
- to be re-elected or to push through its political agenda,
- to appoint partisans or persons close to the government's political party in PSM management bodies

**by following means →**

# Current threats for PSM in Europe II

- **Forms of political pressure are:**
  - **appointment of PSM management bodies** by government without public tender and hearings
  - **hierarchical regulatory systems** under the control of non-independent administrative bodies
  - **limited judicial reviews** by independent courts
  - **lack of internal independence/pluralism of journalists**
  - **limited/reduced financial/personal resources** to produce pluralist, diverse and quality information → increased in the current situation of financial crises
  - lack of segmented regulation and supervision/self-regulation of media → kind of “**checks & balances**” needed

# Obligations of States

## ■ Article 10 ECHR & Article 11 Charter

- not only prohibit violating interferences by state organs, but
- oblige states to take certain measures to ensure freedom of expression effectively (“**positive obligations**”).

## ■ Broad **discretion of states** to frame the media landscape by pluralistic and independent PSM → **but:**

- **State as „ultimate guarantor of pluralism“** has related obligations (ECtHR *Manole et.al v. Moldova*), in particular to provide **independent, pluralistic, and sufficiently funded and equipped PSM**
- by taking into account **European standards**.

# Thank you for your attention!

**PPT available on:**

<http://bim.lbg.ac.at>

**Note:** This PPT is partly based on the study “Public Service Media under Article 10 of the European Convention on Human Rights” by *Walter Berka* and *Hannes Tretter* on behalf of the European Broadcasting Union, October 2013