

Audiovisual Regulation in Russia in the Context of Council of Europe Standards

Elena Sherstoboeva

School of Creative Media, School of Law, City University of Hong Kong,

Hong Kong

eshersto@cityu.edu.hk

Abstract

This paper explores, mainly from a legal perspective, the extent to which Russian regulation of traditional TV and online audiovisual media policies has been consistent with Council of Europe (hereinafter CoE) standards. The study compares the CoE and Russian approaches to specific aspects of audiovisual regulation including licensing, media ownership, public service media, digitalization, and national production. The paper first studies the CoE perspective through examining its conventional provisions related to audiovisual media regulation, the case law of the European Court of Human Rights as well as CoE non-binding documents. The study proceeds to consider Russian national law governing audiovisual media and the practice of Russian courts of general jurisdiction on broadcast licensing. The paper suggests that Russian audiovisual regulation is insufficiently compatible with CoE standards and mainly seeks to maintain excessive governmental control over the audiovisual sector in a digital environment.

Keywords

audiovisual regulation – audiovisual media – freedom of expression – media freedom – Russian media

1 Introduction

The European Convention on Human Rights (hereinafter ECHR),¹ the main CoE human rights treaty, guarantees in Article 10 Part 1² the enjoyment of freedom of expression without governmental interference, regardless of borders and through any media. This right is essential for a democratic society,³ where the press plays the role of ‘public watchdog’ by informing societies on issues of public interest and holding governments to account,⁴ as the European Court of Human Rights (hereinafter ECtHR) has repeatedly stated.

The ECHR does not consider freedom of expression as absolute. Furthermore, international standards provide many other special requirements for audiovisual media services because of their visual component and considerable ‘power to form and mislead public opinion’, as the ECtHR has noted.⁵ Article 10 Part 1 permits the licensing of broadcasting, television, or cinema enterprises.

However, any governmental limitation must match the three-tier test established in the ECHR Article 10 Part 2.⁶ Otherwise, it represents undue

1 European Convention on Human Rights (ECHR), opened for signature in Rome on 4 November 1950, entered into force on 3 September 1953, ratified by Russia on 5 May 1998, *European Court of Human Rights*, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf

2 Art 10 ECHR Part 1 states: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.

3 See, eg, ECtHR, *Lingens v. Austria*, ECtHR judgment (8 July 1986) App no 9815/82; ECtHR, *Meltex Ltd and Movsesyan v. Armenia*, ECtHR judgment (7 June 2008) App no 32283/04, ECtHR, *Ahmet Yildirim v. Turkey*, ECtHR judgment (18 December 2012) App no 3111/10.

4 See, eg, ECtHR, *De Haes and Gijssels v. Belgium*, ECtHR judgment (24 February 1997) App no 7/1996/626/809; ECtHR *Dalban v. Romania*, ECtHR judgment (28 September 1999) App no 28114/95; ECtHR, *Fedchenko v. Russia* (No. 1 and 2), ECtHR judgments (11 February 2010) App no 48195/06; ECtHR, *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, ECtHR judgment (2 February 2016) App no 22947/13.

5 ECtHR, *Demuth v. Switzerland*, ECtHR judgment (5 November 2002) App no 38743/97.

6 Art 10 ECHR Part 2 states: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

governmental control and violates the right to freedom of expression.⁷ Neither a free country nor a democracy is possible under these circumstances.⁸ The test requires each limitation on freedom of expression to (1) be provided by law; (2) pursue a legitimate aim specified in Article 10 Part 2; and (3) be necessary in a democratic society. This means that national audiovisual regulation must be unambiguous and foreseeable. Governmental limitations must be proportionate to protect legitimate aims and instigated by pressing social need. At every instance, national regulation and its application must balance other legitimate rights and interests concerning freedom of expression, given its significance. A similar test is provided in Article 19 Part 3 of the International Covenant on Civil and Political Rights (hereinafter ICCPR), the main United Nations (hereinafter UN)⁹ treaty whose global level implies the universality of the right to freedom of expression.

The development of digital technologies has posed many questions related to national audiovisual regulation. The European audiovisual market has diversified considerably, due to the emergence of new business models, such as online sharing platforms or video-on-demand (VOD) services.¹⁰ Smartphone devices have eased access to audiovisual content. Production and sharing of audiovisual content has accelerated among both media professionals and users. At the same time, appropriate national regulatory frameworks consistent with international human rights standards are required so that audiovisual services in the digital era can contribute to freedom of expression.

The Russian audiovisual sector has also changed dramatically in the digital era, but national TV remains the main source of news and information for more than two thirds (73%) of Russia's population, as a survey by the Levada Center, a non-governmental research organization, shows.¹¹ Almost half of

7 Dirk Voorhoof, Hannes Cannie, "Freedom of expression and information in a democratic society," 72 (4–5), *International Communication Gazette* (2010), 407–423.

8 Jochen Abr Frowein, "Freedom of expression under the European Convention on Human Rights," (97) 3, *Monitor/Inf* (1997), Council of Europe.

9 The ICCPR Art 19 Part 3 states: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals".

10 Robin Hugoenoit-Noel, "Audiovisual media in digital era: An industrial strategy needed to safeguard cultural diversity," *European Policy Centre* (6 July 2018), available at http://www.epc.eu/documents/uploads/pub_8671_audiovisualmedia.pdf?doc_id=2029.

11 "TV Still Russia's Biggest News Source, but Trust Plummets – Poll," *The Moscow Times* (12 September 2018), available at <https://www.themoscowtimes.com/2018/09/13/tv-still-russias-biggest-news-source-but-trust-plummets-poll-a62876>.

Russians claimed they trusted information they hear on national TV, although confidence in television news among Russians decreased from 79% to 49% between 2009 and 2018.¹²

Furthermore, Russian media freedom has low rates.¹³ From the mid 1990s, coinciding with the start of Russia's membership in the CoE,¹⁴ free speech in the country has only been declining, especially on national TV, as most scholars assert.¹⁵ Several studies suggest that Russian audiovisual regulation is extremely problematic.¹⁶

It remains unclear to what extent Russian audiovisual regulation complies with international legal standards on freedom of expression. Since 2005, the CoE Parliamentary Assembly (hereinafter PACE) has consistently criticized Russia for lack of political pluralism on TV and for other deficiencies of audiovisual media freedom in the country. Russia has abstained from

¹² *Ibid.*

¹³ In the 2019 Press Freedom Index by Reporters Without Borders, Russia occupies 148th position out of 180 countries. For more information see 2019 World Press Freedom Index, *Reporters Without Borders* (2019), available at <https://rfsf.org/en/ranking>. Freedom House rates press freedom in Russia as "non-free." For more information see Freedom in the World 2019, *Freedom House* (2019), available at <https://freedomhouse.org/report/freedom-world/2019/russia>.

¹⁴ Russia joined the CoE in 1996.

¹⁵ Maria Lipman, Anna Kachkaeva and Michael Poyker, "Media in Russia: Between Modernization and Monopoly," in Daniel Treisman (ed), *The New Autocracy: Information, Politics, and Policy in Putin's Russia* (Brookings Institution Press, Washington, 2018), 159–190. See also, Daphne Skillen, *Freedom of Speech in Russia: Politics and Media from Gorbachev to Putin* (Routledge, Oxon, 2017); Camille Jackson, "Legislation as an indicator of free press in Russia," 63(5) *Problems of Post-Communism* (2016), 354–366; Andrei Richter, "The regulatory framework of audiovisual media services in Russia," *IRIS Special* (European Audiovisual Observatory, Strasbourg, 2010), 9–64. Andrei Richter, *Post-Soviet perspective on censorship and freedom of the media* (IKAR, Moscow, 2007); Matthew Lipman & Michael McFaul, "The media and political development," in SK Wegren, DR Herspring (eds), *After Putin's Russia: Past imperfect, future uncertain* (Rowman & Littlefield, Lanham, MD, 2010), 108–126; Anna Arutunyan, *The media in Russia*, (McGraw Hill Open University Press, New York, 2009); Anna Kachkaeva, "Transformatsiia Rossiiskogo televideniia," in Yassen Zassoursky (ed), *Sredstva massovoi informatsii Rossii* (Aspect Press, Moscow, 2006), 298–321. See also, Olessia Koltsova, *News media and power in Russia* (Routledge, New York, 2006).

¹⁶ Jackson, *op. cit.* note 15. See also, Elena Sherstoboeva, "Pravovye ramki upravleniia i kontroliia OTVR v kontekste standartov Soveta Evropy," 1 *Mediascope* (2013), available at <http://www.mediascope.ru/node/1255>; Vlad Strukov, "Digital switchover, or digital grip: Transition to digital television in the Russian Federation," 2(1) *International Journal of Digital Television* (2011), 67–68; Richter "The regulatory framework of audiovisual media services in Russia," *op. cit.* note 15.

ratifying the main CoE convention regulating TV broadcasting – the European Convention on Transfrontier Television (hereinafter ECTT).¹⁷ In 2018, UK media regulator Ofcom ruled that Russian international state-owned news channel RT had violated the rules of media impartiality.¹⁸ However, the Russian government contends that it fully respects international standards on freedom of expression.¹⁹ Its representatives often criticize the CoE for applying so-called ‘double standards’ and even call for Russia’s exit from the CoE as a result.²⁰

From a scholarly perspective, this issue is mostly uncertain, too. There have been few studies on compliance of Russian media freedom with CoE standards but they have never focused on audiovisual regulation.²¹ In addition, they examined distinctly divergent periods and applied varying methodology. Therefore, they often arrived at controversial conclusions.

-
- 17 European Convention on Transfrontier Television (ECTT), adopted on 5 May 1989 in Strasbourg, *Council of Europe*, available at <https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/090000168007bod8>.
- 18 “Russian news channel RT broke TV impartiality rules, Ofcom says,” *BBC* (20 December 2018), available at <https://www.bbc.com/news/entertainment-arts-46633082>.
- 19 See “Postoiannoe Predstavitel’stvo Rossiiskoi Federatsii pri Otdelenii OON i Drugikh Mezhdunarodnykh Organizatsiiakh v Zheneve,” *Informatsiia Rossiiskoi Federatsii v Sviazi s Zaprosom Special’nogo Dokladchika Soveta OON po Pravam Cheloveka po Voprosu o Svobode Vyrazheniia Mneniia*, No 660 (3 November 2016), *UN Human Rights*, available at <http://www.ohchr.org/Documents/Issues/Expression/Telecommunications/Russia.pdf>. See also, Anastasia Bazenkova, “Putin urges global authorities to ensure freedom of information,” *The Moscow Times* (7 June 2016), available at <https://themoscowtimes.com/articles/putin-urges-global-authorities-to-ensure-freedom-of-information-53193>; “Lavrov: Russia open to widest possible cooperation with West,” *RT* (3 March 2016), available at <https://www.rt.com/politics/official-word/334413-lavrov-russia-west-cooperation/>.
- 20 Valeria Maslova, Anna Lushnikova, “Nesimmetrichnoe sotrudnichestvo: pochemu v Rossii zagovorili o vyhode iz ESPCh,” *RT* (1 March 2018), available at <https://russian.rt.com/world/article/487764-rossiya-vyhod-espch>.
- 21 Ekaterina Shugrina, *Rossii i Sovet Evropy. Istorii, Sovremennost’ i Perspektivy Vzaimodeistviia Pravovykh Sistem* (Prospekt, Moscow, 2016). See also, Andrei Richter, “Russia’s Supreme Court as media freedom protector,” in Peter Molnar (ed), *Free speech and censorship around the globe* (Central European University Press, Budapest, 2015), 273–298. See also, Dorothea Schönfeld, “Tilting at Windmills? The European Response to Violations of Media Freedom in Russia,” in Lauri Mälksoo (ed), *Russia and European Human-Rights Law: The Rise of the Civilization Argument* (Koninklijke Brill NV, Leiden, 2014), 91–149. See also, Mikhail Fedotov, “Rossiiskoe Pravo Massovoi Informatsii na Fone Obsheevropeiskikh Standartov: Kontrasty i Polutona,” 3(36) *Konstitutsionnoe Pravo: Vostochnoevropeiskoe Obozrenie* (2001), 105–108.

This paper is the first study specifically considering – mainly from a legal perspective – Russian audiovisual media regulation in the context of CoE standards.²² I suggest these standards have mainly had a superficial impact on the country's legislation on the audiovisual media. I also argue that Russia still predominantly views audiovisual regulation in a traditional sense, as a tool of direct governmental control, which is largely irrelevant in light of CoE standards.

Although audiovisual regulation often remains mainly a national issue in practice, as Barata argues,²³ international standards limit the national 'margin of appreciation' to restrict media freedom by providing a three-part test. The 'margin' is particularly narrowed if national laws prevent debate on issues of public interest, but it is broader regarding some sensitive issues for instance, protection of minors.²⁴ Nonetheless, national limitations should be in line with the test criteria. Therefore, this paper's methodology is fully based on the three-part test of Article 10 Part 2 of the ECHR.

The paper's original contribution to the field is that it not only extensively analyses Russian national legislation on offline and online audiovisual media in light of international standards but also evaluates fifty decisions by Russian courts of general jurisdiction on TV broadcasting licensing. To explore the CoE vision, the paper examines conventional and non-binding standards on audiovisual regulation of the CoE Committee of Ministers and PACE as well as ECtHR case law. The paper also refers to the audiovisual standards of the European Union (hereinafter – EU) whose member countries also participate in the CoE, as does Russia.

The paper has two parts. It first outlines the CoE's perspective on audiovisual regulation and then proceeds to the Russian perspective. The paper compares the CoE and Russian legal visions on the scope of audiovisual regulation, licensing, audiovisual media pluralism and concentration, regulatory authorities, public service media, digitalization, protection of minors, support for national audiovisual production, and advertizing.

22 The study was implemented in the framework of the Basic Research Program at the National Research University Higher School of Economics (HSE) in 2018.

23 Joan Barata, "Challenges for audiovisual regulation," 44(3) *InterMEDIA* (2014), 18–22, at 18–20.

24 Jan Oster, *European and international media law* (CUP, Cambridge, 2017). See also, Perry Keller, *European and international media law: Liberal democracy, trade, and the new media* (OUP, Oxford, 2011).

2 The CoE Perspective on Audiovisual Regulation

2.1 *Scope of Audiovisual Regulation*

The ECTT was adopted in 1989 to create a unified legal framework for the free transfrontier transmission and retransmission of television program services in Europe. The ECTT is legally binding on the signatory parties. It develops the commitments of the ECHR's Article 10 with regard to TV broadcasting through providing minimal regulatory standards in various fields, such as program transmission, protection of minors, hate speech, commercial content, and audiovisual production. For instance, the ECTT stipulates that reception, transmission²⁵ and retransmission²⁶ of program services may be restricted if a party violates ECTT rules but any conflicts must be settled through cooperation and arbitration proceedings.²⁷ The ECTT's parties are allowed to establish stricter rules on programme services transmitted within their jurisdiction.²⁸ Nonetheless, the rules must match the three-part test.

The ECTT applies to traditional TV only, but the CoE provides standards to govern other audiovisual media services. So that the media would still function as a public watchdog in a digital era, the PACE 2009 recommendation on "The Regulation of Audiovisual Media Services"²⁹ urged revision of national audiovisual regulation in light of technological advances. It recommends that the level of legal regulation should depend on the type of media content, rather than the technologies or platforms that distribute it.

Press regulation providing soft basic requirements and encouraging self-regulation should be applied to offline and online media services in the way they are 'written,' that is, traditional newspapers or magazines. Audiovisual regulation, however, has more and stricter rules and should be applicable only

25 Art 2 ECTT defines transmission as "the initial emission by terrestrial transmitter, by cable, or by satellite of whatever nature, in encoded or unencoded form, of television programme services for reception by the general public".

26 Art 2 ECTT states that retransmission "signifies the fact of receiving and simultaneously transmitting, irrespective of the technical means employed, complete and unchanged television programme services, or important parts of such services, transmitted by broadcasters for reception by the general public".

27 See Arts 19, 24–26 ECTT, *op. cit.* note 17.

28 See Art 28 ECTT, *op. cit.* note 17.

29 Recommendation 1855 (2009) of the CoE Parliamentary Assembly, "The regulation of audiovisual media services," adopted on 27 January 2009, *Council of Europe*, available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17700&lang=en>.

to TV and online audiovisual media services, according to the technological neutrality principle. Furthermore, the recommendation suggests establishing lighter legal requirements for non-linear (on-demand) audiovisual media services than for linear ones (broadcasts and webcasts). CoE standards also distinguish between regulation of content and regulation of transmission. The latter should be governed by the rules on electronic communication, rather than by rules on the media.

Another key distinction concerns media and non-media services. The 2011 recommendation of the CoE Committee of Ministers “On a New Notion of Media”³⁰ notes that media regulatory frameworks are inapplicable to providers of non-media services, for instance, video-sharing platform services, such as YouTube. Media services in a digital environment should be identified through several media indicators, especially editorial control, because the latter traditionally refers to journalism. Although it may be hard to detect editorial control with regard to on-demand or online audiovisual media services, it “can be evidenced by the actors’ own policy decisions on the content” and “on the manner in which to present or arrange it.”³¹

Implementation of the abovementioned standards can be exemplified by the 2010 EU Audiovisual Media Services Directive³² (hereinafter – AVMSD) establishing EU audiovisual market provisions for national legislation. The AVMSD applies several criteria including editorial responsibility to identify media services and differentiates requirements for linear and non-linear services, as provided in CoE standards. The Directive is mostly based on the same principles provided by CoE audiovisual regulation, as may be seen from the official website of the European Commission.³³

In 2018, however, the AVMSD was amended to cover video-sharing platforms, such as YouTube, and social media platforms used for sharing

30 Recommendation CM/Rec(2011)7 of the CoE Committee of Ministers to member-states “On a New Notion of Media,” adopted on 21 September 2011, *Council of Europe*, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc2co.

31 *Ibid.*

32 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010, “On the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive),” *EUR-Lex*, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0013>.

33 See, Principles for regulating Audiovisual Media Services at European level, *European Commission*, available at <https://ec.europa.eu/digital-single-market/en/general-principles>.

audiovisual content, such as Facebook or Instagram.³⁴ Compliance of the new provisions with CoE standards is a complex question deserving a separate study. On the one hand, these services have become extremely influential on people's views and opinions. Indeed, some are even more powerful than most media services. Furthermore, the updated AVMSD does not require from social media platforms the same level of responsibility as required from media services but, rather, establishes the lowest level of regulation for non-media services. The AVMSD mainly restricts illegal or harmful content placed on these platforms, such as child pornography, hate and terror speech as well as content causing harm to children's development – content that may nonetheless be limited according to CoE standards on Internet service providers.³⁵ Implementation of new rules is supervised by independent media regulators, rather than governmental agencies, in line with the ECHR. On the flipside, the updated AVMSD encourages speech overregulation and forces private platforms to interpret and apply complicated and sensitive provisions in their favor.³⁶ This may lead to miscorrelation with CoE standards.

In general, European audiovisual regulation has been hotly debated among scholars and legislators. Noam argues that audiovisual regulation will inevitably resemble telecom regulations because, in future, the media will be delivered through the Internet only.³⁷ Developing Noam's perspective, Barata suggests that audiovisual regulation will “need to move from the traditional areas of licensing and content monitoring” to the “terrain of ex post, flexible,

34 Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018, amending Directive 2010/13/EU “On the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities,” *EUR-Lex*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018L1808?>.

35 See Recommendation CM/Rec(2018)2 of the Committee of Ministers on the roles and responsibilities of internet intermediaries, adopted on 7 March 2018, *Council of Europe*, available at <https://rm.coe.int/0900001680790e14>. See also Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Ismail Rabie, Sophie Valais, “The legal framework for video-sharing platforms,” *Iris Special* (European Audiovisual Observatory, Strasbourg, 2018), 13–16.

36 Joan Barata, “The new audiovisual media services directive: turning video hosting platforms into private media regulatory bodies,” *The Center for Internet and Society, Stanford Law School* (24 October 2018), available at <http://cyberlaw.stanford.edu/blog/2018/10/new-audiovisual-media-services-directive-turning-video-hosting-platforms-private-media>.

37 Eli M. Noam, “Why TV regulation will become telecom regulation,” *Columbia Institute for Tele-Information* (2007), available at http://www.citi.columbia.edu/elinoam/articles/Why_TV_regulation_wil_%20b_telecomReg.pdf.

and principled intervention.”³⁸ He emphasizes, however, that international standards of audiovisual media regulation should not be disregarded.

2.2 *Pluralism in Audiovisual Media*

Media pluralism is a universal concept deriving from the commitments of ICCPR Article 19 and ECHR Article 10. Media pluralism does not constitute a human right itself but implies multifaceted governmental obligations under these commitments, as Oster argues.³⁹ Hitchens emphasizes that, being a forum for ideas and information and a generator of debate, the media “must be able to offer a variety of voices and views, and operate independently, without undue dominance by public or private power.”⁴⁰ The EU Charter of Fundamental Rights specifically guarantees respect for media pluralism.⁴¹ A partial component of media pluralism appears in ICCPR Article 27⁴² protecting ethnic, religious, or linguistic minorities. The Court of Justice of the EU has defined media pluralism as a ‘cultural policy’ to protect freedom of expression in the media.⁴³

Although it relates to any media, media pluralism was crucial for broadcasting due to spectrum scarcity, as the ECtHR has noted.⁴⁴ In the digital era, media pluralism is still important because the audiovisual media maintains a strong influence on societies.

38 Barata, *op. cit.* note 23, 22.

39 Oster, *op. cit.* note 24.

40 Lesley Hitchens, *Broadcasting pluralism and diversity: A comparative study of policy and regulation* (Hart Publishing, Oxford, 2006), at 31.

41 See Art 11 part 2 Charter of Fundamental Rights of the EU, European Union (26 October 2012) 2012/C 326/02, *EUR-Lex*, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

42 Art 27 ICCPR states: “In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

43 ECJ, *Stichting Collectieve Antennevoorziening Gouda and others v. Commissariaat voor de Media* (25 July 1991) Case C-288/89; ECJ, *Commission v. Netherlands* (30 May 1991) Case C-368/10; ECJ, *Veronica Omroep v. Commissariaat voor de Media* (3 February 1993) Case C-148/91; ECJ, *TV 10 SA v. Commissariaat voor de Media* (5 October 1994) Case C-23/93.

44 See, eg, ECtHR, *Verein Alternatives Lokalradio Bern, Verein Radio Dreyeckland Basel v. Switzerland*, ECtHR judgment (16 October 1986) App no 10746/84; ECtHR, *Informationsverein Lentia and Others v. Austria*, ECtHR judgment (24 November 1993) App nos 13914/88, 15041/89, 15717/89, 15779/89, 17207/90; ECtHR, *VgT Verein gegen Tierfabriken v. Switzerland* (No. 1), ECtHR judgment (28 June 2001) App no 24699/94; and ECtHR, *Manole and others v. Moldova*, ECtHR judgment (17 September 2009) App no. 13936/02.

CoE standards are lacking in terms of detailed provisions on media ownership but allow member states to adopt legal measures limiting media ownership, including foreign media ownership, if it threatens media pluralism and lead to a monopoly. The measures must match the three-tier test and lead to greater pluralism. Otherwise, they violate the ECHR, as follows from the CoE Committee of Ministers' 2007 Declaration concerning media concentration.⁴⁵

The CoE bans any media monopolies, particularly a public audiovisual monopoly, as the ECtHR has ruled.⁴⁶ PACE Resolution 1636 (2008)⁴⁷ suggests the private media should not be run or held by state or state-controlled companies. Among measures to promote media pluralism, the CoE Committee of Ministers' Recommendation R(99)1⁴⁸ recommends defining legal thresholds to media ownership based on maximum audience share or the revenue or turnover of media companies. The same recommendation also suggests creating an independent antitrust regulator in the media sector.

2.3 *Licensing*

Despite the decreasing importance of the spectrum scarcity rationale for licensing broadcasters, the CoE sees the need for licensing in a digital era to ensure media pluralism and the free flow of information.⁴⁹ As a limitation to freedom of expression, licensing must comply with the three-part test, as the ECtHR has recalled,⁵⁰ and has emphasized that licensing systems failing to ensure media pluralism violate Article 10 of the ECHR.⁵¹ According to the recommendation

45 Declaration of the Committee of Ministers "On Protecting the Role of the Media in Democracy in the Context of Media Concentration," adopted on 31 January 2007, *Council of Europe*, available at <https://search.coe.int/cm/Pages/resultdetails.aspx?ObjectID=09000016805d6b78>.

46 ECtHR, *Informationsverein Lentia and Others v. Austria*, *opp. cit.*, note 44.

47 Resolution 1636 (2008) of the CoE's Parliamentary Assembly "Indicators for Media in a Democracy," adopted on 3 October 2008, *Council of Europe*, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17684&lang=en>.

48 Recommendation R(99)1 of the CoE Committee of Ministers to member-states "On Measures to Promote Media Pluralism," adopted by on 19 January 1999, *opp. cit.*, note 50. *Council of Europe*, available at <https://search.coe.int/cm/Pages/resultdetails.aspx?ObjectID=09000016804fa377#globalcontainer>.

49 Eve Salomon, *Guidelines for broadcasting regulation* (The Commonwealth Broadcasting Association, London, 2008).

50 ECtHR, *Groppera Radio AG and others v. Switzerland*, ECtHR judgment (28 March 1990) App no 10890/84.

51 ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* (7 June 2012) App no 38433/09 *Ibid.*

“The Regulation of Audiovisual Media Services,” licensing or other national authorizations should be inapplicable to online media services.⁵²

CoE standards provide no right for broadcasters to obtain licenses but oblige governments to ensure that licensing serves the public interest. Recommendation Rec(2000)23 of the CoE Committee of Ministers⁵³ suggests that licensing rules and procedures should be established by law, be clear, precise and non-discriminatory. The licensing term should be of long duration.

Licensing should be overseen by independent governing bodies, whose decisions are accountable and accessible to the public.⁵⁴ National law should determine their powers and duties, enshrine ‘democratic and transparent’ procedures for appointing their members and guarantee that they have no interests in the media or other sectors.

The CoE suggests that national laws should guarantee that licensing to broadcast on frequencies⁵⁵ is ensured through independent non-discriminatory tendering procedures and that public calls for tenders are announced. Decisions should be mostly based on broadcasters’ programming policies.

2.4 *Public Service Broadcasting*

Among the main principles of the European broadcasting order is ‘broadcasting dualism’, or the coexistence of private and public service media.⁵⁶ Despite the variety of online media services, CoE standards stress the importance of public service media in the digital era and reaffirm that its main principles are still relevant.⁵⁷

52 Recommendation 1855 (2009) of the CoE Parliamentary Assembly “The regulation of audiovisual media services,” *op. cit.* note 29.

53 Recommendation Rec(2000)23 of the CoE Committee of Ministers “On the Independence and Functions of Regulatory Authorities for the Broadcasting Sector,” adopted on 20 December 2000, *Council of Europe*, available at <https://rm.coe.int/16804e0322>. See, also, Declaration by the CoE Committee of Ministers “On the Independence and Functions of Regulatory Authorities for the Broadcasting Sector,” adopted on 26 March 2008, *Council of Europe*, available at [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl\(26.03.2008\)&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl(26.03.2008)&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75&direct=true).

54 Recommendation Rec(2000)23 of the CoE Committee of Ministers “On the Independence and Functions of Regulatory Authorities for the Broadcasting Sector,” *op. cit.* note 53.

55 See, eg, ECtHR, *Meltex Ltd and Movsesyan v. Armenia*, *op. cit.* note 3.

56 Oster, *op. cit.* note 24.

57 Recommendation 1641 (2004) of the CoE Parliamentary Assembly “Public service broadcasting,” adopted on 27 January 2004 (3rd Sitting), *Council of Europe*, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17177&lang=en>.

According to CoE standards,⁵⁸ public service media is necessary for democracy as “an essential factor of pluralistic communication accessible to everyone.” Public service media differs from state-owned or private media “for purely commercial or political reasons because of its specific remit.”⁵⁹ Therefore, national laws should ensure that the programming policy of public service media meets public interests and legislation should oblige it to encourage freedom of expression and provide high quality programs satisfying the needs of all social groups.

CoE standards permit state- or privately-owned organizations to run or fund public service media if necessary to achieve its specific objectives.⁶⁰ However, public service media should have clear and precise legal guarantees for editorial independence and institutional autonomy, especially regarding programming policy, management and supervisory bodies.⁶¹ National laws should exclude any risk of political or other interference as well as conflicts of interest regarding members of public service media.

2.5 *Digital TV*

Digitalization offers a new way of packaging signals to transmit programs. It creates new opportunities and challenges for freedom of information and media pluralism. Digital TV can carry more channels than analog TV and allows releasing a frequency spectrum (‘digital dividend’) that may be allocated for various purposes.

58 Resolution No 1 “The Future of Public Broadcasting,” adopted on 7–8 December 1994, *European Broadcasting Union*, available at https://www.ebu.ch/CMSImages/en/leg_ref_coe_mcm_resolution_psb_07_081294_tcm6-4274.pdf.

59 Recommendation 1641 (2004) of the CoE Parliamentary Assembly “Public service broadcasting,” *op. cit.* note 57.

60 Recommendation No R (96) 10 of the CoE Committee of Ministers “On the Guarantee of the Independence of Public Service Broadcasting,” adopted on 11 September 1996, *Council of Europe*, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168050c770>. See, also, Resolution 1636 (2008) of the CoE Parliamentary Assembly “Indicators for Media in a Democracy,” adopted on 3 October 2008 (36th Sitting), *Council of Europe*, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17684&lang=en>.

61 Recommendation No R (96) 10 of the CoE Committee of Ministers “On the Guarantee of the Independence of Public Service Broadcasting,” *op. cit.* note 60.

According to the 2016 GE-06 Agreement⁶² signed by the members of the UN International Telecommunications Union,⁶³ analog TV had to be switched off in June 2015 in 119 countries including European and post-Soviet countries.

CoE standards on digitalization focus on advancing public interests and values, such as pluralism, cultural and linguistic diversity, innovation, education, and prevention of digital exclusion.⁶⁴ From the CoE perspective,⁶⁵ members should adopt a clear strategy for digitalization as a result of open debates involving governments, society and the media industry. Most European countries govern digitalization by parliamentary acts.

According to CoE standards,⁶⁶ it is essential to ensure that digitalization leads to greater programming pluralism, prevents media concentration and promotes cooperation between operators. Non-discriminatory allocation of digital broadcasting licences should be guaranteed. It is important to maintain 'must-carry' rules so that a society would have free universal access to media services, including public service media, providing a variety of opinions and perspectives. National strategies should provide legal mechanisms to allocate the digital dividend according to social and media sector needs.⁶⁷

2.6 *Support for European Audiovisual Production*

From the CoE perspective, legal measures to support European TV production are needed to serve cultural purposes and resist US hegemony of the European

62 GE06 Agreement: The end of the transition period, *International Telecommunication Union*, available at https://www.itu.int/en/ITU-R/terrestrial/broadcast/plans/Documents/GE06-End%20of%20transition%20period_information%20document-Final%2025082015.pdf.

63 International Telecommunication Union membership consists of 193 countries including Russia.

64 David Korteweg and Tarlach McGonagle, "The Digital dividend: Opportunities and obstacles," 6 *IRIS plus* (2010), 7–26.

65 CoE Committee of Ministers' Recommendation Rec(2003)9 "On Measures to Promote the Democratic and Social Contribution of Digital Broadcasting," adopted on 28 May 2003, *Council of Europe*, available at <https://wcd.coe.int/rsi/common/renderers/rendstandard.jsp?DocId=38043&SecMode=1&SiteName=cm&Lang=e>.

66 *Ibid.*

67 Declaration by the CoE Committee of Ministers "Allocation and Management of the Digital Dividend and the Public Interest," adopted on 20 February 2008, *Council of Europe*, available at <https://search.coe.int/cm/Pages/resultdetails.aspx?ObjectID=09000016805d3d25>.

audiovisual market. Nonetheless, some scholars argue that these measures disrupt information flows and reduce media pluralism.⁶⁸

The ECTT qualifies works as European if their production or co-production is controlled by European natural or legal persons.⁶⁹ Languages and locations of production are not important. The ECTT states that broadcasters must reserve ‘a majority proportion’ of transmission time for ‘European works,’ excluding time for news, sports events, games, advertizing, teletext services, and tele-shopping.⁷⁰ The proportion must be achieved progressively and based on broadcasters’ responsibilities to viewers.

Arguably, the increasing dominance of a few media-like platforms on the EU audiovisual market has threatened safeguards to Europe’s cultural diversity and national content production.⁷¹ The AVMSD provides the same minimal requirements for TV broadcasters as does the ECTT. Additionally, the amended AVMSD obliges video-on-demand services to reserve no less than a 30% share of European content in their catalogue. From a human rights perspective, this requirement does not seem in contradiction with CoE standards but it may only comply with them if its implementation would be balanced with the principle of media pluralism.

2.7 *Protection of Minors from Harmful Audiovisual Content*

The ECTT bans pornography on TV and indecent TV programs.⁷² It also obliges broadcasters to schedule ‘adult’ programs in late-night time slots and to precede them with an acoustic warning or to accompany them with a visual symbol. CoE standards apply much softer requirements to online audiovisual media.⁷³ The CoE does not oblige non-media services to follow the rules for

68 See, eg, Irini Katsirea, “Why the European broadcasting quota should be abolished,” 2 *European Law Review* (2003), 190–209. See, also, Jackie Harrison, Lorna Woods, “Television quotas: Protecting European culture?,” 12(1) *Entertainment Law Review* (2001), 5–14.

69 See Art 2 ECTT, *op. cit.* note 17.

70 See Art 10 ECTT, *op. cit.* note 17.

71 Hugoenot-Noel, *op. cit.* note 10.

72 See Art 7 ECTT, *op. cit.* note 17.

73 See, eg, Recommendation CM/Rec(2009)5 of the CoE Committee of Ministers “On measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment,” adopted on 8 July 2009, *Council of Europe*, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090001680645b4>. See, also, Recommendation CM/Rec(2008)6 of the CoE Committee of Ministers “On measures to promote the respect for freedom of expression and information with regard to Internet filters,” on

protection of minors, unlike the AVMS. Its recent amendments extend some media duties related to this issue to video-sharing platforms.

2.8 *TV Advertizing and Teleshopping*

ECtHR standards of scrutiny are less severe with commercial speech than with other types of expression.⁷⁴ However, the ECTT sets minimum standards on TV commercials to protect consumers. For instance, TV advertizing and teleshopping must not be misleading and should be separated from editorial content. The transmission time for advertizing and teleshopping spots must not exceed 20% in any one day or in any one hour. The ECTT prevents sponsors from interfering with editorial independence and establishes limitations for TV program sponsorship. It also lays down basic rules on advertizing and teleshopping addressed to or using minors. TV advertizing is banned for tobacco products and limited for alcoholic beverages, medications and medical treatments.

The AVMSD rules on audiovisual advertizing are grounded on identical principles but the AVMSD additionally regulates audiovisual product placement.⁷⁵ Besides, recent amendments allow broadcasters to decide when they show advertisements throughout the day, but the overall limit of 20% remains unchanged.

26 March 2008, *Council of Europe*, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b4>. See, also, Declaration of the CoE Committee of Ministers “On protecting the dignity, security and privacy of children on the Internet,” adopted on 20 February 2008, *Council of Europe*, available at <https://wcd.coe.int/ViewDoc.jsp?Ref=Decl>. See, also, Recommendation Rec(2006)12 of the CoE Committee of Ministers “On empowering children in the new information and communications environment,” adopted on 27 September 2006, *Council of Europe*, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b4>.

74 See, eg, ECtHR, *Demuth v. Switzerland*, ECtHR judgement (5 November 2002), *op. cit.* note 5; ECtHR, *Tele 1 Privatfernsehgesellschaft mbH v. Austria*, ECtHR judgement (21 September 2000) App no 32240/96; ECtHR, *Radio ABC v. Austria*, ECtHR judgement (20 October 1997) App no 19736/92; ECtHR, *Verlag GmbH and Klaus Beermann v. Germany*, ECtHR judgement (20 November 1989) App no 10572/83; and ECtHR, *Jacobowski v. Germany*, ECtHR judgement (23 June 1994) App no 15088/89.

75 Art 1(m) AVMSD defines “product placement” as “any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration”.

3 Russian Audiovisual Media Regulation

3.1 *Scope of Audiovisual Regulation*

Article 29 of the 1993 Russian Constitution⁷⁶ guarantees freedom of speech, freedom of mass information and imposes a ban on censorship.⁷⁷ Although not explicitly addressed, protection of freedom of broadcasting is implied in this article and Russia's international commitments. Constitutional Article 55 part 3⁷⁸ describes the criteria for admissible limitations on freedom of speech and mass information almost fully in line with the ICCPR and ECHR,⁷⁹ although Russia had not joined the CoE at that time.

In Russia, freedom of speech and freedom of mass information were formed as legal concepts only at the beginning of the 1990s, much later than in Western Europe. The mass media regulations of the Russian Empire were purely censorial.⁸⁰ Soviet regulations never explicitly legalised censorship, but the media was directly state-owned and fully controlled by the Communist Party of the Soviet Union through an 'effective' system of censoring organs.⁸¹ TV and

76 Constitution of the Russian Federation, adopted by national referendum on 12 December 1993, came into force on 25 December 1993, *Constitution*, available at <http://www.constitution.ru/>.

77 Art 29 Russian Constitution states: "1. Everyone is guaranteed freedom of thought and speech. 2. Propaganda or agitation exciting social, racial, national or religious hatred and strife is not permitted. Propaganda of social, racial, national, religious or linguistic superiority is banned. 3. No-one may be compelled to express his or her opinions and convictions or to renounce them. 4. Everyone has the right freely to seek, receive, pass on, produce and disseminate information by any lawful means. A list of information comprising state secrets is determined by federal law. 5. Freedom of mass information is guaranteed. Censorship is banned".

78 Art 55 Part 3 of the Russian Constitution states: "The rights and freedoms of man and citizen may be limited by federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State".

79 Elena Sherstoboeva, "The Evolution of a Russian Concept of Free Speech," in Monroe Price and Nicole Stremlau (eds), *Speech and society in turbulent times: Freedom of expression in comparative perspective* (Cambridge, UK, CUP, 2017), 213–236.

80 See Pavel Reifman, "Iz istorii russkoi, sovetskoi i postsovetskoi tsenzury: Sovetskaia i postsovetskaia tsenzura," *Reifman* (2010), available at <http://reifman.ru/soviet-postsoviet-tsenzura/>; Yurii Baturin, Mikhail Fedotov & Vladimir Entin, *Zakon o SMI: na perekrestke vekov i mnenii* (Soiuz Zhurnalistsov Rossii, Moscow, 2004); Gennadii Zhirkov, *Istoriia tsenzury v Rossii XIX-XX vekov* (Aspect Press, Moscow, 2001).

81 See, eg, Reifman, *op. cit.* note 80; Tatyana Goriaeva, *Istoriia sovetskoi politicheskoi tsenzury. Dokumenty i kommentarii* (ROSSPEN, Moscow, 1997).

radio programs were censored by the governmental broadcasting regulator, the USSR's State Committee for Television and Radio Broadcasting (*Gosteleradio*). Despite the USSR's membership in the UN and Organization for Security and Co-operation in Europe (hereinafter – OSCE),⁸² the country proclaimed freedom of speech and the press without any ideological provisos only on the eve of the USSR's collapse in the 1990 Statute “On Press and Other Mass Media.”

The 1991 Federal Law “On Mass Media,”⁸³ the successor to the USSR press law, laid down the modern framework for communications policy in Russia.⁸⁴ It is still effective and remains the main legal act governing the media, including audiovisual media services. The statute:

- confirms Russia's commitment to limiting freedom of mass information in line with Russia's interstate treaties;⁸⁵
- defines censorship;
- enshrines the ban on censorship with regard to any mass information;
- prohibits program jamming;⁸⁶
- governs the procedures and requirements for founding and closing mass media.

One of the law's main achievements is in a broad scope of editorial rights established to ensure editorial independence and access to information. In line with international standards, the law guarantees the confidentiality of editorial sources, the right to request information and obtain accreditation.⁸⁷ Furthermore, journalists may vote for an editorial charter, a unique document governing the editorial relationship and defining procedures for appointing the editor-in-chief.

However, most of the statutory mechanisms need improvement and do not necessarily work in practice.⁸⁸ Additionally, they are counterbalanced by

82 The OSCE (the then-Conference for Security and Co-operation in Europe) is an intergovernmental organisation specializing in security-related concerns and uniting fifty-seven member states. With regard to media freedom, particularly important are the activities of the specific OSCE institution, the Representative on the freedom of the media.

83 Statute of the Russian Federation “O sredstvakh massovoi informatsii,” No 2124-1, adopted on 27 December 1991, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_1511/.

84 Monroe Price, “Law, force, and the Russian media,” 13 *Cardozo Arts & Ent. L.J.* (1995), 795–846.

85 See Art 54 in Federal Law “O sredstvakh massovoi informatsii,” *op. cit.* note 83.

86 *Ibid.*

87 Sherstoboeva, *op. cit.* note 79, 222.

88 Fedotov, *op. cit.* note 21.

media duties, some of which bureaucratize media activities or look inappropriate in the digital era, as I show below.

Furthermore, since the 2000s, the law “On Mass Media” has been substantially amended in line with the 2000 and 2016 Doctrines of Information Security approved by presidential decrees.⁸⁹ The 2000s Doctrine proclaimed the need to protect Russian ‘national interests’ from ‘internal and external informational threats’ and saw the main threat in private media, as Fedotov⁹⁰ has argued. The 2016 Doctrine states the threat mainly comes from foreign countries, in the shape of individuals as well as media and human rights organizations. Therefore, subsequent amendments to the law “On Mass Media” have considerably limited freedom of mass information in Russia.

Initially, the law “On Mass Media” implied adoption of a separate broadcasting statute in Russia. However, since the 2000s, the process of drafting has been frozen due to ‘an unannounced moratorium’.⁹¹ In 2011, a broadcasting statute was artificially ‘embedded’ in only one article of the law “On Mass Media”. Some revisions were also made to the law “On Licensing of Specific Types of Activities”⁹² negating the nature of the media.

As a result, Russia still has no separate parliamentary act, like the AVMSD, that would establish distinct and consistent audiovisual regulation in Russia. The Russian audiovisual sector has been regulated by numerous legal acts detailed in presidential decrees or governmental regulations. As a result, it is often unclear to what extent and how one or the other act applies to the audiovisual sector. Additionally, Russian executive power has been obtaining substantial leeway to interpret (or re-interpret) statutory rules.

Often interpretations come from *Roskomnadzor*, the state Russian regulator in communication, mass communication and IT subordinate to the Ministry of Digital Development, Communications and Mass Media.⁹³ Numerous revisions to the previously liberal law “On Mass Media” provide *Roskomnadzor*

89 See “Doktrina informatsionnoi bezopasnosti Rossiiskoi Federatsii,” approved by the Decree of Russian President “Ob utverzhdenii Doktriny informatsionnoi bezopasnosti Rossiiskoi Federatsii” No Pr-1895 of 09 September 2000, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_28679/; “Doktrina informatsionnoi bezopasnosti Rossiiskoi Federatsii,” approved by the Decree of Russian President “Ob utverzhdenii Doktriny informatsionnoi bezopasnosti Rossiiskoi Federatsii” No 646 of 05 December 2016, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_208191/.

90 Fedotov, *op. cit.* note 21.

91 Richter, “The regulatory framework of audiovisual media services in Russia,” *op. cit.* note 15.

92 Federal Law of the Russian Federation “O litsenzirovanii otdel'nykh vidov deiatel'nosti,” No 99-FZ of 4 May 2011, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_113658/.

93 For more information, see the official *Roskomnadzor* site, available at <http://eng.rkn.gov.ru>.

with almost unlimited power to supervise all stages of mass media functions, including the process of authorisation and licensing procedures. The agency may issue warnings (*predpisaniie*),⁹⁴ suspend broadcasting licenses⁹⁵ and file lawsuits to revoke them.⁹⁶ It may initiate 'scheduled and unscheduled inspections' of broadcasters.⁹⁷ Such governmental interference may only be acceptable in light of Article 10 of the ECHR if other Russian legal standards would be consistent with the CoE vision.

However, Russian audiovisual regulation pays insufficient attention to the key CoE and EU principle to differentiate the level of regulation depending on the type of media service.

The irrelevance of this approach from the media freedom perspective can be illustrated by the application to audiovisual platforms in Russia of the old registration principle.⁹⁸ This was introduced by the 1990 USSR press law and confirmed in the law "On Mass Media" to allow founding of private media outlets. The laws 'required' anyone who wished to disseminate mass information in Russia to register with a state body as 'mass media.' While the registration principle seems to permit some governmental interference in media founding, it led to the rise of the private press at the beginning of the 1990s.

Nonetheless, registration is a threat to media freedom in Russia in the way it is organized, especially in the digital era, because dissemination of mass information without registration is banned. According to law "On Mass Media," owners must provide *Roskomnadzor* with a significant amount of data when applying for registration and notify the agency about changes to the data provided.⁹⁹ *Roskomnadzor* may refuse registration and initiate a lawsuit to withdraw registration certificates.¹⁰⁰

94 See Art 31.7 in Federal Law "O sredstvakh massovoi informatsii," *op. cit.* note 83.

95 See Art 14.1 in Part 4 of Russian Code "On Administrative Offenses," *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_34661/.

96 See Art 31.7 in Federal Law "O sredstvakh massovoi informatsii," *op. cit.* note 83.

97 *Ibid.*

98 Art 12 of Federal Law "O sredstvakh massovoi informatsii" exempted from registration only: (i) outlets created by public authorities for publishing their official decisions or messages, (ii) outlets with a circulation of less than 1,000 copies, or (iii) radio and TV programmes disseminated within one organisation or having no more than ten subscribers; audio and video programmes with a circulation of less than 10,000 copies, *op. cit.* note 83.

99 Art 10 of Federal Law "O sredstvakh massovoi informatsii" states that an application for registration must provide comprehensive information on the owners, the proposed specialisation of the media outlet, its territory of service, language(s), financial sources, et cetera, *op. cit.* note 83.

100 Art 13 of Federal law "O sredstvakh massovoi informatsii" provided the following grounds for refusal of an outlet's registration: (i) if the applicants had no right to establish media

Although international standards do not explicitly ban registration, the ECtHR found a violation of freedom of expression in its enforcement in Russia.¹⁰¹ It ruled in 2007, in the case of *Dzhavadov v Russia*, that media registration in Russia constitutes official governmental permission to establish a media platform because its legal regulation lacks clarity, leading to governmental misinterpretations.¹⁰² International standards suggest applying notification procedures instead of registration. Notification means informing the government of the outlet's existence, "while registration allows the government to inform a newspaper that it may exist," as indeed OSCE standards clarify.¹⁰³ Nonetheless, they emphasize that notification is also inapplicable to traditional broadcasters because they undergo licensing.

In Russia, traditional broadcasters, including foreign ones, have to undergo both registration and licensing with *Roskomnadzor*, due to insufficient differentiation between regulations on written and other media services in the law "On Mass Media." Such 'cumulative' requirements for broadcasters seem to represent a disproportionate limitation in light of international standards.

Although registration and licensing of websites are irrelevant from the CoE's perspective, the law "On Mass Media" fails to clarify this. So far they have been voluntary, due to the 2010 Russian Supreme Court clarifications on how to apply "On Mass Media."¹⁰⁴ These clarifications were mostly in line with CoE standards, but they are not legally binding in Russia. Therefore, the Russian authorities, including *Roskomnadzor*, mostly ignore the Court's clarifications.

Large online audiovisual platforms unregistered as mass media in Russia fall under other specific regulation similar to mass media regulation. They must be registered with *Roskomnadzor* as 'online audiovisual services' if they match the criteria listed in the 2017 amendments to the Law "On Information,

according to Federal Law; (ii) if the data in the application was incorrect; (iii) if its title or specialisation contradicted Article 4 Part 1; (iv) if this type of the outlet had been already registered under the same title, *op. cit.* note 83.

101 ECtHR, *Dzhavadov v. Russia*, ECtHR judgment (27 September 2007) App no 30160/04, ECtHR, *Gaweda v. Poland*, ECtHR judgment (14 March 2002) App no 26229/95.

102 ECtHR, *Dzhavadov v. Russia*, *op. cit.* note 101.

103 "Registration of Print Media in the OSCE area: Observations and recommendations" (Special Report of the OSCE Representative on Freedom of the Media) (29 March 2006), available at <http://www.osce.org/fom/24436?download=true>.

104 Decision of the Plenum of the Supreme Court of the Russian Federation "O praktike primeneniia sudami Zakona Rossiiskoi Federatsii "O sredstvakh massovoi informatsii" No 16 of 15 June 2010, Rossiiskaia Gazeta (18 June 2010), available at <https://rg.ru/2010/06/18/smi-vs-dok.html>.

Information Technologies and Protection of Information”¹⁰⁵ governing media-like services and online blocking procedures. The criteria are (1) distributing the collection of audiovisual works online; (2) providing access to works for a fee or without payment but after showing advertizing targeted at Russians; and (3) have at least 100 thousand daily users located in Russia. Registration of online audiovisual services is much closer to notification and less bureaucratized, than registration, but it may also be used to impose undue governmental control over their activities and content, as ensured by *Roskomnadzor*.

‘Online audiovisual services’ are not legally certified as mass media after registration but become subject to some media requirements without the relevant rights. Nonetheless, registering audiovisual services as mass media may only be desirable for the owners if they want their service to fall under the scope of the law “On Mass Media” and obtain specific journalistic rights or other media privileges.

The regulations for ‘online audiovisual services’ might resemble the updated AVMSD, as they concern protection of minors and support for national content. At the same time, however, Russian rules considerably limit foreign ownership of these platforms, distribution of foreign media content and impose restrictions on electoral campaigns. Unlike CoE or EU standards, regulation of online audiovisual services in Russia is fully overseen by the governmental regulator *Roskomnadzor*. This agency is assigned to file lawsuits against editorial offices and to ensure blocking access to media platforms, which runs counter to the ECtHR viewpoint.¹⁰⁶

So far, search engine services or services with predominantly user-generated videos, such as YouTube or Facebook, are excluded from audiovisual regulation in Russia. However, the AVMSD’s revisions might serve as a justification to expand the scope of Russian regulations, in spite of all the differences. Furthermore, search engine services and social media platforms are overregulated in Russia because of the abundance of legal rules on online content.

3.2 *Licensing*

The main legal mechanism for governing traditional broadcasters in Russia is licensing, as allowed by CoE standards. However, in Russia licensing is

105 Federal Law “O vnesenii izmenenii v Federal’nyi zakon ‘Ob informatsii, informatsionnykh tehnologiiakh i o zashchite informatsii’ i otdel’nye zakonodatel’nye akty Rossiiskoi Federatsii” No 87-FZ of 1 May 2017, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_216069/.

106 ECtHR, *Ahmet Yildirim v. Turkey*, ECtHR judgment, *op. cit.* note 3.

considerably intrusive, unclear and excessively dependent on the government in order to meet CoE standards.

Russia operates a 'dual' system of licensing.¹⁰⁷ After registration, broadcasters ensuring editorial control must first obtain a license for broadcasting permission to broadcast programmes and then a license for communication with the purpose of broadcasting. The former may be applied to traditional broadcasters under CoE standards, but the latter might only be relevant to some telecom companies and is excessive for broadcasters. However, the government declared they need it too.¹⁰⁸ Both types of licensing are administrated by *Roskomnadzor*.

If broadcasters simply (re)transmit content from third parties without editing they only need a communication license. However, broadcasters must notify *Roskomnadzor* about whose content they (re)transmit within ten days after they start (re)transmission (Article 31.9). They must also inform *Roskomnadzor* in advance about termination of (re)transmission. Otherwise, the agency issues a warning on failure to notify. As Richter notes, these rules have led to absurd practices.¹⁰⁹

The laws "On Mass Media" and "On Licensing of Specific Types of Activities"¹¹⁰ permit the government to determine licensing requirements. According to governmental regulations,¹¹¹ the list of requirements is nonexhaustive and may be altered by the government.¹¹² When applying for a license, applicants must provide *Roskomnadzor* with a considerable amount of data including program themes expressed in hours.¹¹³ All the data constitutes

107 Richter, "The regulatory framework of audiovisual media services in Russia," *op. cit.* note 15.

108 Resolution of the Government of the Russian Federation "Ob utverzhdenii perechnia naimenovanii uslug svyazi, vnosimykh v litsenzii, i perechnei litsenziionnykh uslovii," No 87 of 18 February 2005, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_51919/.

109 Andrei Richter, *Pravoye Osnovy Zhurnalistiki* (Izdatel'skie resheniia, Moscow, 2016).

110 Federal Law of the Russian Federation "O litsenzirovanii otdel'nykh vidov deiatel'nosti," No 99-FZ of 4 May 2011, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_113658/.

111 Resolution of the Government of the Russian Federation "O litsenzirovanii televizionnogo veshchaniia i radioveshchaniia," No 1025 of 8 December 2011, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_123294/.

112 See Arts 31, 31.1–31.9 in Federal Law "O sredstvakh massovoi informatsii," *op. cit.* note 83; Federal Statute of the Russian Federation "O litsenzirovanii otdel'nykh vidov deiatel'nosti," *op. cit.* note 110; Federal Law of the Russian Federation "O svyazi" No. 126-FZ, of 7 July 2003, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_43224/; "O litsenzirovanii televizionnogo veshchaniia i radioveshchaniia," *op. cit.* note 111.

113 See Arts 31, 31.1–31.2 in Federal law No. 2124-1 "O sredstvakh massovoi informatsii," *op. cit.* note 83.

'licensing conditions.' Broadcasters must notify *Roskomnadzor* about minor data changes. Although broadcasting licenses are granted for a relatively long term of ten years,¹¹⁴ the process for their renewal is incompatible with the CoE vision because it does not differ significantly from the process of obtaining licenses and largely depends on *Roskomnadzor's* goodwill.¹¹⁵

Tendering procedures to broadcast in a frequency are regulated by three governmental legal acts¹¹⁶ as well as the law "On Communication,"¹¹⁷ which also regulates communication licensing requirements and procedures detailed by governmental regulations.¹¹⁸ Radio frequency allocation in Russia is defined and administrated by the State Commission on Radio Frequencies (GKRCh) acting under governmental regulations¹¹⁹ as well as supervision from the Ministry of Digital Development, Communications and Mass Media. Tendering procedures are nominal. *Roskomnadzor* forms the Federal Tendering Commission on Broadcasting (ФКК) that decides on winners according to criteria approved by *Roskomnadzor*. The criteria pay no attention to the public interest. The head of *Roskomnadzor* supervises the ФКК. Most members represent governmental structures. Therefore, the 'dual' licensing system lacks clarity and largely depends on the government.

The Russian Constitutional Court confirmed compliance of this approach with the Constitution and international standards on radio frequency allocation in 2006,¹²⁰ stating that international standards provide their members

114 See Art 31.1 in *Ibid.*

115 See Art 31.4 in *Ibid.*

116 These are the Resolutions of the Government of the Russian Federation "O vydelenii konkretnykh radiochastot dlia veshchaniia s ispol'zovaniem ogranichenного radiochastotного resursa (nazemного efirного veshchaniia, sputnikovого veshchaniia), provedenii konkursa, vzimanii edinovremennoi platy za pravo osushchestvliat' nazemное efirное veshchanie, sputnikovoe veshchanie s ispol'zovaniem konkretnykh radiochastot i priznanii utrativshimi silu nekotorykh aktov Pravitel'stva Rossiiskoi Federatsii" No 25 of 26 January 2012; "Ob utverzhdenii tipovoi formy litsenzii" No. 826 of 6 October 2011; "O litsenzirovanii televizionного veshchaniia i radioveshchaniia," *op. cit.* note 111; *Roskomnadzor*, all legal acts are available at <https://rkn.gov.ru/mass-communications/license/p156/>.

117 "O sviazi," *op. cit.* note 112.

118 Richter, *op. cit.* note 109.

119 Resolution of the Government of the Russian Federation "Ob utverzhdenii Polozheniia o Gosudarstvennoi komissii po radiochastotam," No 336 of 2 July 2004, *Garant*, available at <http://base.garant.ru/187178/>.

120 Resolution of the Russian Constitutional Court "Po delu o proverke konstitutsionnosti otdel'nykh polozhenii Federal'nogo zakona 'O sviazi' v sviazi s zaprosom Dumy Koriakskogo avtonomного okruga," N 2-P of 28 February 2006, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_58946/.

with their ‘sovereign’ right to regulate national telecommunications and to assign a state agency to administrate the frequency spectrum. The Court failed to address the issue of freedom of expression, although allocation of radio frequencies in Russia may affect this right.

Except for “On Mass Media,” all legal acts governing the audiovisual sector in Russia overlook issues of freedom of expression and the nature of media services and the specific role of the media for maintaining democracy. Russian audiovisual regulation also seems to help the government to control the broadcasting sector in the country. “On Mass Media” pays insufficient attention to free speech and media peculiarities, too, in terms of specific audiovisual regulation that was mostly formed in the 2010s. For instance, the legal definition of broadcasters¹²¹ is unclear in distinguishing them from communication service providers.¹²² This definition contrasts with the ECTT and AVMSD because it ignores the criterion of editorial control and the key principle of technological neutrality enshrined in CoE and EU audiovisual regulation.

Despite the Russian Supreme Court’s interpretations on voluntary licensing of online broadcasters, “On Mass Media” fails to govern this issue. Furthermore, its Article 31 establishes a universal license that permits disseminating TV or radio channels in Russia by any means and via any platform. Therefore, it remains unclear to what extent this type of license applies to online broadcasters. The statute does not differentiate the process of obtaining a universal license for online and offline broadcasters, which intensifies the problem of proportionality.

The study of judicial practice in the context of CoE standards represents a particular research interest, because lawsuits on violations of broadcast licensing requirements or conditions¹²³ are brought by *Roskomnadzor*. Although these violations cause relatively modest monetary penalties,¹²⁴ they

121 Art 2 in Federal law “O sredstvakh massovoi informatsii” defines a broadcaster as a legal entity that “forms TV or radio station and transmits it in the prescribed manner in accordance with a broadcast license”, *op. cit.* note 83.

122 A communication service provider is defined in Art 2 Part 12 of the law “O svyazi” as a legal entity or individual proprietor “providing services in communication in accordance with the appropriate license”, *op. cit.* note 112.

123 See Art 14.1 Part 3 in “On Administrative Offenses,” *op. cit.* note 95.

124 *Ibid.*, Art 14.1 Part 3 provides the following sanctions in case of violation of licensing requirements or conditions: for citizens – a warning or a fine of up to 2,000 rubles (around 29 euros); for public officials – up to 4,000 rubles (around 56 euro); and for legal entities – up to 40,000 rubles (around 580 euros).

may further result in suspension or revocation of broadcasting licenses,¹²⁵ which the CoE views as sanctions of last resort.

On these issues, I have selected from the *RosPravosudie* database fifty random decisions¹²⁶ handed down in 2012–2017.¹²⁷ Analysis of these decisions shows that none of them referred to Russian constitutional provisions or ECtHR case law and other CoE standards. Only four decisions (8%) did not entail sanctions for broadcasters. The decisions largely neglected the ECtHR principle of proportionality and often imposed different sanctions for identical violations.

The overwhelming majority (74%) of court decisions considered broadcasters' failure to allocate certain amounts of airtime to programs on specific subject-matter. These violations do not seem to be significant or require court consideration. However, Russian courts mostly penalized broadcasters in their rulings, which may be disproportionate in the context of CoE standards. For instance, a regional TV broadcaster was penalized for giving one hour of its airtime to programs on music instead of on a healthy lifestyle.¹²⁸

From the CoE perspective, change of programs does not necessarily represent a violation, as the change may contribute to media pluralism and freedom of expression. However, only one Russian court decision evaluated change of programs from this perspective. The court did not satisfy *Roskomnadzor's* lawsuit by concluding that replacement of national entertainment programs with local programs had been "with the aim of ensuring the right of TV viewers."¹²⁹ Yet the court failed to examine the legitimacy of *Roskomnadzor's* interference with the activity of the broadcaster.

There was only one decision analysing the agency's actions in the course of its inspection,¹³⁰ but the court used a nominal rationale, such as lapse of time,

125 See Art 31.7 in "O sredstvakh massovoi informatsii," *op. cit.* note 83.

126 I limited the search to the keyword phrase 'broadcasting license'.

127 For more information, see the official website of the *RosPravosudie* legal database, available at <https://rospravosudie.com>.

128 Decision of the Arbitrazh Court of the Tomsk region in Case No 5 – 104/2014 of 8 March 2014, *RosPravosudie*, available at <https://rospravosudie.com/court-sudebnyj-uchastok-1-nikolaevskogo-rajona-ulyanovskoj-oblasti-s/act-215932954/>.

129 Decision of the Arbitrazh Court of the Sakhalin region in Case No A59-1160/2015 of 22 May 2015, *RosPravosudie*, available at <https://rospravosudie.com/court-as-saxalinskoj-oblasti-s/judge-loginova-e-s-s/act-319393015/>.

130 See, also, Decision of L Badritdinova, Magistrate Judge of Court Circuit No 3 of Rezhevsky District of Sverdlovsk Region, in Case No 5-594/2014 of 20 August 2014, *RosPravosudie*,

to rule in favour of the broadcaster. It failed to consider the need for *Roskomnadzor's* inspection in light of media freedom and the ban on censorship.

Some court decisions look politically motivated. For example, a regional TV broadcaster was punished for slightly exceeding the rebroadcasting hours of *TV Dozhd*, an independent Russian TV channel with an alternative news agenda.¹³¹ A year after this decision, Russian cable and satellite TV providers disconnected the channel allegedly because the audience had been offended by its controversial survey.¹³²

Another example is the decision on TV-2,¹³³ a regional independent company transformed, due to state pressure, from a profitable organization into a small broadcaster. *Roskomnadzor's* 'unscheduled inspection' detected that TV-2 had been available via cable in one small town located next to but outside the territory stipulated in TV-2's license. TV-2 referred to its universal license that implied the right to broadcast within Russia. However, the court rejected this argument and required TV-2 to apply to *Roskomnadzor* for the relevant permission.

3.3 State Media Ownership

In consistency with the abovementioned principle of 'broadcasting dualism', most European countries have transformed their state-run broadcasters into public service media.¹³⁴ Russia still maintains state-owned broadcasting, which represents the Soviet legacy. The largest broadcast media corporation in Russia, VGTRK, is directly state-owned.¹³⁵ Top managers of VGTRK's TV channels are dismissed and appointed by the president. Dismissals are often caused

available at <https://rospravosudie.com/court-sudebnyj-uchastok-mirovogo-sudi-1-rezhevskogo-rajona-s/act-214866775/>.

131 Decision of the Arbitrazh Court of Orlovskaya region in Case No A48-443/2013 of 15 May 2013, *RosPravosudie*, available at <https://rospravosudie.com/court-as-orlovskoj-oblasti-s/judge-zhernov-a-a-s/act-306646269/>.

132 See, for details, "12 newsrooms in 5 years. How the Russian authorities decimated a news industry," *Meduza* (18 May 2016), available at <https://meduza.io/en/feature/2016/05/18/12-newsrooms-in-5-years>.

133 Decision of the Arbitrazh Court of the Tomsk region in Case No. A67-8621/2014 of 13 April 2015, *RosPravosudie*, available at <https://rospravosudie.com/court-as-tomskoj-oblasti-s/judge-sennikova-irina-nikolaevna-s/act-319061423/>.

134 Ruzha Smilova, Daniel Smilov, Georgi Ganev, "Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Bulgaria," *Mediadem Background information report* (October 2010), 44–76.

135 See, for details, VGTRK, available at <http://vgtrk.com/>.

by dissatisfaction with the programming policy or certain programs.¹³⁶ VGTRK has a separate line in the national budget, but is also allowed to receive advertising revenues. In 2018, the government provided it with a huge sum equivalent to about 335 million euro.¹³⁷

The Russian audiovisual market represents an oligopoly with a dominantly pro-government position.¹³⁸ The Russian government – directly or indirectly – is the main owner of all the national TV channels available to Russians free of charge,¹³⁹ in line with Russian regulations on digital TV examined in the relevant section below. Almost all channels are owned by four companies. Three of them are the state-owned entities VGTRK, Gazprom Media Holding and VTB Bank.¹⁴⁰ The only private company – National Media Group – is controlled, through the bank *Rossia*, by the pro-Kremlin businessmen Kirill Kovalchuk.¹⁴¹ These companies also run the so-called ‘big troika’ of national TV channels: First TV Channel (*Pervyi Kanal*), Russia-1 (*Rossia-1*), and NTV.¹⁴² In 2017, they collectively accounted for more than one third (35%) of the Russian TV audience.¹⁴³

136 Richter, “The regulatory framework of audiovisual media services in Russia,” *op. cit.* note 15.

137 “SMI i biudzhët: den’gi zakonchatsia vmeste s futbolom,” *Gazeta.ru* (29 March 2018), available at <https://www.gazeta.ru/business/2018/03/28/11699354.shtml>.

138 Ilya Kiriya, Elena Degtereva, “Russian TV market: Between state supervision, commercial logic and simulacrum of public service,” 1(3) *Central European Journal of Communication* (2010), 37–561.

139 Richter, “Russian Federation. Must-carry Channels Approved by President,” *European Audiovisual Observatory*, available at http://merlin.obs.coe.int/iris/2009/10/article25_en.html

140 “Russia profile – Media,” BBC (25 April 2017), available at <https://www.bbc.com/news/world-europe-17840134>; See also Eli M. Noam, *Who owns the world’s media* (OUP, Oxford, 2016) 284–287.

141 “Kto vladeet SMI v Rossii: vedushchie holdingi,” *BBC Russia* (11 July 2014), available at http://www.bbc.com/russian/russia/2014/07/140711_russia_media_holdings.

142 First TV Channel is partly directly state-owned (51%) and partly owned by the National Media Group company (29%) and VTB Bank (20%) (for more information see: Irina Parfent’eva, Sergei Sobolev, “VTB kupil doliu Abramovicha v ‘Pervom kanale,’” *RBC* (7 March 2019), available at <https://www.rbc.ru/business/07/03/2019/5c80cc3c9a7947125d24a97e>). Russia-1 is part of VGTRK. NTV is almost fully owned (99.94%) by Gazprom Media Holding Company (for more information see “Televidenie v Rossii v 2017 godu: Sostoianie, tendentsii i perspektivy razvitiia. Otrasleyvi doklad,” *Federal Agency on Press and Mass Communications* (2018), available at <http://www.fapmc.ru/rospechat/activities/reports/2018/teleradio.html>).

143 *Ibid.*

Several legal documents lay down specific legal requirements for state broadcasters. According to a 1993 presidential decree,¹⁴⁴ state broadcasters must comply with obligations on pluralism, impartiality, and editorial responsibility. Identical commitments are specified in several PACE documents¹⁴⁵ for any broadcaster and the decree even refers to them. Some similar obligations are established in a 1995 federal statute¹⁴⁶ concerning coverage of governmental activities by state broadcasters. Nonetheless, these documents do not apply in practice. The application of another national statute¹⁴⁷ guaranteeing equality of parliamentary parties in reports is very limited: it focuses on the parties' administrative activities and concerns only VGTRK channels. It is also inapplicable during election campaigns. However, these documents may give the illusion of political pluralism in Russian state broadcasting.

'Indirectly,' state-owned broadcasters have no special obligations in Russian law at all. Their commitments are often informal, just as their privileges,¹⁴⁸ but national law is often the main tool for allocating them, as I show below.

Russian law has not elaborated on the ban on media concentration, in contradiction to CoE standards. The impact of Federal Antimonopoly Service of the Russian Federation (hereinafter – FAS) attempts to constrain media

144 Decree of the President of the Russian Federation "O garantiakh informatsionnoi stabil'nosti i trebovaniikh k teleradioveshchaniuu," No 377, adopted on 20 March 1993, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_1742/.

145 Recommendation 748 (1975) of the CoE Parliamentary Assembly "Role and Management of National Broadcasting," adopted on 23 January 1975, *Council of Europe*, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=14782&lang=en>. See, also, Resolution 428 (1970) of the CoE Parliamentary Assembly "Declaration on Mass Communication Media and Human Rights," adopted on 23 January 1970, *Council of Europe*, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15842&lang=en>. See, also, Resolution 820 (1984) of the CoE Parliamentary Assembly "Relations of national parliaments with the media," adopted on 7 May 1984, *Council of Europe*, available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16231&lang=en>.

146 Federal Law of the Russian Federation "O poriadke osveshcheniia deiatel'nosti organov gosudarstvennoi vlasti v gosudarstvennykh sredstvakh massovoi informatsii" No 7-FZ of 13 January 1995, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_5410/.

147 Federal Law of the Russian Federation "O garantiakh ravenstva parlamentskikh partii pri osveshchenii ikh deiatel'nosti gosudarstvennymi obshchedostupnymi telekanalami i radiokanalami" No 95-FZ of 12 May 2009, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_87677/.

148 Lipman, Kachkaeva and Poyker, *op. cit.* note 15.

concentration has been limited.¹⁴⁹ The Russian national statute “On Protection of Competition”¹⁵⁰ has never been applied to prevent media concentration.

Furthermore, Russian law is reinforced by the 2014 limitations to foreign media ownership in Russia, as the OSCE Representative on Freedom of the Media noted.¹⁵¹ The law “On Mass Media”¹⁵² bans broadcast media ownership for foreign citizens, companies, governments, international NGOs, Russian companies with foreign participation, stateless individuals and Russian citizens with dual citizenship. The statute also ambiguously denies them the right to ‘manage or somehow control’ 20% or more of the charter capital of companies owning broadcasting organisations. Similar limitations concern ownership of ‘online audiovisual services’.¹⁵³

This regulation may illustrate Smaele’s characterization of the Russian media system, where “the worlds of politics and business are merged.”¹⁵⁴ As Lipman, Kachkaeva, and Poyker suggest,¹⁵⁵ the limitations aim at providing informal economic privileges to some state-controlled private broadcasters, because the Russian TV advertizing market declined amid political and economic sanctions imposed after Russia’s annexation of Crimea. For instance, STS Media, one of the biggest Russian TV entertainment media companies, had to sell 75% of its shares to UTV, another Russian broadcast company controlled by Alisher Usmanov, a tycoon from the presidential inner circle.¹⁵⁶ Another example seems to be more political. Russian tycoon Roman Berezovsky had

149 Richter, “The regulatory framework of audiovisual media services in Russia,” *op. cit.* note 15.

150 Federal Law of the Russian Federation “O zashchite konkurentsii” of 26 July 2006 No 135-FZ, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_61763/.

151 “Proposed media ownership requirements could further damage media pluralism in Russia, OSCE Representative says,” *Organization for Security and Co-operation in Europe*, (24 September 2014), available at <http://www.osce.org/fom/124143>.

152 See Art 19.1 in “O sredstvakh massovoi informatsii,” *op. cit.* note 83.

153 Federal Law “O vnesenii izmenenii v Federal’nyi zakon ‘Ob informatsii, informacionnykh tehnologiiah i o zashchite informatsii’ i otdel’nye zakonodatel’nye akty Rossiiskoi Federatsii” No 87-FZ, *op. cit.* note 105.

154 Hedwig de Smaele, “In search of a label for the Russian media system,” in Boguslawa Dobek-Ostrowska, Michal Glowacki, Karol Jakubowicz, and Miklós Sükösd (eds.), *Comparative media systems: European and global perspectives* (Central European University, Budapest, 2010), 41–62, at 58.

155 Lipman, Kachkaeva and Poyker, *op. cit.* note 15.

156 “Televidenie v Rossii v 2015 godu: Sostoianie, tendentsii i perspektivy razvitiia. Otrassevoi doklad,” *Federal Agency on Press and Mass Communications* (2016), 19–20, available at <http://www.fapmc.ru/rospechat/activities/reports/2016/television-in-russia.html>.

to reduce his stake in the First TV Channel to the abovementioned National Media Group Company after he had become an Israeli citizen.¹⁵⁷

In 2019, the Russian Constitutional Court found the limitations on foreign media ownership partially inconsistent with the Russian Constitution.¹⁵⁸ The Court ruled that the 2014 amendments on foreign media ownership insufficiently clarify to whom they apply, in violation of the three-tier test. Russian citizens with dual citizenship may exercise their ‘corporate’ and ‘property rights’ within their stakes below 20% in companies owning broadcasting organisations, as the Court held.

Other limitations were found constitutional. In consistency with CoE standards, the Court’s resolution acknowledged the particular role of the media and governmental commitment to ensure ‘effective pluralism’ as well as competitiveness in the audiovisual sector. However, the Court failed to examine regulation of foreign broadcast media ownership in the context of these standards or media freedom in general. The Court stated the limitations pursue a legitimate aim, namely to protect national security – implying ‘information safety’, in line with the 2016 presidential Doctrine.¹⁵⁹

3.4 *Public Service Broadcasting*

Instead of reforming state broadcasting, the Russian government launched a public service media channel, *Obshchestvennoe Televidenie Rossii* (hereinafter OTR), as a new broadcaster. This happened in 2013, nearly ten years after the CoE had urged Russia to do this.¹⁶⁰

The OTR’s governing frameworks and objectives significantly differ from those set by CoE standards. OTR’s legal framework¹⁶¹ is formed by the president

157 Chris Dziadul, “Abramovich to reduce Channel One stake,” *Broadband and TV news* (25 June 2018), available at <https://www.broadbandtvnews.com/2018/06/25/abramovich-to-reduce-channel-one-stake>.

158 Resolution of the Russian Constitutional Court “Po delu o proverke konstitutsionnosti stat’i 19.1 Zakona Rossiiskoi Federatsii ‘O sredstvakh massovoi informatsii’ v sviazi s zhaloboi grazhdanina EG Finkel’shteina” No 4-P of 17 January 2019, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_316142/.

159 “Doktrina informatsionnoi bezopasnosti Rossiiskoi Federatsii,” No 646 of 05 December 2016, *op. cit.* note 89.

160 Recommendation 1641 (2004) “Public Service Broadcasting,” *op. cit.* note 57.

161 Decree of the President of the Russian Federation “Ob obshchestvennom televidenii v Rossiiskoi Federatsii,” No 455 of 17 April 2012, *Garant*, available at <http://www.garant.ru/hotlaw/federal/393119/>; Order of the Government of the Russian Federation “Ob uchrezhdenii avtonomnoi nekommercheskoi organizatsii ‘Obshchestvennoe televidenie

and government, rather than by the parliament. OTR is included in the list of must-carry channels, but the broadcaster has no specific obligations regarding its remit or programming policy. The regulations authorize the president to appoint and dismiss the OTR's head (editor-in-chief) and control the formation of the OTR's managing and supervisory bodies. OTR lacks legal guarantees of stable funding, which strengthens its dependency on the executive power.

Responding to criticism of OTR's political bias, its head Anatoly Lysenko stated that he did not believe in independent TV at all because it is "just an abstract idea."¹⁶² To a certain extent, Russia is retracing the same path as that of other Central and Eastern European countries that have failed to properly implement public service media institutions.

3.5 *Digital TV*

Most European countries have phased out analog terrestrial TV. Russia is also close to completing the digital switchover. As of April 2019, one-third of Russia's population has free universal access to twenty TV channels in digital format.¹⁶³ Analog TV was switched off in twenty Russian regions without any problems, as Aleksey Volin, Deputy Minister of Telecom and Mass Communications, stated.¹⁶⁴

However, the government has postponed the end of the switchover several times,¹⁶⁵ in breach of Agreement GE-06. At the time of writing, this is scheduled for October, 2019.¹⁶⁶ The cost of digitalization in Russia has increased

Rossii" No 1679-r of 12 September 2012, *Consultant*, available at <http://www.consultant.ru/cons/cgi/online.cgi?base=EXP&dst=100001&n=632108&req=doc#0706557042347030>; Decree of the President of the Russian Federation "Ob utverzhdenii sostava Soveta po obshchestvennomu teledeniiu," No 1021 of 18 July 2012, *OTR*, available at <https://otr-online.ru/resources/userFiles/documents/54d68be179.pdf>.

162 "Lysenko: 'Ia ne veriu v nezavisimoe teledenie'" *BBC Russia* (22 June 2013), available at http://www.bbc.com/russian/russia/2013/06/130622_public_tv_russia_interview.

163 "Pochti 50 mln rossiian pereshli na tsifrovoe televeshhanie," *Tass* (23 April 2019), available at <https://tass.ru/ekonomika/6366980>.

164 *Ibid.*

165 "Telepiknik na obochine," *Gazeta.ru* (25 April 2019), available at https://www.gazeta.ru/tech/2019/04/25_a_12321127.shtml.

166 "V Rossii prodliili srok perekhoda na tsifrovoe teledenie," *Ria Novosti* (25 April 2019), available at <https://ria.ru/20190425/1553040745.html>.

and reached an enormous sum equivalent to around 860 billion euro where the national budget share makes up more than two-thirds.¹⁶⁷

The shift towards digital television in Russia is regulated and controlled by the government, which has played the biggest role in developing the strategy¹⁶⁸ for the shift, with some participation from powerful business structures and without open debate.¹⁶⁹

The list of national must-carry channels was approved by presidential decree.¹⁷⁰ The decree notes that it seeks to ensure freedom of information and universal access to issues of public interest. However, the must-carry channels are directly state-owned and indirectly state-controlled.¹⁷¹ These channels comprise the first digital multiplex available to Russian consumers for free, and the government fully subsidises their free dissemination on all platforms in Russia.¹⁷² In other words, Russian law gives their broadcasters discriminatory privileges without tendering procedures. Presidential decrees¹⁷³ also established the monopoly of the state communication service provider of digital channels, the Russian TV and Radio Broadcasting Network (RTRS or *Rossiiskaia Televizionnaia i Radioveshchatel'naia Set'*).

The competition for the second digital multiplex in Russia was mostly nominal. Procedures and criteria were insufficiently clear. The second multiplex primarily consists of entertainment channels. None of these provides an alternative news agenda. The abovementioned *TV Dozhd* lost the competition for

167 "Perehod Rossii na tsifrovoe TV: tsifry i fakty," *Telesputnik* (11 December 2018), available at <https://www.telesputnik.ru/materials/tsifrovoe-televidenie/article/perehod-rossii-na-tsifrovoe-tv-tsifry-i-fakty/>.

168 Digitalization in Russia is regulated by the 2009 National Purpose-Oriented Program for the Development of Television and Radio Broadcasting, 2009–2018, approved by Resolution of the Government of the Russian Federation "O federal'noi tselevoi programme "Razvitie teleradioveshchaniia v Rossiiskoi Federatsii na 2009–2015 gody" No 985 of 3 December 2009, *Garant*, available at <http://base.garant.ru/6731125/>.

169 Richter, *op. cit.* note 109.

170 Decree of the President of the Russian Federation "Ob obshcherossiiskikh obiazatel'nykh obshchedostupnykh telekanalakh i radiokanalakh," No 715 of 24 June, 2009, *Kremlin*, available at <http://kremlin.ru/acts/bank/29453>.

171 Richter, *op. cit.* note 139.

172 According to Art 32.1 of "O sredstvakh massovoi informatsii," *op. cit.* note 83.

173 "Ob obshherossiiskikh obiazatel'nykh obshchedostupnykh telekanalakh i radiokanalakh," *op. cit.* note 170; Decree of the President of the Russian Federation "O garantiiah rasprostraneniia telekanalov i radiokanalov na territorii Rossiiskoi Federatsii" No 561 of 11 August 2014, *Kremlin*, available at <http://kremlin.ru/acts/bank/38814>.

unexplained reasons. Russian law also guarantees free universal access to the second multiplex but no state subsidies for broadcasters are allocated for that. As a result, the managers of some media companies had to informally ‘appeal’ to the Russian government for ‘financial assistance.’¹⁷⁴

The fate of regional broadcasting in Russia, which was accessible in Russia for free, remains undetermined. Currently, only Crimea has its own regional multiplex, which was launched shortly after Russia’s annexation of the peninsula.¹⁷⁵ In 2019, the upper chamber of the Russian parliament, the Federation Council, issued a decree on digitalization¹⁷⁶ recommending that the Russian government create and fund a third multiplex consisting of regional TV channels. However, only OTR will receive state subsidies for allocating five hours of its airtime to regional broadcasting. Volin stated that the government should launch regional multiplexes only in regions that are ready to pay for RTRS services from their budgets.¹⁷⁷ Most likely, only a few regional broadcasters will be able to cover these expenses.

Therefore, the state regulator recommended that regional broadcasters should use other platforms for delivering programmes, in particular cable TV. The 2016 amendments to the laws “On Mass Media” and “On Communications” obliged private cable operators to ensure transmission of must-carry regional TV channels at their own cost. It is hard to assume that this duty correlates with international standards, especially because the amendments provide no criteria implying broadcasters’ contribution to media pluralism. *Roskomnadzor* alone determines the list of 72 broadcasters receiving this privilege.¹⁷⁸ They must reserve 75% of airtime for Russian national production and broadcast on territory where no less than half of the regional population lives.

174 Anna Afanasieva, Anna Balashova, “Telekanaly veshchali v biudzhet,” *Kommersant* (24 April 2015), available at <https://www.kommersant.ru/doc/2715225>; see, also, “Veshchateliam podgoniaut tsifru,” *Kommersant* (8 February 2019), available at <https://www.kommersant.ru/doc/3875877>.

175 “Chetyre regional’nykh kanala voshli v tretii tsifrovoi mul’tipleks v Krymu,” *Novosti Kryma* (23 April 2019), available at <https://crimea-news.com/society/2019/04/23/512611.html>.

176 “O voprosakh perekhoda na tsifrovoe televizionnoe veshchanie v Rossiiskoi Federatsii,” *Sovet Federacii* (16 January 2019), available at <http://council.gov.ru/activity/documents/100586/>.

177 “Tretii mul’tipleks mozhet poiavit’sia tol’ko v otdel’nykh regionakh,” *Telesputnik* (30 January 2019), available at <https://telesputnik.ru/materials/tsifrovoe-televidenie/news/tretiy-multipleks-mozhet-poyavitsya-tolko-v-otdelnykh-regionakh/>.

178 “Roskomnadzor opredelil ‘21-iu knopku’ eshche v 9 sub”ektakh Rossii,” *Izvestiia* (24 November 2018), available at <https://iz.ru/817647/2018-11-28/roskomnadzor-opredelil-21-knopku-eshche-v-9-subektakh-rossii>

Most probably, amendments granting similar privileges to some municipal broadcasters will soon be adopted in Russia.¹⁷⁹ As the ECtHR has clarified, municipal media ownership in Russia is the same as state media ownership.¹⁸⁰

The Russian population also faced several challenges in the process of switchover.¹⁸¹ Most Russians still have TV sets that do not accept digital signals and so have to purchase special technical equipment to access digital television.¹⁸² Although the plan is to allocate subsidies for the poor, concrete measures have been adopted only in a few regions, including Crimea. FAS initiated lawsuits against several large retailers that had been selling unnecessarily overpriced digital equipment in Tverskaya region on the eve of the digital switchover.¹⁸³

After implantation of the digital switchover in Russia, the channels that were available for free but excluded from multiplexes will be accessible only via cable. Thus, they will be banned from broadcasting advertizing, as shown below, which may lead to the bankruptcy of many media companies and to a decrease in audiovisual media pluralism.

3.6 *The ECTT and Russia's Perspective on Its Ratification*

On 4 October 2006, Sergei Lavrov, the Russian Minister of Foreign Affairs, signed the ECTT on behalf of the Russian Federation. Subsequent amendments to the laws “On Advertizing” and “On Mass Media” would ratify the ECTT, with the only minor reservation concerning commercials for alcohol products. However, the amendments were not considered in parliament. As Richter argues, the Russian government did not ratify the ECTT because of reluctance on the part of the Russian TV industry to be regulated by “rules outside its influence and control.”¹⁸⁴ Currently, Russian ratification of the ECTT seems hardly likely.

Russia's failure to ratify the ECTT became a nominal rationale for terminating retransmission of Russian TV channels in Ukraine, a party to the ECTT. The Ukrainian government claimed that Russian broadcasters had violated Ukrainian law in that they insulted Ukraine, called for separatism, or denied

179 “Zakon o zakreplenii 22-i knopki za munitsipal'nym TV proshel pervoe chtenie,” *Sostav.ru* (5 April 2019), available at <https://www.sostav.ru/publication/zakon-o-zakreplenii-22-j-knopki-za-munitsipalnym-tv-proshel-pervoe-chtenie-36541.html>.

180 ECtHR, *Saliyev v. Russia*, ECtHR judgment (21 October 2010) App no 35016/03.

181 “Veshchateliam podgoniaut tsifru,” *op. cit.* note 174.

182 *Ibid.*

183 “FAS Rossii vzbudila delo iz-za uvelicheniia tsen na tsifrovye tv-pristavki,” *FAS* (13 December 2018), available at <https://fas.gov.ru/news/26608>.

184 Richter, *op. cit.* note 15, 20.

the annexation of Crimea.¹⁸⁵ The ECTT indeed bans hate speech and giving “undue prominence to violence.” However, such cases require court consideration.¹⁸⁶ In Ukraine, they were considered by the national regulator, which has often disproportionately interfered with media freedom. For instance, it decided to switch off *Multimania*, a Russian children’s cartoon TV channel, because the map in its cartoon weather forecasts had depicted Crimea as a part of Russia. Sometimes transmission of Russian channels was terminated only due to their broadcasters’ failure to remove commercial spots. These measures are disproportionate and represent an improper tool for deescalating conflict, according to CoE and OSCE standards.¹⁸⁷

3.7 Protection of Minors from Harmful Audiovisual Content

Article 4 of “On Mass Media” bans promoting pornography and using obscene speech in mass media content. A separate national statute “On Protection of Children from Information Harmful to Their Moral Health and Development”¹⁸⁸ obliges producers and distributors of mass media content to rate their programmes. Content is divided among five age groups: 0+, 6+, 12+, 16+, and 18+. If online audiovisual services have not been registered with *Roskomnadzor*, they do not need to provide a notice signaling content age category. In line with the ECTT, adult content in Russia may be broadcast in special slots when children cannot normally see it.

However, many statutory provisions contain imprecise wording. The content of “considerable historical, artistic, and cultural value” is excluded from the scope of the statute, which, however, fails to clarify this notion. The criteria for identifying ‘adult’ content are often vague and sometimes contrasting with the CoE vision. For instance, while Russian law bans propaganda of nontraditional sexual relationships, the ECtHR prohibits homophobic expressions.¹⁸⁹

185 Vitalii Portnikov, “Efir i Propaganda,” *Radio Svoboda* (15 October 2016), available at <http://www.svoboda.org/a/28049534.html>.

186 See, eg, ECtHR, *Başkaya and Okçuoğlu v. Turkey*, ECtHR judgment (8 July 1999) App no 23536/94.

187 See, also, “Propaganda and Freedom of the Media” (OSCE Office of the Representative on Freedom of the Media, Vienna, 2015), available at <http://www.osce.org/fom/203926?download=true>.

188 Federal Law of the Russian Federation “O zashchite detei ot informatsii, prichiniauiushchei vred ikh zdorov’iu i razvitiuu” No 436-FZ of 29 December 2010, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_108808/.

189 ECtHR, *Vejdeland & Others v. Sweden*, ECtHR judgment (9 February 2012) App no 1813/07.

Roskomnadzor fully monitors implementation of the statute. It accredits experts who assess compliance of content with the statute's rules and imposes fines on broadcasters for breaching them.

Unlike AVMSD, the Russian statute provides no specific requirements for online audiovisual services regarding protection of minors. However, Russia has very extensive online content regulation that concerns any website. This regulation provides *Roskomnadzor* with almost unlimited power to oversee them. Examining this regulation falls beyond the scope of this study, but it is important to note here that *Roskomnadzor's* decisions on blocking access to online content that may be harmful to minors have resulted in several ridiculous bans, such as the ban on *hentai* anime¹⁹⁰ and of video instruction for Halloween make-up.¹⁹¹

3.8 *TV Advertizing and Support for National TV Production*

The 2006 Russian law "On Advertizing"¹⁹² was mostly consistent with the ECTT, with minor exceptions concerning the frequency of advertisement slots and requirements to announce breaks for sponsored commercials. However, the 2014–2015 amendments might change matters. Most likely, they mainly seek to increase the advertizing profits of Russian state-controlled broadcasters amid sanctions.

Initially, the amendments prohibited commercials on any TV channel that is available 'on a paid basis' or 'with the use of decoders.' However, soon the ban appeared to mean bankruptcy for most broadcasters in Russia. Because FAS clarified that the ban did not concern channels broadcast on frequencies, *Roskomnadzor* urgently issued licenses granting the right to broadcast on a Moscow-based frequency to forty state-controlled companies.¹⁹³ Then, the ban was 'smoothed' and became inapplicable to TV channels reserving more than 75% of their airtime to "Russian national production" (Article 14.1 of the

190 Vladimir Zykov, "Roskomnadzor priznal mul'tfil'my detskoi pornografiei," *Izvestiia* (13 June 2013), available at <https://iz.ru/news/551864>.

191 "YouTube fights Russian watchdog over blocked Halloween 'suicide' make-up video," *RT* (13 February 2013), available at <https://www.rt.com/news/youtube-lawsuit-russia-video-137/>.

192 Federal Law of the Russian Federation "O reklame" No 38-FZ, adopted on 13 March 2006, *Consultant*, available at http://www.consultant.ru/document/cons_doc_LAW_58968/.

193 Kseniia Boletskaia, "Osnovnye igroki platnogo TV vnov' razmeshchaiut reklamu, nesmotria na priamoi zapret," *Vedomosti* (11 February 2016), available at <https://www.vedomosti.ru/technology/articles/2016/02/12/628670-nesmotrya-na-priamoi-zapret-osnovnie-igroki-platnogo-tv-vnov-razmeschayut-reklamu>.

law “On Advertizing”). Additionally, “On Mass Media” has limited the content of must-carry channels to no less than 75% of ‘Russian national production.’¹⁹⁴

According to the law “On Advertizing,” ‘Russian national production’ must be in Russian or in one of the official languages of the Russian republics. Otherwise, it must be specifically produced for Russian media companies or by Russian citizens or legal entities. Additionally, Russian investments in production constitute no less than 50% of total production costs. ‘Russian national production’ excludes translated, dubbed, and subtitled programs, unlike the ECTT. This approach might be supportive for Russian audiovisual production and appropriate to the ECTT, but the Russian limitations seem to be too broad to support media pluralism.

In contrast to the ECTT, the Russian law “On Advertizing” permitted commercials for beer during broadcasts of sports competitions as well as on TV channels specializing in sports from 2014 to 2019. This measure was justified by Russia’s hosting of the FIFA Confederations Cup and the 2018 World Football Cup, which is a questionable justification in light of the second three-tier test. As the implementation of this regulation has shown, the measure provided discriminatory financial benefits to companies that specialized in sports or broadcasting sports competitions and that are state-owned or state-controlled.¹⁹⁵ Additionally, the amendments eased the restrictions on advertizing Russian wine products on TV. This measure is still valid and seems to go in line with the Russian policy of ‘import-substituting’ products and goods – a policy that seeks to respond to foreign sanctions imposed after the annexation of Crimea.

4 Conclusion

Russian and European audiovisual regulation has become increasingly complex and controversial in the digital era. This can make freedom of expression more vulnerable. Consequently, the importance of CoE standards regarding this right for national policymakers should grow.

However, this paper concludes that CoE standards have had an almost superficial impact on Russian audiovisual regulation. Furthermore, non-compliance has increased since 2014, which might be connected with Russia’s

194 See Art 32.1 in Russian law “O sredstvakh massovoi informatsii,” *op. cit.* note 83.

195 “Gubit efir ne pivo: pivnye brendy vernulis’ na TV,” *Sostav.ru* (19 July 2016), available at <http://m.sostav.ru/app/article/23130>.

annexation of Crimea and subsequent sanctions affecting the Russian economy and Russian politics. While European supranational audiovisual regulation is becoming extremely multidimensional, the Russian legal audiovisual framework seems to have been largely developed as a governmental tool for direct or indirect control over the audiovisual media sector. In exchange for financial or other privileges, the Russian audiovisual media industry has to accept the paternalistic mode of regulation and assume its role of governmental mouthpiece in harsh market conditions.

Russian audiovisual regulation almost always goes beyond the national 'margin of appreciation' and hardly matches the ECHR's three-tier test on the admissibility of limitations to freedom of expression or media freedom. Lack of clarity, transparency and foreseeability in Russian audiovisual regulation allows the Russian government significant leeway to selectively interpret and implement the law. The state watchdog *Roskomnadzor* has particularly excessive powers to do so. Although Russian laws are often presented as pursuing legitimate aims in compliance with the second criterion of the test, national legislation mainly goes beyond their protection, and the real purpose of most laws is unclear. In practice, regulation has frequently resulted in greater media concentration, dependence on the will of the government (or, in fact, the political establishment), in contrast to the CoE's basic principles for audiovisual regulation. It is debatable whether there is a pressing social need for many limitations, particularly in digital environments. Among these are excessive media authorisation rules, a total ban on foreign audiovisual media ownership or extensive restrictions on foreign media content.

As seen from the analysis of Russian legislation and court practice, including the Constitutional Court's interpretations, issues of freedom of expression and media freedom are largely eliminated from national audiovisual regulation, although these human rights are fundamental, according to both CoE standards and the Russian Constitution. The Russian government does not explicitly challenge the relevance of CoE standards on audiovisual regulation in Russia. Instead, national law mostly imitates the CoE institutions or concepts, such as 'private media ownership,' 'public service media,' 'online audiovisual services,' or 'media regulator.' This may give the illusion that the Russian audiovisual sector is regulated in consistency with CoE standards.

Since the end of the Soviet period, Russian media law has changed completely, but it has insufficiently progressed from issues of official authorization and content regulation towards protection of the democratic values that the CoE aims to safeguard. Among them are competition, pluralism, freedom of access to content, and protection of vulnerable audience groups. In this context, research comparing Soviet and Russian audiovisual frameworks would be

a fruitful area for further work to explore the extent to which the contemporary Russian audiovisual regulatory model differs from the Soviet one.

In all likelihood, the inconsistency of Russian audiovisual regulation with CoE standards on freedom of expression will increase the more its audiovisual market is diversified and traditional broadcasting becomes less powerful and profitable. The government will most likely try to maintain control over audiovisual media, which is far from considered an easy task in a digital environment. Further research on this issue is therefore recommended.

Acknowledgments

I wish to thank Dr. Joan Barata for his guidance and supervision. I also highly acknowledge Dr. Andrei Richter and Dr. Anna Kachkaeva for their revisions and important comments.