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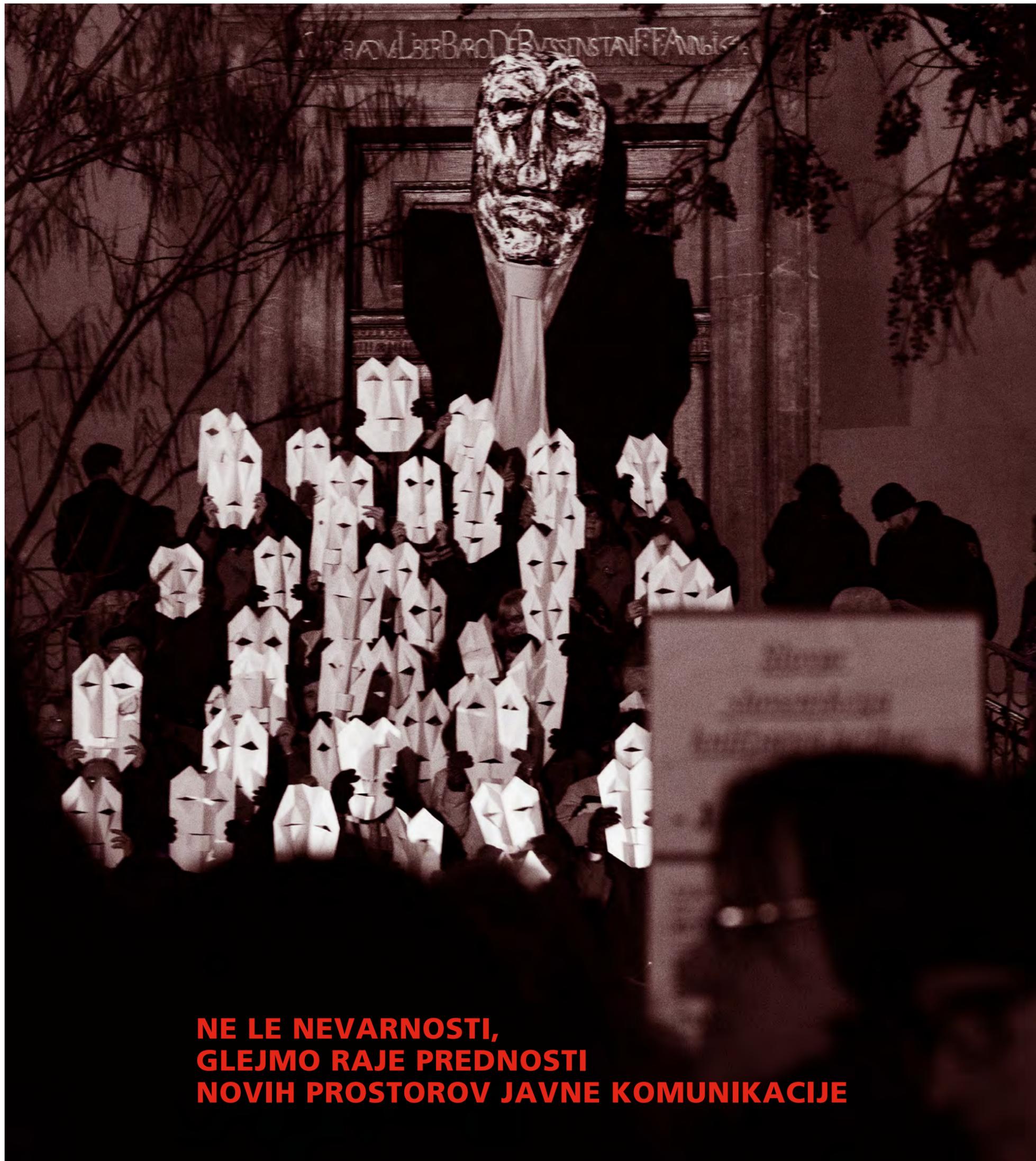
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## MEDIJSKA PREŽA ■ MEDIAWATCH JOURNAL

MEDIJI IN VSTAJE 04 MEDIJI PONOVO GRADIJO LEGITIMNOST POLITIKE, KI SO JO VSTAJE RAZGRADILE NOVINARJI 08 V MEDIJIH KRIZO RAZLAGAJO VEDNO ISTI LJUDJE 10 Z USTANOVITVIJO MEDIJSKIH ZADRUG DO DELOVNIH MEST PO SVOJI MERI MEDIJSKI TRG 13 BLIŽA SE RAZPAD LASTNIŠKIH SKUPIN TISKANIH MEDIJEV IZ ZGODOVINE TISKA 18 MEDIJSKI SKLADI NEKDAJ IN ZDAJ: »NAJ SE VRNE CENZURA, LJUBŠA BI NAM BILA.« SOVRAŽNI GOVOR 25 PROFESIONALNI RAZPIHOVALCI SOVRAŽNEGA GOVORA NA SPLETU RECENZIJE IN PRIKAZI 34 AVTOR IGRA ŠAH S PISCI STARIH TEKSTOV TEMATSKA PRILOGA 39 PRIMERJANJE MEDIJSKIH REFORM FOTOGRAFIJA NADA ŽGANK, JURE MOČNIK 61 ENGLISH SUPPLEMENT



**NE LE NEVARNOSTI,  
GLEJMO RAJE PREDNOSTI  
NOVIH PROSTOROV JAVNE KOMUNIKACIJE**

## ZAHTEVA, DA SE PREVERI IN ZAGOTOVI INTEGRITETA TUDI V MEDIJSKI INDUSTRIJI KDO BO RAZISKOVAL IN ODKRIVAL SPORNE PRAKSE, »KI USTREZAJO DEFINICIJI KORUPCIJE« V MEDIJIH? Jernej Rovšek, namestnik varuhinje človekovih pravic

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### FOTOGRAFIJA

Nada Žgank in Jure Močnik

Tudi letošnji svetovni dan medijev je bil dobra priložnost za razmislek o današnji vlogi medijev in novinarjev. Letos je bilo več poudarkov na nezavidljivih pogojih dela novinarjev in njihovi socialni in siceršnji varnosti. Poudarjena je bila nepogrešljivost medijev za delovanje demokratičnih družb, tudi pri odkrivanju korupcije in koruptivnih praks v javnem in zasebnem sektorju. Vsi ti poudarki so seveda upravičeni in nesporno je, da imajo mediji največ zaslug za odkrivanje koruptivnih praks. Organi odkrivanja in pregona kaznivih dejanj se največkrat z zamudo lotijo primerov, ki so bili že prej razkriti v medijih.

Vendar poleg teh zaslug se, ko spremljamo naše medije, začnemo spraševati tudi o tem, koliko je koruptivnih praks tudi v sami medijski industriji in kdo se s tem sploh ukvarja?

Primeri, ki vodijo k takšnemu razmišljanju, so lahko banalni, lahko pa so tudi sistemski in globalni. Kdo ima v resnici interes za ponujanje določenih informacij medijem in občinstvu? Kolikokrat so za posameznimi medijskimi prispevki le interesi globalnega kapitala in korporacij ali pa lokalnih politikov? Kdo ima (materialni) interes za naklonjeno predstavljanje ali promocijo določenih »čudežnih« zdravil, prehranskih dodatkov, oblačil ali turističnih destinacij? Ali za takšnimi novinarskimi vsebinami, ki niso označene kot oglaševalske, stojijo bolj ali manj prikriti sponzorji? Ali kdo nadzira zakonsko prepoved (53. člen ZMed), da sponzor ne sme vplivati na sponzorirane vsebine in omejevati uredniške neodvisnosti medija?

Kako se sklada uvodnik urednice tedenske priloge, poln srce parajočih primerov o današnjih družbenih tegobah in revščini, s ponujanjem očitno prevarantskih »čudežnih« tabletk za hujšanje ali s ponujanjem oderuških posojil na naslednjih straneh istega tednika? Ali za novinarskimi članki o tem, kaj je *in* v prihajajoči modni sezoni, ali o izboru priporočenih »naključno« izbranih oblačil, v resnici ne stojijo trgovci teh izdelkov? Ali novinar, ki hvali določeno turistično destinacijo ali znamko avtomobila, ne dela tega le zato, ker je brezplačno potoval na račun turistične agencije ali se brezplačno vozi v takšnem vozilu, ki mu ga je odstopil trgovec?

Mediji in njihovi lastniki nam tako prek vsebin, ki jih (proti plačilu ali brezplačno) ponujajo, v resnici vsiljujejo življenjski slog, vzorce vedenja in razmišljanja, tudi političnega. Torej, tisti, katerih interesi so za posameznimi medijskimi vsebinami, želijo narediti iz nas, namesto kritičnih državljanov, potrošnike, ki smo vredni le toliko, kolikor lahko kupimo njihove izdelke.

Sam sem rasel v času, ko je bilo tega manj in smo medije spremljali predvsem zato, da smo izvedeli, kaj se zanimivega in poučnega dogaja pri nas in po svetu. Seveda so bile vsebine politično omejene, vendar smo se, vsaj nekateri, naučili brati med vrsticami in kombinirati informacije iz različnih virov. Lahko bi se reklo, da smo bili medijsko izobraženi, čeprav brez tovrstnega formalnega izobraževanja. Zato smo lahko zaskrbljeni nad mlajšimi generacijami, ki so neusmiljeno izpostavljene prej omenjenim medijskim vsebinam. Še posebej na spletu, ki ponuja vsebine brezplačno, je težko najti zrnje med vsem plevelom, ki se ne le ponuja, ampak celo vsiljuje. Pogosto se sploh ne moremo izogniti vsiljivim ponudbam stvari, ki jih ne želimo in jih ne potrebujemo. Premalo se sprašujemo o tem, kdo oziroma čigavi interesi so za posameznimi medijskimi vsebinami in koliko so v medijih razširjene prakse, ki bi jih lahko imenovali koruptivne.

Seveda ne smemo vseh medijev in medijskih praks metati v isti koš, ker so razlike med mediji in novinarji velike, skrbi nas pa lahko, da so te razlike premalo vidne in največkrat niso razkrite. Če to primerjamo s korupcijo v javnem sektorju in delovanjem protikorupcijskega organa, pri nas je to Komisija za preprečevanje korupcije, se je zavedanje o tem, koliko je na tem področju koruptivnih praks, povečalo vzporedno s povečanjem aktivnosti te komisije.

Tudi sam prej nisem verjel, da je korupcija v javnem sektorju tako razširjena. Pri tem je treba poudariti, da se komisija ne ukvarja s kaznivimi dejanji s področja korupcije, za to so pristojni policija, tožilstvo in sodišča. Komisija predvsem daje »neobvezna« mnenja o tem, katera ravnanja ustrezajo definiciji korupcije, tudi če ravnanje ni kaznivo po kazenskem zakoniku. Komisija na podlagi zakona spremlja, ali organi javnega sektorja sprejemajo ocene korupcijskih tveganj na svojem področju in imajo načrte zagotavljanja integritete. Zakon o integriteti in preprečevanju korupcije vsebuje tudi določbe o zaščiti prijaviteljev korupcije. Vsega tega v medijski industriji ni.

Seveda stanje v javnem sektorju in medijski industriji glede tega ni v celoti primerljivo. Skupen pa je lahko interes državljanov in državljanov, ki so hkrati davkoplačevalci, in bralci, poslušalci in gledalci medijskih vsebin ter potrošniki blaga in storitev, ki jih ti mediji promovirajo. V javnem interesu mora biti, da nismo napačno informirani, da blaga in storitev ne plačujemo več, kot je treba, da nismo prevarani, da ne konzumiramo škodljivih izdelkov in podobno. Zato bi moralo biti v javnem interesu tudi odkrivanje, koliko je korupcije v medijski industriji; morale bi se postaviti zahteve, da se ocene in načrti zagotavljanja integritete sprejemajo in upoštevajo tudi na tem področju.

Verjamem, da se teh težav uredniki in novinarji zavedajo in se z njimi tudi vsakodnevno soočajo. Slabe gnotne razmere, v kateri je večina medijske industrije, pa ne prispevajo k zmanjševanju spornih praks, prej nasprotno. Lahko si je predstavljati, da so v takšnih pogojih uredniki pod pritiski lastnikov in oglaševalskih oddelkov glede vsebin, to pa se odraža tudi v delu novinarjev. Na drugi strani je gotovo prisotna tudi solidarnost znotraj stroke in industrije, da se ne preiskujejo in medsebojno razkrivajo tovrstni prekrški in sporne prakse, saj verjetno nihče ni povsem brez greha. Brez odgovora zato ostaja vprašanje, kdo bo raziskoval in odkrival sporne in neetične prakse, »ki ustrezajo definiciji korupcije« v medijih. ■



# WHY COMPARE MEDIA REFORMS? IT IS POSSIBLE TO BLAME THE WRONG APPROACH TO "MEDIA DEMOCRATIZATION" WHERE THE MODELS OF MEDIA REGULATION, INSTITUTIONS AND PROFESSIONAL CULTURE HAVE BEEN SIMPLY TRANSPLANTED AND IMITATED FROM THE WESTERN COUNTRIES. BUT IS IT ALSO POSSIBLE TO BLAME AND QUESTION THE MODEL ITSELF? Brankica Petković, Peace Institute, Ljubljana

The initiatives to reform media systems to better serve public interest and democracy, and to better protect citizens' rights to communication and information are taking place in different regions of the world.

Although the general demands are the same, current media reform initiatives have specific contexts, forms and goals in each country. The regional dimension is, however, often relevant since the problems with the media and democracy, and the strategies for media reforms have a certain level of common regional character.

The regional view of media reform initiatives is useful in the case of South East Europe, but also in the case of the Middle East and North Africa and the recent developments there, as well as in the case of current and previous structural transformations of media systems in the countries of Latin America.

Common to these regions is that the lack of structural conditions for the media to play a normative role is explained as it is connected with their exposure to authoritarian regimes. As such these regions have been subject to media development aid in the forms of support to the development of media regulation, institutions and professional culture, especially in the period of post-authoritarian media transformations.

However, the outcome of media system transformation in the post-socialist countries of South East Europe 20 years after the fall of authoritarian regimes shows that something has gone wrong. It is possible to blame the wrong approach to "media democratization" where the models of media regulation, institutions and professional culture have been simply transplanted and imitated from the Western countries. But is it also possible to blame and question the model itself?

Media reform initiatives are currently taking place in the countries which have been considered the senders of media development aid, and the models of democratic media systems, such as the UK and the USA. In the case of the UK, both the public service broadcasting (BBC) and the self-regulatory body for print media (Press Complaint Commission) have been used as models during the "media democratization" in South East Europe. But, media reform advocates in these Western countries now use similar criticism of their media systems as those in post-authoritarian societies, claiming that media systems in "traditional democracies" have been captured by particular commercial and political interests.

Is it then possible to compare media reform initiatives in different regions of the world, and learn from each other?

That question was in the core of the trans-regional conference "Comparing Media Reforms" organized on 29 and 30 November 2012 in Ljubljana by the Peace Institute, aiming to connect the analysts and protagonists of campaigns for media reforms and media system transformations in different regions of the world, beyond the division between "developed" and "non-developed". Its purpose was to revisit analytical frameworks, learn lessons from successes and failures in the field of the media and democracy in different regions and establish grounds and instruments for trans-regional collaboration and exchange. This thematic supplement of the *Media Watch Journal* contains most of the contributions and ideas discussed at the conference.

## Agenda of the conference "Comparing media reforms"

### Thursday, 29 November 2012

#### 9.30-10.15 Introductory session

Why and how to compare media reforms in different regions of the world?

Introduction:

- Brankica Petković, Peace Institute, Ljubljana, Slovenia

Speakers:

- Paolo Mancini, University of Perugia, Italy
- Sandra B. Hrvatin, University of Primorska, Koper/Capodistria, Slovenia

#### 10.15-11.30 Session 1

Lessons learned: Social and historical reflections of media system transformations in different regions

Case study 1: Central and South Eastern Europe

Speakers:

- Remzi Lani, Albanian Media Institute, Tirana, Albania
- Zrinjka Peruško, University of Zagreb, Croatia
- Tarik Jusić, Center for Social Research "Analitika", Sarajevo, Bosnia and Herzegovina
- Judit Bayer, King Sigismund College, Budapest, Hungary

#### 11.30-12.00 Coffee break

#### 12.00-13.00 Session 2

Lessons learned: Social and historical reflections of media system transformations in different regions

Case study 2: Latin America

Speakers:

- Guillermo Mastrini, Quilmes National University, Argentina
- Rodrigo Gómez García, Metropolitan Autonomous University, Cuajimalpa, Mexico City, Mexico

#### 13.00-14.00 Lunch break

#### 14.00-15.00 Session 3

Recent initiatives and strategies for media reforms: What doesn't work in terms of media and democracy in different regions and how to influence changes?

Case study 1: Middle East and North Africa

Speakers:

- Larbi Chouikha, Institute for Press and Information Sciences (IPSI), Tunisia
- Aboubakr Jamai, Lacomme.com, Morocco

#### 15.00-16.00 Session 4

Recent initiatives and strategies for media reforms: What doesn't work in terms of media and democracy in different regions and how to influence changes?

Case study 2: UK and USA

Speakers:

- Justin Schlosberg, Coordinating Committee for Media Reforms & Department of Media and Cultural Studies, Birkbeck, University of London, UK
- Timothy Karr, Free Press, Massachusetts and Washington, USA

#### 16.00-17.00 Working groups

Working group meetings: to discuss key issues, ideas and strategies for joint trans-regional initiatives

Working group 1:

Ideas and strategies for trans-regional approach in collecting and aggregating data and arguments for media reforms: research agenda and methodology  
Chair: Rodrigo Gómez García

Working group 2:

Ideas and strategies for trans-regional approach in communicating and influencing changes: strategies and platforms for advocacy and campaigning  
Chair: Justin Schlosberg

Working group 3:

Ideas, suggestions and platforms for revisiting theoretical framework (categories) in analyzing and comparing media systems and social changes (e.g. using International Communication Associations Pre-conference scheduled for 17 June 2013 at the Goldsmiths, University of London, etc.)  
Chair: Zrinjka Peruško

#### 19.00 Dinner

### Friday, 30 November 2012

#### 9.30-10.30 Session 5

Media reforms and the role of the state: What is the place for the state (the role of the state) in the reformed media systems? How to understand successes and failures in media and democracy through assessing the role of the state in different countries/regions?

Speakers:

- Andrei Richter, School of Journalism, Lomonosov Moscow State University, Russia
- Guillermo Mastrini, Quilmes National University, Argentina
- Viktorija Car, University of Zagreb, Croatia

#### 10.30-11.30 Session 6

Political economy of the media as a subject of reforms: What we know about the impact of media ownership patterns and labour relations in the media industry on media and democracy in different regions? How to generate knowledge and develop campaigns for change of harmful media policy and practices in this field?

Speakers:

- Rodrigo Gómez García, Metropolitan Autonomous University, Cuajimalpa, Mexico City, Mexico
- Snežana Trpevska, School of Journalism and Public Relations, Skopje, Macedonia
- Larbi Chouikha, Institute for Press and Information Sciences (IPSI), Tunisia

#### 11.30-12.00 Coffee break

#### 12.00-13.00 Session 7

Journalists as agents of media reforms? Are journalists initiators and active participants of media reform movements? What influence their engagement and emancipation in different regions?

Speakers:

- Jovanka Matić, Institute of Social Sciences, Belgrade, Serbia
- Joel Okao, Panos East Africa, Uganda
- Mandakh Myagmar, Press Institute, Ulan Bator, Mongolia
- Alan Rusbridger, Editor-in-chief of the Guardian, London, UK (video statement)

#### 13.00-14.00 Session 8

Impact of digitalization on media reforms: Understanding the internet and information technology when demanding media reforms

Speakers:

- Timothy Karr, Free Press, USA
- Aboubakr Jamai, Lacomme.com, Morocco
- Lenart J. Kučič, Delo, Slovenia

#### 14.00-15.00 Lunch break

#### 15.00-16.00 Session 9

Strategies for media reforms: Sharing ideas and experiences in developing strategies how to articulate and advocate for media reforms

Who takes initiative and which institutional framework to chose, which methods and activities to develop, how to gain public support, how to build coalitions, how to sustain activities etc. Summarizing experience from different regions.

Speakers:

- Roberto Beličanec, Media Development Center, Macedonia
- Giovanni Melogli, International Alliance of Journalists, together with European Alternatives an initiator of the European Initiative for Media Pluralism
- Timothy Karr, Free Press, USA
- Larbi Chouikha, Institute for Press and Information Sciences (IPSI), Tunisia

#### 16.00-17.00 Closing session

Conclusions: Are there common concerns and ideas about fundamentals of media reforms in different regions to be compiled in joint statement?

Summaries from the workshops on ideas for joint trans-regional initiatives in research, advocacy and campaigning on media reforms.

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## ONE STEP FORWARDS, TWO STEPS BACK\* IS IT POSSIBLE TO SPEAK ABOUT MEDIA REFORMS AT ALL? CAN SOMETHING WHICH HAS IN ITS ESSENCE BECOME UNDEMOCRATIC BE REFORMED? Sandra Bašić Hrvatin, Faculty of Humanities, University of Primorska, Koper/Capodistria

Translation: Andrej Zavrl

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

A couple of years ago, a BBC journalist asked a Jerusalem rabbi standing in front of the Western Wall the following question: 'Well, what is it like, having prayed for peace between the Arabs and the Jews for thirty years?' To which the rabbi replied: 'As if I had been talking to a wall.' This is roughly the feeling citizens get, observing what is happening to the media. Is it possible to speak about media reforms at all? Can something which has in its essence become undemocratic be reformed? Do the media perform the role of safeguarding the public interest, that is, do they (can they) work in the public interest? Is it possible for the media reform coalition to include media owners who are deeply implicated in the neoliberal project of state capture and the privatization of fundamental human rights?

### The answer is straightforward: NO!

In the last two decades the euphoria of both politics and civil society has been founded on the belief that market forces would liberate us from the past restraints of the single-party, undemocratic, non-market system and lead us to a new society of equal opportunities (not possibilities) for everybody. Whereas in actual fact the political space (and, indirectly, the media space as well, which rather quickly got colonised by politics) has been invaded by the ideology of unbridled privatisation, unreasonable deregulation, uncontrolled media concentration, the precarisation and pauperisation of the journalistic workforce, a re-established state control of the public service broadcasting, that is to say, the condition which Serge Halimi, in his book *The New Watch Dogs*, describes as 'the incestuous relationship between the media and the ruling class'.<sup>1</sup> We do not perceive this thesis by Halimi as a metaphor (as it has been understood by journalists and the readers of Halimi's book), but as a fact.

The journalist, claims Halimi, is given the right to believe in her/his own power. The power, however, has turned against those it should serve. When the world had rolled into 'information society' and the media had become part of the 'creative industry', journalists ended up in new hierarchies, surrounded by new masters – ministers, generals and bankers.<sup>2</sup> When an American trade unionist was speaking about the journalists from his country, he noticed to following: 'Twenty years ago they used to have lunches with us in cafes, today they have dinners with industrialists.' By having contact only with 'the decision makers', by wandering into the society of the court and money, by changing into the propaganda of market mentality, journalism has closed itself off in a class, a caste. It has lost readers and respect. It has promoted the impoverishment of public debates. This situation is inherent in the system: deontological codes of practice are not likely to change much.<sup>3</sup> Halimi is right in saying that no deontological code of practice, no journalistic Hippocratic oath will change this.

### No effective mechanism in place to safeguard the rights of citizens

During the debates on what the influence on politics is and to what degree today's mediatized politics presupposes the merging of media and political spheres, the most tragic consequence of the collapse of trust in institutions, perhaps, is the fact that none of the mechanisms intended to establish effective control over the media has worked. Moreover. The institutions established by the media industry itself in order to regulate its own power freely have demonstrated the powerlessness of

the notion that the media are capable – independently, without any external pressure (state regulation) – of respecting the professional standards which safeguard the public interest and work in its service.

The idea of the media industry's self-regulation has been left 'buried' under the rubble of the corruptive and elitist relationship between politics and the media. It could be claimed that at the moment there is no effective mechanism in place to safeguard the rights of citizens to quality and reliable information both at the national and supranational (EU) levels. The consequence of the absence of effective media regulation as well as too great a reliance on the media's spirit of goodwill to work in the public interest are a warning why the state cannot (and must not) renounce its active role in protecting fundamental human rights. It should not be forgotten that freedom of expression and freedom of the media belong to the fundamental rights. Furthermore, the attempt to transfer the protection of these rights to the goodwill of the media industry represents a typical example of the privatisation of the public interest – about which there has never been any consensus in public politics.

### "The West" and the East"

In the last twenty years theoreticians from 'the West' (the term 'West' is not used here to imply the individual's geographical origin, but rather a particular ideology which has been transferred – without any hint of self-reflection whatsoever – to the newly 'liberated' countries of the East) have been describing and unmasking events in 'the East' in their masses, failing to heed the warnings of those rare individuals from 'the East' who have been drawing critical attention to the situation in the media getting worse. When taking over media outlets in the East, media owners from 'Western' countries have not been paying any respect to the fundamental journalistic standards in place in their countries of origin, destroying local media markets, and leaving behind a devastated media landscape.

This is not to say that 'local' media owners have been treating 'their' cheaply gained media possessions any differently. The media have been bought and sold with the permission of political elites, media capital has functioned throughout as political capital and media companies have brought in revenues through advertising money spent by predominantly state-owned companies. The responsible EU institutions have likewise showed no understanding of the media needs of the citizens of former socialist and communist countries. It was deemed important to set up a European media premier league to compete against American companies and to prevent all the naive attempts by some countries to limit the concentration of media ownership and protect pluralism. Thus, the EU 'media policy' of the last two decades has been based on the mantra of soft regulation, co-regulation and self-regulation.

The European Commission has become the strongest guarantor of media industry interests, with the European Parliament as a weak (and frequently inept) reminder that freedom of expression and freedom of the media are the foundations of democratic societies. The numerous conferences organised by various EU institutions on the topic of media policy primarily invited those media organisations and NGO representatives who were willing to verbalize exactly what the hosts wanted to hear. "We need more market, more commercial media and less state." At the same time the European Commission paid careful attention to the comments made by media owners and their lobbying organisations about what European media policy should be – if it should exist at all. Just like the joke from Woody Allen's film *Annie Hall* where two women are discussing the food in their hotel. The

first woman finds the food awful, on which the second one agrees, adding: "And such small portions."

After twenty years of unbridled privatisation and commercialisation of the media space the problems of 'the East' – the supposed remnants of the past, curable with the free market – are also becoming the problems of 'the West'. When the topics that 'the East' so easily renounced without any serious thought devoted to its past have started appearing on the 'western' agendas, 'the East' found itself stranded on the ruins of the once thriving media industry, starting to inquire about the abandoned media practices of local and community media, horizontal democracy and the struggle for the respect of fundamental information and communication rights.

### Questioning the dogma about the media system

The first step, probably, is questioning the dogma widely accepted up to now that the media system within which we are now is the only possible. Let us begin to think about the ways of building a new media system in which the means of production will be owned by citizens and in which the sphere of communication together with its management will be a matter of common public policy. The endless concern over the changes to the framework regulating the media is based on the simple fact that the legal framework is, in fact, the product of the dominant production relationships and thus impossible to adapt or update to the newly arising information and communication needs.

If the legal framework within which the media function today is the product of the present social relationships, then only a change of the relationships can bring about a different regulation of the media sphere. Instead of weak and corruptible co-regulation and self-regulation mechanisms, operating in the private interests of media owners, citizens need control over the state. The present state has been captured by private interests and nearly paralysed with corruption. As Lawrence Lessig claims in his book *Republic, Lost*, the fundamental issues of today are the effective supervision of supervisors and the fight against corruption.<sup>4</sup> Dependence corruption, writes Lessig, describes the process (or state) where legislative and executive branches of power turn into the institutes of the legalisation and legitimisation of corrupt relationships. When examining this meaning of corruption we must focus on the processes which have led to state capture and the very process of government, rather than merely individual corrupt practices.<sup>5</sup>

### Towards new media policy

To create a new media policy, it is crucial to perceive democracy as a way of governance and representative democracy in the form of the republic – *res publica* – as a way of managing public affairs. The binder of the way of governance is the public interest which does not only refer to the difference between the private/specific interest and the general good, but it also includes its 'material' dimension.

The fundamental function of the republic is to recognise the difference and take it into account in governance. The meaning (or content) of the public interest is not possible to define in advance, rather its content can only be defined through public debate where the particular interests of all the participants are confronted. The public interest does not signify the consensus in society about a particular (public) issue, but rather a guideline directing a concrete way of governance. In this sense the public interest actually means *public benefit* which society as a whole has, regardless of the current interests of

1 Serge Halimi, *Novi psi čuvaji* [The New Watch Dogs], trans. Jana Pavlič, Ljubljana: Maska/Mirovni inštitut, 2003 (p. 19).

2 Halimi, *ibid.*, pp. 13–14.

3 Halimi, *ibid.*, p. 124.

4 Lawrence Lessig, *Republic, Lost. How Money Corrupts Congress – and a Plan to Stop It*, New York: Twelve, 2011.

5 Lessig, *ibid.*, p. 328.

THE IDEA OF THE MEDIA INDUSTRY'S SELF-REGULATION HAS BEEN LEFT 'BURIED' UNDER THE RUBBLE OF THE CORRUPTIVE AND ELITIST RELATIONSHIP BETWEEN POLITICS AND THE MEDIA.

## WHAT WENT WRONG WITH MEDIA REFORMS IN POST-SOCIALIST EUROPE?\*

ONCE WE EMPLOY A CRITICAL MEDIA THEORY STANDPOINT, THE RELATIONSHIP OF MEDIA, SOCIETY AND THE PUBLIC IN THE ESTABLISHED DEMOCRACIES BECOMES MUCH CLOSER TO OUR OBSERVATIONS OF MEDIA SYSTEMS IN POST-SOCIALIST CONTEXTS. Zrinjka Peruško, Centre for Media and Communication Research, Faculty of Political Science, University of Zagreb

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

different individuals. If good governance observes the difference, then it is also important to add that a similar dimension must guide citizens, too.

### Citizenship as a public service

Citizenship (not the media) must be understood primarily as public service. In the same way, the citizen, as a holder of public service, must work towards public benefit in his/her actions, rather than following exclusively his/her own private interests. As Zephyr Teachout asserts, citizens can also be seen as corrupt if they exploit their public service to follow private, not public interests. They are also responsible for the integrity of the government governing them.<sup>6</sup> An important contribution to strengthening the principle of horizontal dependence is the assumption that political authority originates in each individual member of the *demos*.

Democracy requires those who manage public affairs to act in the name of the good for everybody. Since power comes from the people (from each individual member of the public), the people are obliged to cooperate in making collective decisions and to make public both the contents of the decisions and the manners of reaching them.<sup>7</sup> Linking this idea of political transparency to the concept of dependence corruption, good governance (such as the republic is based on) thus means dependence upon the *demos* and only upon the *demos*. This is also the essence of good media policy.

### What are we to do?

In his lost novel *Paris in the Twentieth Century*,<sup>8</sup> Jules Verne wrote about a world without newspapers. The novel was published 130 years after it was written (1863), as Verne's publisher was not willing to print it. Why? Because it was too fictional even for a science-fiction writer. The novel only became available after Verne's great-great-grandson decided it deserved to be read today. The novel is set in Paris in 1960, in a world controlled by bankers and engineers and where writing poetry is something shameful, something to be condemned, whereas reading poetry is not possible at all as it is unavailable in libraries. The professions having become extinct in this financial and technological world include journalism.

Journalism, namely, originated and thrived in the world where the people were politically active, where it was possible to think differently – and fight for that. The world which is dominated by capital, that is, the world functioning like a well-oiled machine feels no need for critical thinking, political action or newspapers and journalism. Verne's publisher found it easier to imagine travelling around the world in eighty days or a journey to the centre of the Earth than a world without newspapers, writers, poets, journalists, readers and the public. Well, we are living in such a society now. We are living in a society whose reality is more fictional than fiction itself and science fiction more probable than news programmes. Can anybody envisage a world in which information about important political events would have to be sought for in a sea of blogs, tweets, Facebook statuses, and in which the only thing left would be more or less obvious political propaganda? No? That is why it is more important than ever to speak publicly about what kind of the media world we want. Debates on the future of the media must necessarily be part of the change of the existing social order. Instead of the cosmetic reforms of the present media system, there must be new foundations laid for a new media policy in which a broad coalition of citizens will be participating. ■

Twenty something years after the critical juncture in which socialism was replaced with democracy and capitalism, the state of the media in post-socialist Europe still raises questions in relation to the consolidation of their democratic role. In the early 1990's the process of media transition was expected to be quickly over after the implementation of regulatory reforms, which was seen as the key step. From today's perspective, it seems that something went amiss. This view is especially strong if we take a panoramic look at the region of south-eastern Europe through the optic of the Freedom House Media freedom scores which, after 2000, show a flat line of an unchanging trend of a composite multi-country score of a little below 40 (a sharp drop is visible from 1994 when values were at 65 points average), signifying media systems which are partly free and never reaching the 30 points of a free media system.

Putting aside in this text all the problems with this and other similar indexes that rely on a handful of people to evaluate the state of the world's media, or, more importantly, the fact that seeing a score does not truly explain the state of the media in any one country, we will here engage the fact that all international comparative indexes of this kind rely on one and the same normative template to evaluate all of the media systems in the world. And while this shows how similar all the media systems are to the ideal norm that sits behind the particular index used, where the similarity to the norm is positively evaluated in that the most similar system is the most free according to the index values, no scores of this kind actually speak about the success or failure of democratic media reforms in post-socialist Europe. This text briefly explains why.

### Problem with the media reform approach

The vintage point of media reform is the usual approach in evaluating the success, or often, the failure of media democratic transformation in post-authoritarian regimes. This approach is primarily normatively defined, based on an expectation that the creation, adoption and implementation of correct legislation will bring the media in the country in question "up to the expected democratic standard".

While the adoption of common values of freedom of expression, as a basic human right, and its extension to media and its role in democratic process (in line, for instance, with the European Convention on the Protection of Human Rights and Fundamental Freedoms), is undoubtedly a common value in all democracies, the media field is more complex and freedom of expression is not the only standard or goal to espouse, nor the only one against which the field can/should be evaluated. In its worst expression, this normative approach manifested in imitative media regulation in European new democracies (compare Splichal, 2000), where existing laws from the Western European countries were translated into local languages and implemented.

In addition to some explanatory problems of the media reform approach, listed below, the normative approach also suffers from a pluralist expectation that the relationship of media, society and the public is in the established democracies really like in the ideal normative model. Once we employ a critical media theory standpoint, this relationship becomes much closer to our observations of media systems in post-socialist contexts.

### Ahistorical approach of normative media reform

Normative media reform approach is ahistorical, because it forebodes to take any notice of the historical

past, the geographical present, or the cultural future of the country on whose media it focuses. As historical institutionalism shows us (Hall & Taylor, 1996, Mahoney, 2000, Humphreys, 2012) the repercussions of historical conditions can be seen in contemporary media systems (Hallin and Mancini, 2004).

The media reform approach is focused on a single dimension of media systems, i.e. on the relationship between the media and state exemplified in media policy and regulation. Media systems research (Siebert, Peterson & Schramm, 1956, Blumler & Gurewitsch 1995, Hallin & Mancini, 2004, Peruško et al, 2011) shows us that market mechanisms and economic forces, the historically predisposed role of the journalist and the relationship of the political sphere to the media also shape media systems. The political system and its modalities has been shown to impact the media system development in Europe and internationally (Hallin & Mancini, 2004, Norris & Inglehart, 2009, Norris & Odugbemi, 2010). In terms of academic usefulness, the drawback of the media reform approach is its descriptive character and focus on legislative content or its implementation, and as such is of limited use in development of new theory. While it does show some uses in comparative settings, true understanding of social consequences of media regulation can only be accomplished in relation to the media system context with its other variables.

### Media systems development and change

When we take the media system transformation as the starting point in our evaluation, our approach becomes both theoretical and empirical, historically grounded, multidimensional, explanatory regarding relationships between variables, as well as indigenous. With the focus on media systems development and change we can use the knowledge of media systems structure, development and change to explain the developments also in our part of the world. Especially useful in this regard is the Hallin and Mancini framework for comparative media system analysis, which they had originally applied to western European countries and the USA (2004) and then expanded in several case studies to out of Europe places (2012).

To very briefly recap their model: every media system can be described and explained through four media dimensions – the relationship of the media and the state, media market development, professionalization of journalism, and the press and politics parallelism (Hallin & Mancini, 2004). The fifth dimension is that of the political system, and includes variables regarding dominant type of democracy (Majoritarian or consensus), degree of political polarization, history of cleavages, type of pluralism. Different values in these five dimensions form three models of media systems – Mediterranean polarized pluralist model where they had placed the southern European countries, democratic corporatist model in the north and central part of Europe, and the liberal model including the Anglo-Saxon countries (including the USA).

In spite of the authors' and other's views that the model cannot be applied to post-socialist contexts (Hallin & Mancini, 2004, Voltmer, 2008), studies show fruitful application to central and eastern European countries (Balčytiene, 2009, Dobek-Ostrowska, 2010, Peruško 2012). Still, the issue of the impact of socialism on subsequent democratic media systems remains, and needs to be addressed in order to fully understand the present media systems in post-socialist new European democracies.

6 Zephyr Teachout, 'The Anti-Corruption Principle', *Cornell Law Review*, 2009, Vol. 94, No. 341 (pp. 359–360).

7 Guillermo O'Donnell, 'Horizontal Accountability in New Democracies', *Journal of Democracy*, 9 (3), July 1998 (p. 121).

8 Jules Verne. *Paris in the Twentieth Century: The Lost Novel*, trans. Richard Howard, New York: Ballantine Books, 1996.

IN POST-SOCIALIST EUROPE OF THE 21<sup>ST</sup> CENTURY, PROFIT MOTIVES DO NOT PRODUCE, BUT DEROGATE NEUTRAL AND OBJECTIVE JOURNALISM.

## WHEN EVALUATING THE SUCCESS OR FAILURE OF DEMOCRATIC MEDIA REFORMS, AND THE ENSUING OUTCOME IN THE SHAPE OF THE MEDIA SYSTEM, WE MUST TAKE INTO ACCOUNT MUCH MORE THAN THE CHANGES IN MEDIA REGULATION.

### Successful or failed reform?

Clearly, when evaluating the success or failure of democratic media reforms, and the ensuing outcome in the shape of the media system, we must take into account much more than the changes in media regulation. We also need to take into account one of the largest differences between post-socialist European media systems and their western counterparts (apart from the, still largely un-researched, impact of socialism), and that is the fact that the former are not natural media systems, but have been in a short time shaped by imitative regulation/policy to a much larger extent.

Thus the relationship of the media and the state, materialized in media policy including regulation and supporting measures, has in a post-authoritarian situation a distinctive importance. On the one hand, the role and importance of media policy is far greater than in the countries where public expectations from the media developed over a long period of time. Changes to the media system were shaped and directed by policy implemented in a brief period of time. The character of this policy, following in the steps of a critical juncture of the fall of communism which changed both the political and the economic system in the countries in question, was very dissimilar to the socialist and pre-democracy media policies, and changed the relationships between media and politics, media and state, within the media field itself. The policy was expected to install the new social role for the media, based on the western European ideals.

On the other hand, the success of the policy is strongly constrained by the path dependency of institutional values and cultures from the past. These constraints become clear when post-socialist media systems are meticulously analyzed in all five dimensions of the Hallin and Mancini model (2004). In the case of Croatia, the media system exhibits very clear characteristics of the Mediterranean model, both in the present day, but more importantly, in its historical development (Peruško, 2012).

Here are a few examples for the success and failure of implemented changes.

The success was in all of the consolidated democracies the introduction of freedom of expression as this was part of the democratic consensus (in unconsolidated

democracies even this first step is still a problem, as for instance in Russia).

### Failure of the reforms of public service broadcasting

The most important disappointments, from the standpoint of normative expectations, are in the reforms of public service broadcasting systems. The failures result from the application of normative solutions from one type of media system into another, where the shape of the media market, the relationship between politics and the media, the political culture and structures of power, are all different. The failure to understand that the context of the whole media and political system influences the possibility of the imported models to be successfully applied is the reason for the perception of failed reforms. Here are only a few examples from Southeastern Europe. One example is the Croatian regulation of public service broadcasting. In the past twenty years different solutions were implemented, many of them modeled on the regulation from media systems of the democratic corporatist countries where the representatives of civil society play a key role in ensuring social pluralism in governance of public service broadcasting (Germany, the Netherlands), yet in Croatia there are no historical social segments to be thus represented and no significant social cleavages; consequently, with no one to represent, the influence of informal political powers filled the void naturally.

In Bosnia and Herzegovina, a deeply nationally divided society, instead of a policy similar to the Belgian or Swiss model which accommodates this division and serves all the national segments equally, public service television policy promotes, unsuccessfully, a single national/federal broadcaster.

In Serbia, the new media strategy stresses the self-regulation in relation to journalism codes of ethics, and highlights this as an improvement and a step forward, not understanding that in a country with a weak professionalization of journalism, ethical norms must be legally defined and protected in order to be implemented. All of these insights are possible only after we employ the comparative media systems approach.

There is also a third aspect that helps explain the “failure” of media reforms and the current state of the media in post-socialist European new democracies. This is perhaps, of the three, the aspect that needs the most scrutiny in future research. The fact is that previous relationships between variables in the media field don’t hold up. For example, Hallin and Mancini (2004), based also on other research, link early market development with the development of journalistic professionalization.

### Problem with the journalistic professionalization

Historically in Western Europe the journalistic autonomy is seen to be a result of commercialization of the press. In post-socialist Europe of the 21<sup>st</sup> century, profit motives do not produce, but derogate neutral and objective journalism. The resulting predatory journalism that profits by scandal and entertainment instead of information is becoming the norm. The negative influence of the owners today is seen to surpass the negative influence of politics, and often the two go hand in hand. The second example of problem in the original relationship of the variables relates to the connection of journalistic professionalization to the process of differentiation of journalism from other professions. In this context the original relationship expects that the greater the separateness of journalism, the greater its professionalization. Are we witnessing de-differentiation of journalism in digital networked media with new practices of citizen journalism and prosumer activity? How does this influence the whole media field, in which the four dimensions stand in specific relationships?

In conclusions, in order to explain the present state of the media in post-socialist European new democracies we should extend our view beyond the process of media reform and look at the media system as a whole. When we do this, we notice the missteps in past media reforms, but more importantly, we notice that some relationships in the media field do not any more correspond to expectations included in normative media reform solutions. ■

*Times they are a-changing.*

Bob Dylan

## THE MOST IMPORTANT DISAPPOINTMENTS, FROM THE STANDPOINT OF NORMATIVE EXPECTATIONS, ARE IN THE REFORMS OF PUBLIC SERVICE BROADCASTING SYSTEMS.

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# MARKET FRAGMENTATION IN SOUTH EAST EUROPE AND DEGRADATION OF PROFESSIONAL JOURNALISM\* MACEDONIA: THE BATTLE BETWEEN THE MEDIA TYCOONS ALLIED TO OPPOSED POLITICAL CAMPS BECAME A CRUEL WAR OF EXTERMINATION. Snežana Trpevska, School of Journalism and Public Relations, Skopje, Macedonia

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

The ideal typical models of media systems developed by Hallin and Mancini<sup>1</sup> are complex concepts used as analytical tools in the comparative analysis of particular political and media systems. The authors themselves recognized the dynamic dimension of their "ideal types" while adapting their theoretical framework to non-western media systems.<sup>2</sup> Their adapted categorization of media systems can be used as a basis for making further sub-categorizations of media systems that share different characteristics and elements from those of the western countries.

Most of the media systems in South East Europe have been shaped by common socio-historical roots and evolution, which explains a range of similar features among them. This is what Mancini refers to as a process of homogenization that includes also the geographical proximity of the countries in question and therefore common historical events and the networks of cultural exchange (Mancini 2013: 131).<sup>3</sup> The democratic institutions in these countries are still underdeveloped, party-political influences overpowering all societal and cultural spheres. As in other countries that emerged from socialist systems, journalistic practice in South East Europe has been shaped by the influences of the state, politics and capital's interests. On the other hand, the modernization of media systems has been prompted by the EU accession processes taking place in all the countries. The values and standards of the traditional liberal model of journalism have been incorporated into the national legislations and journalistic ethical codes but have remained mostly on paper.

In the following text I will describe briefly the general trends detected in the study led by the Peace Institute in 2004<sup>4</sup> and then I will focus on what has been changed so far. I will use the case of Macedonia to illustrate the developments that have more or less also happened in other countries. My main argument is that the market fragmentation driven by politicized and chaotic media policy has deepened the political polarization of the media system, thus leading to an unprecedented degradation of professional journalism. I will explain the different stages of market fragmentation in Macedonia and present some empirical data to demonstrate how market fragmentation, in addition to political parallelism, has shaped the media system towards the so called polarized hegemonic pluralism.

## General trends in South East Europe detected in 2004

What were the general trends detected in 2004? First, in almost all of the countries specific ownership patterns emerged very early, i.e. the links between politics, businesses and the media were established at the start of the development of democratic media systems. This was especially true of the broadcasting sector where the frequencies had been occupied by powerful individuals or companies before the appearance of broadcast regulators and before any media legislation was adopted. We evidenced a widespread practice by media owners to misuse the media for three main purposes: (1) the promotion of their businesses (advertising their products,

companies, services); (2) the dissemination of their political messages (especially during election campaigns); (3) putting pressure on the governmental institutions and individuals in influential positions to protect their personal or group business interests.

Secondly, there was the issue of the late establishment of normative media systems and weak and politically dependent regulators. The broadcast regulators were not sufficiently equipped with specific expertise necessary for regulating the broadcast sector and they were politically linked to governmental and political structures. They were weak and incapable of breaking the established links between the media, capital and politicians. On the other side, the legal provisions on media concentration – taken mostly from developed European countries – were quite vague and not sufficiently adapted to local circumstances.

The third general trend was market fragmentation. Media markets were enormously fragmented with a huge number of media outlets, especially broadcast media. One can distinguish three stages of market fragmentation in Macedonia. The first stage was the result of the liberalization of the media system and the late adoption of media legislation. In the first years there was a prevalent attitude that the media system should be completely liberalized, including the broadcasting sector. The idea of the regulatory intervention and public interest in broadcasting, as a distinct model from the American one, came later with the development of the first broadcast law adopted in 1997. The second stage was the market fragmentation reinforced by the regulator itself due to the absence of a sound regulatory policy and political and industrial pressures to grant new licenses. The third stage, which is currently underway, is the fragmentation driven by technological development and digitalization. The last trend was unregulated labour relations and the poor socio-economic status of journalists as a consequence of the structural changes in media systems. The basic employment and social protection rights of journalists were not recognized or they were significantly reduced. Most of the journalists were not paid well, had no employment contracts and were eventually dependent on media owners and managers. Only a few countries had organized union structures and developed the protection of the journalistic profession. In Macedonia, for example, the independent Union of journalists was not established until 2010 and today it is still a very weak organization that lacks stable resources and a strong membership base.

## Market fragmentation driven by regulatory actions

In addition to political parallelism, market fragmentation in transitional societies was another strong factor that led to the degradation of journalism as a profession. As Mancini rightly argues, although speaking mostly about Internet driven audience fragmentation, objective journalism could hardly survive in a crowded marketplace (Mancini 2013: 132). Audience fragmentation in Macedonia actually happened long before Internet penetration and digitalization. In the early years it was a consequence of the liberalisation of the media system, but in the period after 2004 it was provoked by the regulatory decisions made under various political and business pressures. Digitalization and Internet penetration in the last several years have only worsened the situation because of the subsequent fragmentation of the audience. To demonstrate the implications of the broadcasting regulatory policy on the media market, it is interesting

to observe what happened between 2004 and 2012. In 2004 the media market was already enormously crowded: 159 radio and TV stations and 11 dailies in the print sector. Illegal media concentration, media in the hands of businesses or individuals close to political parties, severe and unfair competition, media polarization along ethnic lines, political pressures on the regulator, weak journalists' associations, the weak and unprotected labour status of journalists, blurred professional values – all this characterised the fragile social context in the years after the armed conflict in 2001. There were many promises and expectations that the new Broadcasting Act from December 2005 would bring some "order" to the airwaves and create a better regulatory environment. The regulator was legally obliged to strategically plan and implement its broadcast policy to accomplish the democratic, cultural and economic regulatory goals incorporated in the new legislation.

## The media sector as a battlefield for gaining political influence

In the Strategy adopted in 2007, the regulator detected the following biggest problems for the development of sustainable and independent media sector: huge market fragmentation, ownership concentration and political parallelism. However, its subsequent decisions for the allocation of new TV licenses in 2008 and 2009 showed that the adopted guidelines for further regulatory policy were just declarative. As a result of these decisions, at the end of 2009 there were 21 private TV stations at the national level and 57 at the regional and local levels. The local media moguls, who were already very influential, were allocated new national licences. Thus, the pattern of ownership structure was replicated by the regulator itself. Also, in addition to the existing, new media owners with political affiliations entered the TV market. This situation transformed the media sector into a real battlefield for gaining more political influence and for grabbing more profit from the scarce advertising resources. How did these regulatory decisions affect the allocation of available resources in the market? In 2004, the advertising (net) expenditure in the TV sector was estimated to 8.27 million euro, and in the radio sector to 1.44 million euro.<sup>5</sup> In 2009, the amount of money for TV advertising increased to 25.6 million euro, but in the radio sector it remained almost the same (1.84 million).<sup>6</sup> The enormous fragmentation of the TV market was obviously one of the reasons for such an increase of the advertising expenditure in television. The other significant factor was the rise in state advertising in the same period. In 2008 and 2009, the Government was among the top five advertisers in the TV sector. The battle between the media tycoons allied to opposed political camps became a cruel war of extermination. Those who stayed "faithful" and supported the government policy grabbed bigger slices from airing public campaigns on their TV stations and those who stood on the opposite side were excluded and persecuted for their behaviour.

## Polarized hegemonic pluralism

Although an all-encompassing study of the political and media systems of Macedonia and their interacting dynamics has not been done, several studies from the last decade give a sufficient empirical basis to describe the system as a modified version of the so-called

1 See: Daniel C. Hallin and Paolo Mancini: *Comparing Media Systems, Three models of media and politics*. Cambridge, UK: Cambridge University Press, 2004.

2 See: Daniel C. Hallin and Paolo Mancini: *Comparing Media Systems Beyond the Western world*. Cambridge, UK: Cambridge University Press, 2012.

3 See: Paolo Mancini 'What Scholars Can Learn from the Crisis of Journalism' in *International Journal of Communication* 7 (2013), 127–136. Available at: <http://ijoc.org/ojs/index.php/ijoc>

4 See: S. B. Hrvatin, and B. Petković: 'Regional Overview' in *Media Ownership and Its Impact on Media Independence and Pluralism*, Peace Institute Ljubljana, 2004. Available at: [http://www2.mirovni-institut.si/media\\_ownership/](http://www2.mirovni-institut.si/media_ownership/).

5 Source: Broadcasting Council: "Analysis of the broadcast market for 2004, 2005, 2006", Available at: <http://www.srd.org.mk/images/stories/publikacii/analiza%202004%202005%20i%202006.pdf>.

6 Source: Broadcasting Council: "Analysis of the broadcast market for 2009", Available at: [http://www.srd.org.mk/images/stories/Analiza\\_na\\_pazarot\\_2009.pdf](http://www.srd.org.mk/images/stories/Analiza_na_pazarot_2009.pdf).

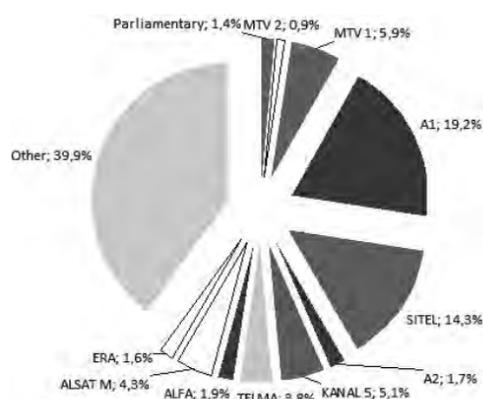
THE MEDIA MARKET IN MACEDONIA IS STILL ENORMOUSLY FRAGMENTED, ALMOST ALL THE INFLUENTIAL MEDIA ARE CLOSELY LINKED TO THE RULING PARTY. THE GOVERNMENT IN MACEDONIA CONDUCTS A CONTINUOUS FOUR-YEAR ELECTION CAMPAIGN THROUGH STATE ADVERTISING, THUS INTERFERING WITH AND INFLUENCING THE EDITORIAL INDEPENDENCE OF THE MEDIA.

THE MEDIA REGULATOR IS POLITICALLY DEPENDENT AND NOT COMPETENT ENOUGH, THERE IS NO COHERENT MEDIA POLICY AIMED AT PRESERVING EXTERNAL AND INTERNAL POLITICAL PLURALISM IN THE MEDIA, THE DEMOCRATIC GOALS OF BROADCAST REGULATION ARE COMPLETELY NEGLECTED, AND THE LABOUR RELATIONS OF JOURNALISTS ARE LEFT TO THE FREE WILL OF MEDIA OWNERS.

Mediterranean or Polarized Pluralist Model, which I refer to as polarized hegemonic pluralism. All the characteristics of the Mediterranean model are present in the historical development of the Macedonian political system: late democratization, organized pluralism with two opposing political camps within the two biggest ethnic communities, majoritarian democracy with consensual elements, the strong involvement of the state and parties in economy, the widespread culture of clientelism and the strong tendency of authoritarianism in recent years. The political system is evidently reflected in the media system: the polarization of commercial media along ethnic and political lines, the public service which reflects ethnic and political polarization and plays a disintegrative role in the society, high political parallelism, the political instrumentalisation of the media, the weak professional identity of journalism, intense state advertising in the media and, therefore, covert forms of (self-)censorship.

Here I shall present the empirical data which indicate how market fragmentation, combined with political parallelism (i.e. strong ties between media and politics), shapes the media system in Macedonia towards a polarized pluralism with a strong tendency for hegemony in each political camp. I will use the data for the average audience share in 2009 and 2012 to demonstrate what has happened with the number of diverse media in the television sector (external pluralism), combined with the data from previous empirical studies about the extent to which each particular TV station reflects political pluralism in its news programming (internal pluralism).

FIGURE 1. AVERAGE AUDIENCE SHARE, SEPTEMBER 2009

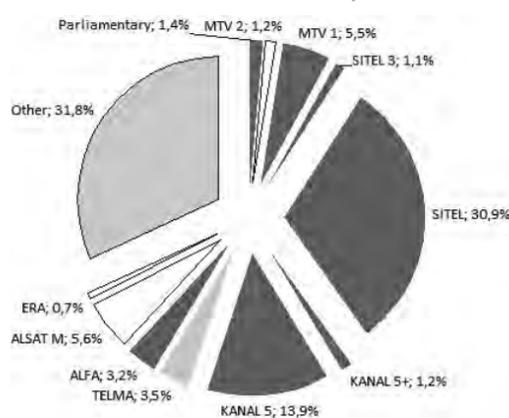


Source: Nielsen Audience Measurement.

As mentioned previously, in 2009 the TV market was additionally fragmented as a consequence of the allocation of many new TV licenses at the national level. On the Macedonian side, the most influential station was A1, owned by an influential businessman who was a partner in the government, but left the ruling coalition at the end of 2009 and started to severely criticize the ruling party. In the presented charts graphs, the TV stations which are close to the ruling party are presented in dark grey and the ones affiliated to the opposite political views in black. White coloured are the media with the national coverage that broadcast in the Albanian language, and the light grey slice is the audience share of all local and

regional TV stations in different languages. In 2012 the situation in the market was completely changed. The license of A1 had been withdrawn following a liquidation procedure. The owner was prosecuted for tax evasion and all his companies involved in this affair were closed (including the satellite TV station A2, which had been started in 2008).

FIGURE 2. AVERAGE AUDIENCE SHARE, SEPTEMBER 2012

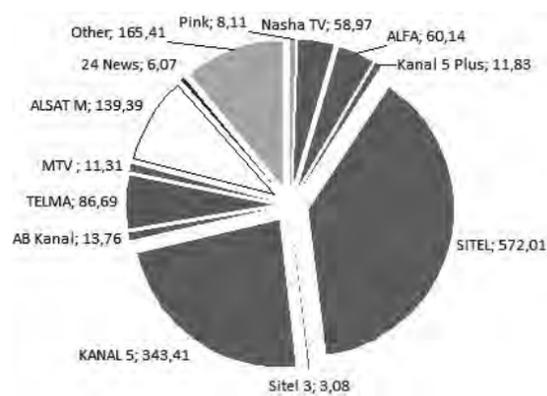


Source: Nielsen Audience Measurement.

At the end of 2012 the only critical voices against the Government came from the TV station Telma, since A1 and A2 had been closed and the TV station Alfa, which was started in 2008 by a businessman close to the opposition, had been sold to a Serbian company close to the influential figures in the ruling party VMRO-DPMNE. The presented data on the audience share in 2009 and 2012 in Figure 1 and Figure 2 visually illustrate the state of the political pluralism in the television sector in Macedonia. Of course, a more comprehensive and longitudinal study is needed to measure empirically how these TV stations reflect the political pluralism in their news programmes on a day-to-day basis.

The next chart demonstrates that the struggle for political influence over audiences was not the only motive of media owners. The figures for the net advertising income of TV stations show that profit was the real driving force behind the crude game in the television market. In 2011, when A1 and A2 had already been closed, the biggest part of advertising income was attracted by the TV stations affiliated to the ruling party.

FIGURE 3. NET TV ADVERTISING EXPENDITURE, 2011



Source: Broadcasting Council.

The total amount of net advertising expenditure in 2011 was estimated to 1,480 million denars,<sup>7</sup> or 24.7 million euro. The total income from political advertising that year was 13% and from state advertising it was 2.56%. Among the top biggest advertisers, the Government was ranked fourth.

#### Conclusion: How to improve the normative media system?

To summarize, the key problems in the media sector in Macedonia, at the end of 2012, are as follows: the market is still enormously fragmented, almost all the influential media are closely linked to the ruling party, the Government conducts a continuous four-year election campaign through state advertising, thus interfering with and influencing the editorial independence of the media, the regulator is politically dependent and not competent enough, there is no coherent media policy aimed at preserving external and internal political pluralism in the media, the democratic goals of broadcast regulation are completely neglected, the labour relations of journalists are left to the free will of media owners.

In a debate focused on media reforms it is very difficult to say what the right solutions and recommendations for further action would be. There are many aspects of these processes and the problems are not simple and easy. Here are some ideas of how to further improve the normative media system: a further examination of regulators' independence; the strengthening of its expertise, transparency and accountability; the introduction of strict and clear principles for the nomination of the members of the regulators based on a merit system; the explicit stipulation of the mission of the regulator to protect external and internal political pluralism; the obligation on the part of the regulator to monitor internal political pluralism in the media and to undertake measures; restrictions for media owners on having other businesses; restrictions for public campaigns financed from the state budget; a ban on political campaigns out of election period; the provision of legal stipulations to oblige media owners to guarantee the labour status of journalists and the editorial independence of the newsrooms. ■

7 The figures have been gathered by the Broadcasting Council and estimated according to the annual balance sheets that all broadcasters are obliged to submit to the regulator. However, in 2011 A1 and A2 were closed and their finance documentation was seized, so the real figures of the total net income is much bigger. Source: Analysis of the broadcasting market for 2011. Available at: [http://www.srd.org.mk/index.php?option=com\\_content&view=article&id=93&Itemid=76&lang=mk](http://www.srd.org.mk/index.php?option=com_content&view=article&id=93&Itemid=76&lang=mk).

## MEDIA REFORMS IN BOSNIA AND HERZEGOVINA: BETWEEN STAGNATION AND TRANSITION\*

MODELS FROM WESTERN DEMOCRACIES, MOST NOTABLY FROM THE US AND THE UK, WERE USED AS A BLUEPRINT FOR REFORM. FOR EXAMPLE, *THE BBC* WAS LARGELY USED AS A MODEL FOR THE REFORM OF PUBLIC SERVICE BROADCASTING IN BIH. Tarik Jusić, Institute for Social Research Analitika, Sarajevo

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

Bosnia and Herzegovina (BiH) is considered to be one of the most prominent examples of comprehensive international intervention into media systems. Following a brief experiment in democratization in 1990, the country collapsed into a devastating conflict (Ministry for Human Rights and Refugees BiH 2003: 7; The World Bank 2004) in 1992 that lasted until late 1995 (Malcolm 1994; Dizdarević et al., 2006: 21-22). With the signing of the Dayton Peace Agreement (DPA),<sup>1</sup> the country was placed under an international supervision. The Office of the High Representative (OHR), with the mandate to monitor, facilitate and coordinate the implementation of civilian aspects of the peace agreement<sup>2</sup> was created, and was given significant powers, such as power to remove public officials who obstruct the DPA from their office and to impose laws if necessary.<sup>3</sup> The international Implementation Force (IFOR), with 60,000 troops, was dispatched to ensure the implementation of military aspects of the DPA. However, the political gridlock severely undermined the implementation of the peace accord. As a consequence, international actors were forced to use their extensive powers and imposed major constitutional, legal, administrative, and political reforms.<sup>4</sup> One of the core characteristics of the post-war development of BiH is the significant presence of international organizations engaged in state-building, pacification, reconstruction and reconciliation efforts. Estimated 48 donor countries and 14 international organizations disbursed \$3.7 billion between 1996 and 1999 in BiH (The World Bank 2004: 2). Significant resources were invested in media reforms as well. According to Rhodes, from 1996 until 2006, an estimated 87 million Euro were provided through various media assistance programs in BiH (Rhodes 2007: 15).

Nevertheless, almost two decades later, the country is still highly dysfunctional, and its political system is in the state of permanent crisis. Complex power-sharing arrangements<sup>5</sup> significantly limit the country's capacity for efficient decision-making. As a consequence, Bosnia lags behind in the process of EU accession, its economy is stagnating, and reforms have largely been stalled (European Commission 2011). Consequently, although the media system has undergone multiple reform processes, including partial reform of the public service broadcasting (hereafter: PSB), the establishment of the Communications Regulatory Agency (hereafter: CRA) and others, the sustainability of its core institutions and arrangements has not been secured. For example, BiH has witnessed a significant drop in the Media Sustainability Index (MSI) score between 2009 and 2012: it declined from a status of near sustainability to the unsustainable mixed system characterized by "segments of the legal system and government opposed to a free media system" (IREX 2009; IREX 2012).<sup>6</sup>

This overview addresses almost two decades of internationally-driven media reforms in Bosnia and Herzegovina, and attempts to outline possible reasons behind their limited success. According to recent literature – and given the focus of media reforms in BiH on transformation of legal framework, independence of media from politics and government, and the development of self-regulatory mechanisms and of professional and ethical journalism – crucial factors to be considered are: the role

and the nature of the state; political parallelism in the media; and the level of professionalization of journalism (Voltmer 2012; Zielonka and Mancini 2011; Hallin and Mancini 2004).

First, in order for legal norms to be implemented, there must be a specific type of political culture – what Max Weber calls rational legal authority – that favors formal rules over informality, limits government and party meddling in the work of public institutions, and provides clear rules and procedures to be followed (Hallin and Mancini, 2004: 55). In contrast to countries with strong rational legal authority are those characterized by high levels of the *politicization of the state*. In such a context political parties and other vested interests try to obtain control over public institutions in order to extract resources from them. As a consequence, the laws are applied selectively, informal rules are often more important than formal ones, and state institutions are weak (Zielonka and Mancini 2011: 2-3).

Second, the nature of media allegiance with political interests will significantly determine the nature of the media system and of political process as a whole. Where media clearly parallel political interests and party landscape, especially in context with high levels of political polarization and fragmentation, the media will be prone to depend less on the (fragmented) market, and more on their political patrons, and will be less open for contrasting views and opinions (Hallin and Mancini 2004; Zielonka and Mancini 2011; Voltmer 2012).

Finally, a high degree of professionalization of journalism means that "journalism is differentiated as an institution and form of practice from other institutions and forms of practice – including politics" (Hallin and Mancini 2004: 34). This means that journalists have significant autonomy and control over their work; have developed distinct professional norms, such as ethical standards and criteria of quality reporting; and have adopted public service orientation in their work that is best seen in the existence of systems of journalistic self-regulation. Where professionalization is high, the possibilities for instrumentalization of the media by government, political parties and other social groups and individuals will be limited. This also means that where political parallelism is high, professionalization of journalism will likely be low (Hallin and Mancini 35-37).

Since the media transformation will take place within a specific context, one could expect that the results of external intervention into a media system will largely be conditioned by the level of state politicization, political parallelism, and journalistic professionalism. These three contextual characteristics will set the limits of what is doable in terms of transfer of models and experience between countries and political systems that are in different stages of development.

### Key aspects of media reforms

In the aftermath of the war, media worked in a hostile environment, exposed to political pressures, a general absence of regulation, threats and attacks on journalists, and bleak financial prospects. Many continued their war-mongering practices (Media Experts Commission 1998; Kurspahić 2003; Thompson and De Luce 2002), severely obstructing peace implementation efforts (International Crisis Group 1997). It is due to these unfavorable conditions that the international actors embarked on comprehensive media reforms to ensure that the peace process is not jeopardized. Reform targeted key aspects of the media system, including the legal framework, regulatory and self-regulatory bodies, state-controlled broadcasters and the PSB, as well as independent media.

Models from Western democracies, most notably from the US and the UK, were used as a blueprint for reform.

For example, the BBC was largely used as a model for the reform of PSB in BiH; strong emphasis in journalism trainings was placed on balanced reporting, impartiality, and objectivity; an independent regulatory agency was tasked to regulate broadcasting; and the self-regulation of print media was supported.

The cornerstone of media assistance efforts in BiH was the creation of the Independent Media Commission (IMC) in 1998 (OHR 1998), tasked to regulate the broadcasting sector (Open Society Institute 2005: 286; Hans Bredow Institute for Media Research, et al. 2011: 92). In 2001, by a OHR decision (OHR 2001), the IMC and the Telecommunications Regulatory Agency were merged into the Communications Regulatory Agency of Bosnia and Herzegovina (CRA) (Open Society Institute 2005: 276; Hans Bredow Institute for Media Research, et al. 2011: 176, Thompson and De Luce 2002).

The CRA was designed to operate as an independent regulatory agency. In the early years of its operations, it was heralded as a highly successful outcome of international reform. However, in recent years, several of the government's legal initiatives have eroded the formal independence of the CRA, especially in respect to the status of its staff members, its financial independence, and its formal status in relation to the Council of Ministers of BiH. In many cases, provisions of new laws are in conflict with provisions of the Communications Act<sup>7</sup> which established the CRA.

Furthermore, there are strong and continuous pressures on the CRA, coming from the Council of Ministers and the Parliament of BiH, aimed at limiting the agency's autonomy. As a consequence, the Director of the CRA and new members of the CRA Council have not been formally appointed by the Council of Ministers and the Parliament of BiH for over four years, and they continue to work in a technical mandate (Halilović 2008; Hans Bredow Institute for Media Research, et al. 2011; European Commission 2009). All this has significantly limited the CRA's policy making capacity, but the agency has so far largely succeeded in resisting the pressures, and has continued to perform its regulatory role despite all obstacles (Hans Bredow Institute for Media Research, et al. 2011).

### Transformation of previously state-controlled broadcasters

Another important aspect of the media reform was the transformation of previously state-controlled broadcasters into public service broadcasters. A first attempt at reforming state broadcasters started in 1998, initiated by international actors. Nevertheless, after such efforts failed due to obstructions by local political interests, the OHR imposed in 2002 the much-needed legal framework for the creation of a PSB system (OHR 2002) that was subsequently improved by a new set of laws adopted by local authorities (under the pressure from international community) since 2005.

The result of the reform was that direct control of the government over PBS was reduced, programs were freed from obvious political propaganda, radio and TV channels opened for opposition views, and the broadcasters have adopted public service orientation in their editorial policies. However, even in 2013 the PBS system continues to be largely dysfunctional, and decisions and laws that serve as its basis are only partially implemented. The three PBS broadcasters<sup>8</sup> act more like competitors than as a part of the same system, their financial viability is questionable, the core institutional components of the

1 The DPA was named after the city of Dayton in USA where it was signed.

2 DPA, Annex 10, Article I.2; II.1.

3 PIC Bonn Conclusions available at [http://www.ohr.int/pic/default.asp?content\\_id=5182](http://www.ohr.int/pic/default.asp?content_id=5182).

4 All OHR decisions are available at: <http://www.ohr.int/decisions/archive.asp>.

5 Bosnia and Herzegovina consists of two entities – the Serb-dominated Republika Srpska and the Bosniak-Croat Federation of BiH. District of Brčko is a separate self-governing unit under the sovereignty of the state. Federation BiH is further decentralized into ten cantons. Central state institutions have weak competences in comparison to entities.

6 The overall score improved from 1.66 to 2.81 between 2001 and 2009, but fell to 1.97 in 2012.

7 Law on Communications of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina 31/03.

8 A state-level BHRT; RTVFBiH in the Federation BiH entity; and RTRS in Republika Srpska entity.

ALTHOUGH SELF-REGULATORY MECHANISMS, SUCH AS THE PRESS COUNCIL AND PRESS CODE DO EXIST, JOURNALISTS DO NOT RESPECT ESTABLISHED RULES, AND SELF-REGULATION HAS NOT TAKEN FOOHOLD IN THE MEDIA SECTOR.

system have not been established, their political independence is questioned, and their public service function is rather limited (Boev 2012).

#### The Press Council was established on the initiative of international actors

International actors have also intensively engaged in supporting independent media outlets in BiH. The support was provided to a number of existing broadcasters and print media outlets, but new media outlets were also created. However, these attempts have had rather mixed results: On the one hand, the support helped many media outlets that were not controlled by main political parties to develop, and in general more plural and open media system emerged. On the other hand, many media outlets were commercialized, such as the TV network OBN (Open Broadcast Network) (Hozić 2008) or stopped operating, such as radio FERN (Free Elections Radio Network), while others built close relations with political parties, business interests close to political parties, or the government (IREX 2012; IREX 2011; Hozić 2008).

Finally, significant efforts were vested into helping the professionalization of journalists in BiH. Initiated by international actors, the Press Council of BiH was established, and the Press Code of Conduct introduced, while support was also provided to relevant journalists associations. However, the Press Council faces obstacles to assert its authority and enforce the Press Code. The sustainability of the Press Council is not ensured, as it largely depends on donor support (IREX 2012: 26), while its functioning is challenged by the disrespect of its decisions among journalists and media outlets (IREX 2012: 26). As a reflection of extreme political, ethnic, territorial and market fragmentation, the journalists associations are also fragmented, largely inactive or inefficient, while journalistic solidarity is rather weak (IREX 2010; IREX 2011; Rhodes 2007: 36). Journalists work under rather unfavorable conditions, often without working contracts, at minimal and irregular wages (IREX MSI 2012: 27).

#### High level of politicization and political parallelism

The case of BiH demonstrates a high level of politicization of the state which has major implications for the functioning of the media. This can be seen in the problems related to implementation of laws and rules regarding the functioning and independence of the CRA and the PBS. In respect to the CRA, one can identify what

Zielonka and Mancini (2011: 6) call 'floating laws and procedures': legal framework is frequently changed, often resulting in conflicting laws, which contributes to the 'legal uncertainty and regulatory chaos' (Zielonka and Mancini 2011: 6).

The rules and laws are not followed even by the legislative bodies that have adopted them, as is the case with the Parliament and the Council of Ministers of BiH who refuse to deal with the CRA in accordance with relevant legal provisions. Similarly, the legal framework for the creation of PBS system is largely ignored by public broadcasters themselves, but also by politicians and the government, as all of them fail to implement some of its key aspects, such as the formula for distribution of funds among the three PSB broadcasters, or the creation of Joint Corporation (tasked to coordinate activities of the three PSB broadcasters, manage equipment and advertising, etc.) that is the backbone for the establishment of the functional PSB system.

It seems that all involved stakeholders are rather comfortable to simply ignore the laws, as there are no consequences for such behavior.

Furthermore, the media in Bosnia fully reflect the complex political landscape of the country, and are this characterized by high level of political parallelism (IREX 2011). For example, coverage of politics clearly reflects political affiliation of media outlets, which is especially visible during elections (Jusić 2002).

Journalists and top media managers often continue their carrier in politics, only to go back to media sector once their political appointments are finished. The government remains the largest owner of broadcast media, with 14 TV and 65 radio stations being either directly owned or financially controlled by the government at various administrative levels, which is more than 30% of the total number of broadcasters in the country (CRA 2011: 9). There is also a strong business parallelism of the media, meaning that owners use media outlets to support own business interests, which are often closely linked with political interests (Zielonka and Mancini 2011: 4). Finally, the media are also significantly divided along ethnic lines, paralleling the division of the audience into largely territorially and administratively separate ethnic camps (GfK BiH 2006a; GfK BiH 2006b). These problems are further exacerbated by a rather small, oversaturated and weak media market (IREX 2012: 33; AGCOM & CRA 2008: 111–113). Such a fragmented market further contributes to the political parallelism in the media sec-

tor, as limited revenues force media to seek for powerful patrons in order to survive (Hallin and Mancini 2004). Finally, the level of professionalization of journalism, as defined by Hallin and Mancini (2004), is rather low. Although self-regulatory mechanisms, such as the Press Council and Press Code do exist, journalists do not respect established rules, and self-regulation has not taken foothold in the media sector. As a consequence, the quality of journalism is low, while investigative reporting is largely absent. Pressures on journalists have been mounting in recent years (IREX 2011: 15).

#### Media reform efforts are based on incompatible conceptual assumptions

All things considered, media in Bosnia and Herzegovina operate in rather unfavorable conditions of post-conflict society, characterized by high levels of state politicization, weak respect for and selective application of rules and norms, and floating laws that result in legal insecurity. In combination with a weak and fragmented market, and lack of professionalization of journalism, such conditions result in an extremely fragmented and polarized media sector, characterized by a combination of political, commercial, territorial and ethnic parallelism. These contextual factors have a detrimental effect on media reform efforts, especially when such efforts are based on models and conceptual assumptions that do not entirely correspond with the nature of the media system that is subject to reforms. In the case of BiH, the conceptual assumptions on how a media system should function were taken primarily from liberal media systems (Hallin and Mancini 2004), and have faced difficulties in taking root in an incompatible local context. Given the specific context in post-war BiH, the intervention of international actors led by the OHR was crucial to start reforms and move things forward in the media sector. However, such reforms have proven to be far more advanced than the context could adopt, which resulted in only partial transformation of media system and its core institutions, and in some cases even a return to earlier stages of development once the foreign assistance stopped. It appears that many of the key media institutions in BiH are "stuck in transition and even to be developing in a reverse direction" (Vltmer 2012: 233). Models borrowed from Western democracies and applied to the local context seem to have developed a life of their own, and have to a significant degree parted ways with the premises they were originally based on. ■

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## LESSONS LEARNED FROM MEDIA REFORMS IN THE CENTRAL EASTERN EUROPEAN MEDIA LANDSCAPE\* HUNGARY STRUGGLES WITH A REINSTATEMENT OF AUTHORITARIAN REGIME, WHICH IS REFLECTED IN ITS MEDIA SYSTEM AND IN OTHER SOCIAL STRUCTURES. Judit Bayer, King Sigismund College, Budapest

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

If we want to draw a conclusion from the development of media regulations in various Central-Eastern-European countries in the past twenty years, the keyword is: disappointment. Although compared to the pre-1989 state the system is now more diverse, characteristic features distort the functioning of the media, effecting both media economy, regulation, diversity and freedom. Not only have independent, free and financially sustainable media systems not developed, but a renaissance of centralised media governance can be observed in some states. Hungary struggles with a reinstatement of authoritarian regime, which is reflected in its media system and in other social structures.

When studying closely the Central-Eastern European (hereafter: CEE) media landscapes, we find that considerable efforts were made in drafting laws that were supposed to ensure diversity, financing and freedom (even though independence from political forces has not always been a main priority). The main discrepancies, however, exist between the spirit and the functioning of the laws. Again, we can observe that this phenomenon is not only characteristic of the media systems, but other social structures in the region as well. Therefore we can assert that the main problem cannot be dealt with purely by the power of regulation.

General characteristics of the CEE media landscape are:

- Informal political pressures, hidden in the implementation, rather than the text of the law itself;
- Corporate pressures are intertwined with political interests of media owners;
- High market concentration, and a deficit in diversity; market dominance of the same politically engaged economic groups;
- Financing dependent on the state, because advertising markets are small and weak;

### Missing preconditions

When searching for the reasons, we find that important preconditions for a free and open society are missing in many of these societies. Apparently not only is free media a precondition to a functioning democracy, but also functioning democracy is a precondition of free media. What are those missing preconditions that prevent these societies from building up a truly well functioning plural media landscape?

**Political culture:** The government should refrain from interfering into the media market and the media content. The state is responsible for passing a regulation that ensures diverse and independent public service media, and governments are responsible to interpret and apply such rules in favour of independence. In addition, effective application of freedom of information principles would also help to ensure a free media that can function as a watchdog.

**Independence:** It would be a precondition that media outlets do not depend on the state, neither directly, nor indirectly through a network of dependencies among private companies and the state. These invisible networks include organisational exposure to a powerful authority and its decisions, and being dependent on the allocation of state resources like advertising money and voluntarily distributed licences.

**Journalistic culture:** A collaborative journalistic community could be helpful in defending freedom of the press. First of all, an effective self-regulation is required, which might have several positive effects: helps build up solidarity; defends attacks claiming irresponsibility

of media, and resists attempts of political influence and corruption. The latter is not easy when journalists struggle with daily living problems; still, general moral integrity in reporting would be key to achieve or sustain prestige of the profession. The lack of this gives room to social distrust, which serves as an excuse to introduce stricter regulation. In Hungary, the passive attitude of the journalistic community towards the draconic regulation of the media was particularly disappointing. Organised representations of their professional and labour interests both towards their employers and the government would be crucial.

### Transform the society, transform the media

I agree with what Professor Mancini said in his opening speech: „you can't transform media system without transforming society". I would even say that each society has a media system that it deserves. I see media systems as part of the society, developed by mainly informal, and partly formalised relations in the society. Therefore, let me examine the affected societies, in order to understand the media better.

First, the transformation of the political systems in most CEE countries was not induced by a revolution of the political thinking in masses of the population, and did not automatically bring about such. A public information campaign about the values of the rule of law and democracy was missing. As a result, democratic decisionmaking was often seen as unnecessary bureaucracy and human rights were never really embraced. While the general expectation from the transition into market economies was to achieve welfare societies, the changes brought about huge economic landslides and new phenomena like unemployment, poverty and a negative social mobility.<sup>1</sup> A general disappointment towards the new system developed, while democratic values failed to stabilise.

Second, informal structures of the previous regime continued to operate in the society. These informal relationships are usually not recognised by the law, and not seen by external observers, yet they influence the daily life of people and how problems are solved or things are settled. Surveys prove, for example, that people's perception about how one can influence his or her own career, do not reflect a modern democratised society: it is still perceived that an individual's fate depends on family and other social ties, rather than on individual effort.<sup>2</sup> It is observed that several of these features are represented both by the political elite and by big segments of civil society. Therefore, even political intention is often missing to carry out the necessary – legal, educational and structural – changes. However, when political intention happened to exist, civil movements – often fueled by strong political or economic interest groups – effectively resisted and undermined the changes. On the other hand, purely bottom-up initiatives are bound to fail because the old structures are defended by interest groups who take advantage from them.

The vicious circle must be broken in order to induce change in society. Hence, all three sectors shall be tackled simultaneously. Political intention is the first precondition to maintain an independent media; independent funding schemes would be necessary to help financing,

especially in the printed press; and education should complete the programme in journalism schools, but possibly in other segments, too. Even so, there is no valid recipe to democratisation.

### What has happened in Hungary?

I was also requested to give a short analysis of the events in the Hungarian media scene since 2010. Without providing a detailed description of the legal changes,<sup>3</sup> I am going to offer a summary of the consequences of Fidesz government's media policy measurements.

In 2010, Viktor Orbán and his party Fidesz gained 2/3 majority of the seats in Parliament. This is enough majority to do anything, even to change the Constitution, which was also carried out by the governmental majority – without social or even merit parliamentary consultation. In a highly belligerent political atmosphere, Orbán decided to build a totally new system of power, which ensures that he and his party do not lose the elections for at least 20 years, in his words.<sup>4</sup> Law is viewed from a purely technical perspective, as a tool to achieve the governmental – often short-term – goals. This is also reflected in the legislative technique: Fidesz uses private members' bills (PMB), originally designed to give oppositional MPs a tool to submit bills to the Parliament. PMBs are a key to formally legalise speedy legislation, and avoid compulsory consultation with stakeholders and NGO's. PMBs have been applied for the overwhelming part of the legislation of the several hundred of new laws, and even for replacement of the Constitution, including the subsequent amendments of the new Basic Law (four within a year, at the moment of finishing the manuscript).

During 2011, *all laws* that affected the constitutional system of power, were reenacted, including (but not limited to) the judicial system, the Constitutional Court, the local governmental system, the ombudsmen's system. Media legislation was the first of these new fundamental laws, also submitted as PMB, and totally transforming media supervision and the public service media structure. Summary of the key measurements is:

The new Media Authority supervises both telecommunication and media, its members are exclusively delegated by Fidesz party, its Head directly by the Prime Minister. Public service media has been subsumed under the Media Authority, through a Fund which is directly instructed by the Media Authority. The Hungarian News Agency also became part of this conglomerate and serves as the newsroom for all public service media.

The new Media Authority originally had practically unlimited powers over printed and electronic press and internet; this was substantially limited after a review by the European Commission and the Hungarian Constitutional Court. It still has discretionary powers in allocating frequency licences (on the radio market) and levying chilling fines.

### How the media scene in Hungary has been changed?

Partly as a consequence of the legal changes and partly of the government's funding policy, the media scene changed to the following effect between 2010 and 2012: The Media Authority allocated licences exclusively to government-friendly radio stations. The only remaining

1 Rothstein, Bo: Creating social trust in post-socialist transition (edited by János Kornai, Bo Rothstein, and Susan Rose-Ackerman) Palgrave Macmillan, 2004.

2 TÁRKI Európai Társadalmi Jelentés 2009, The Pew Global Attitudes Project. Two Decades After the Wall's Fall. November 2, 2009, World Social Report 2009.

3 See Judit Bayer et al.: Media Law. International Encyclopedia of Laws, Kluwer, 2012.

4 Speech at Kötse, by Orbán Viktor, on 5 September 2009. Published in similar words in writing on 16 February 2010 in *Nagyítás*.

IN HUNGARY, THE PASSIVE ATTITUDE OF THE JOURNALISTIC COMMUNITY TOWARDS THE DRACONIC REGULATION OF THE MEDIA WAS PARTICULARLY DISAPPOINTING. ORGANISED REPRESENTATIONS OF THEIR PROFESSIONAL AND LABOUR INTERESTS BOTH TOWARDS THEIR EMPLOYERS AND THE GOVERNMENT WOULD BE CRUCIAL.

## JOURNALISTS AS AGENTS OF MEDIA REFORMS\* JOURNALISTS IN SERBIA ARE DIVIDED INTO THREE MAJOR GROUPS, LED BY VERY DIFFERENT "PROFESSIONAL IDEOLOGIES". Jovanka Matić, Institute of Social Sciences, Belgrade

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

oppositional radio station, Klubradio has been fighting in court for two different frequencies; both of which should have been awarded to it (with intervals of several years), according to the court. The Media Authority has misinterpreted and defied court decisions which favoured the radio.<sup>5</sup> After closing this manuscript, a final court decision also ruled against the Media Authority's earlier decisions and obliged the Authority to carry out a new procedure.<sup>6</sup>

State-owned companies advertised exclusively in government-friendly printed and electronic media. This trend is proven with statistical data.<sup>7</sup> This is aggravated by the habit of Hungarian advertising companies to follow state companies' practice in placing their advertisements.

Public media operation defies the principles of transparency, independence and pluralism. Its spending appears to support government-friendly media companies.<sup>8</sup> The draconic fining scheme have not been implemented, supposedly in reply of the international outcry. But the possibility of fines that are enough to drive bankrupt several of the Hungarian media companies hangs as the sword of Damocles above each media outlet.

Political advertising in the next elections is planned to be allowed only in open public spaces (billboards) controlled by government-friendly companies, and public media – controlled by the government; and printed press, where the government-friendly media companies also have good positions, but generally this branch is less influential. Commercial media and online journals – the independent media outlets – are prohibited to publish political advertisements. Although the rule was annulled by the Constitutional Court,<sup>9</sup> the government included it again into the Basic Law, so that the Constitutional Court loses power over it.<sup>10</sup> This rule will not only curtail press freedom but also puts in danger the cleanliness of the next Parliamentary election. ■

Judging by the experience of South-eastern European countries, the expectations that journalists, in comparison to other professional groups, are more aware of the benefits that media reforms could bring them – and are therefore more active or more involved in them – have proved to be an illusion. On the other hand, the same experience shows that the reforms aimed at the democratization of the media system cannot be achieved without a very strong participation of journalists and efficient professional organizations.

In Serbia, the reconstruction of the media system started with a decade-long delay in comparison to other post-communist countries of Central and Eastern Europe, after the change of the regime of Slobodan Milosević in 2000. In the nineties, the media reflected and promoted deep social cleavages between ethnic and civic orientations and between traditionalism and modernism. A part of Serbian journalists, working in the regime-controlled media, acted as the ideological and propagandist tools of Milosević's autocracy. Their only function was to mobilize public support for the government policies employed in the nation-state building process. In the wars Serbia was involved in during a whole decade in Slovenia, Croatia, Bosnia and Kosovo, these journalists established a specific professional code of "patriotic journalism", which promoted nationalistic patriotism, ethnic intolerance, war, xenophobia, etatism and personality cult, in order to serve Serbian national interests. Another part of journalists, working in the media not controlled but strongly repressed by the regime, promoted the need for creating a democratic Serbian society in which national issues and conflicts would be resolved peacefully, respecting the rights of others. They affirmed a political culture with ethnic tolerance, peace, co-operation with the world, parliamentary democracy, pluralism, human rights and civil society as supreme values, and educated their audience to respect them.

The nucleus of the forces initiating a democratic transition of the media system was forged among the journalists of independent media, their professional associations, civil society organizations, academic teaching and research organizations and media audiences, which all understood the significance of media freedom and pluralism.

In Serbia today, there is still no wide consensus about the course the whole country should take, even less about the course and aims of media reforms. State ownership of the media is just one among the many controversial issues – some are strongly against it, others support it wholeheartedly. Journalists are divided into three major groups, led by very different "professional ideologies". The first group promotes media autonomy and professionalization and sees the media as the guardians of the public interest, free from personal, political or corporate agendas in the media industry. The second thinks of media as the central agents of state-building and nation-building and as a natural ally of the political forces devoted to serving the interests of the Serbian nation. The journalists in the third group consider the media to be commercial enterprises above all, which should follow the market logic only. They oppose media regulation. If there must be any, then it should be a single law, with a single line: The media are free.

The first two perceptions of the media as a social institution have been inherited from the past. The third is quite new, born with the fast development of highly commercialized media outlets (tabloid daily press, entertainment press and commercial television). Only the first group of

journalists advocates and pushes for media reforms that are based on a consistent legal framework, the regulation of the market and media concentration, the transparency of media ownership and funding, politically neutral state aid to the media, guarantees for editorial autonomy and self-regulation. The second group's view on the role of the media has been carried over from the former period and acts as a constraint in the reconstruction of the role of the state in the media sector.

### Organization and building alliances

The experience of South-eastern European countries of media reforms so far shows that the true incentives for media autonomy and media watching over public resources and public policies come only from the civil sector. In order to be effective, journalists have to be organized in professional associations and find allies among other civil society actors. Trade unions in media outlets have not proved to be an effective form of channelling activities aimed at transition, because their members are easily pressured in their everyday job assignments. In Serbia, instead of trade unions, journalists have established new national and local organizations – the Independent Association of Journalists (NUNS) and the Independent Association of Journalists of the Vojvodina province (NDNV), as well as the associations of the media of a particular type, such as the Association of Independent Electronic Media (ANEM) and the union of local newspaper publishers Local Press. Their results started to become significant when they had employed professional staff.

For the entire decade Serbian journalists were divided and organized in two main professional organizations (the Association of the Journalists of Serbia – UNS and the Independent Association of the Journalists of Serbia – NUNS), which followed a split between state-controlled and independent media. Despite differences, these two organizations have recently harmonised their attitudes towards media reforms. Joining with other media organizations, they formed the Media Coalition, which now coordinates the reform activities of media professionals. The 2011 survey among 240 editors of news media in Serbia<sup>1</sup> shows that they perceive professional associations as the most efficient in protecting journalists' rights and freedoms.

INSTITUTIONS MOST EFFICIENT IN THE PROTECTION OF MEDIA FREEDOMS	(PERCENTAGE OF ANSWERS)
Professional associations (of media and journalists)	50
Media and journalists	43
Independent state agencies (ombudsman, commissioner for information of public importance)	29
International organizations (OSCE, IFJ, SEEMO, European court ...)	17
NGO and CSO	14
None	10
Existing legislation	5
Regulatory bodies (RRA, Ratel)	5
Trade unions	4
Courts	3
Executive branch of the government	2.5
Police	0.8
Political parties	0.4

1 The survey was done by the ANEM, the NUNS, the NDNV, and Local Press within the project "Serbian Media Scene vs. European standards (www.civilrightsdefenders.org/files/Serbian-Media-Scene-VS-European-Standards.pdf).

5 A summary of the Klubradio-saga can be read at: <http://mertek.eu/en/article/summary-of-the-case-of-klub-radio>. See also: <http://hungarianspectrum.wordpress.com/2012/03/17/klubradio-and-the-hungarian-judiciary-two-cases-two-wins/>.

6 See <http://europe.ifj.org/en/articles/efj-welcomes-final-court-decision-in-klubradio-case-in-hungary>.

7 See [http://hvg.hu/itthon/20130306\\_Simicska\\_IMG\\_tortenete\\_kozbeszerzesek](http://hvg.hu/itthon/20130306_Simicska_IMG_tortenete_kozbeszerzesek), [http://hvg.hu/itthon/20130228\\_IMG\\_kormanyzati\\_kommunikacio\\_penz](http://hvg.hu/itthon/20130228_IMG_kormanyzati_kommunikacio_penz), [http://www.kreativ.hu/media/cikk/az\\_allam\\_teljesen\\_ratelepedett\\_a\\_mediapiacra](http://www.kreativ.hu/media/cikk/az_allam_teljesen_ratelepedett_a_mediapiacra), [http://www.kreativ.hu/radio/cikk/ketharmad\\_jut\\_a\\_nyerges\\_kozeli\\_radioknak\\_is](http://www.kreativ.hu/radio/cikk/ketharmad_jut_a_nyerges_kozeli_radioknak_is), and [http://www.kreativ.hu/reklam/cikk/fo\\_evet\\_zart\\_a\\_fidesz\\_kozeli\\_mediabirodalom](http://www.kreativ.hu/reklam/cikk/fo_evet_zart_a_fidesz_kozeli_mediabirodalom).

8 See <http://atlatszo.hu/2013/03/11/itt-az-mtva-eltitkolt-budzeje-kalomista-jakso-simicskaek-is-nagyot-kaszaltak-tavaly/>.

9 See 165/2011. (XII. 19.) of the Constitutional Court decision.

10 See <http://www.parlament.hu/irom39/09929/09929-0048.pdf>, submitted by Janos Lazar, MP and Minister of State for the Prime Minister's Office. The amendment was passed today, on the 11<sup>th</sup> March 2013, during vivid protests in front of the Parliament.

THE SERBIAN GOVERNMENT HAS PROVED TO BE THE MOST CONSERVATIVE AGENT OF MASS COMMUNICATION AND SUCCEEDED IN MAKING THE DEMOCRATIZATION OF THE MEDIA MORE A TOOL OF THE POLITICAL WILL OF THE NEW ELITES RATHER THAN A FACTOR OF AN OVERALL DEMOCRATIZATION OF THE SOCIETY

THE FIRST GROUP OF JOURNALISTS PROMOTES MEDIA AUTONOMY AND PROFESSIONALIZATION AND SEES THE MEDIA AS THE GUARDIANS OF THE PUBLIC INTEREST, FREE FROM PERSONAL, POLITICAL OR CORPORATE AGENDAS IN THE MEDIA INDUSTRY. THE SECOND THINKS OF MEDIA AS THE CENTRAL AGENTS OF STATE-BUILDING AND NATION-BUILDING AND AS A NATURAL ALLY OF THE POLITICAL FORCES DEVOTED TO SERVING THE INTERESTS OF THE SERBIAN NATION. THE JOURNALISTS IN THE THIRD GROUP CONSIDER THE MEDIA TO BE COMMERCIAL ENTERPRISES ABOVE ALL, WHICH SHOULD FOLLOW THE MARKET LOGIC ONLY.

Apart from NGOs and academic institutions, journalists' and media organizations have established a very strong cooperation with two independent state institutions – the Protector of Citizens and the Commissioner for the Information of Public Importance. Although new and facing enormous difficulties in their initial stage of work, these two agencies have managed to get some executive power and work independently of political interests, owing to the high personal integrity of their heads. The alliance with the mentioned institutions enabled journalists to repeal some of the very restrictive changes in the Public Information Act Law (2009) and some of the solutions in the Electronic Communications Act (2010).

#### Areas of journalists' participation

Pro-reform Serbian journalists see the state as the main obstacle to media transition processes. Their activities are largely oriented towards counteracting the activities of the government in legislation. Similarly to other new democratic governments in South East Europe, the Serbian government in the last decade has been willing more often than not to sacrifice reform processes for the sake of its temporary political interests. It has proved to be the most conservative agent of mass communication and succeeded in making the democratization of the media more a tool of the political will of the new elites rather than a factor of an overall democratization of the society.

Journalists were most active in fighting for the establishment of a new, coherent legal framework for developing a new media system. They took part in drafting new laws, fighting against contradictions in the adopted laws and their amendments that reduced media freedom and the independence of regulatory bodies and preserved the practice of selective state subsidies for the media. The availability of expertise in media law proved to be a crucial issue in successful journalists' participation in reforming media legislation. The very first new media laws were drafted by civil groups. The reason was a simple one: the government did not have any media law experts at the time. Later on, the government accepted only the representatives of professional associations in their own task forces. Professional interests could be defended only if these representatives were competent enough. Therefore, they had to either engage law experts to work for them, develop own experts with journalistic experience or ask for help from international organizations and experts.

Journalists are also active and rather successful in monitoring the way the adopted laws are implemented. This tiresome activity, requiring large resources, has proved to be effective only if permanent, expert-based, coherent and widely publicized. A very useful form of this activity is a legal monitoring of the media scene, established

by the ANEM in 2009 and presented in a specialized monthly publication (in print and online).<sup>2</sup> Monitoring is done by a private law office and includes the expert following and juristic analysis of all the changes on the media scene – the work of all government bodies in charge of the media sector, the activities of regulatory bodies in the media industry, the implementation of media laws, the preparation of laws affecting the media, the court proceedings and sentences concerning journalists, the violations of journalists' rights and media freedoms, the processes of media privatization and digitalization. Raising the level of professionalism is another area of intensive activities. However, they still have not brought sustainable results. Lacking the tradition and experience of self-regulation, Serbian journalists had to put a lot of effort in promoting self-regulatory mechanisms as an effective tool of collective professionalization. They managed to adopt a common code of professional conduct in 2006. The only self-regulatory body, the Press Council, started work as late as 2011. It brings together only print media, but not all of them. The tabloid papers that violate professional and ethical codes most often are not members of the Press Council.

#### Successes and failures

Although partially successful in the main areas of activities, journalists' reform oriented attempts, however, fall short of expectations. The failure of the transition process is obvious: the independent media which developed under Milosević's regime and endured its repression are barely surviving in the Serbian new democracy. The institutional legacies of the past are still strong while new institutions have only just started taking root. While relatively successful in changing rules, journalists and their organizations are rather unsuccessful in the reform of the institutions that have effects on the role and functioning of the media.

Reform-prone journalists' organizations have insignificant influence on government media policy and decision making, the regulation of the media market and fair competition, the prevention of media monopolies, the ineffective work of regulatory bodies, the slow transformation of the state radio and television into public service broadcasters, the poor labour rights of journalists and the new management capacities of media outlets. In a "consolidated non-consolidated democracy", as Serbian society is cynically described, they can not prevent the instrumentalization of the media for particular political and economic interests. Their efforts have not contributed to the transparency of media ownership nor state subsidies or other forms of aid to the media politically close to the republic and local governments. However,

<sup>2</sup> The publication is available at <http://www.anem.rs/sr/aktivnostiAnema/monitoring.html>, in both Serbian and English.

a single activity of the Anti-Corruption Council, an independent government body – the release of the report on the main problems in the media sector in 2011, revealing domestic tycoons as the true media owners behind foreign companies, the actual degree of the participation of state funds in the advertising market and the non-transparent financing of the national public service broadcaster – boosted reform support more strongly than a number of different forms of the work done by journalists' associations over years.

Reform-oriented journalists have no regular channels of communication with relevant ministries and a passive parliamentary body in charge of the media. They have developed adversary relations with judiciary and regulatory bodies and failed to develop any formal relations with the institutions for journalistic education. In addition, journalists' organizations have not succeeded so far in developing professional solidarity. Although journalists' associations coordinate their activities, journalists do not share the same professional ideology. Media reform issues are rarely reported in the media. The associations have not found a sustainable form of funding their activities and still depend to a great degree on international donors. Yet, the main reason for the failure of media reforms in creating the conditions for media business development in a non-discriminatory manner is the partocratic nature of the Serbian political system, allowing particular interests to take precedence over the principle of the rule of law, without any legal consequences.

Like other South-eastern European media systems, the Serbian system has undergone great changes over the last decade. However, a regular and functional media market is not in place yet. The state still owns a quarter of radio and a quarter of TV stations and has a very important role as the source of finances in the media, which persistently precludes a free and fair competition, despite its commitment from more than 10 years ago to relinquish its position of a media owner and financier. Democratic standards have only been partially implemented, due to either incomplete and inconsistent legal regulations or the insufficient capacities of the institutions which are supposed to apply them or the lack of strength within the profession itself. Drastic deviations from European standards are registered in media economy, the independence of media from political influences, the labour-related and social rights of journalists and their safety. The vested interests of the ruling political elite and the unfavourable economic environment for media operation preclude the changes which reform-oriented journalists deem urgent. ■

ALTHOUGH PARTIALLY SUCCESSFUL IN THE MAIN AREAS OF ACTIVITIES, JOURNALISTS' REFORM ORIENTED ATTEMPTS, HOWEVER, FALL SHORT OF EXPECTATIONS. THE FAILURE OF THE TRANSITION PROCESS IS OBVIOUS.

## ARE JOURNALISTS INITIATORS AND ACTIVE PARTICIPANTS OF MEDIA REFORM MOVEMENTS? THE CASE OF MONGOLIA\*

THE ROLE OF MONGOLIAN JOURNALISTS AS STAKEHOLDERS IN THE MEDIA REFORM PROCESS IS LIMITED TO THE FUNCTION OF FOLLOWERS ONLY. Munkhmandakh Myagmar, Press Institute, Mongolia

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

Are journalists initiators and active participants of media reform movements? The short answer to this important question is: no, they are not. Those trying to implement change in the sector are civil society organizations, international donor agencies, a few media owners and even fewer politicians. Journalists act as followers at best and are seldom active initiators and reformers. Since the vast majority of training, awareness raising and educational events organized to 'strengthen the democratic functions of the media' are targeted at journalists, we often wondered about the passive role of journalists when it comes to reforms in media and journalism.

In order to understand journalists' behavior, interests, agendas, participation, reform efforts and their influence on decision-making processes in the media, I tried to use one of the many stakeholder analysis methods employed in public policy study. Public policy is most often developed following negotiations among conflicting interests, analyzing the needs of stakeholders and determining the power structure of the stakeholders involved in the decision making process. According to Mitchel (1997), stakeholders can be either powerful or powerless and can have either more or less interest in a policy.<sup>1</sup>

So how powerful are Mongolian journalists with regard to their ability to influence media reform policies? The power of the stakeholders in this case can be described by decision making authority, resources at hand, their ability to mobilize resources and their access to policy decision makers.

### Without public recognition

Journalists in Mongolia do not have any decision making powers to control the process of media policy development. Most often, they are also not entitled to make decisions within their media organizations – it is the directors and owners who mainly decide about media content, not the journalists. Reporters largely possess few financial or material assets and when it comes to social stature, such as prestige, esteem and social acceptance, journalists are not afforded a great deal of respect by the public or decision-makers. This is mostly the result of biased and inaccurate reporting, partisanship and sensationalism in journalism which negatively affect the image and credibility of journalists, diminishing their public recognition.

Regarding journalists' potential to mobilize or unionize, many would immediately point out the great power of the media to summon public attention and interest on issues of concern. In reality, however, journalists in Mongolia have not established a well organized group of people to collectively address these issues and they also fail to focus public attention on media policy issues to protect their own professional rights.

Because of unclear distinctions between employer and employee any professional associations tend to represent the employer's organizational interests and agendas, as distinct from those of journalists. For example, there are several associations of media practitioners such as the

Free Journalists Association, Union of Newspapers, Union of Televisions, the Investigative Journalists Association and the Mongolian Journalists' Union. They are not effective mostly because of the ambiguity of their status. The Mongolian Journalists' Union, which goes back to the communist era, also represents media owners, a fact which causes conflicts of interest. The Union of Newspapers and Union of Televisions have been established by the owners to protect their own interests, thus they are not concerned with the journalists' concerns. Trade unions can be a great instrument to build unity among journalists to defend their social and professional rights. However, initiatives to establish a trade union to fight for the interests of journalists have failed in Mongolia so far because of strong opposition from owners and investors.

### Access to policy decision makers compromised by clientelism and dependence

Lack of direct decision-making power to influence media reform policies can be 'counterbalanced' by direct access to policy decision makers; however, the possibility of journalists to directly communicate with policy makers is compromised by clientelism and relationships that undermine editorial and journalistic independence. This is evidenced in different forms of paid-for news stories in the media.

In addition to power, the behaviour of journalists as stakeholders in the media reform process can be determined by their interest and desire to change the existing conditions. Interests can be driven, among others, by the degree of dissatisfaction or willpower to change the situation. It could be argued that Mongolian journalists should have a great interest in changing the media situation since there is a high degree of discomfort among journalists. This discomfort, however, is mainly concerned with their financial or employment situation rather than the role of media in a democracy, their professional integrity or ethics.

Low salary and weak social protection are one of the main reasons journalists are often corrupt and not passionate about their profession. In addition, with the mushrooming numbers of the media outlets, the risk of losing their job is rather moderate, since journalists can relatively easily find a new job at a competing media organization. For this reason the feeling of urgency for media reforms among journalists is somewhat low – it is easier to quit their current job and find a new one instead of trying to address general problems in the wider Mongolian media landscape.

### Divided and short of democracy education

As members of an extremely politicized society with a prevailing culture of accepting corruption, journalists are often lethargic and divided by political affiliation and opinion, thus unable to join forces for advancing their common professional interests. For examples, the awareness of common professional interests is generally weak. Political and economic turbulence since the collapse of socialism have contributed to the situation and the professional potential and public acknowledgement of journalists in Mongolian society is still being shaped.

For many people the ideal of a journalist is still based on political and ideological, rather than professional standards. Added to this is the lack of democracy education among journalists, which undermines sensitivity to the current status and challenges of the democratic functions of media. Many journalists would probably know relatively well how to conduct an interview or write a news story, but they would possibly be puzzled if asked about interrelations between professionalism, democracy, human rights and media freedom.

Limited power and a low interest of journalists to advocate for media reforms (as described above) undermines journalists' ability to influence the decision making processes regarding media policies. This seems to be the main reason the role of Mongolian journalists as stakeholders in the media reform process is limited to the function of followers only.

### Rather to tackle the root causes of journalists' passiveness

In the past over 20 years, since Mongolia's transition to democracy, the Mongolian media sector experienced two cases only of a journalist (not media owners and senior managers) playing an active role in media reform and trying to influence media policy issues. The first case refers to protest demonstrations of journalists in 2002, after the editor of the Mongolian daily newspaper "Ug" ("Word") was jailed for one year for publishing false information that led indirectly to the death of a woman the daily had named as a possible AIDS victim. Protesters demanded, among other things, the newspaper be protected by media freedoms by decriminalizing libel and slander; however, they did not achieve tangible results. The second case relates to protests of journalists against the leadership of the Mongolian Journalist's Union in 2012 amid claims the Union does not represent the interests of journalists and does not actively seek to improve the poor conditions experienced by journalists and media workers in Mongolia. These protests resulted in a national assembly of Mongolian journalists, calling for a change in the structure and the leadership and the rules of the Union. Despite the protests this did not make the Union more active.

The most urgent problems which need addressing in the Mongolian media, however, are alliances between politicians, media and the business world; political and financial pressures that undermine the editorial independence and diminish the quality in journalism; and the decreasing credibility of the media and legal limitations which remain unaddressed by journalists.

Appealing to journalists to be more active or blaming them for being passive followers will not change the situation. Instead, actions that tackle the root causes of this passiveness – such as weak civic/democracy education among journalists, deficient sense of professional identity, low salary and inadequate social protection, lack of platforms for dialogues to discuss common problems, and the absence of media trade unions – might be of greater help to instill common values that would drive the interests and behaviors of media practitioners to act as initiators and active participants of media reforms. ■

1 Mitchell, R. K., B. R. Agle, and D.J. Wood. (1997). »Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What really Counts.« in: *Academy of Management Review* 22(4): 853-888.

IN THE PAST OVER 20 YEARS, THE MONGOLIAN MEDIA SECTOR EXPERIENCED TWO CASES ONLY OF A JOURNALIST PLAYING AN ACTIVE ROLE IN MEDIA REFORM AND TRYING TO INFLUENCE MEDIA POLICY ISSUES.

**MEDIA REFORMS DON'T GROW UP IN A VACUUM\*** MEDIA REFORMS HAVE TO BE CONCEIVED HAVING IN MIND THE REAL CONDITIONS WHERE THEY ARE APPLIED. THEY CAN NOT BE THE FRUIT OF BLIND IMPORTATION OR IMITATION AS IT OFTEN HAPPENS. **Paolo Mancini, University of Perugia**

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

I have to confess that the title of the Ljubljana seminar on "Comparing Media reforms" is a little bit alarming for two reasons that I will try to explain in the next few pages. The first point I want to stress is that media don't grow up in a vacuum. As Siebert, Peterson and Schramm already wrote in 1956 at the very beginning of their seminal work "the press always takes on the form and coloration of the social and political structures within which it operates" (Siebert – Peterson – Schramm, 1956, p. 1). Therefore a universal model of reform is not possible and is not desirable either: a title such as "Comparing Media Reforms" sounds, as I said, a little alarming. Reforms take place within a set of specific conditions and, first of all, we have to compare these conditions and only after this we could compare legislative and normative innovations. Paraphrasing the authors of "Four Theories of the Press", reforms always take the form of the social and political conditions within which they are applied.

Media reforms represent a very difficult matter in a moment of dramatic and rapid technological transformations as the one we are passing through today. I don't want to say that, because of this fast and dramatic change, we don't have to be engaged in reforming initiatives but we have to be aware that today, in the era of Internet, the speed of technological change is such that it is not easy to forecast what could the media landscape even in a short period of time.

In the following lines I'll try to articulate in deep these two points, but, first, let me advance a general caveat that is strictly linked to mass media reforming attempts.

#### **Imitation – not a good way to reform media system**

Most of the times, when talking about restructuring and reforming the mass media system there are two examples that are suggested mostly in Central Eastern Europe but in other countries as well: one is the British example of *BBC* and another one is the German governance of the television system. It is very frequent to meet experts and professional coming from these two realities traveling around the world (and mostly, as I said, in Central Eastern European countries) offering their consulting and being asked to give consultancy. Many times I have met *BBC* journalism experts giving their advice to other professionals and officials within media outlets that are very different from the ones they come from. And it is not rare that journalists and officials themselves of different countries invite *BBC* and German experts to supply with their expertise. I don't think this is a good way to reform media system.

Indeed, German and British experiences work just within a very precise set of cultural, social and political conditions that, most of the times, don't exist outside of those national borders. This is why many reforming attempts fail: they look for inspiration from outside world, they import structural and procedural habits that do not apply to the contextual conditions of the realities where they are imported.

At this seminar I was asked to think of media reforms in Central Eastern Europe countries and in other parts of

the world as well. Let me try to explain which the conditions that is possible to observe in most of these countries (of course with relevant differences among them) that highly contrast with the conditions of those countries, mostly Western European countries, whose models are very often the object of importation or imitation.

#### **The role of the state, the political party system and the political culture**

These conditions refer to three different areas: the state, the political party system and the political culture. These areas are particularly problematic in transitional democracies reaching the status of democracy after a longer or shorter period of authoritarian regime. In these countries the state is very often "under construction"; it doesn't have yet a stable apparatus and a stable system of norms and procedures. Political scientists talk at this regard of "politicization of the state": "political parties take over a supposedly neutral state bureaucracy and public administration using the state as a source of private rent" (Gryzmala-Busse, 2003, p. 1123). Different groups compete to shape the state following their needs and interests and to affect its decisions: indeed, in transitional democracies where state politicization is very likely to happen, state structures are weak and rules are undergoing continuous and often contradictory changes.

The volatility of the rules is one of the main characterizations of most of transitional democracies: the experience of many countries in Central Eastern Europe shows this in a very clear way. For instance, EU pre accession period has convinced many governments to approve bills that were pushed forward by European institutions but right after becoming official part of European Union many of these bills have been changed or have remained without real application. New bills have come in force and different or minor modifications have later been approved. The field of media legislation is a vivid example of this normative volatility:<sup>1</sup> several media act have been approved to ease the accession process but then different revisions, not rarely in a completely contradictory direction, have followed.

Politicization of the state implies also that very often rules don't have universal value: in spite of their supposed universal character they are interpreted and often adapted following partisan and particularistic views. In many cases a supposed high level of formalism leaves room to informal practices and interpretations. Marina Kurkchyan has convincingly demonstrated how the attempt to import in Russia the model of the British Press Complaints Commission has failed in face of a very particularistic and informal interpretation and application of the existing rules (Kurkchyan, 2009). State structures and procedures are often adapted to specific contingencies and interests.

#### **Political culture and the idea of public service broadcasting**

The importation of Western modeled media reforms must take into account also the specificity of the different

political systems. Most of transitional democracies outside of Western world have not passed through the experience of mass political parties that have so greatly affected the structure of the media system in many Western democracies. Mass parties represent essentially a Western experience, hardly to be observed outside of this part of the world. If we look at Central Eastern Europe, such as at other parts of the world, mass parties are not well established organizations; they are very volatile, lasting not rarely just for the short time of election campaign and then replaced by new organizations. Very often they have a very pronounced charismatic and personal nature being established around the figure of single politicians. In many other cases mass parties are replaced by different forms of aggregation: religious, ethnical linguistic ones so that political parallelism that has affected so deeply the history of Western media doesn't apply to other realities where the experience of mass parties has not been in place. The structure of the political system may have very important consequences on the mass media reform process.

Political culture can't be forgotten when talking about media reforms: take the example of the idea of public service broadcasting. Mostly in the *BBC* experience it is deeply inserted within a political culture oriented towards universalism rather than particularism. Here civil society plays a major role also in determining professional bodies being autonomous from each other. On the contrary in many transitional democracies clientelism prevails over universalism and merit based criteria of meritocracy; there is a tradition of frequent overlappings between different elites that prevents the separation of the media from other systems of the society and also weakens the emerging of an autonomous professional journalism separated from other professions and social bodies that were, and partially still are, major characterizing features of the British *BBC*.

The main consequence of what has been said so far is that news media are not conceived as instruments for spreading news, such as they are in the most traditional Anglo-American model of professional journalism (Chalaby, 1996; Hallin – Mancini, 2004) but rather they are instruments to reach contingent and particularistic goals. They serve specific political and economic interests; they are not much interested in spreading values (as in the tradition of Western mass parties), rather they want just to affect the public decision making.

#### **Minimal goals**

Because of what has been said so far, are media reforms impossible? Obviously the answer is not. As I said at the beginning, I want to stress that media reforms have to be conceived having in mind the real conditions where they are applied. They can not be the fruit of blind importation or imitation as it often happens. In transitional democracies that are featured by instability of normative apparatus, volatility of political organizations, predominance of informality over formality, media instrumentalization rather than informative function of the news media it seems important to reach at least some minimal goals. First of all it is necessary to have rules to ensure

1 See in particular <http://mde.politics.ox.ac.uk/index.php/country-reports>.

MEDIA REFORMS REPRESENT A VERY DIFFICULT MATTER IN A MOMENT OF DRAMATIC AND RAPID TECHNOLOGICAL TRANSFORMATIONS AS THE ONE WE ARE PASSING THROUGH TODAY.

IN TRANSITIONAL DEMOCRACIES THAT ARE FEATURED BY INSTABILITY OF NORMATIVE APPARATUS, VOLATILITY OF POLITICAL ORGANIZATIONS, PREDOMINANCE OF INFORMALITY OVER FORMALITY, MEDIA INSTRUMENTALIZATION RATHER THAN INFORMATIVE FUNCTION OF THE NEWS MEDIA IT SEEMS IMPORTANT TO REACH AT LEAST SOME MINIMAL GOALS.

## PROGRESSIVE GOVERNMENTS AND COMMUNICATION MEDIA IN SOUTH AMERICA\* ANALYSIS OF COUNTRIES IN SOUTH AMERICA WHICH HAVE BEEN MORE ACTIVE IN TERMS OF COMMUNICATION POLICIES SHOWS THAT THE CASES OF ARGENTINA AND VENEZUELA STAND OUT. Guillermo Mastrini, School of Communication at the National University of Quilmes, Buenos Aires

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

the transparency of the property: it has to be clear who owns what. In this way the tendency towards instrumentalization that seems the main consequence of those conditions that feature transitional democracies may be limited as citizens can have clear idea on the reasons of any particular kind of coverage and content.

Second: stability of the normative apparatus appears a necessity for all kind of media reforms. Once that a bill has been approved it has to ensure certainty and stability to all those who are concerned. Of course, changes are necessary and possible, but they have to respond to deep and important changes in society (and in technology) and not just to temporary and particularistic interests. Third: property concentration limits seem to be another pre-requisite of any media reform attempt. In other words, pluralism is not just a consequence of media reform, but in some way, it represents a condition for any activity aimed to ensure a better media system.

### A second caveat: very risky shift towards audience segmentation

As I said at the beginning of this contribution, there is a second major caveat when talking about media reform. It has to do with the tendency towards media fragmentation determined by both media commercialization and technology. Internet has made available an enormous number of sources of information that has further increased the fragmentation already created by media systems progressively shaped by market competition.

Technological changes take place at very high speed while fragmentation generates audience segmentation. In this new landscape, the old certainties disappear, the professional environment becomes blurred (are bloggers journalists?) (Zelizer, 2005) and niche audience replaces mass audience. I see this as a very risky shift that produces opportunities but also generates problems of not easy solution. Niche audiences, as have been defined (Jomini Stroud, 2011), may destroy or make very weak that public space, constructed television and print press addressed to a mass audience that has been so far the place for meeting different and contrasting points of view.

One of the principal aims of any media reform has to be that of ensuring the survival of this place where different voice can meet, discuss and find an agreement avoiding the risk of a society differentiated in many contrasting communication spheres unable to communicate and to act for the common good. This can be, for example, the main role of public service broadcasting facing a plurality of sources of information mostly aimed at just reinforcing the already existing opinions and positions.

Media reforms need to be placed within this new landscape of rapid changes and media fragmentation where the old borders become blurred and where segmentation seem to overtake the old general mass audience. ■

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The purpose of this paper is to examine communication policies in South America in the first decade of the twenty-first century. The task is a significant one in that it reviews communication policies in a newly defined political context for the region, but in the light of a new notion of the term 'regional' – rather than considering Latin America, this paper refers mostly to South America, in which most governments show a common trait, in contrast with Central America and Mexico, where other types of political options are seen. For the first time in the history of South America, there is a majority of administrations whose political denomination breaks with a two-hundred-year tradition. Classifying those administrations, generally aligned from the center to the left wing of the political spectrum, will be partly the aim of this paper.

Considering the shifts in political orientation of the governments under review, it is important to consider to what extent such changes are disrupting the communication policies and the structure of the media systems. Fundamentally, the relationship between the National States and the media systems under progressive administrations needs to be addressed.

### Communication regulations

Before analyzing the communication policies of progressive governments, the theoretical framework used for the analysis will be summarized, and the historical context of communication policies in South America will be described.

Communication policies have always existed in the region, though in most cases they were not the result of debate, and had no public visibility. Communication regulations were the result of implicit agreements between the state and media owners (Fox & Waisbord, 2002). For print media, regulation was anchored in the constitutional mandates guaranteeing freedom of expression and freedom of the press for citizens in almost all constitutions of South American countries. In radio and TV broadcasting, the regulatory activity was based on laws or regulations that basically granted the licenses required to operate radio and TV stations to the private commercial sector, funded by advertising. And finally, in the Telco sector, the involvement of the State was stronger until the '90s in many cases taking the role of a monopoly operator, in an effort to develop universal service policies and with a focus on finding ways to reach the largest portion of the population, though it has not always succeeded in that endeavor.

All these policies are guided, in principle, by the notion of "public". The policies are intended to serve the *public interest*. However, in every society there is disagreement regarding which groups are entitled to define what "public interest" means (McQuail, 1998). If *public interest* is understood as what society ends up defining through its institutions, in the case of communication policies in South America, private-sector businesspeople were able to shape a concept of public interest to their own advantage.

Following the notions proposed by Van Cuilemburg and McQuail, we could claim that the definition of "public interest" is the result of the interaction of three forces: first, the State; second, industry companies, traditionally known as "the market", and third, civil society (Van Cuilemburg & McQuail, 2003). A look at the history of communication policies in Latin America rapidly leads us to conclude that among those three players, civil society has been historically overlooked. In Latin America, in general, the definition of communication policies has been dictated by the interests of the State – and basically, within the State apparatus, by governments – and companies.

### Drivers of change

Media regulation has been static for more than half a century. This means that, once enacted, the legal frameworks remained unchanged for many years. However, that state of affairs has been changing since the last

decade of the last century. What drives that transformation? Even though a number of diverse drivers could be quoted, this paper will focus mainly on three forces. First, the *technological transformation*, which, supported on a process of digitization of symbolic assets affects all the levels of regulatory practices. Digitization has fostered convergence, entailing that the classic dividing lines between radio and TV broadcasting and telecommunications have become blurred. But importantly, digitization has also determined the shift from analog to digital TV. All these processes require new regulatory frameworks and have triggered new definitions of "public interest". The second transformation takes place at the political level. According to Freedman, it may be claimed that there is an increasing number of players interested in taking part in the design of communication policies (Freedman, 2008). The new social players span a wide range, from telco companies and banks to social organizations. For instance, for many years, civil society has been trying to appear in the media landscape, and today, it has awakened to the reality that it can have its own media. To make it happen, it is committed to influence the regulatory process.

The third transformation has to do with economic changes, as digitization has led to cost savings in the production of audiovisual contents. Social groups are trying to take advantage of the cost reduction to produce their own messages, so as not to depend on the role of intermediaries taken by the large communication media. The new players interested in participating in the communication arena are a driving force of change in communication policies, in view of their efforts to impact the shaping of the regulatory framework.

### Definition of the term progressive

The processes of regulatory change occurring worldwide have found their own privileged and particular space in South America, with the emergence of a significant group of governments, which we shall preliminarily call "progressive". A significant debate is going on today in the region as to whether these governments should be defined as left-wing, populist or progressive. It is not within the scope of this paper to elaborate on this matter, but a definition will be formulated for operational purposes, identifying the elements that are inherent in a progressive government, as well as the aspects enabling us to set progressive governments apart from non-progressive ones.

Several papers have addressed this topic over recent years (De Moraes, 2011; Kitzberger, 2012; Ramos, 2010). Some authors have depicted these governments as post-neoliberal. While it is clear that the new governments of South America have introduced a disruption with many of the policies of the '90s, certain continuities can also be observed. Furthermore, the post-neoliberal definition does not help to identify the characteristics of the new governments.

For the purposes of our discussion, we shall refer to an operational definition that relies on certain variables that are used to portray a government as progressive. These variables are listed below:

- a) Promotion of the role of the State as the driver of the economy and as a player that seeks to balance social relationships. The discourse in support of State-driven actions has not always been fully matched by public policy-making, though there has been indeed a revaluing of the role of the State as a player encouraging a stronger balance among the different interests present in society.
- b) In line with the item above, there is a discourse to promote equality as an asset to be protected, supported by advocacy for the redistribution of wealth. Progressive governments resume some long-standing concepts taken from Humanism and the French Revolution, as elementary as *solidarity* and *equality*.
- c) Support given to a Human Rights policy, implying a revision of the actions taken by the State during the periods of the military dictatorships.

IF PUBLIC INTEREST IS UNDERSTOOD AS WHAT SOCIETY ENDS UP DEFINING THROUGH ITS INSTITUTIONS, IN THE CASE OF COMMUNICATION POLICIES IN SOUTH AMERICA, PRIVATE-SECTOR BUSINESSPEOPLE WERE ABLE TO SHAPE A CONCEPT OF PUBLIC INTEREST TO THEIR OWN ADVANTAGE.

d) Strengthening of support given to minorities' rights, notably, indigenous peoples, sexual or gender identity constituencies.

e) Consolidation of a regional integration policy that departs from the traditional alignment with the USA. On the basis of this operational definition, a group of South American progressive countries can be identified, whose communication policies will be studied. Even though none of the governments under review meets all the criteria outlined in such operational definition, they all evidence most of those criteria. The administrations under review include: Néstor Kirchner (2003-2007) and Cristina Fernández de Kirchner (2007-2011, 2011- ) in Argentina; Evo Morales (2006-2010, 2010 - ) in Bolivia, Lula da Silva (2003-2010) and Dilma Rousseff (2011 - ) in Brazil, Rafael Correa (2007-2009, 2009 - ) in Ecuador, Tabaré Vázquez (2005-2010) and José Mujica (2010 - ) in Uruguay; and finally, Hugo Chávez (1998-2001, 2001-2007 and 2007-2013) in Venezuela. The administrations of Ricardo Lagos (2000-2006) and Michele Bachelet (2006-2012) in Chile also qualify for inclusion on this listing, even though the administrations led by the Chilean Socialist Party stepped down from power in 2012. Unlike those administrations, the Fernando Lugo administration (2008-2012) in Paraguay will be left outside the sample, as it was unable to deploy progressive policies due to the permanent political instability that prevailed until it was overthrown. Within the set of so-called progressive countries, a distinction is to be drawn between ALBA (Bolivarian Alliance for the Americas) members, including Venezuela, Bolivia and Ecuador, and non-members, i.e., Argentina, Brazil, Chile and Uruguay.

**TYPE OF PROGRESSIVE GOVERNMENTS**

ALBA	MERCOSUR
Venezuela	Brazil
Bolivia	Uruguay
Ecuador	Argentina
	Chile

Source: own data.

**Definition of communication policies**

In Latin America, the notion of National Communication Policies (NCPs) was introduced in the '70s to express the need to regulate communication systems inside national borders. At the time, it represented the first demand for State initiative, faced with a State that did little else than facilitating the development of media corporations. At present, the concept has shifted to

public communication policies—a shift that has brought about the inclusion of new lines of analysis.

Beltrán defined a National Communication Policy as “an integrated, explicit and durable set of partial communication policies organized into a consistent body of principles and norms for guiding the behavior of institutions specializing in the handling of the overall process of communication in a given country.” (Beltrán, 1974).

Thus, acknowledgment was given to the need for the involvement of the State in order to regulate communication media, and this stage was called ‘formalist’. The subsequent stage, called ‘content-driven’, established the mode of intervention of the State, i.e., through the design of concrete plans and actions to reach a higher degree of democratization of communications (Graziano, 1988). In planning NCPs, the State plays a key role, simultaneously taking on two roles: as player and arbitrator of regulations, determining the type and nature of intervention (Exeni, 1998).

Exeni (1998) proposes the term Public Policies for Public Communication (PPPC). He defines PPPCs as a set of principles, norms and aspirations, not only juridical but also moral and social in nature, established based on previously defined objectives and/or purposes referring to collective interests and social issue situations. Public policies are not always driven by the State; they may be pushed by different stakeholders in society. However, the State defines their final form and ensures their application.

In a study of public communication and education policies as part of the development of the Knowledge Society, Sierra introduces the notion of Information and Communication Policies (ICPs) meaning the set of “objectives for the organization of the media, technology and contents of public communication, integrating different players, levels of analysis and forms of intervention, as well as political, economic and cultural issues associated with the overall process of development of National States, regions and local communities, and even supra-national organizations, like the European Union” (Sierra Caballero, 2006, p. 27).

Unlike the historical notion of NCPs, ICPs involve not only modern states and international organizations, but also the conflicts taking place at the micro level within societies, and assume an inter-relation across the audiovisual sector, telecommunications and IT, whose planning and regulation particularly started in the twenty-first century with the rise of the so-called Information Society (IS).

**Correlations in media policy development**

Moreover, Freedman (2008) defines communication policies as “a process referring to the interaction among the

various players, the institutional structures in which they work, and the goals they pursue,” and “relating to the variety of forms in which stakeholders seek to develop formal and informal mechanisms to shape the behavior of communication media” (Freedman, 2008: 13).

In this regard, the existence of a diversity of agents and interests – or multi-stakeholders – represents a challenge when it comes to the passing of legislation. Faced with the traditional regulation models confined to national politics, the current regulations are cut across by bilateral agreements, regional directives and multilateral trade. Thus, it is appropriate to consider what correlation exists between the increase in participants in the conformation of media policies and the decisions that are ultimately adopted.

Martín-Barbero (2008) looks at communication and culture policies from a sociological-cultural perspective, providing a series of clues to address the research. Those clues include the need to intertwine the policies, communication media and culture, and not to restrict industrial production to the market. The focus is on what is public, which goes beyond the realm of the state, and must be considered as an area of conflict and clashing of interests, the place of heterogeneity and visibility of social diversity. Aside from the various depictions and the varying degrees of emphasis placed on communication policies, the way this topic has been addressed in South America in recent years is noteworthy.

The central role taken by communication media in society and the growing concern of civil society with the definition of an environment conducive to its participation are coupled with a new political scene, with governments that have endorsed a reorientation of communication policies. As Murilo Ramos (2010) points out, in South America a new agenda of communication policies has been put forward, which, framed by national-populist administrations, has paved the way for measures that would tend to a higher democratization of communications.

In this regard, he lists a number of developments that have been in progress: new legislation for print and broadcasting media; measures to reduce the concentration of media systems; the development of public broadcasters; the encouragement of community communication; the implementation of digital terrestrial television (DTT)<sup>1</sup>; the emergence of new agencies as autonomous regulators of communication and information, and the promotion of broadband technology.

<sup>1</sup> Notably, a digital standard was selected: between 2006 and 2010, several countries in the region adopted the ISDB-Tb standard: Brazil (June 2006), Peru (April 2009), Argentina (August 2009), Chile (September 2009), Venezuela (October 2009), Ecuador (March 2010), Paraguay (June 2010), Bolivia (July 2010) and Uruguay (December 2010).

FOR MANY YEARS, CIVIL SOCIETY HAS BEEN TRYING TO APPEAR IN THE MEDIA LANDSCAPE, AND TODAY, IT HAS AWAKENED TO THE REALITY THAT IT CAN HAVE ITS OWN MEDIA. TO MAKE IT HAPPEN, IT IS COMMITTED TO INFLUENCE THE REGULATORY PROCESS.

## THE NEW PLAYERS INTERESTED IN PARTICIPATING IN THE COMMUNICATION ARENA ARE A DRIVING FORCE OF CHANGE IN COMMUNICATION POLICIES, IN VIEW OF THEIR EFFORTS TO IMPACT THE SHAPING OF THE REGULATORY FRAMEWORK.

A fundamental aspect considered by the author is that the region has become “the largest laboratory in decades for public policy ideas, principles and guidelines, all in a democratic environment, with free and multi-party elections, with power alternation, an environment which, as is only natural, has not been free from political radicalizations, ideological polarizations and uneven popular participation” (Ramos, 2010: 27). Conducting a specific review of how this process unfolds in each of the selected countries is the main purpose of this paper.

### The communication policies of progressive governments

The agenda of communication policies outlined by progressive governments should be oriented by principles leading to a higher participation of civil society in the media, and the goal to reach more diverse media. To deliver on those goals, the agenda of communication policies must fundamentally acknowledge the right to communication; the establishment and strengthening of public media; the introduction of some policies to encourage national and local content production; the implementation of restrictions to the concentration of media ownership, and the enforcement of a democratic regulatory framework for communication media. According to Dênis de Moraes, the following items are to be found on the agenda of progressive governments:

#### PROGRESSIVE COMMUNICATION POLICIES

New state-run channels

Laws limiting concentration / Increased public control

Support for alternative or community media

Promotion of independent cultural production

Protection of the national audiovisual industry

Regional integration programs

Source: De Moraes (2010).

There follows an analysis of policies implemented by the governments selected above in the field of communication policies.

In the period under review, only two countries introduced integrated reforms of their regulatory frameworks for broadcasting systems: Argentina and Venezuela.

In December 2004, **Venezuela** enacted the Law on Social Responsibility on Radio and TV (*Ley de Responsabilidad Social en Radio y Televisión*), known as *Ley Resorte*. The law has been followed by marked controversies, and even though it promotes national production and an increased participation by citizens, it leaves in the hands of the regulatory authority certain discretionary power that could be used by the State to exert control over contents. Another flagship initiative of the Venezuelan government has been the regulation and promotion of community media. While there has been a remarkable expansion of media outlets linked with social organizations, it is notable that most of those radio stations are aligned with the government. Another controversial event occurred in May 2007, when the government decided not to extend the license of RCTV, one of the main TV channels in the country. That channel had played an active role in the attempted coup against Chávez. However, other channels that had taken a similar stance were

later able to negotiate with the government and were granted license extensions. Finally, the Hugo Chávez administration exercised a blatant governmental use of State-owned media.

In **Argentina**, in October 2009, a new Law of Audiovisual Communication Services (*Ley de Servicios de Comunicación Audiovisual*) was enacted to regulate radio, open TV and pay-TV services. This law repealed the regulatory framework inherited from the dictatorship, of an authoritarian and centralist nature. The new regulation links communication with a social right, and acknowledges three types of service providers: the State, private businesses, and private nonprofits. For the latter sector, it reserves 33% of the spectrum. The law has introduced an institutional framework enabling parliamentary minorities to take part in the regulatory authority and to sit on the board of public media. It has also increased the anti-concentration limits, and advocates for a policy of national content production. The new law was met with significant resistance by private media, and Grupo Clarín (the main multimedia group in the country) managed to block in court the enforcement of some of its articles. Furthermore, the government has not shown the same democratic will in applying the law as it has in drafting it, and more than three years after its enactment, few structural changes are observed.

In **Uruguay**, in late 2007, a community broadcasting services law was approved, which has set an example worldwide. The Uruguayan law inspired the Argentine regulation, also reserving one-third of the spectrum for community radios. The Uruguayan government, however, has not yet introduced a general regulation of communications. It should be noted that in Uruguay broadcasting licenses were granted for indefinite terms. The regulation of the transition to digital TV is being used to try to set equal terms for all licensees.

There are two countries that have not modified their regulatory frameworks, but have included the notion of the right to communication in their new constitutions. In 2009, a new Constitution was adopted in **Bolivia**. Articles 106 and 107 refer to “social communication,” and include major definitions as to the fundamental rights in the areas of communication and information.

Article 106 calls for the State to guarantee all Bolivian citizens “the right to communication and the right to information” and adds, “the State guarantees to all Bolivians the right to freedom of expression, freedom of opinion and freedom of information; rectification and response; and the right to freely state ideas by any means of communication, without prior censorship.” In this regard, it should be noted that the notion of freedom of communication expands the idea of freedom of expression, as it requires the State to guarantee to the population at large the possibility of having communication media available. In Bolivia this is particularly significant for the rights of indigenous peoples.

In **Ecuador**, the Constitution was also reformed, and articles were introduced to promote the right of communication:

#### Article 16

All persons, individually or collectively, have the right to:

1. Free, intercultural, inclusive, diverse and participatory communication in all spheres of social interaction, by any means or form, in their own language and with their own symbols.
2. Universal access to information and communication technologies.
3. The creation of media and access, under equal conditions, to use of radio spectrum frequencies for the management of public, private and community radio and television stations and to free bands for the use of wireless networks.
4. Access and use of all forms of visual, auditory, sensory and other communication that make it possible to include persons with disabilities.
5. Become part of participation spaces as provided for by the Constitution in the field of communication.

#### Article 17

The State shall foster plurality and diversity in communication and, for this purpose, shall:

1. Guarantee the allocation, by means of transparent methods and in equal conditions, of radio spectrum frequencies for the management of public, private and community radio and television stations, as well as the access to free bands for the use of wireless networks and shall make sure that, when they are used, the general welfare of the community prevails.
2. Facilitate the creation and strengthening of public, private and community media, as well as universal access to information and communication technologies, especially for persons and community groups that do not have this access or have only limited access to them.
3. Not permit the oligopolistic or monopolistic ownership, whether direct or indirect, of the media and use of frequencies.

The Constitution called for the passing of a new communication services law that would establish the regulatory framework for the exercise of the right to communication. The government has submitted several projects in that regard, but has not yet obtained parliamentary support for passing the law. It has been noted that in those bills, discretionary criteria are used in favor of the regulatory authority of the state, which may derive in certain degree of control over contents. Another policy worthy of mention in the Rafael Correa administration was the launch, in 2007, of “EcuadorTV”, the first state-owned channel in the country.

Finally, there are two countries whose governments are of a progressive nature, but whose intervention in the communication sphere has been very moderate, and no significant changes have occurred.

In the case of **Brazil**, there is a strong debate inside the “Workers’ Party”, the leader in the coalition in power, regarding a process of democratization of communications. However, few actions by the executive have supported the proposals from the grassroots. In concrete terms, the only event to be mentioned is the creation, in 2007, of the Brazilian Communications Company (EBC), with the aim to strengthen the public communication system, manage the channels TV Brazil, TV Brazil International (launched in 2012), and the public radio system, comprising eight radio stations. Among its objectives, it

ANOTHER FLAGSHIP INITIATIVE OF THE VENEZUELAN GOVERNMENT HAS BEEN THE REGULATION AND PROMOTION OF COMMUNITY MEDIA. WHILE THERE HAS BEEN A REMARKABLE EXPANSION OF MEDIA OUTLETS LINKED WITH SOCIAL ORGANIZATIONS, IT IS NOTABLE THAT MOST OF THOSE RADIO STATIONS ARE ALIGNED WITH THE GOVERNMENT.

seeks to differentiate itself from government channels as well as from privately managed channels. For the time being, its audience impact has been insignificant. In late 2009, President Lula da Silva called the National Communication Conference (Confecom), which served as a basis for a democratic discussion of the communication policies that it was the government's duty to undertake. It counted on broad social participation, but was boycotted by the sector of the large media groups. President Dilma Rousseff has not taken the conclusions of Confecom as a priority on the government's agenda. Faced with the decision to select the digital TV standard, the Brazilian government to a large extent took into account the interests of the main media group, *Globo*. For Chile, the most significant policies of the administrations led by the Chilean Socialist Party (Lagos and Bachelet) were the reform of public TV and the community media law. While the reform of public TV assigned more political autonomy and economic autarchy to Chile's National TV, the new regulation for community media was not welcomed by its addressees—far from strengthening its position, community radio stations have weakened, and have scarce technological and economic prospects. Two actions of regional dimension have been left aside from this brief overview of the communication policies of progressive governments for lack of space: the launch of the news channel TELESUR, and the deployment of regional TV.

**Conclusion: a challenge for democratic communication remains**

In describing the communication policies of progressive governments, Gustavo Gómez (2011) draws a distinction between a model of peaceful coexistence and a model of hegemonic confrontation. The model of peaceful coexistence, adopted by Brazil, Chile and Uruguay, is characterized by specific tensions with the media outlet owners, with varying degrees of lack of actions affecting the interests of corporations. The model of hegemonic confrontation (Bolivia, Ecuador and Venezuela), on the other hand, evidences concrete actions against established communication media. According to Gómez, Argentina shifted from the former to the latter model in 2009. The author also points out the need to find an intermediate model entailing significant progress in the democratization of communications, without subduing individual liberties (Gómez, 2011: 32). This paper has not engaged in a deep characterization of the communication policies adopted by progressive governments—its focus has been placed on describing their main scopes, which can be summarized in the tables below.

**MAIN LEGAL REFORMS: LAWS AND BILLS**

COUNTRY	REGULATORY REFORMS
Argentina	Audiovisual Communication Services Law ( <i>Ley de Servicios de Comunicación Audiovisual</i> , LSCA). Law No. 26,522 (2009). Decree No. 1,269/2011 on the creation of <i>Radio y Televisión Argentina Sociedad del Estado</i> (2011).
Bolivia	Constitutional Reform (2009). General Telecommunications, Information and Communication Technologies Law ( <i>Ley General de Telecomunicaciones, tecnologías de la Información y Comunicación</i> ). Law No. 164 (2011).
Brazil	Law No. 11,678 introducing the principles of broadcasting services exploited by the executive power and authorizing the establishment of <i>Empresa Brasil de Comunicação</i> (2008).
Chile	Law No. 20,433 creating citizen community broadcasting services (2010). Bill for the Reform of Law No. 19,132, <i>Televisión Nacional de Chile</i> of 1992, in parliamentary session. Bill for Television Regulation through amendment of Law No. 18,838 on CNTV, in parliamentary session.
Ecuador	Decree No. 2,207 modifying the General Regulation of the Radio and TV Broadcasting Law ( <i>Reglamento General a la Ley de Radiodifusión y Televisión</i> ) (2007). Constitutional Reform (2008). Organic Communication Bill, in parliamentary session.
El Salvador	None.
Nicaragua	None.
Paraguay	Decree No. 4,982, commissioning the Ministry of Information and Communication for Social Development (SICOM) to create a public TV system (2010). General Telecommunications Law ( <i>Ley General de Telecomunicaciones</i> ) 642/9 (with Presidential veto, which has been rejected by Congress).
Uruguay	Community Broadcasting Law ( <i>Ley de Radiodifusión Comunitaria</i> ). Law No 18,232/07 (2007). Audiovisual Communication Services Bill, in process.
Venezuela	Telecommunications Law ( <i>Ley de Telecomunicaciones</i> ) (2000). Law on Social Responsibility in Radio and TV ( <i>Ley de Responsabilidad Social en Radio y Televisión</i> ) (2005) " <i>Ley Resorte</i> ". Law on Social Responsibility in Radio, TV and Electronic Media ( <i>Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos</i> , LRSTME) (2010). Communication for Popular Power Bill ( <i>Proyecto de Ley de Comunicación para el Poder Popular</i> ), in parliamentary sessions (2012).

Source: (Badillo, Marengi & Mastrini, 2013).

**TYPES OF POLICIES PER COUNTRY**

COUNTRY	CONSTITUTIONAL REFORM	LAWS PASSED	PROMOTION OF STATE MEDIA	PROMOTION OF COMMUNITY MEDIA
Argentina		X	X	X
Bolivia	X			X
Brazil			X	
Chile			X	
Ecuador	X		X	
Venezuela		X	X	X
Uruguay			X	X

Source: own data.

A comparative analysis of communication policies developed by progressive governments allows us to conclude the following:

If the comparison hinges on which has been the predominant policy, there are no doubts that the countries of South America have attached paramount importance to the regulation and promotion of state-owned media. Another phenomenon worth mentioning is the growing interest perceived in the regulation of community media. An analysis of which countries have been more active in terms of communication policies shows that the cases of Argentina and Venezuela stand out, though in each case different policies were applied.

Therefore, some preliminary conclusions can be drawn, which deserve further analysis in the years ahead. In the first place, it should be noted that progressive governments have established the regulation of communication media on the public policy agenda.

In the second place, it may be claimed that there is no single model of communication policy applied by the progressive governments of South America in a consistent manner. There is significant heterogeneity across political processes, and the analysis of individual cases should take into account the current political context, as well as the historical legacy, in the field of communication regulation.

In the third place, a phenomenon shared by all countries in South America is the response of communication media owners questioning every initiative that implies a redistribution of the communicational resources of the country.

Finally, a last issue to be highlighted is that, regardless of the degree of political activity deployed by each government, the structure of the media system has not evidenced significant changes after this first stage of progressive governments in the region. This remains a formidable challenge for democratic communication in the twenty-first century. ■

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## MEDIA REFORMS IN LATIN AMERICA: BETWEEN DE-COMMODIFICATION AND MARKETISATION OF COMMUNICATION PUBLIC POLICIES

THE LATIN AMERICA ARENA OF MEDIA REFORM IS IN PROCESS, EVERY COURSE IS DIFFERENT AND HAS LOCAL IMPLICATIONS – IN THE MAJORITY OF THE REGION, THE MEDIA SYSTEMS WERE CONTROLLED BY BIG MEDIA GROUPS THAT HAD STRONG AND CLOSE TIES TO THE AUTHORITARIAN REGIMES AND DICTATORSHIPS

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\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

The Latin America arena of media policies is in a state of changes and struggles. The process is closely related, on one hand, with the different democratisation processes at each national level, and on the other, with the political banner of the diverse governments through the region. In order to understand the actual scenario, we must recall two historical facts. First, Latina American democracies are young and started to develop their political systems in democratic terms in the late 80s (Smith, 2005). Second, in the majority of the region, the media systems were controlled by big media groups that had strong and close ties to the authoritarian regimes and dictatorships (Fox, 1989; Mastrini & Becerra, 2005). Thus, the majority of the Communication Acts of the region were set in this context. Due to this, there were no experiences of solid practices in public broadcasting systems. Those conditions shaped the Latin America media systems, where the entertainment and the lack of critical voices established the general relation between the media and their audiences.

Another starting point that has to be clear is that even though Latina America has been growing during the last decade in macroeconomic levels, the region has enormous socioeconomic inequities.

It is important to say that this article aims to establish an overview of the general coordinates of the media policies in Latina America to give sense of the changes and struggles that are happening in the region, regardless of the design, discussion, implementation, and progress of the dissimilar experiences in Latina America.

### Mixed conditions of marketisation and de-commodification

In terms of simplifying the panorama in Latin America, I propose the next coordinates of observation where the communication policies are set (Gómez, 2012). On one side there are those that are the general tendency in the world, which give the central role to market logic with a flexible regulation in favour of the economic agents and a referee status played by the public power. Those policies have been strongly implemented since the late 80s (Schiller, 1990) and are part of a larger process called *marketisation* (Murdock & Wasko, 2007).

On the opposite side are public policies which beg to reform the national communication systems with the following terms: a) include the right of communication in their Constitutions; b) give room and legal growth to the third sector of the media (community and indigenous media, non profit associations, etc.) reserving spectrum and set up specific licenses; c) begin processes of de-concentration to bias the disinvestment. These tendencies could be characterised as *de-commodification* of communication policies as they look to change the hegemony of the market logic to organise the media system, giving room to social and community actors. Of course, the different processes of media reform in Latin America presents mixed conditions of two poles or deals with the two main positions. These coordinates are to situate the general tendencies.

In this sense, it is important to remark that Latin America is exporting these experiences of *de-commodification* of public communication policies to the global scenario and enriching the debate of communication policies.

In both tendencies, at the centre of the debate lies questions such as the following: How could the freedom of expression be guaranteed? And whom is restricting the freedom of expression? The State? Ruling and constraint of the market may restricting freedom of speech, or private media and telecommunications? Because the concentration of the market, spectrum, networks, signals, and audiences.

At the same time, to these coordinates of the communication policies, it is essential to add and relate in interactional terms a very important event that happens in Latin America at the beginning of the century: the arrival to political power, by elections, governments with diverse leftwing manifestos, including Venezuela (1999), Brazil (2002), Argentina (2003), Uruguay (2004), Bolivia

(2006), and Ecuador (2007). On the other side of the political spectrum, we can clearly identify governments with rightwing agendas and strong economic neoliberal views. On this side, México, Chile, and Colombia are the most representative countries and have developed these public policies since the early 90s.

### Major players in the region

Regardless of the role, size, and power of the media groups, it is possible to identify major players in the region: Televisa (México), Globo (Brazil), Clarín (Argentina), Venevisión (Venezuela), Caracol (Colombia), Chilevisión (Chile), TV Azteca (México), and RCN (Radio Cadena Nacional, Colombia).

The first three media groups are considered in the global top 50 audiovisual industries in the world for their total income (European Audiovisual Observatory, 2011) and have important size in terms of horizontal, vertical, and cross ownership along the media industries and telecommunications. In fact, in the case of *Televisa* and *TV Azteca*, we could call them Convergent Moguls.

The main issue with these media moguls is not just their dominance in economic terms, but their control over information and symbolic content, mainly in the political arena. This situation has given some of these economic actors an important social power relation, as factual power, in front and challenges the public power and political parties.

At the same time, two other key players appeared, that have been growing since the liberalisation and privatisation of the telecommunications in the region occurred in the 90s, which have regional size and operate at least in the major markets (Argentina, Brazil, Chile, Colombia, Mexico). These new actors were Telmex (Mexico) and Telefónica (Spain).

The general explanation for this is because, thanks to the processes of the convergence, these groups grew and expanded their interests and business to the telecom and media industries. The main difference with the others is that they are more related as carries of communication services and audiovisual content –with a large financial muscle– rather than symbolic and political powers, like the other traditional media.

### Long tradition of community radios

In another stage, it is important to point out that the region has a long tradition of community radios which have been fighting, before the arrival of democracy in the region, to have access to licenses and the right to operate radios, basically to develop a local or proximal communication and to broadcast in the different original languages along the sub-continent. This is mainly because those original towns, social actors, or communities were not considered as markets by the commercial broadcaster. Thus, the information and content that the communities need in their languages and cultural codes are not represented in the mainstream or local business media.

This third sector opens the door to include in this panorama the participation of the civil society in the processes of media reform. In general, a distinction of the different stages of the region's transition to democracy could be established after the experiences in Argentina, Uruguay, México, and Brazil: civil society begins to have an important role in pushing the reforms that support the democratisation of the media and start to break and move the heavy structures built by the mainstream media moguls and the authoritarian regimens (Becerra, Marino, & Mastrini, 2012; Moreira, 2011; Rodríguez, 2011).

### Civil society in Latin America has more possibilities

In other words, after many years of being in the shadows, the civil society in Latin America has more space to discuss, participate, and struggle in the debate and design of the public communication policies. Of course, the possibilities of participation depend on the political will of each government and the institutional democratic

mechanism of each national-state, but in general all the major countries of the region, at different velocities, are changing in that direction. Nevertheless, the role of the civil society must be understood as a *salmon run*.

The World Association of Community Radio Broadcasters (AMARC), a global NGO's, has developed a significant position to push for the recognition of the third sector of the media and underline the importance of this sector in terms of exercise of communications rights, the plurality of information, diversity in content, freedom of expression, and anti-monopoly practices.

At the regional political institutional level, the Organization of Americas States (OAS) in the Inter-American Commission of Human Rights (IACHR) by the Special Rapporteurship for Freedom of Expression has been an important player in setting guidelines in this regard. In its text, "Freedom of expression standards for free and inclusive broadcasting", it proposes in the Second Point the recognition for different actors:

68. *The democratic scope of freedom of expression recognized in the American Convention includes not only the right of all individuals to freely express themselves, but also the right of the public to receive the maximum variety of information and ideas possible. This means, among other things, that the regulation of broadcasting should include setting aside space on the spectrum for a diverse system of media outlets that can together represent a society's diversity and plurality of ideas, opinions, and cultures.*

69. *In this sense, the different kinds of media (public and independent of the executive, private for-profit, and community or private non-profit) must be recognized and have equitable access to all available transmission technology, including the new digital dividend... (IACHR, 2009, p. 20)*

This last statement of the IACHR provides the opportunity to include another reality, which opens the opportunity to re-organise the media systems of the region: digitisation. As we know, this technological fact allows for the possibility to open space in the radio electric spectrum to new players and outlets, and avoid the old argument of the scarcity of the analogue spectrum. So, in that clue of technological change around the globe, the convergence processes set the necessity to re-think: how organised are the media systems?

This is particularly important to Latin America because their television markets are too concentrated (Becerra & Mastrini, 2007; Huerta-Wong & Gómez, 2013; Trejo, 2010). Additionally, there is evidence and research that establish that concentrated media structures do not help the democratic advance and political culture of the contemporary societies (Curran, 2002; Hallin & Mancinni, 2004; Noam, 2009).

In that regard, the Declaration of Principles on the Freedom of Expression, in the Special Rapporteurship for Freedom of Expression by the IACHR, states in its twelfth point:

12. *Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals<sup>1</sup>.*

### A portion of the spectrum reserved for non-profit civil society organisations

In both issues, concentration and access to different actors, some new legislation of Latin American countries have included important reforms. For example, in its 2009 Audiovisual Communication Services Act (Ley de Servicios de Comunicación Audiovisual), Argentina reserved a portion of the spectrum for non-profit civil

<sup>1</sup> Organization of American States (OAS). (2011). Declaration of principles on freedom of expression. Retrieved from <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1> (Accessed: March 7, 2013).

AFTER MANY YEARS OF BEING IN THE SHADOWS, THE CIVIL SOCIETY IN LATIN AMERICA HAS MORE SPACE TO DISCUSS, PARTICIPATE, AND STRUGGLE IN THE DEBATE AND DESIGN OF THE PUBLIC COMMUNICATION POLICIES. THE POSSIBILITIES OF PARTICIPATION DEPEND ON THE INSTITUTIONAL DEMOCRATIC MECHANISM OF EACH NATIONAL-STATE, BUT IN GENERAL ALL THE MAJOR COUNTRIES OF THE REGION ARE CHANGING IN THAT DIRECTION.

society organisations, established limits to concentration and broadcasting cross-ownership, and prohibited telephone companies from holding media licenses (Becerra et al., 2012).

In **Bolivia**, for example, the new Act in Telecommunications (Ley General de Telecomunicaciones, Tecnologías de Información y Comunicación) reserves 17 percent of the spectrum to community or social actors and another 17 percent to original towns and Afro Bolivians.

**Uruguay**, the beginner in this issue with the legal instrument “Servicio Radiodifusión Comunitaria” (Act. 18.232), secured at least one-third to the radio electric spectrum of the third sector in all the possible spectrum of broadcasting and telecommunications (Gómez, 2010). In the case of **Brazil** and **Colombia**, until March 2013 they did not have any provision in this respect, but they had an important development in terms of the impulse of the third sector. For example, last year Brazil started to offer many community radio licenses under the National Plan of Community Radio, which aims to have at the end of 2013, at least one community radio in their 1,425 municipalities. With this, Brazil could add around 4,400 community radios across its geography.

**Colombia** has around 650 community radio and 40 community television channels. Community radio licenses are awarded by public announcements and it is important to remark that Colombia is a pioneer in the region in activism and regulation in community radio. They have regulated since 1997. However, there are some controversial issues: in community radio broadcasting “there is only one community broadcaster allowed per town, while several commercial broadcasters are allowed; indigenous people may be considered for bids for public interest radio, but they cannot be given a community radio license; and community stations cannot link transmissions to create networks, while commercial stations can” (Zuluaga & Martínez, 2012:86). Another aspect that we have to consider in the case of Colombia is that all the reforms regarding the media and telecoms have been established under rightwing administrations. Thus, the democratic mechanism of counterbalance between civil society and the government are working in this regard.

#### The community radio is persecuted and criminalized in Mexico and Chile

On the other side of the coin, the community radio in Latin America is represented by **Mexico** and **Chile**, in terms that have zero or minimal provision of equal access to licenses and spectrum. In fact, in Latin America, AMARC considered both countries as the most problematic in terms of persecution and criminalisation of the community media (AMARC-ALC, 2011).

In the case of Mexico, although around 200 community radios are operated across the country, the majority are run without licenses because the community radio does not have a legal figure in the Federal Radio and Television Act (1960) (Gómez, Sosa, Bravo, & Tellez, 2011). Thus, the community radio is persecuted and criminalized every year; this scenario raises many questions and it is considered as a trend to the freedom of expression in Mexico (AMARC-Mx, 2012). The few indigenous people’s radios and community radios that operate with licenses have a permission license that is given to universities and government institutions –this permission does not allow them to commercialise their programmes. Nevertheless, during the writing of this article – mid March – the new Mexican government, with the support of the three major parties, set a decree which established the reform of telecommunications. In this document, a legal figure was finally mandated to allow the social and community media to have licenses<sup>2</sup>.

In the case of concentration, the only country that already has important measures is **Argentina**. The Act of 2009 includes the following: “For terrestrial TV and radio broadcasting services, there is a maximum limit of 10 licenses... A maximum of 24 licenses has been established for cable TV services. Cable TV licensees may not

2 This mandate is the waybill for the New Act of Communications in Mexico. The changes to the constitution and federal telecommunication laws must now be approved by congress and half of Mexico’s 32 state legislatures. The reforms would raise or eliminate limits on foreign investment: It would allow foreign firms now banned from radio and broadcast TV to have as much as a 49 percent stake, and would give blanket permission for total foreign ownership of all telecommunications and satellite TV services; create two new national television channels; give legal figure to community and social actors to operate convergent licences and form a new independent regulatory commission along the lines of the U.S. Federal Communications Commission, with the power to unilaterally punish non-competitive practices, including withdrawing corporations’ licenses. A second independent commission would be able to order firms to sell off assets in order to reduce their market dominance. Available at <http://www.presidencia.gob.mx/wp-content/uploads/2013/03/Iniciativa-Reforma-Constitucional-Telecom.pdf> (accessed 12 March, 2013).

hold terrestrial TV licenses in the same coverage area” and “it determines that no individual operator may provide services for more than 35 percent of the population or of the market for a service covered” (Becerra et al., 2012, p. 69). The second half of 2013 will show us how these measures are applied and if the disinvestment of the major player “El Clarín” will happen. This is a taste of fire for the new Argentine act and its implementation. **Venezuela** and **Ecuador** are in a similar political polarised process and the media reflects this situation clearly. The big issues in Venezuela are as follows: a) the government uses the “public service” as State media; b) much community media are unconditional and are sometimes cheerleaders of the Chávez regime; and c) the private media and the opposition complains that the freedom of expression is threatened. Nevertheless, it is central to say that the 2002 community media regulation was very important to open the Venezuelan media system to the third sector (García, 2008). The problem of this has been its implementation, and the polarised political context.

#### Conclusion: democratisation of the media in Latina America will arrive if ...

The Latin America arena of media reform is in process; this paper gives a brief overview of the general panorama of the struggles and changes. It is important to remark that every course is different and has local implications, but generally speaking I could sustain that democratisation of the media in Latina America will arrive, if change in terms to a) reserve spectrum and licenses to social and community actors; b) build public broadcasting systems with autonomy and financial support; c) clear rules anti-monopolies, oligopolies and cross ownership; d) strong and autonomous regulatory institutions; e) active participation of civil society in the policymaking; and finally, but not least, f) avoid the influence and control of the governments and presidents in media systems.

Those conditions could guarantee the freedom of expressions, impulse cultural diversity and drive democratic culture. At different speeds and levels, Latin America is reforming and reshaping their Media Systems. ■

THE LATIN AMERICA ARENA OF MEDIA POLICIES IS IN A STATE OF CHANGES AND STRUGGLES. THE PROCESS IS CLOSELY RELATED, ON ONE HAND, WITH THE DIFFERENT DEMOCRATISATION PROCESSES AT EACH NATIONAL LEVEL, AND ON THE OTHER, WITH THE POLITICAL BANNER OF THE DIVERSE GOVERNMENTS THROUGH THE REGION.

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## MEDIA OWNERSHIP REFORM IN THE UK: THE PATH AHEAD\* IN THE ABSENCE OF CLEAR OWNERSHIP THRESHOLDS, ESTABLISHED IN LAW, THE DOOR WILL ALWAYS BE OPEN TO BOTH COMMERCIAL CAPTURE AND POLITICIZATION OF THE MEDIA. Justin Schlosberg, a media activist, researcher and lecturer based at Birkbeck, University of London

\*The article is based on the contribution of the author at the trans-regional conference "Comparing Media Reforms" organised by the Peace Institute in Ljubljana on 29 and 30 November 2012.

There is a paradox underlying contemporary media ownership debates in the UK and elsewhere. On the one hand, it's no secret that special rules governing ownership of the media have faced progressive de-regulation in most western democracies over recent decades. On the other hand – and here is the crux of the paradox – there remains both in the UK and elsewhere a widespread political consensus that media ownership should be regulated, and that existing rules have not been up to the task. Ofcom – the UK's converged media regulator – has recommended to the government that it undertake regular audits of media plurality and the European Commission is currently considering similar recommendations; politicians of all colours have openly called for new caps on media ownership – including senior politicians and one former Prime Minister testifying before the Leveson hearings; and polls suggest substantial public support for new limits on media ownership in the UK. Why then, was the ownership issue so comprehensively side-lined by Leveson and excluded entirely by those currently shaping the future of UK media regulation? If we want evidence of the real enduring agenda setting power of the press, we perhaps need look no further than this question.

What seems certain is that regular reviews of media plurality will not be enough to offset enduring press power both in terms of political influence and audience reach. In regards to the former, the Leveson hearings laid bare a political class brought to heel by the Murdoch empire, complicit in covering up crimes of which, in some cases, they themselves were victims. But whether politicians are in thrall of their media masters or the other way round, the intimate relations that have been exposed between media and political elites fits a Europe-wide pattern that has been intensified since the global economic collapse. It reflects, in short, the 'Berlusconization' of British political culture: an ever closer alliance between media and political centres of power.

### Why is nothing being done about media ownership?

So back to the pivotal question: why is nothing being done about this overriding lesson from the phone hacking scandal which has gripped media policymakers and campaigners alike? One common answer is that any system of ownership caps or thresholds applied to the press is an outdated solution; that it doesn't take account of the structural decline facing newspapers and the emergence of new gatekeepers online. But one of the great oddities of the digital age is that whilst newspapers are facing an unprecedented assault on revenues, the likes of the *Daily Mail* and the *Guardian* are reaching record numbers of readers courtesy of their online editions. Far from detracting from their influence, online giants such as Google, MSN, Facebook, Twitter and Yahoo are in reality amplifying the voice of the national press through aggregation and personalisation; not to mention the enduring agenda setting influence of the press over television – perhaps best exemplified by coverage of the Leveson report itself.

Others argue – including voices from within the media reform movement – that ownership concerns are valid but secondary to the problem of regulating journalist ethics – and in particular, abuse of privacy laws. According to the dominant narrative of 'hackgate', the

principle and certainly 'worthiest' victims of hacking are the innocent and ordinary civilians: the Dowlers, McCanns etc. But the somewhat awkward reality is that the vast majority of hacking victims are wealthy, famous and powerful people – a fact that sections of the press have sought to make a meal of in their attempts to undermine the media reform campaign. In one sense they are right. Of course the privacy of individuals regardless of their status should be respected and of course those who have violated their privacy should be held to account. But this is not the biggest public interest concern to emerge out of hackgate.

### The media owners bare ultimate responsibility for abuses of press power

The fact that redress is being targeted at rank and file journalists – rather than their bosses – is nothing new when it comes to scandals which rock the foundations of state-corporate power. When the prisoner abuse scandal at Abu Ghraib unearthed evidence of a top down policy of torture within the US military and defence establishment, this was largely ignored by the mainstream media which focused overwhelmingly on the isolated actions of a handful of soldiers.<sup>1</sup> We should not allow the same mistake to happen here, on an issue so foundational to the health of our democracy and integrity of our public institutions. We should not allow the lobbying leverage of powerful individuals to detract from the reality that it is the owners of the media who bare ultimate responsibility for abuses of press power. And it is ownership concentration which lies at the root of the endemic institutional corruption that hackgate exposed.

The Leveson Report did nevertheless call for the development of a new system for both measuring and tackling media concentration of ownership (pp. 1461-1476). It is a tacit acknowledgement that the existing regime has been inadequate in curbing ongoing concentration and his recommendations, while avoiding explicit proposals for new media ownership rules, nevertheless highlight three key principles. The remainder of this article focuses on these three principles in light of policy recommendations made by the UK's Media Reform Coalition. Ensemble, these recommendations offer a viable long-term programme for media ownership reform that takes into account both the gatekeeping power of emergent digital monopolies, as well as the enduring influence of legacy media brands.

### A new method is needed for measuring plurality

New method for measuring plurality should focus on the provision of news and current affairs and including online publications.

One of the historical stumbling blocks in media ownership regulation has been the inherent difficulties in measuring media plurality. What is needed is an approach which takes account of both the enduring agenda setting power of dominant news outlets within traditional media markets, as well as the growing significance of cross-media concentration in an increasingly converged media environment. With regard to the former, the Media Reform Coalition has established a clear framework for measuring and identifying excessive market power

in four designated sectors - national newspapers, television, radio and online news.

Each of these sectors requires a tailored metric appropriate to the nature of the medium and market. Whilst this is fairly clear in respect of national newspapers, television and radio (based on the regular industry surveys of ABC, BARB and RAJAR respectively) it is less clear in respect of the internet where no established industry metric currently exists and the market is global. However, research in 2011 by UKOM/Nielson was conducted specifically on the reach of UK news websites within the UK. The data was based on a survey of 50,000 people accessing the internet from office and work computers across the country and provided a useful measure of audience concentration within the national online news market. Such a survey could be commissioned by Ofcom on a regular basis in order to provide comparable data as follows:

- National newspaper circulation
- Multichannel television audience ratings
- Radio listening shares\*
- Audience shares of UK-based news websites

(\*Where radio news services are outsourced, market share is attributed to news provider rather than station). When it comes to measuring cross-media power we clearly need a single, one size fits all approach. To this end, we support proposals put forward by Enders Analysis to base the measure on a share of total cross-media revenues. This is the simplest and most effective indicator of overall dominance.

### Triggers for intervention should be "considerably lower"

The triggers for interventions should be "considerably lower" than those appropriate to ordinary competition concerns and should address organic growth within media markets as well as specific mergers and acquisitions. The approach adopted by the Media Reform Coalition is based on the principle that concerns over media concentration ought to be about the 'share of voice' commanded by a single company or group of companies, rather than just significant market power defined in purely economic terms.

But in order to identify what Leveson refers to as "levels of influence that would give rise to concerns in relation to plurality" (p. 1470), it is imperative to establish clear ownership thresholds. This is the only means by which plurality can be maintained in a consistent, fair and effective way. It is particularly important if remedies are to address concentration as a result of organic growth as well as merger activity. To shy away from establishing ownership thresholds is to place unnecessary powers of discretion in the hands of regulators and ministers. Lord Justice Leveson has recommended that discretionary power remain with the Secretary of State in respect of public interest decisions over media mergers (p. 1476). But this is in conflict with much of the evidence and testimony submitted to his Inquiry. Evidence of a tacit 'deal' between political leaders and media industry lobbyists may never be substantive but we did learn a great deal about the pervasive nature and influence of industry lobbying. This was particularly evident in the run up to key decisions by the Secretary of State such as Jeremy Hunt's pending approval of NewsCorp's bid to buy out BskyB, prior to the unfolding of the phone

<sup>1</sup> Bennett, W. L., Lawrence, R. et al. (2006). 'None Dare Call it Torture: Indexing and the limits of press independence in the Abu Ghraib scandal.' *Journal of Communication* 56(3): 18.

COMMERCIAL PRESS GROUPS IN THE UK ENJOY A SIGNIFICANT PUBLIC SUBSIDY THROUGH VAT EXEMPTION SO, IN ADDITION TO THE ABOVE, IT IS ENTIRELY APPROPRIATE THAT THEY MAKE A FINANCIAL COMMITMENT TO SUPPORT FLEDGLING SECTORS OF PUBLIC INTEREST JOURNALISM.

hacking scandal. In this respect, it is worth noting the testimony submitted by Tony Blair:

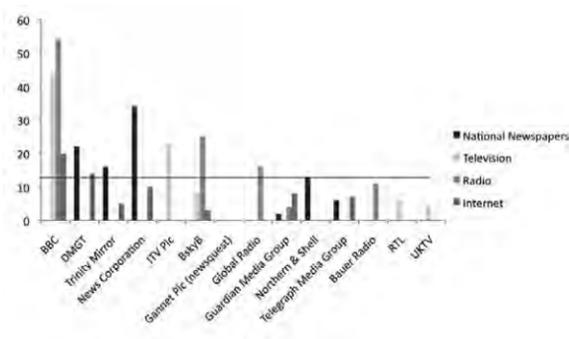
The media are obviously going to be a powerful part of society and in particular a power influence on political debate [...] This challenge is further complicated in respect of any individual political leader, by the fact that our views about particular media organisations are bound to be affected by how we are treated by them.

In the absence of clear ownership thresholds, established in law, the door will always be open to both commercial capture (politicians may be induced to take certain decisions under pressure from media groups) and/or politicization (certain media groups may be unduly favoured or disadvantaged by political decisions).

Of course, any identified threshold will be to some extent arbitrary. But the Media Reform Coalition formally proposed to the Leveson Inquiry a 15 per cent benchmark that would trigger regulatory intervention (as described below) with a 20 per cent overall limit in key sub-markets. This is argued on the basis that no less than five owners—within or across media markets—is the minimum basis for media plurality. We are, therefore, surprised to read in the Leveson Report that “there have been no suggestions as to what level of plurality is sufficient” (p. 1469).

Based on recent market data available from Ofcom among other sources, the chart below illustrates the existing shares of dominant news providers across the aforementioned sectors.

**FIGURE 1. AUDIENCE SHARE OF DOMINANT NEWS PROVIDERS**



Excluding public service broadcasters, which are already subject to public duties, the following providers would be subject to intervention based on a 15 percent threshold:

NATIONAL NEWSPAPERS	TELEVISION	RADIO	INTERNET
News Corporation (The Sun, Sun on Sunday, The Times, Sunday Times)	/	Global Radio	/
Trinity Mirror (The People, The Sunday Mirror, The Sunday Mail)	/	BskyB (Sky News Radio)	/
DMGT (Daily Mail, Mail on Sunday)			

A crucial area excluded from this measurement is local news. Although the overall proposals of the Media Reform Coalition are designed to revitalise this sector via a Public Media Trust, Ofcom should have powers to intervene on public interest issues at the local level. Given the added complexities in measuring local news concentration, a problem that is acknowledged by Lord Justice Leveson (p. 1469), intervention should be triggered by public concern via the Sustainable Communities Act, which is uniquely fit for this purpose.

**A new system should accommodate a range of remedies and forms of intervention**

The final question to address is in what form remedies or interventions should take. The Media Reform Coalition stipulates that media groups with a dominant audience share within markets of between 15 and 20 per cent, based on the aforementioned indicators, should be subject to a new set of **public interest obligations** to ensure editorial and journalist autonomy, as well as a commitment to supporting those sectors of journalism (investigative and local) currently being squeezed out of the market. These obligations are akin to behavioural remedies which have strong and growing precedent under current anti-trust regimes adopted in both the EU and US.

It should be emphasised that what is being proposed falls well short of imposing editorial standards along the lines of public service regulation. But no single entity should be allowed to dominate public conversation without appropriate obligations that promote both a degree of *internal* plurality, and a commitment to providing public interest news. It is these underlying plurality issues which the proposals for public interest obligations are chiefly concerned with.

An example of a public interest obligation in this context would be an undertaking to protect editorial autonomy. One of the chief concerns emerging from the hacking scandal is the extent to which both the autonomy and integrity of journalists can be compromised by a chain of command and institutional culture fostered by senior management. One way of addressing this issue is to introduce institutional arrangements that limit the absolute prerogative power of proprietors and senior management.

**Editorial panel should be set up to oversee key editorial decisions**

As a minimum requirement, this should ensure that qualifying news organisations set up an editorial panel, including a minimum of five staff journalists, which is empowered to oversee key decisions affecting editorial policy as follows:

The appointment and dismissal of the editor-in-chief, or equivalent, by management or proprietors must be approved by the editorial panel on the basis of majority vote.

The panel must be consulted on decisions taken by management or proprietors which affect the definition or direction of editorial policy and content, including editorial codes and guidelines.

The panel must have the ability to pass a motion of no confidence in an editor-in-chief, or equivalent, by majority vote.

The panel must have the capacity both to hear and air grievances of staff journalists in relation to particular assignments, and to consult the National Union of Journalists or the new independent regulator.

**Commercial press to make a financial commitment to support fledgling sectors of public interest journalism**

Commercial press groups in the UK enjoy a significant public subsidy through VAT exemption so, in addition to the above, it is entirely appropriate that they make a financial commitment to support fledgling sectors of public interest journalism. This could be done in a variety of ways, including a levy on profits to support non-profit news initiatives (such as community radio and foundation-supported models of investigative journalism), or by imposing a commitment on qualifying entities to meet minimal levels of investment in original newsgathering.

In tandem with these behavioural remedies, we have also proposed a structural remedy to be triggered by a system of cross-media and sub-market thresholds. But each type of threshold warrants a distinct form of

structural intervention. The objective of forced divestiture is usually to create a new viable competitor, or to strengthen the position of existing competitors through the break-up of a company’s assets. In the case of the media, this might be feasible and sensible when a company has acquired a number of assets across sectors such that it commands a dominant share of cross-media market revenues. To this end, the Media Reform Coalition endorses proposals put forward by Enders Analysis which would prohibit any single company from commanding more than 15 percent of core media industry revenues.

**Structural remedy for concentrated power – equity carve out**

But this will not solve the problem of concentrated power *within* particular media markets and monopoly control policies based on divestment can raise difficulties when applied to these cases. The Media Reform coalition is therefore proposing a different structural remedy to be applied in these cases based on equity carve out. Where a single outlet or group of outlets breach a given threshold of 20 per cent, this would entail the creation of a new company out of the subsidiary and the selling of shares accordingly. Whilst this might not lead to the creation of a new viable competitor, it could ensure that no single entity or individual has a controlling interest in the title or group of titles.

The particular advantage of this approach is that it is aimed specifically at limiting the influence of powerful interests. That is, after all, the primary concern attached to media plurality and is precisely the kind of intervention that is most needed – especially in the UK where individual proprietors are still dominant in the newspaper industry (in contrast to the US and much of western Europe). Furthermore, a remedy based on equity carve out will not deter growth or interfere with consumer sovereignty within media markets; and it can be implemented relatively easily based on Ofcom’s existing criteria for measuring controlling interests. It will also go some way to meeting Ofcom’s stated objections to market caps – that they are a disincentive to innovation and are unduly inflexible – that were noted by Lord Justice Leveson in his Report (p. 1468).

**No justification for abandoning media ownership restrictions**

Recent examples of shareholder activism in many industries, including shareholder pressure at News International for Rupert Murdoch to stand down, demonstrate that there is a growing appetite to exert influence on large companies on the basis of shareholdings. This trend indicates that equity carve out could genuinely increase internal plurality, as civil society groups and socially-oriented investors (such as pension funds) may well take up the opportunity to buy released shares in order to hold media companies to account.

In conclusion, the proposals put forward by the Media Reform Coalition are designed to meet plurality goals shared by a consensus framework in ways that are both achievable and pertinent in the current political climate. They offer an overall approach that addresses both the symptoms and root causes of the problems addressed by the Leveson Inquiry and the unfolding scandal surrounding widespread criminal practice at *News of the World* and elsewhere. Reforming media ownership is a notoriously complex and difficult task but this should not be used as a justification for abandoning policy altogether, or for instituting simplified regimes that offer little more than cosmetic or short-term fixes as recent historical precedent suggests. ■

## LES MÉDIAS AU MIROIR DU « PRINTEMPS TUNISIEN » : DES RÉFORMES DIFFICILES À INITIER ET POUR MANIFESTER SA DÉSAPPROBATION À L'ÉGARD DES PRATIQUES GOUVERNEMENTALES ET DU REFUS DE TOUTE CONCERTATION, L'INRIC A PRÉFÉRÉ SE SABORDER EN JUILLET 2012. Larbi Chouikha, Professeur de l'enseignement supérieur, Membre de l'Instance Nationale Indépendante de l'Information et de la Communication (INRIC)

Au lendemain du 14 janvier 2011, jour du déclenchement du « printemps tunisien », le champ médiatique subit les soubresauts de ce paradoxe : D'un côté, la suppression du ministère de la communication - véritable office de censure des médias du temps de l'ex président Ben Ali -, l'abrogation du Code de la presse de 1975 jugé répressif par les journalistes et la levée des balises et des obstacles érigés contre la libre expression ont permis l'avènement des nouveaux acteurs et la libre diffusion des expressions qui étaient muselées ou interdites d'antenne. Mais dans le même temps, cette situation « d'ouverture » se singularise cette fois-ci par l'absence d'une autorité centrale, légitime, à même d'organiser et de superviser le monde des médias et des journalistes. Et depuis l'avènement d'un gouvernement à dominante islamiste *En Nahdha* à la faveur des élections de la Constituante du 23 octobre 2011, l'absence d'une réelle volonté politique à engager des réformes audacieuses et à activer les textes juridiques élaborés et promulgués peu de temps auparavant, complexifie encore plus cette situation. La conséquence qui découle de ce paradoxe, c'est que les journalistes qui ont vécu plus d'un demi-siècle sous le régime de la Chappe de plomb se sont trouvés, subitement, livrés à eux mêmes, dans l'obligation d'agir dans un espace de liberté totale dans lequel ils n'étaient préparés ni professionnellement, ni culturellement. Et de plus, ils sont loin de constituer un corps homogène, soudé et cimenté par les principes qui régissent la profession. En conséquence, le monde des médias et des journalistes n'est régi par aucun cadre juridique et institutionnel. Et c'est précisément pour combler ce vide que fut créée en mars 2011 une instance publique, consultative, pour initier des réformes des médias.

### L'Instance nationale de réforme de l'information et de la communication (INRIC)

Cette structure a été créée à l'initiative du premier gouvernement provisoire - post 14 janvier -, lors de sa réunion du 25 février 2011. En vertu du texte qui porte création de l'INRIC<sup>1</sup>, celle-ci a un rôle consultatif et elle est chargée d'évaluer la situation du secteur de l'information et de la communication, dans tous aspects, et de présenter des propositions de réforme qui soient en phase avec les standards internationaux en matière de liberté d'expression et d'information. L'INRIC a été également chargée, notamment, de :

Présenter des recommandations pour améliorer le rendement des entreprises d'information et de communication, en vue de les hisser au niveau des objectifs de la révolution et de garantir le droit du peuple tunisien à une information objective, libre et pluraliste.

Proposer les législations qui s'imposent pour atteindre ces objectifs, à travers notamment la création d'instances de régulation dans les secteurs de la presse écrite, audiovisuelle et électronique.

Soumettre aux autorités compétentes et à l'opinion publique les résultats de cette évaluation et les propositions avancées.

Émettre un avis au sujet des demandes de licences pour la création de nouvelles chaînes de radio et de télévision, en attendant l'adoption d'une législation spéciale.

Présidée par un opposant de l'ex président Ben Ali, Kamel Labidi, figure respectée de la lutte pour la liberté de la presse et de la dignité des journalistes, l'équipe de l'INRIC est composée de huit membres comprenant des journalistes indépendants, d'une magistrate, d'un professeur universitaire, d'une bloggeuse. Les membres ont été choisis pour leur compétence, leur indépendance et leur non compromission avec le régime de l'ex président Ben Ali<sup>2</sup>. L'INRIC a contribué à la réforme du cadre juridique de l'information, à travers la conception et l'élaboration de trois décrets-lois adoptés durant la période transitoire<sup>3</sup>.

### Le cadre juridique et institutionnel envisagé

#### La législation sur la presse, l'impression et l'édition

Le décret-loi relatif au nouveau code de la presse, de l'imprimerie et de l'édition (D-L n°115 du 02 novembre 2011) vise à remplacer le code de la presse de 1975 jugé par les journalistes beaucoup trop répressif. Il est construit autour de quatre chapitres qui portent respectivement sur le régime des entreprises de presse, le statut du journaliste professionnel, le droit de rectification et de réponse et la responsabilité pénale. Le texte consacre la liberté du journaliste d'accéder aux informations et de les diffuser (article 9 et 10), tout comme la protection de ses sources (article 11). Il interdit notamment toute ingérence du ministère de l'intérieur dans les domaines de la presse et de l'édition qui relèvent désormais du pouvoir judiciaire. Sur les douze peines privatives de liberté que contenait l'ancien code de la presse, seules trois peines ont été maintenues<sup>4</sup>. S'alignant sur les codes des pays démocratiques, les peines privatives de liberté en matière de diffamation et d'insultes sont supprimées et remplacées par des peines financières. Le nouveau code de la presse supprime également le régime d'autorisation pour les domaines de l'édition des livres, des ouvrages et des périodiques et le remplace par la déclaration simple. Il comprend également des dispositions fixant les conditions d'accès au statut de journaliste professionnel et consacrant le droit des journalistes à l'accès aux informations et à la liberté de diffusion, tout en assurant la protection du secret de leurs sources.

#### La Haute Autorité Indépendante de la Communication audiovisuelle (HAICA)

Le Décret-loi n°116 du 2 novembre 2011, relatif à la liberté de communication audiovisuelle et portant création d'une instance supérieure indépendante de la communication audiovisuelle a comblé un vide juridique puisque la Tunisie ne s'était jamais dotée d'une réglementation des médias audiovisuels sous le régime Ben Ali. Ce décret-loi consacre la liberté de la communication audiovisuelle et stipule la création d'une Haute Autorité indépendante de la communication audiovisuelle

(HAICA)<sup>5</sup>, qui dote pour la première fois la Tunisie, d'un instrument de régulation des médias audiovisuels. Inspiré des législations française et belge en la matière, le texte attribue à la Haute Autorité une personnalité civile et une autonomie financière et la charge « de garantir la liberté et la pluralisme de la communication audiovisuelle » (Art 3 et Art 6). Celle-ci sera composée (art. 7) de neuf membres, nommés pour un mandat de six ans non renouvelable. La HAICA dispose de pouvoirs décisionnels, de contrôle et de sanction (art. 16, 17, 18). Elle est notamment chargée de :

- faire respecter les règles applicables au secteur de la communication audiovisuelle par l'ensemble des acteurs, y compris les pouvoirs publics ;
- statuer sur les demandes d'octroi des licences relatives à la création et l'exploitation des médias audiovisuels, fixer leurs cahiers des charges et contrôler le respect de son contenu ;
- coordonner avec l'Agence nationale des fréquences (ANF) l'attribution des fréquences audiovisuelles (le décret-loi donne la priorité aux entreprises du service public) ;
- veiller à garantir la liberté d'expression et le pluralisme des idées et des pensées, en particulier en ce qui concerne l'information politique, tant pour le secteur audiovisuel privé que public ;
- veiller au respect des textes législatifs qui fixent les règles de programmation et de diffusion des séquences relatives aux campagnes électorales ;
- adopter et contrôler l'application des règles relatives à la publicité ;
- mettre en place les règles d'audimétrie et les contrôler ;
- statuer sur les litiges relatifs aux chaînes audiovisuelles ;
- fixer le montant de la redevance d'exploitation des médias audiovisuels ;
- Sanctionner les infractions commises par les entreprises audiovisuelles.

Ces deux décrets-lois n'ont été activés qu'une année après leur publication au JORT<sup>6</sup>, le 17 octobre 2012, à la suite de la grève des journalistes - massivement suivie - pour dénoncer les atteintes à la profession et revendiquer une protection juridique et une amélioration des conditions morales et matérielles<sup>7</sup>. Et jusqu'à la date de la rédaction de cet article, la composition et la mise sur pied de la HAICA tardent à se concrétiser.

#### La loi sur l'accès aux documents administratifs

En promulguant le décret-loi sur l'accès aux documents administratifs (D-L n°41 du 26 mai 2011 modifié par le décret-loi n° 54 du 11 juin 2011) pour tous les citoyens, le gouvernement fait de la Tunisie le deuxième pays arabe, après la Jordanie, disposant d'une telle loi qui lutte contre la culture du secret étatique. Le premier décret-loi (du 26 mai) avait été « vidé de sa substance » en donnant à l'administration publique tunisienne un pouvoir de confidentialité discrétionnaire par rapport à

1 Décret-loi N°10-2011 du 2 mars 2011.

2 Décret-loi N°10-2011 du 2 mars 2011.

3 Cf, Rapport général de l'Instance Nationale pour la Réforme de l'Information et de la Communication (INRIC), [www.inric.tn](http://www.inric.tn).

4 Les peines retenues incriminent :

- L'incitation à la discrimination raciale ou à la violence contre des personnes pour leur origine, leur religion ou leur sexe ;
- La production, la distribution, la vente et l'importation de produits pornographiques à caractère pédophile ;
- L'incitation à l'homicide ou au pillage, au viol ou à l'atteinte à l'intégrité physique.

5 Décret-loi N° 2011-116 du 2 novembre 2011, relatif à la liberté de la communication audiovisuelle et portant création d'une Haute Autorité Indépendante de la Communication Audiovisuelle (HAICA), reproduit in <http://www.inric.tn/tr/decret.pdf>.

6 Journal Officiel de la République Tunisienne (JORT).

7 Cf, communiqué du Syndicat National des Journalistes Tunisiens (SNJT) appelant à la grève générale en date du 14 octobre 2012.

L'ACTION DE RÉFORME STRUCTURELLE ENGAGÉE PAR L'INSTANCE NATIONALE DE RÉFORME DE L'INFORMATION ET DE LA COMMUNICATION A BÉNÉFICIÉ DU SOUTIEN DU SYNDICAT DES JOURNALISTES, MAIS BEAUCOUP MOINS DE CELUI DES PATRONS DE PRESSE.

CERTES, LE CHAMP DE LA LIBERTÉ D'EXPRESSION S'EST CONSIDÉRABLEMENT ÉLARGI : PLUSIEURS NOUVEAUX TITRES PARRAISSENT DEPUIS LE 14 JANVIER 2011 ET DE NOUVELLES STATIONS DE RADIO ET TÉLÉVISION ONT ÉTÉ AUTORISÉES À ÉMETTRE OU DIFFUSER. MAIS DANS LE MÊME TEMPS, ON RELÈVE L'ABSENCE DE VOLONTÉ POLITIQUE À METTRE EN APPLICATION LES TROIS TEXTES FONDATEURS CENSÉS PRÉPARER LES CONDITIONS QUI DOIVENT GARANTIR LA PLURALITÉ DES OPINIONS, LA TRANSPARENCE DES MÉDIAS ET L'INDÉPENDANCE DES MÉDIAS PUBLICS.

l'information à divulguer ou non. Sous la pression de l'INRIC et des instances internationales, le décret-loi a été modifié par celui du 11 juin, plus conforme aux standards internationaux. « Il prévoit le droit de chacun, sans restriction de citoyenneté, à avoir accès aux documents administratifs ; il oblige les autorités publiques à publier de manière proactive des informations sur leurs activités et il établit le principe de la gratuité de l'accès aux documents »<sup>8</sup>. Mais les exceptions au principe de divulgation sont rédigées de manière trop large et le décret ne contient pas de disposition établissant la primauté de l'intérêt public<sup>9</sup>. Il est à noter qu'à ce jour, aucune campagne de communication auprès des citoyens n'a été organisée pour faire connaître cette loi.

L'action de réforme structurelle engagée par l'Instance Nationale de Réforme de l'Information et de la Communication a bénéficié du soutien du syndicat des journalistes, mais beaucoup moins de celui des patrons de presse. Ces derniers sont désormais regroupés dans deux structures différentes : l'Association des Directeurs de Journaux Tunisiens (ADJT) et une nouvelle structure dénommée Syndicat des dirigeants des entreprises médiatiques. Sous l'impulsion du nouveau Syndicat des médias audiovisuels privés, les responsables de ces médias mènent une campagne dure contre l'INRIC et contre les projets de textes, en particulier celui relatif à l'audiovisuel. Et leur crainte porte sur le fait que l'instance de régulation de l'audiovisuel la HAICA ne se mue en instance de contrôle et de sanction contre eux. Mais les mesures gouvernementales telles que les nominations des responsables de médias publics (janvier 2012 et juin 2012) sans concertation avec l'INRIC<sup>10</sup>, les attermolements à propos de l'activation du dispositif juridique et institutionnel, illustrent bien les limites qui marquent la volonté du gouvernement à démocratiser ce secteur. Par ailleurs, les agressions dont sont victimes des journalistes, des artistes... et le laxisme des

responsables publics à poursuivre leurs auteurs, sont autant d'exemples qui montrent que le chemin des réformes est parsemé d'embûches. Et pour manifester sa désapprobation à l'égard des pratiques gouvernementales et du refus de toute concertation, l'INRIC a préféré se saborder en juillet 2012<sup>11</sup>.

#### Absence de volonté gouvernementale

Certes, le champ de la liberté d'expression s'est considérablement élargi : Plusieurs nouveaux titres paraissent depuis le 14 janvier 2011 et de nouvelles stations de radio et télévision ont été autorisées à émettre ou diffuser. Mais dans le même temps, on relève l'absence de volonté politique à mettre en application les trois textes fondateurs censés préparer les conditions qui doivent garantir la pluralité des opinions, la transparence des médias et l'indépendance des médias publics. En effet, depuis l'avènement d'un gouvernement à dominante islamiste *En Nahdha* à la suite des élections de la constituante du 23 octobre 2011, nous observons un déficit de communication qui sévit dans tous les secteurs de la vie sociale, économique, politique du pays. Il résulte d'une crise de légitimation qui découle principalement de l'absence d'une vision claire, d'un agenda politique palpable, d'une feuille de route visible dans les rapports gouvernants-gouvernés. Et si on ajoute à tout cela, les dissonances qui se font jour au sein même des élites dirigeantes qui forment ce qui est convenu d'appeler « la Troïka ».<sup>12</sup>

Le constat général qui s'impose aujourd'hui porte sur le flou, le tâtonnement, voire aussi les dérapages qui caractérisent la politique du gouvernement dans sa gestion du dossier des médias. Pourtant, Le 22 décembre 2011, lors de la présentation du programme du gouvernement devant l'Assemblée constituante, le nouveau président du conseil des ministres déclare que le secteur de l'information bénéficiera de tout l'intérêt qu'il mérite afin que l'information soit libre, plurielle, indépendante et au service des objectifs de la société sans restriction aucune. « L'époque de la tutelle et de la censure est révoquée », a-t-il précisé.

A l'issue de ces développements, nous pouvons affirmer que pour la première fois dans la Tunisie indépendante, les changements provoqués dans le secteur des médias sont venus par le « bas », en l'absence d'un encadrement unique régenté par un leadership incontesté et omnipotent. Par conséquent, la configuration de l'espace public, la situation des médias et des journalistes, l'évolution du pays dans son ensemble, se distinguent par leur caractère exceptionnel et inédit dans l'histoire de la Tunisie depuis son indépendance en mars 1956. Ce faisant, cette transition insolite et singulière peut avoir deux effets, foncièrement contradictoires : Elle peut déboucher sur des situations totalement nouvelles et inédites caractérisées par un regain de créativité, d'intelligence, d'imagination en vue d'esquisser un nouveau paysage médiatique réellement indépendant, transparent et pluraliste, comme elle peut, tout simplement, renouer avec les mêmes pratiques et les mêmes schèmes qui ont régentés ce secteur depuis les années de l'indépendance du pays, et dans ce cas, nous aurions connu une « éclaircie » de plus!<sup>13</sup> ■

8 [www.article19.org/resources.php/resource/2207/fr/tunisie:-nouveau-d%C3%A9cret-relatif-%C3%A0-l%2E%80%99acc%C3%A8s-aux-documents-administratifs-:-la-fin-de-la-culture-du-secret](http://www.article19.org/resources.php/resource/2207/fr/tunisie:-nouveau-d%C3%A9cret-relatif-%C3%A0-l%2E%80%99acc%C3%A8s-aux-documents-administratifs-:-la-fin-de-la-culture-du-secret)

9 La loi prévoit le droit de refuser la publication d'un document sur la base de la protection juridique des données à caractère personnel, de la violation des droits de propriété littéraire et artistique, de la décision d'un tribunal ou dans le cas où le document a été fourni à l'organisme public sur une base confidentielle. L'Article 17 prévoit également d'autres exceptions où l'organisme public peut refuser de communiquer un document notamment quand cela pourrait être préjudiciable.

10 Ce qui contredit les dispositions du Décret-loi N°10-2011 du 2 mars 2011 portant création de l'INRIC.

11 CF, communiqué de l'INRIC qui explicite les raisons de son auto dissolution, du 04 juillet 2012.

12 Il s'agit des trois composantes politiques qui se proclament « laïques » qui forment, aujourd'hui, avec le mouvement *En Nahdha* le gouvernement provisoire.

13 Et si ce n'était qu'une éclaircie de plus ?... Larbi Chouikha, in, « La Presse de Tunisie » Hors-série, Médias en Tunisie : Libres mais jusqu'à quand ? Tunis, mai 2012.

LE CONSTAT GÉNÉRAL QUI S'IMPOSE AUJOURD'HUI PORTE SUR LE FLOU, LE TÂTONNEMENT, VOIRE AUSSI LES DÉRAPAGES QUI CARACTÉRISENT LA POLITIQUE DU GOUVERNEMENT DANS SA GESTION DU DOSSIER DES MÉDIAS.

