



## Background information report

Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Bulgaria

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## **Project profile**

MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It will investigate the configuration of media policies in the aforementioned countries and will examine the opportunities and challenges generated by new media services for media freedom and independence. Moreover, external pressures on the design and implementation of state media policies, stemming from the European Union and the Council of Europe, will be thoroughly discussed and analysed.

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## The case of Bulgaria

*Ruzha Smilova, Daniel Smilov and Georgi Ganev*

### 1. Introduction

Over the last twenty years, Bulgaria has gone through a series of radical reforms of its public institutions and regulatory framework. The transition from a communist society towards liberal democracy, market economy, and EU membership, had a profound impact on the media environment of the country. Following the fall of the communist regime in November 1989, the Bulgarian media, comprising the state-owned press, radio and television underwent rapid transformation in terms of ownership and organisation, initially in the print press and radio broadcasting, and at the end of the 1990s in the television as well. The combined processes of democratisation and economic liberalisation generally created conditions for reducing state intervention in the media and for enhancing its diversity and independence.

At the start, the public radio and television were released from the comprehensive direct control of the Communist party and its state apparatus – they were “de-ideologised” and “de-politicised”. They nevertheless remained under the indirect control of the state. Even today, state bodies (still) appoint the members of an independent Council on Electronic Media-CEM (prior to 1998 called National Council for the Radio and Television), which selects the directors of the public electronic media. Since the majority of the members of this Council are nominated with the support of the parliamentary majority (though nominally these members - and the whole body - are to be politically neutral media experts), CEM has been criticised as an indirect channel for exercising political control in the public electronic media. This political control over the electronic media has been enhanced by the fact that the state finances the public radio and television channels through a direct state subsidy, and has limited the flow of commercial money into them. Thus, it becomes clear that following the democratic transition, state intervention in the media has declined, yet, it is far from eliminated.

The post-communist state legally removed the monopoly of the state electronic media already in 1991,<sup>1</sup> and the pro-reform government of the Union of Democratic Forces in October 1992 gave the first private licence for broadcasting in the capital Sofia (Radio FM+). In 1993 the first private radio started operating outside the capital. By mid-1997, there were more than 150 private radio stations (though only 50 of them had valid licences). The private TV cable channels proliferated with a similar intensity. The first cable networks were developed in 1992/1993, and by mid-1997 there were more than 400 cable TV operators. The regulation and the process of licences lagged considerably behind: here as well less than ¼ of the operators had the required licence.

While the end of censorship made the press more diverse and independent, its diversity and independence were qualified by the fact that many newspapers (especially during the first years of the transition) served as the mouthpiece of particular political parties. The media, in general, took an active part in the framing of the Bulgarian political spectrum in the early 1990s: they were both shaped by and

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<sup>1</sup> Postanovlenie [Executive Order] № 114 of the Council of Ministers from 1991, *State Gazette* № 51/1991. This state act authorised the Committee on the Postal and Communications Services to issue licences for radio broadcasting and for use of the state cable system.

shaping the political forces in the country. This peculiar interaction created numerous constitutional and political controversies around the issue of media independence from governmental intervention. The focus has, however, been on the public electronic media.

The end of the 1990s marked a new era of developments in Bulgarian politics. The processes of privatisation and restitution of property<sup>2</sup> had been finalised, the print media were exclusively private, while there were major private TV channels, and cable networks covering the country. The possibilities for direct political control in such an environment decreased, or, as it will be argued below, changed their focus. These developments coincided with profound changes in the political landscape in the country: the parties of the first ten years of the transition – the Bulgarian Socialist Party (BSP) and the Union of Democratic Forces (UDF) – started to lose ground to ever new political players, who relied massively on media exposure for party-building purposes. These developments created a new dynamic, which we will address in more detail in the final section of the report.

The report starts with an overview of the Bulgarian media landscape. Then it explores the normative framework, the regulatory bodies and the constitutional debates on media independence in the country. The goal is to place Bulgarian media policy in a political and social context and assess its relevance for democratic politics.

## **2. The media landscape in Bulgaria**

The Bulgarian press market is characterised by a high number of dailies per capita and low newspaper circulation. Despite the decline in circulation figures in the last years, Bulgaria still has a large number of newspapers, totalling 436 in 2009 with an overall circulation of 355 million copies. The peak in the number of newspapers and circulation was 2000, with around 550 newspapers and circulation over 450 million. The lowest point was in 2003, when the titles dropped below 400 with a total circulation of 300 million. In 2009 there were 67 dailies (3 less than in 2008), with a decreased circulation by 6.6% compared to 2008. The number of weeklies was 183 (around 10 less than in the previous year) and that of magazines 603. Around ½ of the newspapers are published in the capital Sofia, which enjoys 88% of the total circulation of newspapers in the country.<sup>3</sup> The tabloids “Weekend” and “Treta Vuzrast” currently have the highest circulation figures among the weekly editions.

With the exception of a few local newspapers and the official *State Gazette*, all print media in Bulgaria are privately owned, including foreign ownership. The two highest circulation dailies were until recently owned by the German group Westdeutsche Allgemeine Zeitung (WAZ). Currently, a new player entered the print media market, the New Bulgarian Media Group, whose hold on the media market as a whole is growing. Even the biggest, in terms of circulation, dailies and weeklies do not enjoy vary large market shares and cannot exercise significant influence by

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<sup>2</sup> The process of restitution of property to its pre-socialist-era owners/their inheritors started in 1991 with the restitution of agricultural land, and continued from the mid-90s with the restitution of urban property. The restitution was a long and controversial process, which took more than a decade to complete.

<sup>3</sup> National Statistical Institute of Bulgaria, “Development of book publishing and press in the Republic of Bulgaria in 2009”, available at: <http://www.nsi.bg/publikacia.php?n=239&r=%7C3%7C&P=65&SP=113&PSP=3> (last visited on 22/10/2010).

themselves on public opinion. The level of rivalry and competition among different titles is relatively high, which guarantees that readers have a broad selection of information sources and points of view.

Free newspapers entered the print press market in 2008.<sup>4</sup> They were generally met with hostility by the traditional press – as potential killers of the circulation of the print press, and as “truth killers” because of their perceived inferior journalistic quality.

The revenues from advertising in the print media in the country have also declined at a fast speed. Thus in 2009 these amounted to 163.8 million leva, which according to official data is 9% less than in 2008.<sup>5</sup> Many newspapers are sustained through funds from other economic activities of their owners. According to analyses, published in rival print media outlets, the aim of the publishers of such unprofitable titles is to keep the channels open for influencing public opinion, and in this way to exercise political pressure for the benefit of their other business interests.<sup>6</sup>

There are no direct or indirect state subsidies for the Bulgarian print media: there are no reductions in value added tax, no preferential rates for telecommunications services and no lower social security contributions for the sector. This renders the sustainability of the smaller circulation newspapers under constant threat. So is media pluralism in the country. State advertising<sup>7</sup> and the state subsidy for the political parties<sup>8</sup> are the only source of indirect state finance for Bulgarian media.<sup>9</sup> State advertising is subject to the general procurement requirements, yet to

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<sup>4</sup> In September 2008 the first free daily “19 minutes” started with 100,000 circulation. It was followed by “Gradski vestnik” published by the influential Economedia group (publisher of the most serious daily in the country “Dnevnik” and the most influential weekly – “Capital”). “Gradski vestnik” had 100,000 circulation (yet was read by some 230,000) and was of good journalistic quality. Because of financial difficulties Economedia group stopped publishing it in March 2009, waiting for better times. “Anons” weekly and “Novinite dnes” are among the other titles of free newspapers in the country. See S. Tzankova, “Безплатните вестници – заплаха или стимул за вестникарския пазар в България?” [“Free newspapers: A threat or a stimulus for the print media market in Bulgaria?”], in *Медии и публична комуникация* [Media and public communication], no. 4/2010, available at: <http://media-journal.info/?p=item&aid=80> (last visited on 22/10/2010).

<sup>5</sup> Unofficially, the drop in advertisement revenues is much bigger - between 35% and 50%, if the enormous discounts (which are a commercial secret) - usually between 25% and 50% - are taken into account.

<sup>6</sup> These publications were part of the media war in 2009/2010 between Economedia group and the New Bulgarian Media group. The most representative of these publications is “Петата власт: Цветан Василев и Делян Пеевски превърнаха търговията с влияние в норма за медиите” [The Fifth Power: Tzvetan Vassilev and Delyan Peevski turned trading with influence into a norm for the media], Capital weekly, 16/10/2010.

<sup>7</sup> State advertising increased dramatically in the last couple of years because of the structural funds of the EU, in which there are strict requirements for publicity of the EU-funded projects. Thus with each EU funded project goes a “communications” budget. Additionally, most state institutions also run their communications campaigns, yet because of non-transparent procedures and inadequate requirements, these bids are often taken by smaller players in the field of the PR and advertisement markets, arguably connected to the governing parties. See “Най-големият и вреден клиент” [The biggest and most damaging client], Pari daily, 21/09/2010.

<sup>8</sup> According to the Law on Political Parties (*State Gazette* № 28/1.04.2005), the political parties and coalitions with elected MPs in the last elections receive state subsidy, amounting to 5% of the minimal salary for the country per vote received (Articles 25 and 27 of the Law on Political Parties).

<sup>9</sup> Some analysts claim that the print media commercials market especially regarding the dailies did not collapse to the levels expected for the crisis-stricken 2009 primarily because of the huge amounts of state subsidy money spent by the political parties during the EP and general elections campaigns in this year. See “Затегнете коланите” [Fasten the belts], Capital weekly, 19/02/2010. For example, only the

this point spending has rarely been run under transparent and competitive procedures. This has provided certain market players that are connected to the government with a significant advantage.

Since the de-monopolisation of the electronic media sector in Bulgaria in 1991, commercial broadcasting co-exists with the public radio and television channels. There are currently 2 public national TV channels: BNT1 and the world-wide satellite channel TV Bulgaria. Starting from 2000, there are also private commercial TV channels that are broadcasted terrestrially nation-wide: BTV, NovaTV and Pro.BG (BTV being the first to receive a licence). The public Bulgarian national television has also 4 regional channels in Varna, Rousse, Plovdiv and Blagoevgrad. In 2006 the cable and satellite TV programmes amounted to 196. 42 towns had local TV operators and private TV channels.

In 2009, implementing changes in the licensing and registration requirements envisaged in a 2008 amendment to the Law on Radio and Television, CEM, the electronic media regulatory body, re-registered a number of radio and television programmes. As of December 2009, CEM registers indicate that there are 136 television programmes (11 using air broadcast and 125 cable and satellite). In addition, Bulgarian citizens have access through air, cable and satellite to numerous foreign programmes.<sup>10</sup> Despite the large number of registered programmes, however, the national market for both radio and television is relatively concentrated in the programmes with national air broadcasting licence. However, in recent years data on advertising revenues indicate that these national media are facing increasing competition from electronic media broadcast through cable or satellite, or on a local basis. In this respect, a major stumbling block for free competition is the sizeable annual government subsidy for the state-owned radio and television, which strongly enhances their competitive position in terms of attracting advertisers relative to other electronic media.

Concerning radio broadcasting, in 2006 there were 143 licensed radio programmes. Three of them had national coverage: the two public radio programmes Horizont and Hristo Botev of the public radio operator Bulgarian National Radio (BNR) and the private Darik radio. In 42 of the 240 towns in the country there are local radio programmes, and in 9 towns with a population above 100,000 there are 115 local radio programmes. There is considerable concentration of radio broadcasting in the bigger towns and hyper-concentration in the capital Sofia. There are also 18 radio networks which broadcast in the major towns. As of December 2009, CEM registers indicate that there are 311 radio programmes (288 using air broadcast and 23 cable and satellite).

The national commercial terrestrial TV programmes have a polythematic profile, yet most of the private radio programmes and the cable TV channels are entertainment-oriented.

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Blue coalition (a coalition of right-wing parties with an electoral support of around 7%) has spent 1,300,000 million leva for political advertisements in the media, while the Socialist party – 230,000 leva just for ads in the print media alone. See: “Партиите харчили до дупка за изборите” [The parties were spending as if it is the end of the world during the last elections], mediapool.bg, 14/08/2009.

<sup>10</sup> Data from the Council for Electronic Media (CEM), “The public register of media service”, available at: [http://cem.bg/public\\_reg.php?action=1](http://cem.bg/public_reg.php?action=1) (last visited on 22/10/2010).

The public electronic media - Bulgarian National Radio (BNR) and Bulgarian National Television (BNT) - are at present separate legal entities.<sup>11</sup> They receive significant state subsidy, yet have funding from advertising as well. BNT and BNR have distinct Boards of Directors and General Directors, appointed by CEM. The political control over the public electronic media is a feature of the Bulgarian post-communist mediascape; from 1989 to 1993 with each new government a change in their governance ensued and journalists were fired for criticising the government. To this date each new government introduces changes in the electronic media law and/or in CEM, in order to have tighter control over the public electronic media in the country. In this report we will discuss multiple examples of political interference with the regulation of the media, which brought uncertainty in the electronic media market and stalled reform.

Bulgaria, as an EU member state, has to switch from analogue to digital broadcasting by the end of 2012. The legal framework for the switchover was finally adopted in 2009 after a series of political scandals involving the major partners in the then governing coalition, who allegedly tried to push through a legislation favourable to their friendly business circles. The unprincipled, *ad hoc* provisions in the Law on Digital Communications, aimed at eliminating some of the competitors for national digital operators, prompted the Bulgarian Constitutional Court (BCC) to intervene and invalidate the most outrageously unjust ones. Currently, the European Commission (EC) is checking the compatibility of the Bulgarian legal framework for the switchover with EU legislation, as well as the practice of hurriedly issuing temporary licences for TV programmes, which guarantee them advantages after the digital switchover in 2012. If the legal framework or the licensing policies are found wanting, this will most likely make it impossible for the country to meet the 2012 deadline.

The importance of internet<sup>12</sup> has grown in the domestic media market. Most print media outlets provide some or all of their content on the internet free of charge and many also offer breaking news in a timelier manner. Even the popular “Trud” daily and the “24 Chasa” daily that resisted this drive and kept a limited online profile, went online in March 2009, offering most of their print content for free. While the sales figures of national newspapers have been declining (though at a lower rate, as shown above), web traffic reports reveal that their online versions are becoming extremely popular among Bulgarian internet users.<sup>13</sup>

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<sup>11</sup> In the crisis-stricken 2010 the cabinet and the parliamentary majority are seriously considering merging the two legal entities: this could be one of the changes in the currently widely discussed entirely new Law on the Media.

<sup>12</sup> There are different data on the internet penetration among the Bulgarian population. Thus Internet World Stats in 2010 give 47.5% penetration (compared to Romania (35.5%), Cyprus (39.3%) and Greece (46.2%), a level which still leaves the country well behind the average 67.6% for the EU countries. Source: Internet World Stats, “Internet usage in Europe”, available at: <http://www.internetworldstats.com/stats4.htm> (last visited on 22/10/2010). However, the data for 2009 from Eurostat show that just 30% of the households in the country have internet access. See Eurostat, *Internet usage in 2009 – Households and individuals*, available at: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-09-046/EN/KS-QA-09-046-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-09-046/EN/KS-QA-09-046-EN.PDF) (last visited on 22/10/2010).

<sup>13</sup> See the website of the people-metric company Gemius, available at: <http://www.audience.bg> (last visited on 20/10/2010) for ratings according to different criteria (reach, real visitors and share) of the most popular web-sites in the country.

The major national newspapers' websites are mainly built upon their print versions and offer relatively low levels of interactivity to their users, yet they are very popular.<sup>14</sup> There are notable exceptions to this trend, however. The content on the websites of the elitist "Capital" weekly and "Dnevnik" daily (issued by the Economedia group) is much richer than the print-versions of the same titles, and offer enormous possibilities for interactive exchange with the public. They contain special sections for blogs and many interactive online games with diverse content – from political to entertainment. The popularity of their electronic versions far outgrows that of their print counterparts.<sup>15</sup> There are also many news portals that do not have a print counterpart.<sup>16</sup> Additionally, all major national private television channels and radio programmes as well as the public radio and TV programmes offer free audiovisual and text news services on their websites. It is indicative that the website of the major private TV programme BTV is the 3<sup>rd</sup> most popular website in the country, with some 706,466 visitors in August 2010. The website of the major national private radio programme Darik Radio ranked 13 with 414,485 visitors.<sup>17</sup>

The importance of social media services is also growing.<sup>18</sup> Facebook is by far the most popular e-service in 2010 and is gaining popularity at a fast speed. There are no reliable data on the blog users in the country.<sup>19</sup> In the beginning of 2009 the registered blogs were over 35,000.

The internet space in the country is relatively free of interference, but there are proposals on the part of the Ministry of the Interior to significantly increase the access of police and investigators to servers and data without court permission. All such proposals have been blocked in Parliament so far.

The Bulgarian media landscape is further characterised by a plethora of private news agencies alongside the public Bulgarian Telegraph Agency (BTA), which receives a state subsidy for its operation, yet is mainly financed through subscription fees for its services. It is an independent<sup>20</sup> news agency, whose subscription services are used by all major newspapers and the electronic media in the country. It is also the most authoritative news voice of the country abroad. Yet the

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<sup>14</sup> The web-sites of *24 chasa* daily and of *Trud* daily are ranked 17<sup>th</sup> and 20<sup>th</sup> in the country in terms of e-visitors for August 2010, respectively.

<sup>15</sup> [www.dnevnik.bg](http://www.dnevnik.bg) is the 12<sup>th</sup> most popular site in Bulgaria for August 2010 (with 438,951 visitors), and [Capital.bg](http://www.Capital.bg) - the 35<sup>th</sup> (with 180,387). Ibid.

<sup>16</sup> The major ones – Information Agency Focus, available at: [www.focus-news.net](http://www.focus-news.net), and [mediapool.bg](http://www.mediapool.bg), available at: [www.mediapool.bg](http://www.mediapool.bg), are among the important private news agencies. Interestingly, the most popular among the news portals are not the ones belonging to the prominent publishing groups.

<sup>17</sup> Ibid.

<sup>18</sup> According to publications in the media, over 1 mln Bulgarians used Facebook in the beginning of 2010, which is 10 times more than just a year before. 1/3 of all internet users in the country are registered in this social media service alone (and more than 80% of these are aged 18-40). See: "Nad 1 milion Bulgari polzvat Facebook" [Over 1 million Bulgarians use facebook], BNR Radio Bulgaria, 07/05/2010. According to another source, Facebook users in the country (by mid-June 2010) are already 1,5 mln (1,458,640). This shows that the growth rate is still high - 50% in less than half year. The penetration by mid-June of this social media service is 20%, which is over 1/3 of all internet users in the country. See "Чакам те във Facebook" [Waiting for you at facebook], *Capital*, 18/06/2010, available at: [http://www.capital.bg/biznes/tehnologii\\_i\\_nauka/2010/06/18/919427\\_chakam\\_te\\_vuv\\_facebook/](http://www.capital.bg/biznes/tehnologii_i_nauka/2010/06/18/919427_chakam_te_vuv_facebook/) (last visited on 20/10/2010).

<sup>19</sup> The political blogosphere in the country is analyzed by the media monitoring laboratory of the Media Democracy foundation. The monthly analyses for the electoral 2009 can be found at the foundation's website, available at: <http://www.fmd.bg/?cat=7> (last visited on 20/10/2010).

<sup>20</sup> The General Director of BTA is appointed by the Bulgarian Parliament.

national and regional print and electronic media use the services of many more news agencies – national<sup>21</sup> and regional<sup>22</sup> ones.

The role of professional organisations and NGO activity in the development of the Bulgarian media is important. Among Bulgaria's most important journalistic associations are the Media Coalition and the Free Speech Civil Forum Association. Another, the Journalists Union, is a holdover from the Communist era currently attempting to reform its image. More than half of the journalists in Bulgaria are women. The publishers of the biggest newspapers are united in their own organisations, such as the Union of Newspaper Publishers. Of the few NGOs that work on media issues, the most important is the Media Development Center, which provides journalists with training and legal advice.

The Bulgarian media code of ethics, drafted within the framework of the PHARE project “Technical Support for Improving the Professional Standards of Bulgarian Journalism” was signed in 2004<sup>23</sup> and is a major step towards media self-regulation. It includes standards for the use of information by unidentified sources, preliminary nondisclosure of a source's identity, respect of personal information, and non-publication of children's personal pictures. Two media ethics bodies (one for the print and one for the electronic media) have established themselves as respected self-regulatory mechanisms. The major functions of the two commissions include promoting adherence to the code, resolving arguments between media outlets and audiences, and encouraging public debate on journalistic ethics.

The Bulgarian media space has been covered by foreign observers, such as the International Research & Exchanges Board, which publishes the Media Sustainability Index. The main conclusion of the 2009 report on Bulgaria<sup>24</sup> was that developments in Bulgaria with respect to each of the five objectives, measured by the Index,<sup>25</sup> indicate approaching the levels of “actual and irrevocable” sustainability, though this stage has not been reached yet. “Reporters without Borders”<sup>26</sup> also reports a rather uneven path with relatively sharp improvements and deteriorations in the last 5 years in terms of media independence,<sup>27</sup> but a constant downward trend relative to other countries. However, in 2009, in contrast to the previous two years, there have been no major reported cases of violence or undue procedures against journalists.

The media in Bulgaria is among the most trusted societal institutions, with some 76% of the population declaring in 2008 that they rather trust the media.<sup>28</sup> Yet

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<sup>21</sup> The biggest players are БГНЕК, Focus, Dnes+, Bulgarian news network etc.

<sup>22</sup> Sofia News Agency, Globus News, Kurdjali info, etc.

<sup>23</sup> The first signatories were the Union of Bulgarian Journalists, the Association of Bulgarian TV and Radio Operators, the Bulgarian Media Coalition, The Union of Print Media Publishers in Bulgaria and the Bulgarian Association of Regional Media. Most of the organisations in the field of the media in the country are signatories to this Code, with the notable exception of the New Bulgarian Media Group.

<sup>24</sup> See International Research and Exchanges Board, “Media sustainability index 2009”, available at: [http://www.irex.org/programmes/MSI\\_EUR/2009/bulgria.asp](http://www.irex.org/programmes/MSI_EUR/2009/bulgria.asp) (last visited on 20/10/2010).

<sup>25</sup> These objectives are: free speech, professional journalism, plurality of new sources, business management and supporting institutions.

<sup>26</sup> For their ranking, see Reporters Without Borders, “Press freedom index 2009”, available at: [http://en.rsf.org/spip.php?page=classement&id\\_rubrique=1001](http://en.rsf.org/spip.php?page=classement&id_rubrique=1001) (last visited on 20/10/2010).

<sup>27</sup> The fluctuations have been significantly larger than the observable trend, which makes it difficult to draw definitive inferences.

<sup>28</sup> The data are from a representative survey of the sociological agency Alpha Research, conducted in April 2008, quoted in “Медиите функционират при сравнително благоприятен обществен климат-76% им вярват, но не безусловно. Доверието в четвъртата власт” [The media work in a relatively

recently the credibility of the journalistic profession and of the so-called “fourth power” in the country has been undermined.<sup>29</sup> The main problems are the lack of transparency in the ownership of the print media and its concentration in the hands of political party affiliates, who allegedly pressure their journalists to publish materials that damage the interests of their political and/or business adversaries. Generally, the pressure over the journalists has been growing, especially during the last two years of the economic crisis, which saw the shrinking of circulation and the closing down of many jobs in the sector. Judging from the large numbers of media outlets and from the absence of any licensing restrictions for practising journalism one could infer that the number of journalists in Bulgaria is considerable, yet no official data on this are available. The major trade unions in the sector (the Union of Bulgarian Journalists and the Union of the Journalists in Bulgaria) do not disclose information on their membership, and in any case many of the journalists do not hold any such membership.

Despite the 20-year history of relatively free media in the country, the level of media literacy in Bulgaria is low: it is the second lowest in the EU (together with 4 other EU member states that fall below the 70 points threshold of basic media literacy), according to a 2009 study commissioned by the EC.<sup>30</sup> There are a couple of actors in the field of promoting media literacy in the country, funded by the EU: the Bulgarian branch of the organisation Safenet, some NGOs specialising in this field, as well as a public council on safe internet. However, their activities are campaign-oriented and almost invisible.

### **3. Media policy in Bulgaria**

Since its liberalisation in the early 90s, the media market in Bulgaria has gone through a series of legislative regulatory efforts. It should be mentioned that the early post-communist governments in the country were weary of imposing too strict and detailed regulations, especially with regard to the print media and radio broadcasting. The general understanding was that the democratisation process needed free media, which was interpreted as “less regulated” media.

#### **3.1 The media regulatory framework**

##### **3.1.1 Constitutional provisions**

The processes of media liberalisation started immediately after the break-down of the communist regime in the country on November 10, 1989. On November Article 271

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beneficial atmosphere – 76% have trust in them, yet not unconditionally. Trust in the fourth power], Capital weekly, 30/04/2008, available at: [http://www.capital.bg/politika\\_i\\_ikonomika/redakcionni\\_komentari/2008/04/30/491626\\_doverieto\\_v\\_c\\_hetvurtata\\_vlast/](http://www.capital.bg/politika_i_ikonomika/redakcionni_komentari/2008/04/30/491626_doverieto_v_c_hetvurtata_vlast/) (last visited on 20/10/2010).

<sup>29</sup> A publication in the Capital weekly is indicative of the mood in society against the media, blaming it for its dependency on the economic and political interests of the media private owners. See “Предателството на медиите” [The treason of the media], Capital weekly, 9/10/2009, available at: [http://www.capital.bg/biznes/media\\_i\\_reklama/2009/10/09/797531\\_predatelstvoto\\_na\\_mediite/](http://www.capital.bg/biznes/media_i_reklama/2009/10/09/797531_predatelstvoto_na_mediite/) (last visited on 20/10/2010).

<sup>30</sup> European Commission, Directorate General Information Society and Media, “Study on assessment criteria for media literacy levels”, available at: [http://ec.europa.eu/culture/media/literacy/docs/studies/eavi\\_study\\_assess\\_crit\\_media\\_lit\\_levels\\_europe\\_finrep.pdf](http://ec.europa.eu/culture/media/literacy/docs/studies/eavi_study_assess_crit_media_lit_levels_europe_finrep.pdf) (last visited on 20/10/2010).

of the socialist Penal Code, which prohibited any critique against the socialist regime, was abolished. A month later Article 1 of the socialist Constitution, which guaranteed the leading role of the Communist party in the country was also repealed. Independent newspapers – both commercial and affiliated with the newly established political parties - were appearing overnight and were spreading their influence, to reach unimaginable for non-sponsored by the state apparatus circulations of 300,000-350,000 copies. Such was the circulation in 1992/1993 of the most popular at the time “24 hours” daily. The legal framework for the free press was provided by the newly adopted in 1991 Constitution.

The most relevant articles in the Constitution are Articles 39, 40 and 41. Article 39 guarantees to everyone the freedom to express and publicise her opinion, which right, however, may not be used against the rights or to the detriment of others, nor for challenging the constitutional order, for encouraging violence or perpetrating crime. Article 40 guarantees freedom from censorship to all media. A confiscation or an injunction on any media is allowed only following judicial decision in cases of violations of public decency, challenges to the constitutional order, incitement of enmity or violence, and perpetration of crimes. Article 41 stipulates that everyone is entitled to seek, obtain and disseminate information, which right may not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality. Paragraph 6 of the Transitional and Concluding Provisions further stipulates that until the adoption of laws concerning the BNT, BNR, and BTA, the National Assembly exercises the prerogatives of the Grand National Assembly in relation to them.

The period after the adoption of the new constitution was characterised on the one hand, by rapid proliferation of the private press and private radio and cable TV programmes, and, on the other hand, by the preservation of state monopoly in the sphere of terrestrial TV broadcasting. As will be shown below, there were numerous political and legal struggles with regard to the state’s control over the public electronic media. Yet a societal consensus existed, that the press should be free from any form of state control and regulation (not simply censorship). The special status of the press in this regard was upheld in a decision of the Bulgarian Constitutional Court (BCC).<sup>31</sup> The Court was asked to provide an authoritative interpretation of Articles 39, 40 and 41 of the Constitution, guaranteeing the right to freedom of opinion and expression. In its decision, the Court stressed that the press should not only be politically independent, but also “institutionally, financially and technically separate from the state”. No regulations and interventions in this sphere were thus considered to be admissible.<sup>32</sup> For the Court, “the press publishers are in reality market actors, and it is rather the market mechanisms, which determine the type and the number of publications, and henceforth – the plurality of points of view.”

The situation of the electronic media is significantly different according to the Court. Not only does paragraph 6 of the transitory and concluding provisions state that Parliament is responsible for overseeing the activities of the electronic media until a special law is passed. The need for the regulatory role of the state towards these types of media is also mandated by “juridical, financial, technical or

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<sup>31</sup> BCC Decision № 7, 1996: *Interpretation of Articles 39, 40 and 41 of the Constitution*, *State Gazette* № 55/1996.

<sup>32</sup> Excluded from this prohibition are the cases, as specified in Article 39(2) and 40(2) of the Constitution.

technological reasons”. One of the technological reasons is the constitutionally guaranteed sovereign right of the state with respect to the radio frequency spectrum (Article 18(3) of the Constitution), which is also used for the terrestrial radio and TV programmes, yet is a limited resource. Thus the freedom of the electronic media does not preclude state intervention. On the contrary, in the Court’s view, since the freedom of the electronic media is crucial for guaranteeing access to information to the public (another constitutionally guaranteed right according to Article 41(1) of the Constitution), the regulation of these media (with respect to their organisation, structure and financing) by an independent state body is not only admissible, but required.

This decision of the BCC, though upholding state regulation of the electronic media, aimed to counter the majoritarian impetus of Parliament, which via its standing committee on the media intrusively interfered with the independent work of the media. This parliamentary practice prompted the President of the Republic (under the pressure of several NGOs and associations of Bulgarian journalists, who actively campaign) to request an interpretation of the free speech constitutional provisions from the BCC. The result of the decision of BCC was the promulgation of the Law on Radio and Television (LRT), which will be discussed in detail below.

### **3.1.2 Regulatory bodies of the electronic media: constitutional controversies**

The importance of the public electronic media for the Bulgarian parliamentary regime, and their special role in building the party system after the fall of communism, could hardly be overestimated. In the Bulgarian political system, characterised by the so-called “rationalised parliamentarianism”,<sup>33</sup> a political actor needs to rely on a strong (parliamentary) party or a cohesive coalition of parties in order to have control over the government. Sometimes this institutional logic may even create “empty shell” parties, searching for ideological substance. Thus the institutional logic promotes the emergence of disciplined parties even out of ideologically ambiguous groupings, once they have won a substantial number of votes. This creates a system of representation based not on single persons, or *ad hoc* electoral alliances, but rather on stable and durable parties.

The importance of the control over the public electronic media becomes clear when one takes into account the pressure of promoting strong and cohesive parties in a country without clearly articulated ideological differences and class cleavages which was the state of Bulgarian society after the fall of communism. The parties needed control over the major instrument of propaganda and public opinion formation – the electronic media – in order to solve the problems with their identity, and prevent the opposition from establishing and consolidating itself. Since all national electronic media were state-owned until 1999, the importance of such control was really crucial.

The early transition period was characterised by an intense confrontation in the field of the public electronic media regulation. Four major players were involved

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<sup>33</sup> Rationalised parliamentarianism is characterised by the presence of strong institutional incentives for the creation of stable parliamentary majorities and parties in general, even in countries without established and long-standing ideological cleavages and democratic traditions. In Bulgaria, for example, in order to have control over the government, a political actor needs to rely on a strong (parliamentary) party, or a cohesive coalition of parties. The institutional logic itself promotes the emergence of disciplined parties even out of ideologically ambiguous groupings, once they have won a substantial number of votes.

in it. Along with the parliamentary majority and the opposition, and depending on the political circumstances (whether the president and the majority are or are not in the same camp) the presidential institution in Bulgaria also played a significant role in this sphere. The Bulgarian Constitutional Court (BCC) is the forth, and major player in this field: it has been involved in all the “battles” for media domination between these players since the fall of communism in 1989. In this field the Court did not stick to its customary role of arbiter in the disputes: in many cases its role was that of an active player.

The principal focus of all controversies has been on the formation of a body responsible for the appointment of the directors of the national TV and radio, and the supervision of the operation of the electronic media in general. As already mentioned, this body is currently the Council on Electronic Media (CEM). All political majorities since the beginning of the reforms in 1989 have tried, and to different extent succeeded, to control this body, and to ensure their intervention in the workings of the media.

For around five years after the adoption of the Constitution, the public electronic media were regulated and governed, on a “temporary basis”, by a standing parliamentary committee, dominated by the ruling party/coalition. This model was conceived when, in December 1990, the Grand National Assembly (convened to adopt the new Bulgarian constitution) passed *Temporary Rules on the Status of the Bulgarian National Radio and Bulgarian National TV*. The Rules were meant to be applicable only until the adoption of a law on public media. Such a law, however, was passed as late as 1996, did not prove effective because of constant challenges before BCC, and was replaced by a new law in 1998.

The first major constitutional controversy took place in 1995, and was provoked by a challenge of the constitutionality of the *Temporary Rules*, especially with respect to the guarantees for the independence of the media provided by the regime of appointment of the directors of the national TV, Radio and Telegraph Agency.<sup>34</sup> In assessing the legal framework, the Court first pointed out that the discussions in the Grand National Assembly during the adoption of the Constitution made clear that the appointment of directors of the public electronic media should not fall under the competence of the Parliament or the President of the Republic.<sup>35</sup> A public body was needed - an independent Council, to regulate the media. On the basis of these considerations founded on the “drafters’ intent,” and Article 40(1) of the Constitution, the BCC struck down the provisions of the *Temporary Rules*, which granted to a Committee of the National Assembly the power to supervise directly the BNT and BNR, appoint their directors, approve their structure and internal orders, be

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<sup>34</sup> The very first interventions of the BCC in the area of media regulation took place as early as 1991. They concerned the constitutionality of appointments and dismissals of directors of the National TV and Radio, which showed the intensity of the struggle for dominance over the propaganda outlets. See Decision 3, 1991: *Dismissal of the Director of BNT*, *State Gazette* № 4/1992, for instance. In it, the Court held that the violation by the National Assembly of its own act (the *Temporary Rules* on the Status of BNT and BNR) was not a constitutional violation. The dismissal of the director was unobjectionable from a constitutional point of view, although he was dismissed by the Assembly as a whole, and not by a special independent Council, as required by the Rules. In Decision 15, 1993: *Dismissal of the Director of BTA*, *State Gazette* № 88/1993, BCC considered a similar case, involving the dismissal of the director of the Bulgarian Telegraph Agency (BTA) – based on paragraph § 6 of the Constitution, the Court upheld that dismissal as well. The early jurisprudence of the Court on the issue reveals the generally deferential attitudes of the judges to the legislature.

<sup>35</sup> Decision 16, 1995: *Constitutionality of the Temporary Rules on the Status of the BNT and BNR*, *State Gazette* № 86/1995.

informed about and give opinion on their programmes, and hear reports from their directors. The judges argued that Article 40(1) of the Constitution prohibited state intervention in the workings of the mass media.

In a follow-up case,<sup>36</sup> the Court dealt with an attempt by the National Assembly to reintroduce the powers of the parliamentary committee to approve the internal orders and the structure of the media through an amendment to the Rules. The BCC reaffirmed its previous decision and held that these prerogatives could not be delegated to a commission.

These BCC decisions were generally satisfactory: they sought to eliminate a pressing political problem. Arrangements at the time threatened the open and fair political process, and created possibilities for malicious governmental intervention in the media, leading to bias and favouritism. The situation could lead to the marginalisation or discrimination of views contrasting those of the political majority.

The second stage of the Bulgarian media saga took place in the 90s. The Videnov socialist government (January 1995 – February 1997) was the first to pass a separate Law on radio and television (LRT) in 1996, and establish an “independent” regulatory body, the *National Council on Radio and TV (NCRT)*, the majority of whose members (5 out of 9), however, were to be elected by the government and the ruling majority in Parliament. BCC again intervened,<sup>37</sup> announcing that this formula was unconstitutional. The law also empowered NCRT with extensive prerogatives, many of which were found to be unconstitutional.<sup>38</sup> A third point of controversy was the labelling of the NCRT as a “state organ” rather than a “public organ”.<sup>39</sup> The Court held that “the term ‘state’... presupposes expansive reading and the existence of governing (directing) prerogatives, and [thus] is in contradiction with... Article 40(1) of the Constitution.”<sup>40</sup> Although largely symbolic, this last issue is revealing of the sensitivity of the political opposition and of the civil society as a whole to governmental interference with the media: by 1996 political control over the electronic media was a widely recognised and discussed problem in the country.

As a result of the BCC decisions, the 1996 LRT did not have any effect during the rule of the Socialist government. However, it had *one crucial consequence*: it repealed the long suffering *Temporary Rules* and with them the legal authorisation for the National Assembly to govern/control the media. This effect did not come about

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<sup>36</sup> Decision 24, 1995: *Constitutionality of Amendments to the Temporary Rules*, *State Gazette* № 1/1996.

<sup>37</sup> Decision 21, 1996: *Constitutionality of Some Provisions of the Law on Radio and Television*, *State Gazette* № 102/1996.

<sup>38</sup> In justices’ own words: “Art. 89 of LRT gives the following prerogatives for the imposition of coercive administrative measures... 1) giving of binding recommendations to the directors of the radio and television organisations; 2) temporary interruption of a particular programme; 3) temporary interruption of the programmes of a given media... The ‘giving of binding recommendations’... is outside the range of measures envisaged by Art. 40.2 of the Constitution, and amounts to a direct interference with the activity of the radio and television organisations... In all enumerated cases, the ‘interruption’ prevents the dissemination and reception of information, and violates explicitly recognised constitutional rights.” *Ibid.*

<sup>39</sup> In justices’ own words: “According to Art. 8.2 of the LRT ‘NCRT is a specialised state organ... it is an essential, basic characteristic of any state body to have governing prerogatives... [T]he competence of [NCRT] should be restricted to control and the imposition of administrative sanctions. The explicitly specified by the law prerogatives cannot include governing (directing) prerogatives vis-à-vis radio and television organisations...”. *Ibid.*

<sup>40</sup> *Ibid.*

automatically, however; it required another constitutional case. In a decision of 1997,<sup>41</sup> the BCC ruled that: “From the moment at which such legal arrangements were adopted, paragraph 6 of the *Provisional and Concluding Rules of the Constitution* loses its effect... Therefore, from the day of entering of the LRT into force, the prerogatives of the National Assembly vis-à-vis the BNR and BNT are permanently terminated... No consequent events could revive the effect of paragraph 6, and to restore the prerogatives it envisages”.

Probably the most important decision for the future of the regulation of the electronic media from this period was the already mentioned BCC Decision 7, 1996 on the interpretation of Articles 39, 40 and 41 of the Constitution. In this decision, the Court stated that because radio frequencies are a “limited resource”, the state can regulate the establishment and operation of electronic media, and intervene in this area more extensively compared to the operation of printed media. However, the Court insisted that despite these possibilities of intervention, the state should respect the independence of the media: “the exclusion of any form of *governing* of the media by any state body is the primary condition for their structural independence.” This principled position of the court was in line with the developments in Bulgarian society at the time, which in the period 1995-1996 saw the development of strong civil society media organisations, spurring public discussion on the role of the media for the quality of Bulgarian democracy.

With the coming to power of Kostov’s pro-reform UDF cabinet in 1997, hopes were high that the situation would be finally legislatively resolved in favour of media independence and journalistic professionalism. Partly as a result of the 1996 decisions of the Court, discussed above, a new Law on Radio and Television (LRT)<sup>42</sup> was passed by the UDF-dominated National Assembly in 1998. The law guaranteed the independence of the electronic mass media from political and economic pressure (Article 8), protected their freedom from censorship (Article 9), and granted them the right to receive information from the state institutions (Article 13). It also envisaged the creation of a special regulatory body: the National Council on the Radio and the Television. The task of this body was to guarantee that the law is observed by the electronic media. The majority (5 out of 9) of its members should again be appointed by the Parliament.

Understandably, there were complaints that this last provision of the LRT ensures the control of the National Assembly over the media, even though Article 20(2) declares that “in its activity, the Council is guided by public interests, defending the freedom and pluralism of speech and information and the independence of the radio and the television”. Indeed, despite this declaratory text, the formula of NCRT appointments provided by the 1998 LRT was not a dramatic improvement over that of 1996; the members were to be appointed by the President of the Republic (4) and the parliamentary majority (5). Since President Stoyanov was from the same party as the ruling majority (UDF), the formula provided similar results as the previous arrangements: dominance of one party in the appointment process.

The BCC disregarded some of its own arguments from previous case law, concerning the link between political pluralism and media independence, and ultimately upheld the UDF sponsored legislation. The judges held that the first factor

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<sup>41</sup> Decision 17, 1997: *Constitutionality of the Dismissal of the Directors of the BNR, BNT and BTA by the National Assembly*, State Gazette № 109/1997.

<sup>42</sup> State Gazette № 138/24.11.1998.

guaranteeing the independence of the NCRT under the new arrangements was the fact that the MPs were obliged by the Constitution (Article 67(1)) to represent the people as a whole.<sup>43</sup> In the same vein, the President expresses the “unity of the nation” (Article 92(1)). The second major guarantee for the independence of the NCRT was the principle of “rotation”, according to which the members were to be elected. Thirdly, the BCC pointed out that the practice of developed Western democracies showed that such an arrangement was ultimately acceptable.

It is difficult to explain why the judges went out of their way in this case, having in mind the serious pressure from civil society groups and journalist organisations for striking down the law. In any event, the results of the law and the BCC’s decision were the de-legitimation of the NCRT and constant accusations of political partiality. The impression that the ruling party could pick and choose the directors of the national radio and TV persisted (and still does), as well as the public suspicion that the public radio and TV programmes are generally favouring the ruling party and the government.

The 1998 LRT entrusted *two regulatory bodies* with the power to licence commercial operators of electronic media. Besides the NCRT, which became responsible for licensing and overseeing the radio and TV programmes, there was a second body, involved in the regulation of the electronic media: the State Commission on Telecommunications (SCT). The SCT is responsible for granting individual licences for the use of the radio spectrum.

The BCC failed to prevent governmental interference with the workings of the SCT as well. Among the most controversial provisions of the 1998 Law on Telecommunications<sup>44</sup> was the *appointment* of the SCT *by the government*. This provision was challenged in front of the BCC. The argument was that, since SCT was authorised to participate in the licensing of electronic media, its “politicisation” (namely the fact that its members are entirely dependent for their mandate on the parliamentary majority) provided no guarantees that the decisions of this body would not disregard expert considerations in favour of partial, political biases, in an area which should be free of political pressures. The Court dismissed the argument by observing that the control over the *programmes* of media operators was not within the powers of the SCT but with those of the NCRT instead.<sup>45</sup> The SCT was meant to grant only *technical licences* for the use of radio frequencies. BCC held that while the body regulating the substance of the programmes of media operators (i.e. the NCRT) should be “independent”, the SCT need not be free of governmental control. On the contrary, the state and its bodies should control the licensing process, because the radio frequencies are an exclusive state monopoly according to the Constitution (Article 18(3)).<sup>46</sup> This argument, however, was clearly undermined by the decision,

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<sup>43</sup> Decision 10, 1999: *Constitutionality of the 1998 Law on Radio and TV*, *State Gazette* № 60/1999.

<sup>44</sup> *State Gazette* № 93/1998.

<sup>45</sup> Decision 33, 1998: *Constitutionality of the Law on Telecommunications*, *State Gazette* № 147/1998.

<sup>46</sup> Another contentious issue was the term of office of the SCT, set longer than the term of the National Assembly. The challengers argued that appointed non-elected bodies should not have fixed mandates: their mandate should expire with the expiry of the term of the appointing body. The Court simply rejected this claim and argued that the “fixed mandate” principle was not constitutionally prohibited for appointed state bodies. Moreover, in certain cases the fixed mandate is desirable, because it boosts the independence of the agencies. The real fear of the challengers was that the present government would entrench its influence in the regulatory body even after the end of its staying in office. Finally, the judges dismissed the challenges against the envisaged re-licensing of already existing media and telecommunications operators. Re-licensing was required only for operators, authorised after the Law

adopted in 1999<sup>47</sup>, which allowed the “politicisation” of NCRT as well. In sum, the Court’s jurisprudence from 1998 and 1999 in this field reinforced suspicions that candidates close to the government were being favoured in the allocation of TV and radio frequencies.<sup>48</sup>

The next controversial issue of the 1998 LRT was the requirement for re-licensing by the regulatory bodies CEM and CRC of the already existing TV and radio operators (local cable TV and radio broadcasters in most cases) after its entering into force. The BCC upheld the constitutionality of these provisions as well. Politically, the 1998 LRT concentrated too much power in the hands of the government and the parliamentary majority, and excluded the opposition from participation in the granting of media and telecommunication licences.

To conclude, the continuous attempts of the post-communist governments in the 1990s to regulate the electronic media did not manage to guarantee its independence. The regulatory bodies NCRT and SCT as a result enjoyed low legitimacy in the following years.

### **3.1.3 Structural regulation**

Structural regulation of the Bulgarian media market has mainly focused on licensing matters. Contrary to the press, which is not subjected to licensing procedures (in line with the constitutional recognition that the press is free from state interference), detailed rules have been adopted to regulate the licensing of television and radio operators in the country. With regard to media ownership, there are few special rules regarding the sector. Rather, the media market is governed in its entirety by the general provisions of anti-trust regulation. There are no specific mono-media or cross-media restrictions, nor are there currently any restrictions concerning the integration of the media industry with other business sectors.

#### **3.1.3.1 Licensing rules**

The regulatory regime of electronic media licensing is based on Article 18(3) of the Constitution, according to which the state has sovereign rights over the radiofrequency spectrum. Two laws currently determine the legal framework for licensing and registration of the radio and TV operators: the Law on the Radio and TV and the Law on Electronic Communications<sup>49</sup> (which repealed in 2007 the Law on Telecommunications<sup>50</sup>).

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on Concessions (LC) had entered into force. Operators licensed before that had only to renew their licences – a much simpler procedure. The challengers argued that the different regimes create unjustified discrimination against a group of telecommunications operators. BCC rejected the claim by arguing that after the LC had entered into force the operators should have obtained a concession, not a licence for the use of radio frequencies. By obtaining a licence, they had in fact violated the LC: violation of a law could not be a ground of a claim for equality before the law, argued the judges.

<sup>47</sup> Decision 10, 1999: *Constitutionality of the 1998 Law on Radio and TV*.

<sup>48</sup> These suspicions were exacerbated when weeks after Kostov’s resignation in 2001, the Supreme Administrative Court annulled, on the grounds of procedural violations, the licence of Nova TV, a commercial national TV programme, allegedly close to Kostov and his party.

<sup>49</sup> *State Gazette* № 41/22.05.2007.

<sup>50</sup> *State Gazette* № 88/7.10.2003.

After the liberalisation of the media market in the country in the early 1990s,<sup>51</sup> the licensing procedures remained unclear until the adoption of the 1998 LRT and often proved contradictory. The first licence for a commercial radio broadcaster was issued by the newly constituted *Temporary Council for Radio Frequencies and TV Channels* under the pro-reform UDF government in October 1992. The legal framework, however, was based on a by-law of the socialist era, the 1975 *Law on Telecommunications*. By 1997 there were more than 150 commercial radio broadcasters in the country, yet only 51 of them held valid licences.<sup>52</sup> The situation was similar with respect to the commercial cable and satellite TV programmes. The first cable networks were built in 1992-1993, and by mid-1997 there were around 400 TV operators in the country, where only 94 of them held valid licences.<sup>53</sup> In 1994-1995 the first commercial terrestrial TV operators started transmitting their programmes in the country.

The main characteristic of the licensing process for the electronic media in the pre-1998 period, was the lack of clear rules on licensing. Thus the licensing decisions were entirely in the discretion of the executive and were often politically motivated. The second feature was the lack of control over the electronic media market, where between 2/3 (radio) and 3/4 (TV) of the operators functioned without proper licences (they were “pirate” broadcasters), and, among many other legal breaches, massively violated copyright law.

With the adoption of the 1998 LRT, a dual regulatory regime was introduced: a regime of licensing – for the terrestrial (analogue) radio and TV operators, and a regime of registration – for the cable and satellite operators.

From 1998 (the year of entry into force of the LRT) until November 2001, terrestrial radio and TV operators were licensed on the basis of a competition, organised by an inter-institutional commission that was appointed by the Prime Minister: the State Commission on Telecommunications (SCT). The winner was decided by the Cabinet on the basis of a report by SCT. The *programme licensing* (concerning the content of the programmes, and not how they are transmitted) was de jure independent: it was carried out by the independent NCRT. Yet de facto it was also decided within the framework of the same tender procedure. SCT was the body issuing the licence, yet it had to take into account the position of NCRT on the content of the programme (the programme licence). The final decision rested with the Council of Ministers, the patron of SCT. As a whole, this licensing procedure of terrestrial radio and TV operators was heavily criticised by both the operators and the representatives of civil society for being non-transparent and liable to political influence.

On its basis, two tenders for commercial terrestrial TV operators were held. However, Bulgarians became able to watch just one national terrestrial commercial programme, BTV (from May 2000), since the governmental decision for the national licence of the second winner, Nova TV, was successfully challenged in court. It took three years for Nova TV to win a new bid (in July 2003) and for Bulgarians, to have a second commercial national TV operator. This practice of constantly challenging the

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<sup>51</sup> Council of Ministers' Executive order № 114 from 1991, *State Gazette* № 51/1991.

<sup>52</sup> Data quoted in D. Boryana “Deset godini, koito raztursiha elektronnite medii (no ne i natsionalniya efir)” [Ten years that shook the Eelectronic media (but not the National TV-broadcasting)], in G. Lozanov, L. Deyanova and O. Spassov (eds), *Media and transition* (2000).

<sup>53</sup> *Ibid.*, p. 49.

decisions of NCRT and SCT (and those of their successors, as will be explained below) in front of the administrative courts, and of the judiciary finally deciding the cases rather than the regulatory bodies, has contributed to the low credibility and status of the media regulatory bodies.

Cable and satellite TV and radio operators, on the other hand, were licensed by SCT without a tender, solely on the basis of a *registration decision* of NCRT. One controversial issue was the requirement to re-license, according to this new procedure, all pre-existing cable and satellite TV and radio operators. Yet the BCC upheld the constitutionality of this requirement, and thus all cable/satellite operators were compelled to go through the registration procedure.

Despite its many shortcomings, the 1998 LRT had one major advantage: the requirements for the programme licence (issued by NCRT) were identical for all types of TV operators, both cable/satellite and terrestrial. This principle is in line with the EU requirements for technical neutrality of the regulation of the content of TV programmes.<sup>54</sup>

After the amendments brought to LRT by the coalition government of NDSV and DPS in 2001,<sup>55</sup> a so-called “unified” procedure for the licensing of terrestrial TV and radio operators was introduced. Accordingly, the decisions of the two regulatory bodies in the field - NCRT (succeeded in November 2001 by a new body, the Council on Electronic Media - CEM) and SCT (succeeded in 2001 by an independent Commission on Regulation of the Communications - CRC) - are interdependent. The decision on the licensing of the programmes is taken by CEM. CEM communicates its decision to CRC, which on its part issues the technical licence for the use of the radiofrequency spectrum. This procedure follows the principles of “functional interdependence” and unified licensing: while formally the licences are two – one for the programme and the other technical (for the use of the radiofrequency) - they are issued within the framework of only one procedure. Most importantly, the role of CEM is decisive in this procedure: CRC cannot refuse to issue a technical licence to the winner of a tender (since procedures are opened only if there are free radiofrequencies to be distributed), nor can CRC oblige CEM to issue a programme licence to its preferred competitor.

Yet the process of licensing terrestrial radio and TV operators was virtually terminated already in mid-2001. Following the dissolution of NCRT by the new coalition government, the establishment of CEM took time to materialise, which temporarily stopped the licensing process. The 2002 amendments to LRT had the same effect for a longer period. They mandated to CEM and CRC the task of proposing a long-term strategy for the development of terrestrial radio and TV activities, to be approved by the Parliament. Until such strategy had been approved by the Parliament, issuing new licences was prohibited. The purpose of this amendment was obvious for the political and media analysts in the country. The new body CEM had lost the trust of its sponsors: the parliamentary majority. Thus the governing coalition effectively blocked CEM’s main prerogative - the licensing of terrestrial TV and radio programmes - by not adopting the required strategy until the end of its mandate in 2005.

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<sup>54</sup> N. Ognyanova “Mediyniyat zakon v kraya na analogovoto vreme” [Media law at the end of the analogue age], *Capital weekly*, 28/11/2008.

<sup>55</sup> Amendments to LRT, *State Gazette* 96/ 9.11.2001.

There were other significant results produced by this governmental stance: the blockage of CEM's activity happened when the second wave of licensing procedures was due, that for the *regional* terrestrial TV operators in the biggest towns of Bulgaria. In short, for more than 5 years, there were no new terrestrial licences issued. The pre-1998 licences of the regional terrestrial operators were just prolonged under unclear terms,<sup>56</sup> leaving them hostage to the changing – and often politically motivated – will of CRC. This uncertainty of course boosted the market value of the already licensed national TV operators. This raised concerns within civil society that there are lobbyist interests behind the delay in the adoption of the strategy by Parliament: the majority allegedly served private interests, aiming to monopolise the electronic media market in the country.

The idea behind the delay was obviously to wait with the strategy adoption until a new LRT was passed. The new LRT would mandate the dissolution of CEM and the constitution of a new, more favourable to the parliamentary majority media regulatory body. After two attempts to pass such a new LRT (opposed by civil society/media NGO organisations and by the EU partners, as the country was already an official candidate-member of EU), the only option left to block the activity of CEM was not to adopt the required strategy. This saga, in sum, brought uncertainty to the media market and clearly favoured the *status quo*.

The 2002 LRT amendments created a further set-back for media regulation: the principle of technologically-neutral regulation was abandoned, and two separate regimes for TV *programmes licensing* – one for cable, another for terrestrially transmitted TV programmes - were re-introduced.<sup>57</sup>

As a result of these processes, the reform in the public media - BNT and BNR - was also delayed: CEM was to be its primary “driving force” as the independent regulatory body of the media. The situation in the private media market further deteriorated, since CEM was not performing many of its LRT mandated functions, including control of compliance with its provisions by the private electronic media. One of the other major problems concerned the ownership over the media (which is still a pressing concern), making it difficult to guarantee equality of the media actors in the media market. In the final analysis, the plurality of the expressed positions - crucial for the quality of democracy in a country - was under threat.

This was, roughly, the regulatory situation in the Bulgarian media market, approaching “the end of the analogue era”.<sup>58</sup> The digital switchover, due to be completed by the EU members states by the end of 2012, brought even more problems.

By technically allowing the transmission of a multiplicity of programmes, the digital technology offers enormous opportunities for enhancing media pluralism. This is one of the main reason behind the requirement that all EU members “get digital” in the sphere of electronic media by the end of 2012. Yet, as the transition in Bulgaria proceeds, there are serious concerns that rather than enhancing media pluralism, it will bring media concentration, if not fully-fledged monopolisation of the electronic media market.

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<sup>56</sup> §9a of the Transitory and Concluding Provisions of LRT stated, that terrestrial operators, holding non-renewed licences in regions, where there were no tender procedures, may continue their activities till such tenders are held.

<sup>57</sup> N. Ognyanova “Mediyniyat zakon v kraya na analogovoto vreme”.

<sup>58</sup> Ibid.

The transition process to digital transmission started late in Bulgaria.<sup>59</sup> Though digital broadcasting started in May 2003 in Sofia – using one multiplex (i.e. digital broadcasting centre) with a capacity for six channels, it was only in 2008 that the coalition government of BSP, DPS and NDSV adopted a two-phase digital switchover plan. During the first phase (2009/July 2010) competitions had to be held, one for giving a licence to a company to build two national commercial multiplexes, another to choose a company to build the national public “multiplex”, which would digitally broadcast the public electronic media BNT and BNR. During the second phase (July 2010/December 2012), these multiplexes should take over broadcasting. By the end of 2012 analogue broadcasting should terminate.

However, the procedures to follow, as well as the entire normative framework for the digital switchover were adopted very late. They were provided by two laws – the Digital Communications Act (DCA) and amendments brought to the Law on Radio and Television. A third law - the Public Broadcasting Act<sup>60</sup> - was to set the procedures and principles for the digital broadcasting of the public electronic media BNT and BNR. This law was adopted in the last days of the coalition government of BSP, DPS and NDSV in May 2009, yet was met with hostility by the civil society. The reason for the hostility was a plethora of texts in the law, perceived as lobbyist by the public. They provided for the establishment of a state-funded national company “Public Digital Broadcasting”, as well as of a second company (a joint venture between the state and a private company) to build the digital multiplex to broadcast both the public BNT and BNR, and some other TV programmes, without clear rules for selecting them. The envisaged financial involvement of the state without clear rules and criteria for selecting the operators and the company to build the multiplex, prompted conflict-of-interests and corruption concerns. As a result of these concerns even one of the minor coalition partners, NDSV, did not support this law in Parliament. This controversial law was finally abolished by the new government of GERB in the beginning of 2010.<sup>61</sup> Important provisions for the digital switchover that were included in it, were subsequently incorporated in LRT and DCA, yet some of the lobbyist texts were maintained, and some others were added. Firstly, the prohibition for advertising companies to own electronic media, introduced already in the original 1998 LRT, was lifted. Secondly, the number of TV programmes that should be automatically (i.e. without competition) put on the multiplexes was increased. Thirdly, the requirements towards these automatically selected TV programmes were at the same time relaxed: to qualify, they only had to provide TV programmes to more than 50% of the population in the country.

The crucial for the digital transition legislative rules were introduced only in March 2009, and were highly controversial. According to one of them, a multiplex (digital broadcasting) operator cannot develop its own transmission network. This prohibition was successfully challenged before the BCC.<sup>62</sup> The other controversial provision concerns the so-called “must carry” requirement, according to which not only the public BNT and BNR, but all national terrestrially broadcasted commercial

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<sup>59</sup> Some steps were taken earlier – already in 2000, as reported in O. Spassov, “Public service television in Bulgaria at the end of the analogue age” in, M. Sükösd and A. Isanović (eds), *Public service television in the digital age: Strategies and opportunities in five South- East European countries* (2008).

<sup>60</sup> *State Gazette* № 37/19.05.2009.

<sup>61</sup> Amendments to the Law on Radio and TV, *State Gazette* № 12/12.02.2010.

<sup>62</sup> BCC Decision № 3: *Constitutionality of Some Provision of the Digital Communications Act and the LRT*, *State Gazette* № 45/2009.

TVs (i.e. BTV, Nova and Pro.bg) will go digital without having to participate in a competition or go through any further procedure. Each one of them will also have the right to put on the commercial multiplex up to 5 more additional programmes. The “must carry” rule applies not only to commercial TV operators with licences for *national* terrestrial broadcasting, but also to TV operators, holding *regional* terrestrial broadcasting licences, when they provide TV services with a minimum coverage of 50% of the population.

In the last days of its mandate the coalition government of BSP, DPS and NDSV managed to push through the CRC (the state commission authorised to run the competitions for the digital multiplexes) the decision to select the company to build the first two commercial multiplexes (thus fulfilling the requirements of phase 1 of the digital switchover plan). This decision was taken hastily and in breach of the requirement to hold an open and transparent competition for digital multiplex operators. In addition, 102 analogue regional licences were offered and won in the context of another non-transparent competition (with just a 6-day application period) by two TV operators, who met the 50% regional coverage requirement. This guaranteed them inclusion in the “must carry” quota for the digital multiplexes, as explained above. These decisions of the state Commission were very controversial, since they were taken just 3 days before the Constitutional Court decision (declaring unconstitutional some of the procedural rules for these tenders) entered into force. Currently the European Commission has launched an investigation on both the national legislation and the concrete tender procedures that were followed for their compatibility with EU law.<sup>63</sup>

The new GERB government speeded the process in the spring of 2010 by adopting amendments to LRT and DCA, which removed the most controversial provisions (yet passed others, in particular with regard to media ownership, which will be discussed in more detail below). CRC also managed in a speedy and completely non-transparent way to decide on the second company that will build the other 3 commercial multiplexes. The same company (Hannu Pro) has also won the competition to build the public multiplex, which will broadcast the public BTV and BNR. This essentially means that a single company will control 2/3 of the broadcasting of digital terrestrial TV in the country. There are allegations in the media that this company is connected to the other company - Tower com - which won the competition for the other 2 multiplexes, and owns ½ of the TV transmission network in the country.<sup>64</sup> Quite naturally, the EC is concerned that monopolisation by a single player of the Bulgarian digital media market (allowed by the new government of GERB, has thus been made possible.<sup>65</sup> In view of all these developments, the likelihood of Bulgaria meeting the 2012 digital switchover deadline is slim.

### 3.1.3.2 Ownership and competition rules

One major feature of the press market in Bulgaria is the lack of special ownership rules and of rules that would guarantee the transparency of the market in general. This has long been perceived as a major problem in the field. Yet it was only in September 2009, that the Union of the Publishers in Bulgaria sent a letter to the Prime Minister,

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<sup>63</sup> “Шум в ефира” [Noise in the air], Capital weekly, 10/09/2010.

<sup>64</sup> “Кент флеш роял” [Royal flush], Capital weekly, 16/07/2010.

<sup>65</sup> “Шум в ефира” [Noise in the air].

asking the government to take active steps towards regulating the ownership in the print media, the origins of the investments there, as well as media concentration. An inclusive working group to prepare the necessary regulations was formed, and thus in 2010 amendments to the Law on Obligatory Depositing of Print and Other Products (there is no law on the press in the country, as explained above) are being introduced.<sup>66</sup> The amendments require that the names of the “real owners” (the ultimate beneficiary/ies of the ownership in the legal entity) of the print media are published on the front page of the first issue of the publication for the year. Any changes in the ownership need also to be reported in due time. The Ministry of Culture has to publish information on print media ownership on its website. The control over the compliance with the regulation is with the municipal authorities, which are the beneficiaries of the substantial monetary sanctions for breach of these rules.

With respect to electronic media, special ownership rules exist, yet they leave much to be desired. According to the LRT, only legal persons who can prove ownership in their properties or capital, and were not declared bankrupt in the last five years (Article 105 (4)) may apply for a TV or radio licence. Further restrictions (Article 105 (4)7 and 8) are imposed on legal entities with advertising<sup>67</sup> and security as their registered object of activity (or which carry out such activities). In May 2010, as already mentioned, the restriction on cross-ownership between advertising companies and TV operators was lifted. Telecommunications operators, enjoying a monopoly status on the market (which was the case with the then state-owned Bulgarian Telecommunications company – BTK)<sup>68</sup> cannot apply for a licence (Article 105(4)9). Article 108 also requires applicants to submit a declaration that “they do not hold stakes, shares or other rights of participation in radio and television operators above the limits admissible pursuant to the anti-trust legislation of the Republic of Bulgaria”.

The Bulgarian Anti-trust Law<sup>69</sup> does not prohibit *per se* neither monopoly,<sup>70</sup> a dominant market position, nor concentration. Prohibited is just the abuse of a dominant position on the market. The presence of a dominant position is established by the *Competition Commission*, an independent state body, entrusted with the application of the anti-trust legislation in the country. The law does not set any strict ceilings above which a dominant position is deemed unacceptable. Determining whether there is a case of abuse of a dominant position or whether ownership

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<sup>66</sup> On Sept 23<sup>rd</sup> 2010, the amendments were voted by Parliament on their first reading.

<sup>67</sup> Already in 1998 the LRT incorporated the restriction for advertisement companies to get TV and radio operator licences as well. During the years, this restriction was constantly neglected/ side-stepped, the most prominent case being that of Krassimir Guergov, the biggest player in the advertisement market in Bulgaria. He was officially just a consultant to the foreign owners of the first commercial national TV programme – BTV, yet recently admitted to have been among its owners from its first days in Bulgaria. See “Едно лицемерие по-малко” [One piece of hypocrisy less], *Capital* weekly, 4/06/2010.

<sup>68</sup> BTK was privatised in mid-2004 (the state sold 65% of its shares to Viva Ventures) and the privatisation process was complete in January 2005, when the rest of its shares were traded on the Bulgarian Stock Exchange –Sofia.

<sup>69</sup> *State Gazette* № 102/28.11.2008.

<sup>70</sup> Monopolies are only allowed when determined by Law, pursuant to Article 18 paragraph 4 of the Constitution.

concentration is permissible is a matter of discretionary decision of the state Competition Commission.<sup>71</sup>

There is one special rule in the LRT (introduced in 2008), prohibiting TV and radio operators to become digital multiplex operators. The restriction for digital multiplex operators to build their own transmission networks, which was introduced in 2008, was successfully challenged in front of BCC, as already mentioned. Only one special restriction, introduced in 2009,<sup>72</sup> remains. According to it national coverage TV programme licences cannot be issued to TV operators that hold a licence for regional/local broadcasting (yet they may give up their regional/local licences and then acquire a national one).<sup>73</sup>

There are no mono-media or cross-media ownership restrictions. The existing rules aim only at the prevention of monopolisation of the market, and mono- and cross-media ownership are not interpreted as posing such a threat. There are no limits on market shares, circulation and audience shares, and advertising revenue shares in the media market or in the capital shares in a media company. Only the monopolistic domination of the market is excluded. Cases of cross ownership can be identified for all three types of media – press, TV and radio. Foreign media ownership is also allowed and the same ownership rules apply to it as well.

Currently an entirely new Law on the Electronic Media is under discussion, which will specifically address media ownership rules. During the public discussions held in July 2010 on the general direction of the new media law, the position of the Association of TV and Radio Operators in Bulgaria (ABRO) and of press publishers was expressly against the introduction of special media ownership restrictions that would go beyond the general provisions of the Anti-trust Law. Calls for lifting the restriction for TV and radio operators to be digital multiplex operators were also put forward. Since no official draft of this law has been publicised yet, it is difficult to assess its content and even general orientation.<sup>74</sup>

With respect to media competition rules, they are entirely regulated by the Anti-trust Law. There, as already mentioned, dominant position on the market per se is not prohibited, but just its abuse. Whether this is the case with the concrete company is established by the state Competition Commission. There are also a number of provisions specifying which practices constitute non-loyal competition practices: like libel, providing misleading information on the competitors and their products, misleading or comparative advertising, etc. Yet there are no specific provisions in this law, targeting specifically the media market.

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<sup>71</sup> The Anti-trust Law mandates (in Articles 26 (1) and (2)) the Competition Commission to permit ownership concentrations even when they lead to or enhance a dominant market position, when the aim of the concentration is the modernisation of the relevant economic activity, the improvement of the market structure, the better protection of consumers' interests and when "overall the positive effect of it outweighs the negative influence over the competition in the respective market".

<sup>72</sup> Amendments to LRT, *State Gazette* № 14/2009.

<sup>73</sup> Article 116B (3) of LRT.

<sup>74</sup> The current chairperson of CEM, Georgi Lozanov, declared during the public discussions of the media law project that the philosophy behind the new law is liberalisation of the regulation, yet with clearer ownership rules. Voices were heard that these two desiderata are hardly compatible. Experience shows that the final shape of the media law will be more a matter of happenstance of influential interests in the media community rather than of principles.

### 3.1.4 Content regulation

The 1998 Law on Radio and Television and the 2004 Ethics Code of the Bulgarian Media contain a variety of legal provisions and self-regulatory measures, which aim at regulating the content of information that is provided by the press and audiovisual media operators, so that it meets standards of responsibility, quality, objectivity and pluralism. Article 10 of LRT, for example, requires media providers to follow the following principles in their activities: free expression of opinion, right of access to information, non disclosure of their sources of information, personal inviolability and inviolability of personal life, inadmissibility of programmes propagating intolerance, violence, cruelty or racial, ethnic, gender or religious hatred, preservation of the purity of the Bulgarian language, copyright (and neighbouring rights) protection, protection of children from exposure to violence or any visual content that may distress them/hinder their development, etc. All operators - public and commercial - also have the obligation to include, when possible, in their programmes EU-produced TV and radio content, which should be a minimum 50%<sup>75</sup> of all TV and radio content on the programme. Of these EU programmes, 12% should be the work of independent EU producers. The requirements placed on public operators are more extensive and stricter: they have to provide political, economic, cultural, scientific, educational and other publicly important information, guarantee access to the national and world cultural values, popularise scientific achievements, promote the Bulgarian and European cultural heritage, guarantee pluralism of opinions in each of their news and commentary programmes, enhance tolerance and mutual understanding in society, etc.<sup>76</sup> Content regulations determine also the admissible forms of advertising. The public TV and radio operators are subject to stricter requirements in this respect as well.<sup>77</sup> There are also strict rules, applying to all electronic media, concerning product placement, advertising in children programmes, advertising of alcohol and tobacco products, etc.

It is also a particular responsibility of the national public operators to inform citizens about the events of public life, and even the commercial media are duty bound to provide at least partial access to important public events (over the coverage of which they may have exclusive rights) to the general public.<sup>78</sup> The media regulatory body CEM has many prerogatives, not only concerning the monitoring of compliance with the structural rules, but also of those concerning the content of the programmes. In short, the goal of content requirements and the relevant regulatory measures is to guarantee the right of citizens to receive information and to ensure political and cultural pluralism.

The content regulation regarding *the press*, by contrast, is not provided in the law, nor is it enforced by a state regulatory body. It is a matter of self-regulatory codes of conduct of the journalists. This particularly concerns the objectivity and impartiality of the published information: censorship is constitutionally banned, so it is not for the state to determine whether the published information is objective and

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<sup>75</sup> 50% or more of EU- produced TV content is the target, which has to be reached in the five years following the introduction of this provision in the law – i.e. by 2014.

<sup>76</sup> Article 6 (2) and (3).

<sup>77</sup> Article 89 of the LRT limits advertising time to 12 minutes per hour for the commercial TV operators, and to 15 minutes for the whole 24 hours programme of BNT (of which max 5 minutes may be used in prime time).

<sup>78</sup> Article 21 (3.1) of the LRT.

impartial. Thus in 2004 an Ethics Code of the Bulgarian Media<sup>79</sup> was signed, which applies both to the electronic media and the press. In accepting the Code, the signatories declare to respect the following principles: 1. to provide truthful (strictly checked and cross-checked) information to the society, 2. to use open, fair and lawful means (the use of secret cameras, microphones and other such devices is only allowed when there is no other means of providing public access to crucially important for the society information. The use of such means should be clearly stated in the final media product.); 3. to respect the persons and their private life, 4. to have special responsibility for the rights of the children; 5. to not discriminate on grounds of race, gender, religion or ethnicity; 6. to exhibit special sensitivity in informing about crimes and cruelty, so that the rights of both suspects and their victims are respected, and 7. to maintain decency of language and style. Special sections in the code are devoted to guaranteeing the independence of the media from political and economic pressure/influence and to regulating the relations within and between the media outlets. The main professional associations in the field and journalistic NGOs<sup>80</sup> established in 2005 a “National Council for Journalistic Ethics” (NCJE). This is an NGO, whose main objective is the creation and support of two national media ethics councils for electronic and for print media. These councils currently monitor the compliance of the media with the above ethics code<sup>81</sup> and mediate disputes within the media. Their decisions are mandatory<sup>82</sup> for the media, and in case they are not complied with within the set deadline, LRT mandates CEM to impose monetary sanctions.<sup>83</sup> This last mandate concerns only the electronic media, since CEM has no jurisdiction over the print media. The two councils and NCJE are members of the Alliance of Independent Press Councils of Europe.

It could be maintained that the media deregulation and the development of private television and radio have enhanced the diversity and pluralism of broadcasting content. At the same time the media experts (both in the country and abroad) have been warning that the quality of the media output is deteriorating,<sup>84</sup> because of lack of clear media ownership rules, attempts to gain economic and political control of the media and self-censorship of journalists, especially in the local media outlets. Because of these problems, the mandate of CEM has been reinforced. Now it is the responsibility of the media regulatory body to not only issue programme licences and remove them when the regulations of LRT are severely and repeatedly violated, but also to enforce the Ethics Code of Bulgarian Media. However, with respect to both of these functions, the work of CEM has not been satisfactory.<sup>85</sup> It remains to be seen

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<sup>79</sup> National Council for Journalists Ethics, “code of journalistic ethics of the Bulgarian media”, available at: [www.mediaethics-bg.org](http://www.mediaethics-bg.org) (last visited on 20/10/2010).

<sup>80</sup> The Association of the TV and radio operators (ABRO), The Union of Publishers in Bulgaria, the Union of Bulgarian Journalists and a couple of NGOs – The Bulgarian Media Coalition and The Foundation “Centre for Media Development”.

<sup>81</sup> According to the last available report for their activities (for 2008), they have received 18 complaints from citizens and media representatives, of which just 1 was found to violate the Ethics Code.

<sup>82</sup> Article 76 (2) of the LRT, *Amendments to LRT, State Gazette* № 12/2010.

<sup>83</sup> Article 126g of the LRT, *Amendments to LRT, State Gazette* № 12/2010.

<sup>84</sup> The 2005 report for Bulgaria of the “Media Sustainability Index” found that the quality of journalism and the compliance with professional standards in Bulgaria deteriorated compared to previous years (the index was started in 2000).

<sup>85</sup> The State Audit Office checked CEM’s activities for 2007-2008. According to its report the control of the media regulatory body over the licensed and registered TV and radio operators was ineffective. For the whole period just 14 (out of a total of 560) TV and radio programmes were checked, and though violations of the licences were established, no sanctions or other administrative measures were

what the effects of the recent<sup>86</sup> reduction in the number of members of CEM (from 9 to 5) will be on the work and effectiveness of this body.

Currently the Bulgarian legislation does not treat the internet-generated content (blogs, social networking sites, etc.) as media. Such content is not regulated. Yet in the presently widely discussed by civil society draft of the new Electoral Code, the internet is treated as a media and therefore there will be regulations concerning it as well. The parliamentary majority plans to prohibit the libellous speech on political candidates in blogs and the social networking sites. The regulations in this regard will thus become identical for all types of media – press, electronic and internet-generated. Concerning the other draft law which has received much attention by civil society, the one on the media, it is yet unclear<sup>87</sup> whether it will treat blogs and other internet-generated content as media, and thus regulate them.

It took a long time for the right of free expression through the media to take a root in post-communist Bulgaria, even though it enjoyed constitutional protection. For more than a decade, a major problem of the post-communist Bulgarian media was the large number of Bulgarian journalists sued for libel and insult (these were and remain criminal offences). For the period 1990 – 1998 there were 45 libel trials and 6 insult trials against Bulgarian journalists.<sup>88</sup> After 2000,<sup>89</sup> the number of trials increased significantly but the number of convictions was relatively small.

The legal provisions against libel and insult<sup>90</sup> are included in the Penal Code<sup>91</sup> (Articles 146, 147 and 149), which was adopted in 1968. The penalty was effective imprisonment (up to two years for insult and up to three years for libel) and financial sanctions. After a long political and legal battle (involving a negative decision of the BCC,<sup>92</sup> which upheld the constitutionality of these articles of the Penal Code), amendments were finally passed in June 2000.<sup>93</sup> These abolished imprisonment, yet imposed substantial monetary sanctions.<sup>94</sup>

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taken. See “Сметната палата отчете слаб контрол на CEM” [The National audit office reported weak control by CEM], *Novinar*, 11/11/2009.

<sup>86</sup> This provision was introduced with the last amendments to the LRT in June 2010, *Amendments to LRT, State Gazette* № 47/2010.

<sup>87</sup> The opinion of the chairperson of the working group, Georgi Lozanov, on the draft-law is that the regulation will not affect the blogs and social networking sites, since they are forms of personal communication, where the production of audio-visual products, if there is such, is not aimed at the market. The EU regulations in the field, according to him, are only limited to audio-visual *services* in the internet, and the blogs and networking sites are not services but forms of personal communication. See “Интервю с доц. Георги Лозанов: Медийната регулация няма да засегне сайтове, блокове, социални мрежи” [An interview with assoc. Prof. Georgi Lozanov: The media regulation will not affect sites, blogs and social media], *vsekiden.com*, 22/06/2010, available at: [www.vsekiden.com/71255](http://www.vsekiden.com/71255) (last visited on 22/06/2010).

<sup>88</sup> “Програма за правна защита на съдебно преследвани журналисти” [Programme for legal protection of prosecuted journalists], Foundation “Reporter” (1998).

<sup>89</sup> The 2003 report on “Libel and Offence Trials against Bulgarian Journalists” of the Bulgarian Helsinki Committee established that for the period March 2001 – March 2003 there were 91 such trials.

<sup>90</sup> An overview of the developments in this sphere is provided in M. Chuturkova, *Свободата на словото и нейните граници* [Freedom of speech and its limits] (2009).

<sup>91</sup> *State Gazette* № 26/2.04.1968.

<sup>92</sup> BCC Decision № 20: *Constitutionality of Provision of the Penal Code*, *State Gazette* № 83/1998.

<sup>93</sup> *Amendments to the Penal Code, State Gazette* № 51/23.06.2000.

<sup>94</sup> The fine is 1000lv to 3000lv for insult, and 3000lv to 7000 lv for libel. When the insult is public and disseminated in the press or in other media, and is against an official and with relation to her official duties, the fine is from 3000lv. and may reach up to 20 000 lv. depending on the gravity of the action and its consequences.

It is not just the Penal Code that protects the personality, honour and dignity of individuals. With regard to the electronic media, the LRT requires TV and radio operators to ensure that persons are treated with respect and that their honour, dignity, good name and family life are protected. However, even though operators are not allowed to distribute information on the personal life of the citizens without their consent (Article 16(1)), they may include such information on public persons/or persons with influence in the public life, when access to this information is in the public interest (Article 16(2)). When these provisions are violated, the operators owe a public apology to the affected persons. The public apology does not deprive the victims of their right to seek redress (monetary compensation) in civil court. Public figures and officials, as well as ordinary citizens have a right to response, which must be broadcasted in the next issue of the same programme (Article 18).

#### **4. Media policy and democratic politics: an assessment**

The present overview of norms and developments demonstrates the importance of the media for the Bulgarian parliamentary regime, and their special role in building the party system after the fall of communism; this political aspect could hardly be overestimated. There have been generally two models of interaction between political and media actors over the last twenty years. The first model of aggressive majoritarian attempts to control the (public electronic) media was characteristic of the 1990s. The second model started to shape after 2001, when the party system of the first ten years started to disintegrate, and populist newcomers won a succession of parliamentary elections. These developments took place against a much more pluralistic (and not susceptible to direct governmental control) environment. The end result was a new pattern of relationships between political parties and specific media, which (at their extreme) led to hybrid political structures - party-media or media-party -, or at least to very heavy emphasis on the development of capacities for media presentation and PR in party politics.

In order to better grasp these developments, a brief introduction to Bulgarian transition politics is necessary. The 1991 Constitution introduced “rationalised parliamentarism” as a general logic of the political regime. Rationalisation of parliamentarism consists mainly in the constitutional provision of very strong institutional incentives for the creation of stable parliamentary majorities and parties in general, even in political contexts where there are no established and long-standing ideological cleavages and democratic traditions. In Bulgaria, in order to have control over the government, a political actor needs to rely on a strong (parliamentary) party, or a cohesive coalition of parties. The institutional logic itself promotes the emergence of disciplined parties even out of ideologically ambiguous groupings, once they have won a substantial number of votes. Sometimes rationalised parliamentarism may even create “empty shell” parties, waiting and searching for ideological substance. The institutional pressure may “invent” fake ideological differences, or amplify increasingly irrelevant differences. Still, the institutional logic of the regime attempts to create a system of representation based not on a single person, or *ad hoc* electoral alliances, but rather on stable and durable parties.

The institutional pressures to have strong and cohesive parties in a situation where the ideological differences and class cleavages are not clear and articulated, required from the “empty shell” parties to impose control over the major instrument of propaganda and public opinion formation – the electronic media. Thus the control

over the media was one of the major instruments of the parties from the early transition period to solve their identity problems and to prevent the opposition from establishing and consolidating itself. Since all national electronic media were state-owned until 1999, the importance of such control was really crucial. This feature of Bulgarian constitutional design has placed a very strong imprint on media development in the first ten years after the transition.

In the beginning of the 2000s, however, new developments marked the Bulgarian party system. The parties, which have been established in the period 1989-2000 came gradually under attack by new, extra-parliamentary players. These developments have been described as a “rise of populism”. Populism in this context is understood as the creation of parties, which appeal to the people as a whole, and are very light in terms of programme/ideology and organisational structures.<sup>95</sup> The rise of populism in Bulgaria is closely linked with developments in the media environment. The ideological and organisational lightness of the political parties increases the weight of PR and media in the political process. This leads to occasional interesting symbiotic creations – hybrids between media and political structures.

Consider the Ataka party, for instance. Days before the 2005 presidential election the pollsters in Bulgaria were in for a big shock: out of the blue, a new political actor appeared claiming 8-9% of the voters’ support. Since this was so surprising, the rumour was that leading polling agencies delayed the announcement of their data, because they doubted the accuracy of their results. The new actor was a party organised around a TV cable station and a journalist radically criticising the political establishment as corrupt and dangerous from the point of view of the national interests. The TV station was called “SKAT”, and the journalist Volen Siderov. Siderov had a programme “Ataka” on the station, which he successfully managed to turn into a nationalist political party of the same name. Siderov’s biography is instructive for the student of populism. In the beginning of the transition, Siderov was the editor-in-chief of the newspaper of the UDF - the main democratic reformist party - *Democracy*. After that he became a journalist in one of the most influential dailies *Monitor*, a newspaper on the borderline between the serious press and the tabloids. Ataka ultimately entered the Bulgarian parliament in 2005, surprisingly becoming the biggest opposition group in it (albeit for a short period of time, since the group soon after disintegrated). The other bigger parties – the BSP, the tsarist NDSV, and the Movement for Rights and Freedoms (DPS) – formed a grand ruling coalition.

The role of the media, and TV SKAT in particular, explains much of the success of Ataka. This was the main tool of mobilisation of electoral support of the organisation. SKAT is in fact a TV station which provides a forum for populist discourse. It has mainly publicist and analytical programmes, giving voice to the second, third and the lower tiers of the political and intellectual elite. Not surprisingly, the station is “anti-elitist” (meaning against the empowered political elites), defends public morality, national interests, national integrity, etc. All this is presented with a degree of popular culture, conspiracy theories, and tiny bits of high culture.<sup>96</sup> The

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<sup>95</sup> See the publication G. Mesežnikov, O. Gyárfášová, and D. Smilov (eds), *Populist politics and liberal democracy in Central and Eastern Europe*, working paper, available at: <http://www.ivo.sk/5353/en/news/ivo-released-working-paper-populist-politics-and-liberal-democracy-in-central-and-eastern-europe> (last visited on 20/10/2010).

<sup>96</sup> It is very important that the network does not invest in the quality of the picture or the quality of the content of its programmes. This is probably an intentional aesthetic choice, which gives to the whole

party Ataka, in this sense, represented a hybrid between a political organisation and a media outlet. The success of this party demonstrated the increased relative weight of media presentation and PR in party politics and party building.

In 2007 there was another electoral shock for the political establishment in Bulgaria. At the May EU parliamentary elections a new political party – GERB – led by the popular mayor of Sofia Boiko Borissov won most of the votes. GERB's main resource was the personal charisma and appeal of its leader. The party was registered and set up only in 2006, reflecting the political ambitions of its leader to convert his general popularity into representation at the national level. Borissov speaks directly to the Bulgarian people. Much of his success could be attributed to his ability to speak to the ordinary people, to look like many of them, and to articulate what they commonly think about complex governmental matters. Thus, electoral success and mobilisation are to be attributed largely to personality factors, not programmatic issues. In this sense, Borissov is to a large extent a product not of party life and party politics, but of media presentation. He has an extremely fine sense for PR matters and manages always to be in the focus of media attention. His use of street jargon in a relatively delicate manner and with a fine sense of humour makes him one of the media favourites.

The parliamentary elections in Bulgaria on July 5, 2009 confirmed the already existing trend of diminishing of the electoral strength and appeal of the so-called “traditional” parties, identifying themselves along the left-right political spectrum: the centre-left Bulgarian Socialist Party (BSP) and the successor of the once-mighty centre-right Union of Democratic Forces (UDF). These were the two major parties of the 1990s, which dominated the political scene during the most decisive years of the Bulgarian transition. As of September 2010, these “traditional” parties enjoyed the support of less than 20 % of the population. Most of the rest of the Bulgarian citizens express preference for new political players, who campaign mainly along two issues: the fight against corruption and mild nationalism.

In line with this trend, in July 2009, the clear winner of the parliamentary elections was the political party GERB, which took 116 out of the 240 seats in the Bulgarian National Assembly. Second came the incumbent BSP with 40 seats, which was more than twice less than what they had in 2005. DPS (the Movement for Rights and Freedoms) – a regional party representing mostly the Bulgarian Turks - was the only party of the triple ruling coalition (BSP, DPS and NDSV), which was able to stabilise and even slightly increase its performance in comparison with 2005. In contrast, the party of the former tsar Simeon II – NDSV – failed to clear the 4% electoral threshold and remained outside of the parliament: this was a dramatic development having in mind that this party had won 40% of the vote of Bulgarians in the 2001 parliamentary elections. Of particular importance was the fact that most of the remaining vote went to populist and nationalist parties such as Ataka, “Order, Law and Justice”, and Leader, the first two of which got over the 4% electoral threshold.

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show a very “natural” air, bringing it close to reality TV and even the documentary genre. The overall effect is that it is as if “the people” express themselves in the programmes of this TV.

**Table 1: Results of the 2009 parliamentary elections**

<b>№</b>	<b>Party</b>	<b>Votes</b>	<b>Percentage of the total vote</b>
1	Order, Law and Justice	174582	4.13%
2	Leader	137795	3.26%
3	GERB	1678641	39.72%
4	Movement for Rights and Freedoms (DPS)	610521	14.45%
5	ATAKA	395733	9.36%
6	Coalition for Bulgaria (BSP)	748147	17.70%
7	Blue Coalition (UDF and Democrats for Strong Bulgaria)	285662	6.76%

The electoral results were a confirmation of the seemingly perpetual capacity of the Bulgarian party system to disintegrate and transform. Thus, both the dominant parties of the 1990s (BSP and UDF), and the dominant party of the early 2000s (NDSV) are now losing strength and being marginalised: the NDSV is already an extra-parliamentary party, while the successors of the UDF are dangerously close to the electoral threshold. In their stead there are rising new players, who are very light both in terms of programmes and ideologies, and in terms of party structure and organisation. It is as if they come from the virtual world of the electronic media, materialise during elections, and then disappear in virtual reality again within a few years.

With these developments in the political sphere, it is clear that the media have again become an area of intense political contestation. It is no surprise that at present there are attempts by the ruling majority to revamp the CEM – the Council on the Electronic Media – with the apparent intention to increase its influence on this body (or at least to diminish the influence of its opponents in it). Further, there are important changes in the media market, which are influenced significantly by the political processes. A financial group owning one of the Bulgarian banks (and allegedly close to DPS) has provided credits for the creation of an influential media group – The New Bulgarian Media Group. It owns the daily with the biggest circulation (“Telegraf”), the most influential tabloid newspaper (“Weekend”), as well as a host of other publications and TV stations. It also controls the company, which will build 2/3 of the digital multiplexes in the country. It is telling that this financial group became the authorised banker of most of the Bulgarian publicly owned companies during the reign of the so-called “triple coalition” in which the DPS was a key player. All these developments make the Bulgarian case very interesting from the point of view of the intersection of media and party politics.

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