

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 Greece

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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 Greece

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1. Introduction

The development of the media in Greece has been inseparably linked to the country's political system and the various social and economic interests that are represented in it. Throughout the 20th century, the Greek press became a pre-eminent field of political antagonism, with newspapers tied to different active political parties or opposition forces. In the post-World War II period, the dominance of the right in Greek politics and the exclusion of the left were also reflected in the press through the banning of left-leaning newspapers. The transition from a military regime to democracy in 1974 put an end to the censorship of political views that were critical of the government, and restored fundamental rights, including freedom of expression. Yet, the partisan character of the press, although starting to decline, continued to significantly define a large number of newspapers. This phenomenon is specific to the clientilistic nature of political relations broadly prevailing in South Europe.¹

Generally, the evolution of the Greek media has been subject to strong politicisation and its regulation has been characterised by haphazard policy attempts carried out by successive governments from the 1980s until the present. The degree and nature of the interconnections between the political system and the media in Greece have substantially transformed over time, as the political dynamics and economic conditions changed along with the possibilities opened by technological advancements. Exploring the specific characteristics of the media in Greece and the policies that have been adopted to regulate them, must first place the media in the country's political, economic and social context. By doing so, the purpose of this report is to depict the emergence of the legal and regulatory framework defining the Greek media, and then identify the main factors that have shaped it. What are the policies pertaining to the media and is there a coherent set of provisions and government interventions that can be seen to make up "media policy"?

Following the fall of the junta, the Greek media, comprising of the press, state radio and television, exhibited continuity with a number of features that had been acquired under the semi-democratic and authoritarian governments of the post-war period. At the same time, democratisation created the preconditions necessary for reducing state intervention in the media, in addition to enhancing its diversity and independence. First of all, public radio and television were released from the tight control of the colonels. Nonetheless, they remained under the directorship of the state and they continued to serve as a means for the centre-right governing party, New Democracy (ND), to project its views and gain support from the public. What made this possible was that the state completely financed and controlled the state television channels by appointing or dismissing directors who were thought to be in favour of the government or against it, respectively.²

¹ D.C. Hallin and S. Papathanassopoulos, "Political clientilism and the media: Southern Europe and Latin America in comparative perspective", 24 *Media, Culture and Society* (2002) 175, at p. 176-177.

² It is notable that the government changed the Director General of national television on average every twelve months. See S. Papathanassopoulos, "The politics and the effects of the deregulation of the Greek television", 12 *European Journal of Communication* (1997) 360, at p. 364.

In juxtaposition to the government-controlled television and newspapers supporting the centre right government, a number of newspapers were closely associated with the left and centre-left opposition parties. They served as a medium for those parties to promote their views and influence upon voters. In the second half of the 1970s, an unprecedented shift of readership from the newspapers of the right to those supporting the centre and the centre-left mirrored the imminent reconstitution of the electoral power of the main political parties.³ It culminated with the landslide victory of the socialist party of PASOK that came to power in 1981. In this light, while the end of censorship allowed the press to become more diverse and independent, these two qualities were compromised by the fact that many newspapers still served as the mouthpiece of particular political parties.⁴

Although state intervention in the media declined following the democratic transition, it was far from actually ending. The state's ability to intervene was shaped by the fact that it continued to provide newspapers with extensive financial benefits, such as tax exemptions and loans.⁵ Such assistance was vital for the survival of newspapers that were for most part published by small or medium-sized enterprises, which were not profitable enough to sustain themselves on their own. Dating back to the pre-junta period, such dependency of the press on state support had enabled the government to effectively direct its views upon publishers and decide what was "fit to print". In turn, though, this dependency also allowed publishers to exert influence over government policies.

The transition to democracy and the emergence of various social movements at its aftermath challenged the overwhelming power that publishers had and forced them to somewhat diversify their views and newspaper content.⁶ Still, both the state's control over public television and the alignment of most newspapers with political party views continued unabated, if not intensified, in the early 1980s. Eventually, they thoroughly restricted the ability of social actors who were not attached to a political party to influence the views and content of the media.⁷ The overall weakness of a non-politically affiliated civil society has also been evidenced in the sphere of journalism, which did not develop as an autonomous profession. The ability of journalists to represent themselves as an independent social group and to enforce journalism ethics through self-regulation have been undermined by conflicting partisan ties.

In the 1980s, the international trend towards liberalisation and Greece's membership in the European Economic Community, combined with important domestic developments, undermined state monopoly over the audiovisual sector.⁸ It was clear that the drive to establish a common market where goods, services, persons and capital could circulate unhindered would not allow state monopoly of radio and television to persist much longer. At the same time, liberalisation was the result of a

³ M. Komninou, "O rolos tw n MME stin triti dimokratia 1974-1994" [The role of the media in the third republic 1974-1994], in C. Lyrintzis *et al.* (eds), *Koinonia kai Politiki [Society and politics]* (1996) 219, at p. 230.

⁴ For a detailed discussion, see S. Papathanassopoulos, "The decline of newspapers: the case of the Greek press", 2 *Journalism Studies* (2001) 109.

⁵ Komninou, "O rolos tw n MME", p. 231; A. Skamnakis, "Mesa mazikis epikoinwnias kai politiki eksousia stin Ellada" [The media and political power in Greece], *Oi ekselikseis ston chwro tw n meswn epikoinwnias [Developments in the media]* (2009) 109, at p. 113-114.

⁶ Skamnakis, "Mesa mazikis epikoinwnias", p. 113.

⁷ Komninou, "O rolos tw n MME", p. 233-235.

⁸ S. Papathanassopoulos, "Broadcasting, politics and the state in socialist Greece", 12 *Media, Culture and Society* (1990) 387, at p. 392.

domestic political and economic crisis in the second half of the 1980s. The eruption of a major scandal that involved the press and the government (the so-called “Koskotas” scandal), the general climate of discontent with the socialist government, but also the inability to elect a new one (it took 3 rounds of elections in 1989-1990 to do so), were all signs of a growing disillusionment with the political system.⁹ The demand for liberalisation of Greek broadcasting went hand in hand with a quest for its autonomisation from political partisanship and state tutelage.

Compounded by major economic difficulties, the political crisis contributed to bolstering the demands and pressures from the centre-right opposition forces, publishers and business interests to be granted licences for private radio and TV channels. Following the 1986 elections that returned the socialists to power (though their electoral power was substantially reduced), direct action on the part of the mayors of Athens and Thessaloniki, who were from the opposition, and who started to transmit programmes received from the satellite channels, led to the establishment of the first private radio stations.¹⁰ The first private television channels were also created alongside state broadcasting. Similarly, the intermeshing between political parties and newspapers progressively weakened with the economic crisis of the 1980s, which paved the way for a more commercial orientation and the expansion of advertising as a source of revenue. Despite its small dimension in terms of size and population, the Greek market has a large number of media outlets both in the print and the audiovisual sectors. This multifaceted and densely filled media landscape is described in the first section of this report.

Since the 1980s, the commercial shift in orientation was marked by the entry of business entrepreneurs in the press, who together with established publishers, were also the first to expand their activities in the deregulated audiovisual sector.¹¹ From the late 1980s onwards, the commercial shift in the press and the deregulation of the audiovisual media in Greece further undermined state intervention in the media and the ability of the government and other political forces to direct information and influence the content of news. They did not, however, bring an end to the multiple dependencies and interconnections between the various media outlets on the one hand, and the government and the large political parties on the other.

Instead, the attempts of the political class to influence the media moved to the legislative and regulatory processes, as well as to the process of granting licences to private media outlets. Successive governments have used the latter to favour, or conversely disadvantage, radio and television channels, which they consider to be friendly or critically predisposed to them, respectively. As a result of the political favouritism driving the process of licensing, and with successive governments showing preference for particular media outlets, the granting of licences is still pending to this day. It is an astounding (and possibly rarely encountered elsewhere) phenomenon that nearly all private television channels with analogue transmission operate without proper licences, and have done so since deregulation in the late 1980s. The failure of successive governments to accomplish the licensing process has been part and parcel of a legal and regulatory framework comprising norms and provisions that lack underlying strategic and policy goals, they are often contradictory and apparently unenforceable. An overview and analysis of the legal and regulatory

⁹ Komninou, “O rolos tw n MME”, p. 236.

¹⁰ Papanthanasopoulos, “Broadcasting, politics and the state”, p. 393.

¹¹ Papanthanasopoulos, “The politics and the effects of the deregulation”, p. 360.

frame is provided in the second part of this report. The final part of the report assesses the conduct of Greek media policy and examines its effects on democratic politics.

2. The media landscape in Greece

Despite the continuous decline in circulation figures, especially since the broadcasting deregulation in the late 1980s, Greece has an extremely large number of newspapers. In 2009 there were 76 national newspapers and around 420 local/regional newspapers, though many of them are not viable in economic terms.¹² Athens-based nationally circulated political dailies have suffered the greatest losses in terms of sales. The advent of free newspapers and online media in the early 2000s intensified the decline of paid circulation, resulting in decreasing profits from advertising. The Sunday press on the other hand remains strong and has managed, over the same period, to increase its sales considerably. Despite their declining revenues or their loss of ability to be profitable, many newspapers are sustained through funds from other economic activities of their owners. They are maintained because of their perceived capacity to influence public opinion, and are thus used to exercise political pressure for the benefit of other business interests rather than as a profitable business venture.

Meanwhile, the Greek print media is supported by considerable indirect state subsidies in the form of distribution subsidies, reduced value added tax, preferential rates for telecommunications services and lower social security contributions.¹³ The policy of indirect subsidies contributes to the sustainability of smaller circulation newspapers and can be justified on the basis of support for the right of freedom of information and media pluralism, especially in relation to the geography of the country. State advertising is another staple source of finance for Greek newspapers. An array of criteria has been established for its “fair” distribution,¹⁴ also in support of the regional press. However, doubt still exists as to whether these criteria are actually fully respected.¹⁵ In addition, Greek governments have displayed remarkable lenience towards the debts accrued by major publishers towards the state (e.g. debts to the national social security system), raising even more questions about the role of the state and the media houses’ independence from it.¹⁶

Since liberalisation in 1989, Greece has a dual broadcasting system. There are currently 4 public TV channels and around 130 private channels, 8 of which are of national range and offer free-to-air analogue television services under some kind of

¹² 39 of the national newspapers were daily, 14 weekly newspapers and 23 Sunday newspapers. Athens Daily Newspaper Publishers Association, “Statistical information on newspaper circulation”, available at: http://www.eihea.gr/default_gr.htm (last visited on 23/7/2010).

¹³ For example, approximately 40,000 million euro in annual press distribution subsidies are granted to around 3,500 titles. See Secretariat General for Communication-Secretariat General for Information, “Diakinisi tou typou” [Circulation of the press], available at: http://www.minpress.gr/minpress/aeroporiki_diakinisi-2.pdf (last visited on 23/7/2010).

¹⁴ See Presidential Decree 261/1997, “Transparency in government and wider public sector advertising in the print and electronic media”, FEK A’ 186/1997, as amended by Law 3688/2008, FEK A’ 163/2008, and Law 3548/2007, “Public bodies advertising in the regional and local press and other provisions”, FEK A’ 68/2007.

¹⁵ The previous government of New Democracy that spent 83 million euro for advertising in the press only, has been alleged to have manipulated the distribution of state advertising by rewarding friendly outlets with government spots. See “I kratiki diafimisi sti xwra twn thaumatwn” [Public advertising in wonderland], *Eleftherotypia*, 26/10/2008.

¹⁶ See “Fesi 90 ekat. euro apo ta MME sta tamia” [Media’s debt of 90 million euro to social security funds], *Kathimerini*, 30/10/2008.

provisional licence.¹⁷ In regards to the radio, there are 24 public stations and about 960 in private (or municipal) ownership that have some kind of permission to air.¹⁸ Most of them are entertainment-oriented. Cable television is virtually non-existent due to poor infrastructure. In 2006, however, IPTV (Internet Protocol Television) was introduced and there are currently 4 IPTV service providers in operation. Pay-TV began in 1998 but, for reasons related to the balance of power in the analogue-TV market, did not manage to establish a significant presence.¹⁹

Deregulation of the audiovisual sector was a watershed in so far as it paved the way for a fundamental restructuring of existing ownership patterns from small and medium-sized enterprises to large conglomerates and business-like ventures, which also extended to the traditional press. Despite the existence of restrictive provisions (which are subsequently discussed in detail), a high degree of concentration has prevailed, particularly with respect to the media of national range: 6 publishers own the biggest nationally circulated newspapers, many magazines, a handful of broadcast media, as well as press distribution agencies.²⁰

Public radio and television are run by the Hellenic Broadcasting Corporation (ERT). ERT currently operates 5 television stations, 2 of which are of national coverage, 1 worldwide satellite broadcast and 24 radio stations. ERT's profile has not changed much since 1987 when it became legally "autonomous" from the state. The government still controls ERT's Managing Board by appointing the majority of its members. Moreover, the Board changes every time the administration changes, reflecting the limited development of a truly "public service" broadcaster in Greece. In addition, ERT was not prepared to compete with the private broadcasting sector and able to keep up with its evolution. As a result, the major private television channels have enjoyed a dominant position over public broadcasting in terms of audience and advertising share. These are solely funded by advertising while ERT receives income mainly through a mandatory licence fee imposed on every electricity bill, state subsidies and to a lesser extent, by advertising. Despite the multiple sources of funding it enjoys, ERT has accumulated a sizeable deficit. In fact, due to its high operating costs and ineffective business plans, ERT has never managed to avoid cost overruns.²¹

Greece is currently under digital switchover. Since 2006, ERT is active in digital terrestrial television without any subscription cost. In 2009, a second digital provider (DIGEA) was established by the seven major private television channels, in

¹⁷ See Secretariat General for Communication-Secretariat General for Information, "Tileoptikoi Stathmoi periferiakoi-topikoi [Television channels regional local], available at: http://www.minpress.gr/minpress/index/mme_gr/list_tvlocal.htm (last visited on 23/7/2010).

¹⁸ See National Council for Radio and Television, "Adeiopotithentes R/T stathmoi" [Licenced R/T channels], available at: http://www.esr.gr/arxeion-xml/pages/esr/esrSite/view?section=e5f2cfb3c0aa1e7683571826e98263e5&categ=00bc3beed0871e7683571826e98263e5&last_clicked_id= (last visited on 23/7/2010).

¹⁹ Currently Multichoice Hellas (Nova) is the only pay-TV provider. See S. Papanthanasopoulos, "The development of digital television in Greece", 14 *Javnost - The Public* (2007) 93, at p. 96-102.

²⁰ These are the Lambrakis Press Group, the Pegasus Group (owned by the Bobolos family with interests in construction), Tegopoulos A.E., Kathimerini-Skai (owned by the Alafouzos family with interests in shipping), the Vardinogiannis family (with interests in energy) and the Antl Group (owned by Minos Kyriakou with interests in telecommunications).

²¹ See indicatively, "Isologismos ERT A.E. 2009" [ERT A.E.'s 2009 balance sheet], available at: <http://www.ert.gr/keep/anakoinoseis/isologismos-ert-ae-2009.htm> (last visited on 27/3/2010), and "Sok kai deos apo ta kratikodiaita MME" [Shock and awe from the state-dependent media], *Imerisia* 31/01/2010.

order to undertake the digital transmission of their programmes and those of any other station that would choose to use its services. Digital Union is the third provider set-up by 16 local and regional television stations. Currently digital TV services are partly available in major Greek cities. Full digital transition is expected to be finalised in 2012, but concerns have been expressed as to whether it will be completed on time due to insufficient legal preparations, as will be demonstrated below.

During the past few years, the importance of the internet has significantly grown in the domestic media market.²² 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. While the sales figures of national newspapers have been declining, web traffic reports reveal that their online versions are becoming extremely popular among Greek internet users.²³ Nevertheless, major national newspapers' websites are mainly built upon their print versions and offer significantly low levels of interactivity to their users, showing that online journalism culture is still in its infancy.²⁴ Few news portals that do not have a print counterpart exist. Among them, the ones that enjoy significant popularity are those that belong to prominent publishing groups which own print newspapers too.²⁵ Additionally, all major national private television channels and the public broadcaster offer both audiovisual and written news services on their websites for free.

The Greeks seem to have embraced social media services. One notable example of the use of social media in Greece, especially among teenagers and young adults, has been their use as a communication tool for the organisation of the major riots and protests, as well as for the relay of the events that took place in December 2008.²⁶ International and Greek media then used that information for their own reporting. According to a study commissioned by the Institute of Communication,²⁷ facebook was the most popular service in 2008. As to blogs, more than half of internet users visited blogs frequently, mainly for news and information, but only 10% owned their own blog. Although online content production in the form of blogging is

²² Internet use in Greece was at 42.4% of the population in the first trimester of 2009, showing an average annual growth rate of 17.4% since 2005, but with significant variation among different age groups and between lower- and higher-educated users. See Hellenic Statistical Authority, "Ereuva xrisis texnologiwv pliroforisis kai epikoinwnias apo ta noikokuria" [Research on the use of information and communication technologies by households], available at: http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A1901/PressReleases/A1901_SFA20_DT_AN_00_2009_01_F_GR.pdf (last visited on 23/7/2010).

²³ See "Top sites in Greece", available at: <http://www.alexa.com/topsites/countries;0/GR> (last visited on 23/7/2010).

²⁴ L. Spyridou and A. Veglis, "Exploring structural interactivity in online newspapers: a look at the Greek web landscape", 13 *First Monday* (2008), available at: <http://firstmonday.org/article/view/2164/1960> (last visited on 23/7/2010).

²⁵ In.gr and Pathfinder.gr of Lambrakis Press Group are the most popular portals.

²⁶ See "Protesters rule the web in internet backwater Greece", Reuters, 18/12/2008, available at: <http://blogs.reuters.com/global/2008/12/18/protesters-rule-the-web-in-internet-backwater-greece/> (last visited on 23/7/2010).

²⁷ 88.2% of internet users made use of some social media service(s) at least once a month in 2008. Among 18-34 year-olds the share of social media users was even higher. See Institute of Communication, "Social media research", available at: <http://drop.io/ioc2009/asset/ioc-social-media-research-pdf> (last visited on 23/7/2010).

gaining ground, administering a blog is still an activity largely confined to a certain demographic profile.²⁸

News agencies act as sources of information and from this perspective are important for pluralism of output. In Greece, however, there is only one leading national news provider, the Athens News Agency-Macedonian Press Agency (ANA-MPA), which is state owned.²⁹ Nearly all newspapers are subscribers of ANA-MPA, so it can be regarded as the primary source of news information.³⁰ ANA-MPA represents the international voice of Greece and collaborates with many international news agencies. It receives income through subscriptions and other commercial services, advertising and state subsidies, yet, it has accumulated a sizeable debt.³¹

Journalists' working conditions merit attention to the degree that they can have an impact on journalists' professional autonomy. However, up until this day, there is no official data available on the exact number and profile of journalists in Greece. Data from journalists' trade unions are not disclosed. Even if they were disclosed, they would not have been reliable since not all journalists are affiliated with trade unions. This is mainly attributed to the peculiarities of journalists' work status and employment conditions, which do not usually match the requirements for union membership. Moreover, journalism as a profession has never been regulated and no formal licence is required to qualify for the profession.

According to an independent study, the estimated number of journalists in Greece, including "related" professions, was around 17,000 in the period 2003-2004.³² According to the same study, 63% of journalists declared having relevant theoretical training, despite the fact that journalists in Greece, contrary to most qualified occupations, are not required to follow a certain formal course of study. Concerning working conditions, the study reveals that many journalists experience financial insecurity due to lack of definition of their occupational status and low wages. It is notable that half of the sample reported working more than one jobs. This figure also includes journalists who are employed in the press offices of public institutions and media enterprises in parallel.³³

At this point it should be noted that despite the long history of the press and the advancement of electronic media, Greece has a low media literacy development. According to a study commissioned by the European Commission, media literacy

²⁸ Blog owners are usually highly educated males between 26 and 45 years old of centre-left political ideology. See in this respect, "I politiki kouloura tw'n blog" [The political culture of blogs], 43 Monthly Review (2008), available at: http://www.monthlyreview.gr/antilogos/greek/periodiko/arxeio/article_fullstory_html?obj_path=docrep/docs/arhra/MR47_erevna_FS/gr/html/index (last visited on 23/7/2010).

²⁹ ANA-MPA is under the supervision of the Minister of Culture and Tourism. The Minister appoints 4 out of the 9 members of its Board of Directors, supervises the legality of its decisions, and has the ability to request a financial audit.

³⁰ Other regional news agencies (e.g. the Cretian News Agency, the North Aegean News Agency, and the Peloponnesian News Agency) are complementary sources.

³¹ See "Sok kai deos", Imerisia.

³² VPRC Public Opinion Institute, "I domi tou dimosiografikou epaggelmatos" [The structure of the profession of journalism], available at: http://www.vernardakis.gr/uplmed/33_press.pdf (last visited on 23/7/2010).

³³ According to Article 5 of the 1998 Code of conduct of the Panhellenic Federation of Journalists' Unions, the latter is "accepted", unless it challenges journalists' professional integrity and independence.

levels in the country are estimated lower than the EU average.³⁴ The concept of media education has not been sufficiently explored and there are no state institutions devoted to media education, nor concrete integration of media education in school curriculums. Media literacy initiatives are fragmentary, coming mainly from independent actors, such as Safenet, which is the self-regulatory body for internet content, and the Hellenic Audiovisual Institute.

3. Media policy in Greece

Since the late 1980s, when the Greek audiovisual market was liberalised, a series of legislative acts have been adopted as part of the state's media policy to regulate the domestic media market. Successive governments, each one with its own agenda and media favourites, have sought to dictate the conditions of electronic media performance. One legal act has followed the other, leading to an overregulated and extremely detailed, albeit complex, legal framework. By contrast, the press, traditionally recognised as a bulwark for democracy, has not been heavily regulated. It has only be subject to general applicable laws, relating to such matters as defamation, privacy and the protection of public security and public order, limited regulation regarding ownership structures and self-regulation.

Aware of the need to codify Greek media legislation, an *ad hoc* working group of the National Council for Radio and Television (NCRT), the independent authority which is primarily charged with media rules enforcement, has recently produced a report, suggesting 2/3 of national media-related legislation to be revoked, modified or simplified.³⁵ The following sections seek to present and explain the Greek regulatory framework for the media, placing it in the socio-political context in which it has emerged and currently operates. The analysis focuses on both structural and content regulation, following a brief discussion of the major actors involved in media policy-making and the constitutional provisions that govern the process.

3.1 Actors of media policy and regulation

Contrary to the press, whose freedom is explicitly recognised by the Greek Constitution (as will be explained in more detail below), radio and television are under the “direct control of the state”.³⁶ One significant characteristic of the Greek regulatory regime is that since the liberalisation of the broadcasting market, competences for the regulation of the sector have regularly been transferred from one state body to the other without any substantial planning. This has resulted in the fragmentation of regulatory duties, an array of bureaucratic procedures and deficient coordination between actors, which has unavoidably undermined institutional stability for the formulation of a concrete media policy with clear objectives and aims.

One notable example is the evolution of what is now the Secretariat General of Communication-Secretariat General of Information (SGC-SGI), the body that is

³⁴ European Commission, Directorate General Information Society and Media, “Study on assessment criteria for media literacy levels”, available at: http://ec.europa.eu/avpolicy/media_literacy/docs/studies/eavi_study_assess_crit_media_lit_levels_europe_finrep.pdf (last visited on 23/7/2010).

³⁵ See “Rizikes allages sti radiotileoptiki nomothesia eisigountai meli tou ESR” [Proposals for radical changes in radio and TV legislation by members of the NCRT], *Eleftherotypia*, 20/4/2010.

³⁶ Art. 15(2) of the Greek Constitution.

primarily responsible for media affairs. Introduced in 1974, it functioned as the General Directorate for Press and Information,³⁷ until 1994, when a proper ministry was established, the Ministry of Press and Mass Media. Ten years later, in 2004, the ministry was dissolved and two General Secretariats were created to incorporate its activities, both transferred to the Ministry of Interior (MI) in 2008. Through a variety of acts, the MI retained supervision over the functions of the SGI and transferred the monitoring of others to other ministries, such as the Ministry of Culture.³⁸ It remains to be seen whether a clear-cut plan for the reformulation of media policy lies behind the described re-allocation of competences. At present, such restructuring can only be interpreted as part of the broader attempts of the incumbent government, the socialist party PASOK, to reorganise the public sector.

The SGC-SGI collaborates with the Ministry of Infrastructure, Transport and Networks, the body responsible for planning and implementing national telecommunications policy and promoting the information society. Cooperation between the two has intensified during the last couple of years on account of the much awaited passage to digital terrestrial broadcasting.

The Greek National Council for Radio and Television (NCRT), an independent body since the constitutional revision of 2001, is the Greek administrative authority which has exclusive competence for the control of the broadcast media. It was set up in 1989 and its initial responsibilities illustrated the wish of the political majority of the time to retain control of the newly liberated broadcasting sector. In fact, the NCRT was not granted substantial autonomy and its role remained mainly consultative, also regarding the “hot” topic of awarding licences for broadcasting, until 2000, when Law 2863/2000 upgraded its functions.³⁹ The NCRT has the mandate to secure that public and private broadcasters comply with domestic legislation, and can impose administrative sanctions in case of violations. Its operation is under parliamentary control, and its decisions are subject to judicial scrutiny by the Council of State.

The gradual expansion of the competences of the NCRT, especially following the 2001 constitutional revision, has not matched an equivalent increase in its resources. The effectiveness of NCRT’s activity is substantially hindered by the lack of personnel, outgrowing premises and insufficient information technology equipment,⁴⁰ in addition to unwieldy bureaucratic mechanisms and limited coordination with other authorities, such as the National Telecommunications and Post Commission (NTPC) and the Hellenic Competition Committee (HCC). The NTPC is the authority responsible for the regulation, supervision and monitoring of electronic communications. In view of the digital switchover, its role has gained

³⁷ Law 216/197, “On the establishment of the Ministry of the Presidency”, FEK A’ 367/1974.

³⁸ The Ministry of Culture was entrusted with the supervision of ANA-MPA, the supervision of public service media and the supervision of the National Audiovisual Archives. At the beginning of 2010, the duties of the SGI were bestowed to the Deputy Minister to the Prime Minister and currently also government spokesman.

³⁹ Law 2863/2000, “National Council for Radio and Television and other provisions”, FEK A’ 262/2000. See R. Panagiotopoulou, “20 xronia ellinikis idiotikis tileorasis (1989-2009): enas apologismos” [The 20 years of Greek private television (1989-2009): an account], 10 *Zitimata Epikoinwnias* (2010), p. 13.

⁴⁰ See in this respect, National Council for Radio and Television, 2009 activity report, available at: http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=035516d6c0ab1e7683571826e98263e5&categ=716aa0d6d0861e7683571826e98263e5&last_clicked_id=link6 (last visited on 23/7/2010).

importance, as it is responsible for the provision of general authorisations to operators providing electronic communication networks and/or services to content providers (i.e. broadcasters). The HCC, in turn, is the authority responsible *inter alia* for the application of competition rules in the media sector.⁴¹

A variety of journalists' organisations and other media industry organisations have been established in order to promote their professional and business interests, as well as to influence state action in the field of the media. There are currently five trade unions of journalists that are organised regionally. The Union of Journalists of Daily Newspapers of Athens (ESYEA) and the Union of Journalists of Daily Newspapers of Macedonia-Thrace (ESYEMTH) are among the most significant ones. Grouped under the Pan-Hellenic Federation of Journalists Unions (POESY), the principal aim of the unions is to represent, protect and defend the journalistic profession, which also involves negotiating collective work agreements for journalists with the state and the employers. In lieu of a press council for journalists' self-regulation, the unions are responsible for the supervision of journalists' ethical performance. In order to enforce these ethical standards, various codes of conduct have been adopted and disciplinary councils have been created; however the effectiveness of the latter has been substantially challenged.⁴²

Greece does not have a strong tradition of civil society organisations with influential advocacy activity in the field of the media. Mention is only worth being made of the Hellenic League for Human Rights, an NGO devoted to human rights protection, which follows media coverage and monitors compliance with human rights, and the Greek Helsinki Monitor, which has been calling for increased access of minority groups to media outlets.⁴³ Media research, on the other hand, is carried out by a variety of institutions and seeks to inform state media policy.⁴⁴ However, the extent to which its findings actually feed into the process is difficult to discern.

Overall, the design of national media policy is under the responsibility of governmental bodies and institutions, whose functions frequently change when a change in government or even in the government's agenda occurs. The establishment of the NCRT as an independent (or quasi-independent) regulatory authority for the implementation and monitoring of broadcasting policy has not been associated with the necessary reforms that would have allowed it to effectively carry out its functions and be accountable. At the same time, the action of other authorities, such as the HCC and the NTPC, affects the media to a greater or lesser extent and thus contributes to the complex institutional mix that characterises the conduct of Greek media policy. Limited coordination amongst the actors involved, often combined with unclear mandates, creates confusion as to who is actually responsible for what. Journalists' unions and other professional associations have a limited say in the formulation of state media policy, while the public, in the absence of a strong civil society, has hardly any chance to express its views on media issues.

⁴¹ Since the entry into force of Law 3592/2007, 'Concentration and licensing of mass media enterprises and other provisions' (FEK A' 161/2007), the HCC has a specific department devoted to the media.

⁴² ESYEA, "Ypenthimisi tou kwdika deontologias" [A reminder of the code of ethics], 15/06/2010, available at: <http://www.esiea.gr/gr/index.html> (last visited on 23/7/2010).

⁴³ Greek Helsinki Monitor, "Minorities and the media in Greece", 3/8/2001, available at: http://www.greekhelsinki.gr/Minorities_of_Greece.html (last visited on 23/7/2010).

⁴⁴ Those include the Hellenic Audiovisual Institute that is supervised by the SGC-SGI, three university-based institutes, as well as independent research companies.

3.2 The media regulatory framework

3.2.1 Constitutional provisions

The Greek Constitution provides for freedom of speech and freedom of the press. Whereas paragraph 1 of Article 14 safeguards the individual right to freedom of expression, including through means such as the press, paragraph 2 recognises freedom of the press as an institutional guarantee (*thesmiki eggyisi*).⁴⁵ When read together, they impose a duty of non-interference on the state, namely of abstinence from censorship and the adoption of preventive measures, and a positive obligation to create an enabling environment for a free press to flourish. Although Article 14(1) specifically refers to the press, it is by no means limited to it. Freedom of expression also applies to broadcasting and all other media, including through the internet.⁴⁶ However, according to Article 15(1), broadcasting does not enjoy the higher constitutional guarantees that have been afforded to the press.

During the constitutional revision of 2001, proposals were put forward by the two main political parties, PASOK and Nea Dimokratia (ND), in order to extend the protective provisions for the press to audiovisual media; however they did not gather the necessary political support.⁴⁷ Consequently, radio and television remain under the “direct control of the state”.⁴⁸ Reflective of the paternalistic environment in which Greek media operate, the exercise of state control, which exceeds the concept of state supervision, is under the exclusive competence of the NCRT and regards both public and private broadcasting.

Important changes brought about by the 2001 revision are the constitutional recognition of freedom of information and of the right to participate in the information society (Article 5A),⁴⁹ the constitutional safeguarding of the right of reply (Article 14(5)),⁵⁰ and the introduction of two public duties imposed on broadcasters, namely the obligation to cover free of charge the sessions of Parliament and of its committees, and the electoral addresses of the political parties (Article 15(2)). The 2001 constitutional revision also resulted in the modification of Article 57(1)(c), rendering incompatible the duties of member of Parliament and those of owner/manager of an enterprise that either publishes a newspaper of country-wide circulation or engages in radio and television broadcasting.

Undoubtedly, the most hotly debated amendment of the 2001 constitutional revision was that of Article 14(9), which deals with media ownership, transparency and pluralism. The provision formed the object of extensive discussion in Parliament,

⁴⁵ P.D. Dagtoglou, *Typos kai Syntagma [The Press and the Constitution]* (1989), p. 31.

⁴⁶ I. Karakwstas, *Dikaio kai internet [The law and the internet]* (2009), p. 41-43.

⁴⁷ G. Kiki, *H eleutheria tw n optikoakoustikwn meswn [Freedom of audiovisual media]* (2003), p. 110 *et seq.*

⁴⁸ Art. 15(2) of the Greek Constitution.

⁴⁹ Restrictions on freedom of information may be imposed, provided they are necessary and justified by reasons of national security, combating crime and protecting the rights and interests of others. The right to participate in the information society creates an obligation for the state to facilitate access to electronically handled information, as well as to the production, exchange and diffusion thereof, in observance of Articles 9, 9A and 19 of the Constitution regarding the inviolability of one’s private and family life, the protection of personal data and freedom of correspondence and communication.

⁵⁰ According to Article 14(5), every person offended by an inaccurate publication or broadcast has the right to reply. The information medium has a corresponding obligation for full and immediate retraction. In the case of offenses by an insulting or defamatory publication or broadcast, the media are obliged to ensure immediate publication or transmission of the reply. The manner in which the right of reply is exercised is specified by law.

and was modified after having secured an impressive majority.⁵¹ It determines that “the ownership status, the financial condition and the financing means of information media shall be disclosed, as specified by law”, and mandates national legislation to designate “the measures and restrictions necessary for fully ensuring transparency and plurality in information”. The provision prohibits concentration of control of more information media of the same type or of different types, as well as concentration of more than one electronic media (i.e. radio and television) of the same type. A crucial point is that it also prohibits holding the capacity of owner, partner, main shareholder or management executive of both an information media enterprise and an enterprise that enters into public sector contracts, for the provision of works, supplies and services. The scope of application of this prohibition is extended to “all types of intercalated persons, such as spouses, relatives, financially dependent persons or companies”. Domestic legislation must set out the specific regulations and the sanctions to be imposed in case of non compliance.

A series of provisions of a suppressive nature remains in the Greek Constitution which date back to the 1952 Constitution. Article 14(3) allows for the seizure of newspapers and other publications after circulation by order of the public prosecutor.⁵² Greek courts may also order the temporary suspension or definitive ban of a publication, and prohibit the practice of the profession of journalism.⁵³ In fact, according to Article 14(8), the conditions and qualifications requisite for the practice of the profession of journalist are to be specified by law.⁵⁴

The Greek constitutional provisions relating to free speech and the media are complemented by the European Convention on Human Rights and the International Covenant on Civil and Political Rights, which Greece has signed and ratified. Domestic authorities are bound by their respective Articles 10 and 19 on freedom of expression and freedom to seek, receive and impart information and ideas. The state is also obliged to respect Article 11 of the Charter of Fundamental Rights of the European Union (EU) when implementing EU law. In 2009, the Freedom House Index rated the media in Greece as “free”, with a total score of 29 points, zero (0) being the best.⁵⁵ Greece ranked above Italy and Turkey, holding the 23rd position out of 25 Western European countries.

⁵¹ 265 out of 280 present Parliamentarians voted in favour of the amended provision. See E. Venizelos, ‘Oi eggyiseis tis polifwnias kai diafaneias sta MME kata to arthro 14 par. 9’ [The guarantees for pluralism and transparency in the media according to Article 14(9)], *Nomiko Bima* (2005) 425, at p. 430.

⁵² Seizure of printed material may occur in case of: a) an offence against the Christian or any other known religion, b) an insult against the person of the President of the Republic, c) a publication which discloses information on the composition, equipment and set-up of the armed forces or the fortifications of the country, or a publication which aims at the violent overthrow of the regime or which is directed against the territorial integrity of the state, and d) an obscene publication which is offensive to public decency, in the cases stipulated by law.

⁵³ Pursuant to Article 14(6), after at least three convictions within five years for the criminal acts mentioned above, domestic courts may take such a decision.

⁵⁴ Note however that the provision was never put into practice.

⁵⁵ Countries scoring 0 to 30 are regarded as having “free” media. See Freedom House, *Freedom of the press 2009, Press freedom rankings by region*, available at: http://freedomhouse.org/uploads/fop09/FoP2009_Regional_Rankings.pdf (last visited on 23/7/2010).

3.2.2 Structural regulation

Structural regulation of the Greek media market has mainly focused on licensing and ownership matters. Contrary to the press, which is not subjected to licensing procedures in line with the constitutional recognition that the press is free, detailed rules have been adopted to regulate the licensing of television and radio stations, although they have remained “dead letters”. Restrictions on mono-media and cross-media ownership, combined with competition analysis and legislative action aimed to prevent integration of the media industry with business actors that are active in bidding for the award of public work contracts, have also been broadly imposed.

3.2.2.1 Licensing rules

The liberalisation of the radio and television market in the late 1980s inaugurated a period of regulatory uncertainty, initially due to the state’s inability to cope with the deregulation challenge and subsequently perpetuated as a means to keep the broadcasting media in check, influence their content and hopefully secure positive coverage.⁵⁶ The absence of a clear regulatory framework for the licensing of broadcasting operators, which characterises the Greek media scene even nowadays, has facilitated the anarchic entry of private broadcasters in the market, thus creating and progressively consolidating an atypical relationship between the state and private media interests. This relationship is not only founded upon interdependencies, but also upon mutual unease.

When the socialist party, PASOK, was in power, broadcasting deregulation commenced through the radio frequencies with Law 1730/1987.⁵⁷ Presidential Decree 25/1988 determined the procedure to follow for the allocation of local radio broadcasting licences.⁵⁸ It is reported that around 230 licences, that were valid for 2 years each, were granted to applicants filing an application with the media department of the Ministry of the Presidency.⁵⁹ The liberalisation of the television market took place by means of Law 1866/89.⁶⁰ National legislation made arrangements for the provision of seven-year licences to television broadcasters by the Ministry of the Presidency and the Ministries of Interior, Finance, Transport and Communication. The absence of prompt implementing action induced numerous operators of local and national range to start broadcasting illegally. The first television licences were granted only four years later, in 1993, just before the national elections that maintained the socialist party in power. Law 2181/94, which was subsequently enacted in order to facilitate “experimental” broadcasting,⁶¹ resulted in widespread abuse that was tolerated by the state, leading to increased numbers of operators active on the market.

⁵⁶ See D. Charalambis, “Eleutheria tis ekfrasis, plouralismos kai diafaneia sto xwro tw n ilektronikwn MME – H elliniki empeiria” [Freedom of expression, pluralism and transparency in the field of electronic mass media – The Greek experience], in A.D. Tsevas (ed.), *Diasfalisi tou plouralismou kai elegxos tis sygkentrwsis sta mesa enimerwsis* [*Safeguarding pluralism and controlling concentration in the information media*] (2006) 129, at p. 131.

⁵⁷ Law 1730/87, “Hellenic Radio-Television Corporation (ERT - S.A)”, FEK A’ 145/1987.

⁵⁸ Presidential Decree 25/88, “Terms and conditions for the establishment of local radio stations”, FEK A’ 10/1988.

⁵⁹ Hellenic Audiovisual Institute, ‘Radio in Greece’ (2006), p. 83, available at: <http://www.iom.gr/inst/iom/gallery/ekdoseis/ruthmistiko%20plaisio.pdf> (last visited on 23/7/2010).

⁶⁰ Law 1866/1989, “Establishment of the National Council for Radio and Television and provision of licences for the establishment and operation of television channels”, FEK A’ 222/1989.

⁶¹ Law 2181/1994, FEK A’ 10/1994.

The solution that ensued this chaotic situation was the adoption of Law 2328/1995 which laid down detailed rules for radio and television licensing.⁶² The newly introduced Ministry of Press and Mass Media became competent for the provision of four-year licences on the basis of competitive tendering, and the NCRT was assigned with tender evaluation.

Repeated attempts to licence the TV sector on the basis of the newly adopted law did not materialise. An invitation to tender for the licensing of private television broadcasters was published in 1998, but the procedure was annulled since no operator was found to comply with the requirements of the tender. In 2003, the NCRT, which in the meantime had become solely responsible for licensing the sector,⁶³ published three calls for tender, addressing national, regional and local television broadcasters. However, it did not succeed in concluding the process: several requests for annulment lodged with the Council of State on account of the complexity of procedures thwarted its activity. As to the radio sector, licences were only granted to the stations established in the prefecture of Attiki.⁶⁴ Incapable of rationalising the market, the Greek state recognised and prolonged the “legal” status of the TV operators that had participated in the 1998 tender and the radio stations, active on November 1st, 1999, by means of various acts.

The new government that came into power in 2007, ND, sought to streamline the rules governing licensing procedures and prepare the ground for the much desired switchover to digital terrestrial broadcasting. On July 19th, 2007 a new statute entered into force, Law 3592/2007.⁶⁵ According to the revised framework, licences for analogue, radio and television broadcasting should be granted by the NCRT, following publication of an inter-ministerial frequency chart and specifications brought by the competent ministry for the media regarding the range, number and type of licences available. Licences should be valid for six years and could be renewed once. They would be allocated after an evaluation of the tenders received on the basis of various criteria, including, amongst others, the applicants’ “legal” experience in broadcasting, their economic viability, the quality and diversity of their programming and the absence of sanctions imposed by the NCRT.⁶⁶ The law provided for the licensing of TV operators of national and local reach and of radio operators of regional reach; however it did not deal with local radio stations.⁶⁷

Regarding digital terrestrial radio and television services, Law 3592/2007 offered little guidance as to the procedures to follow. Not only did it not indicate a specific timeframe for the digital switchover; it also left a series of crucial issues to be decided at a later stage. Licensing procedures and assignment of frequencies should be regulated by means of a presidential decree. Three inter-ministerial decisions should, in turn, define a frequency chart for the broadcast of digital terrestrial signal, the number, type and reach of the licences to be granted and the cost for their award

⁶² Law 2328/1995, “Legal status of private television and local radio, the regulation of radio and television and other matters”, FEK A’ 159/1995.

⁶³ Art. 19(2) and (3), Law 3051/2002, “Constitutionally established authorities, amendments and supplements to the recruiting system for the public sector and related arrangements”, FEK A’ 220/2002.

⁶⁴ 20 licences were granted in 2001, and 15 in 2002. The latter were annulled by the Council of State.

⁶⁵ Law 3592/2007.

⁶⁶ In the case of sanctions, negative rating would apply.

⁶⁷ This might explain why merged operators or applicants intending to merge would be favoured in the assessment procedure.

and exploitation. Delays in the adoption of these instruments have significantly undermined progress to digital terrestrial transmission, which presently undergoes an experimental, transitional period, also governed by Law 3592/2007. It is indeed almost certain that the Greek state will not succeed in licensing TV operators wanting to transmit their programmes in digital terrestrial mode before 2012. As for radio, it has been confirmed that operators will continue to transmit in analogue mode after 2012.⁶⁸

Accounting for the above has mainly been the interruption and postponement of the preparation of the acts that are required for the start of the licensing process, due to the 2009 change in government and the coming into power of the social party PASOK. The presidential decree that is necessary for the organisation of the licensing procedure has not been issued yet, despite the fact that a first draft was prepared by ex-government, ND. The issuance of the frequency chart has also proven problematic. On August 20th, 2008, ND published a frequency chart, produced by the National Technical University of Athens, which determined the frequencies on which the existing television stations could digitally transmit their programmes.⁶⁹ The chart did not deal with the so-called “digital dividend”, namely the reduction in the amount of radio spectrum required to deliver terrestrial TV services when the transmission technology will be definitely migrated from analogue to digital and the use of the released spectrum.⁷⁰ The issue has turned into a key topic for the Greek digital switchover, as telecom and broadcasting operators compete fiercely for the allocation of the released frequencies.⁷¹ A new frequency chart will thus be produced, but only recently has the Greek state decided to commission a study in order to examine what the optimum use of the released frequencies could be.⁷²

Interestingly, the operators which have provisionally entered the digital terrestrial market are the public service broadcaster, ERT, and the private broadcasters of national range. No operator active at the regional or local level has started to broadcast digitally, despite the fact that many of them have had the quality of their programmes checked for that purpose by the NCRT, in line with the transitional provisions of Law 3592/2007.⁷³ The considerable investment that is needed for digital transmission might thwart the ability of regional operators to enter the market, with serious implications for democratic politics. The position of local operators is even more uncertain, as no legal provision exists for local digital TV stations following the definite passage to digital terrestrial broadcasting.⁷⁴ Moreover, market entry for new “comers” has been completely obstructed, as Law 3592/2007 has only allowed those

⁶⁸ See the minutes of the Greek Parliament Special Permanent Committee on Institutions and Transparency, 20/4/2010.

⁶⁹ KYA 21161/2008, “Formulation of the frequency chart for the switchover to digital terrestrial television”, FEK A’ 1680/2008.

⁷⁰ The reduction arises from the ability for digital technology to deliver a greater number of TV stations in a given amount of spectrum bandwidth, compared to analogue.

⁷¹ The digital dividend can be used to support a number of innovative services, including non-broadcast services, such as mobile broadband communications, and new broadcast services, for instance high-definition TV.

⁷² See the minutes of the Greek Parliament Special Permanent Committee on Institutions and Transparency.

⁷³ National Council for Radio and television, 2008 activity report, available at: http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=035516d6c0ab1e7683571826e98263e5&categ=716aa0d6d0861e7683571826e98263e5&last_clicked_id=link6 (last visited on 23/7/2010), at p. 15-16.

⁷⁴ Art. 13(3) of Law 3592/2007.

operators that are considered to operate “legally” in Greece to make use of its transitional provisions.⁷⁵ This could lead to a *de facto* foreclosure of the market, once the passage is completed. Long-established media players have been given the possibility to lead the digital revolution and consolidate their position in the digital arena.

3.2.2.2 Ownership rules

Greek media ownership rules have undergone significant changes over the years and have been subject to much debate in governmental platforms. Law 1866/1989 has been at the heart of moves to ensure the state’s stranglehold on the media.⁷⁶ In an effort to appease owners of the print media that were willing to expand their activities in the field of broadcasting but at the same time prevent the emergence of powerful media conglomerates, Law 1866/1989 made provision for the granting of television licences to operators that were “solvent” and “trustworthy”, under the condition that shareholding in television companies did not exceed 25% of the company’s capital. Compliance was limited, and Law 2328/1995 introduced more restrictive rules,⁷⁷ prohibiting participation in no more than two types of media (i.e. television, radio and newspapers). The ‘two out of three’ model was supplemented by provisions precluding ownership of more than one TV and radio station and press ownership restrictions.⁷⁸ Shareholding in a television enterprise was kept to a maximum of 25% of the company’s capital and a similar ceiling was introduced for foreign ownership in electronic media.

The latest version of Greek mono-media and cross-media ownership provisions can be found in Law 3592/2007, which, distinguishes between electronic media (i.e. radio and television) and print media (i.e. newspapers and magazines). Ownership of an electronic media undertaking is permitted up to 100% but concentration of electronic media of the same type is prohibited.⁷⁹ Ownership of electronic media does not preclude ownership of print media, yet it must not lead to

⁷⁵ Art. 14(1)-(2) of Law 3592/2007.

⁷⁶ See P. Dimitropoulos, “Oi rythmistikes epembaseis tou kratous sti radioteleorasi” [The regulatory interventions of the state in broadcasting], in *Oi ekselikseis sto xwro twn meswn epikoinwnias*, 115, at p. 122-123.

⁷⁷ See Charalambis, “Eleutheria tis ekfrasis”, p. 136-137.

⁷⁸ Law 2328/95 determined that a natural or legal person and his/her relatives, deprived of business and financial autonomy up to the fourth degree, could own or participate in only: a) two daily political newspapers issued in Athens, Piraeus or Thessaloniki (a morning and an afternoon one); b) one daily financial newspaper and one daily sports newspaper issued in Athens, Piraeus or Thessaloniki; c) two daily and two non-daily provincial newspapers issued in different regions; and d) one Sunday publication.

⁷⁹ Article 1, read together with Article 3 of Law 3592/2007, defines concentration as the control enjoyed by a natural or legal person over more than one electronic media of the same type, that is, the exercise of substantive influence over media management and operation. Enjoying the capacity of owner, executive director, manager or member of the board of directors in more than one electronic media automatically denotes control. This is also the case with partners and shareholders which: a) hold at least 1% of the capital of more than one electronic media and figure amongst the ten most important partners or shareholders of the media concerned in terms of shares or voting rights; b) enjoy the right to appoint at least one member of the board of directors of the media involved. Media control can also be established via “intermediaries” (i.e. spouses, relatives, other intermediary persons and companies), provided that “unfair influence”, determined by a final judicial decision, is exercised over media management to the detriment of “pluralism, the objective provision, on equal terms, of information and competition”.

concentration in the media market. No particular press ownership restrictions apply, as is also the case with foreign media ownership.

Law 3592/2007 discloses a notable shift of state policy towards a less restrictive approach to media ownership. Ownership rules have been considerably relaxed, both as regards mono-media and cross-media ownership. Ownership of more than one media of the same type is allowed, press ownership restrictions and the “two out of three” rule have been abolished, and no restrictions on media shareholding are imposed. Such softening of the rules has hardly been an endorsement of a free market paradigm; the intention was rather to legalise the problematic *status quo*. Disturbing signs that the 1995 provisions were utterly ignored and circumvented induced the Greek state to amend ownership legislation. To evade the restrictive provisions of the 1995 act, media owners had broadly used intermediary persons and undertakings in order to expand their activity and gain control of various media outlets. Through Law 3592/2007, the state recognised its failing policy and sanctioned the actual configuration of media ownership structures in the country.

Whereas Law 3592/2007 amounted to a clear victory of private media interests, a more robust line was taken in relation to what became known as the “main shareholder” issue, that is, the enactment of rules against investment in and management of both media enterprises and enterprises that engage in public work contracts. Following the amendment of Article 14(9) of the Constitution in 2001, Law 3021/2002 prohibited holding the status of owner, main shareholder or administrator of both a media undertaking and an undertaking entering into public contracts, and defined the concept of “main shareholder” as the natural or legal person which represents at least 5% of the total capital share of a media undertaking or holds 5% of the voting rights. The incompatibility was extended to “intermediaries” (i.e. spouses, relatives and other companies), unless these could prove their financial independence. Before issuing acceptance of a tender for the award of a public contract and in any event, before signature of the contract, the administration should apply to the NCRT and request a “transparency” certificate. To facilitate such a task, the NCRT was charged with keeping detailed records of media undertakings and their ownership structure.

Law 3021/2002 was largely criticised by the then opposition party, ND, which argued for widening the concept of “main shareholder” and accused the government of PASOK for mitigating the effects of the prohibition. In adopting Law 3310/2005 three years later, ND toughened the scope of the provisions.⁸⁰ The party reduced the percentage of capital shares and voting rights to 1%, introduced an irrefutable presumption that relatives are by definition “intermediaries” and forbade shareholding of media undertakings by offshore companies. Additionally, it mandated the NCRT to maintain records of the undertakings concluding public contracts, together with the records kept on media enterprises.

The amended legal framework was met with much concern and was deemed to be unconstitutional and in conflict with EU law.⁸¹ It was also perceived as a concealed attempt on the part of the government to favour specific media undertakings and disadvantage others through careful drafting of rules that only in appearance were

⁸⁰ Law 3310/2005, “Measures to ensure transparency and avoid violations during public procurement procedure”, FEK A’ 30/2005.

⁸¹ V.G. Tzemos, “O ‘basikos metochos’ kai to Syntagma” [The ‘main shareholder’ and the Constitution], 4 DIMME (2005) 533, at p. 537-538

neutral and enforceable.⁸² The modified legislation also caught the attention of the European Commission, which sent a reasoned opinion to the Greek government, questioning the compatibility of both Law 3021/2002 and Law 3310/2005 with primary and secondary EU law.⁸³ Following unfruitful attempts to justify the adopted provisions, the Greek government was forced to suspend Law 3310/2005 and modify it via Law 3414/2005.⁸⁴ The latter determined that media activity and engagement in sectors that bid for public work contracts would only be incompatible, should an irreversible judgment on corruption be issued against the media enterprise concerned. The European Commission remained unimpressed by the changes made and urged the Greek state to comply with EU rules; in default, the case would be brought before the Court of Justice of the European Union (ECJ).

Eventually, it was the Council of State which resorted to the ECJ for guidance.⁸⁵ The case originated in a dispute, referred for a preliminary ruling, concerning the interpretation of Council Directive 93/37/ECC on the coordination of procedures for the award of public contracts,⁸⁶ in light of the constitutional provision of Article 14(9) and its former implementing statute, Law 3021/2002.⁸⁷ Completely disregarding the constitutional dimension of the case,⁸⁸ the ECJ ruled in *Michaniki* that Member States enjoy discretion to maintain or adopt rules designed to ensure in the field of public procurement observance of the principle of equal treatment and transparency, and to protect media pluralism and independence. Moving however to examine the proportionality of the national measure, the Court ruled that Greek legislation went beyond what was necessary to achieve the claimed objectives. Domestic rules excluded an entire category of public work contractors “on the basis of an irrebuttable presumption that the presence among the tenderers of a contractor who is also involved in the media sector is necessarily such as to impair competition to the detriment of other tenderers”.⁸⁹ The Court felt that the disproportionate nature of the Greek legislation was also evident in the very broad meaning of the concepts of “main shareholder” and “intermediaries”. Determined to settle for good issues of potential conflict with EU law, in 2007, the Greek state adopted an inter-ministerial decision (KYA 20977/2007), which practically rendered inapplicable the provisions concerning the delivery of “transparency” certificates by the NCRT. Law 3592/2007 did not introduce any new provisions on the issue, and the matter was closed.

⁸² N. Alivizatos, “O basikos metochos kai oi afaneis kyvernitikes epidiwkseis” [The main shareholder and the obscure objectives of the government], *Ta Nea*, 10/1/2005.

⁸³ See in detail, S. Papathanassopoulos, *H tileorasi ston 21o aiwna* [TV in the 21st century] (2005), p. 314-315.

⁸⁴ Law 3414/2005, “Amendment of Law 3310/2005, Measures to ensure transparency and prevent abuse in public procurement”, FEK A’ 279/2005.

⁸⁵ ECJ, Case C-213/07, *Michaniki AE v Ethniko Simvoulío Radiotileorasis, Ipourgos Epikratias*, available at: www.curia.eu.int.

⁸⁶ Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public contracts, OJ L 199, 9/8/1993, p. 53, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, OJ L 328, 28/11/1997, p. 1.

⁸⁷ Council of State, judgment no. 3670/2006.

⁸⁸ On this see V. Kosta, ‘Case note: European Court of Justice, Case C-213/07, *Michaniki AE v. Ethniko Simvoulío Radiotileorasis, Ipourgos Epikratias*’, 5 *European Constitutional Law Review* (2009) 501.

⁸⁹ ECJ, C-213/07, para. 63.

3.2.2.3 Competition rules

Competition law, often justified as maximising consumer choice via better quality products or products at better prices, can make a sufficient contribution to a varied media offering by guaranteeing an undistorted media market. The Greek competition rules enjoy a specific media component. Law 3592/2007 has complemented Law 703/1977,⁹⁰ the general Greek competition act, by laying down specific provisions on the notion of dominant position and concentration of companies in the media sector. Concentration is forbidden when one or more of the media undertakings concerned enjoy a dominant position or a dominant position is the result of the concentration itself. Specific notification requirements apply and precise “dominance thresholds” are established, ranging from 25% to 35%, depending on the number of the media markets involved. The abuse of a dominant position is prohibited.

Although the aforementioned provisions illustrate a certain level of state sensitivity in the area, in light of the importance of the media for democracy and their contribution to public debate and an informed citizenry, it has been argued that the Greek state should have prohibited dominant position *per se*, not just its abuse.⁹¹ Scholars have also drawn attention to the fact that the exclusive use of economic criteria for the establishment of a dominant position, based on advertising expenditure and sales income, is inappropriate.⁹² They have claimed that the assessment of whether a media enterprise enjoys a dominant position in the market or not must also be based on criteria related to the influence it exerts on the public, usually reflected in audience shares. Article 4(10) of Law 3592/2007 stipulates that viewership, audience and readership measurements, carried out by private not-for-profit enterprises, must be communicated to the Hellenic Competition Commission on a monthly basis, so that the latter can take them into account. However, the law remains silent as to the weight that must be ascribed to such measurements, and emphasises in Article 3(4) the following criteria for the assessment of the establishment of a dominant position: advertising expenditure and sales income for the press, and advertising expenditure and revenues from the sale of programmes and other audiovisual services for the electronic media. The endorsement of a pure economic approach, coupled with the fact that concentration control follows and does not precede operators’ merging plans, could substantially undermine the ability of competition law and policy to support citizen access to a wide range of media outlets and voices.

3.2.3 Content regulation

A variety of legal provisions along with self-regulatory measures aim to regulate the content of the information supplied by the press and audiovisual media operators and ensure that they meet a level of quality, and standards of completeness and versatility.⁹³ Content requirements also define when and how much time media

⁹⁰ Law 703/1977, “On the control of monopolies and oligopolies, and on the protection of free competition”, FEK A’ 278/1977.

⁹¹ Charalambis, “Eleutheria tis ekfrasis”, p. 152.

⁹² Dimitropoulos, “Oi rythmistikes epembaseis”, p. 123.

⁹³ Media operators must include news broadcasting along with programmes on art and culture, sports and light entertainment, programmes of social and educational content, and programmes that promote the correct use of Greek language and their teaching to foreigners, among others. See in particular Art. 6(13) and 7(6) of Law 3592/2007.

operators should devote to advertising.⁹⁴ The overarching goal of content requirements and the relevant regulatory measures is to cater to the right of citizens to receive information while at the same time ensuring political and cultural pluralism and demonstrating social sensitivity. The state is obliged to inform its citizens about the events of public life, and the media can criticise public figures, as long as such criticism is not in conflict with other rights and social goods. As is probably the case in other democratic countries, the right to be informed is recognised and given greater weight when it concerns information that is directly relevant for the formation of the public's political opinion, i.e. when it concerns party financing, public order, management of public funds, etc.

Reflecting a broader tendency in many countries, the regulation of the press differs fundamentally from that pertaining to audiovisual media, a distinction that is constitutionally drawn. For reasons that historically rendered the press a bastion of democratic expression against state arbitrariness, content regulation in the press is defined by self-regulatory codes of conduct. Journalists have historically rejected state intervention in issues concerning the objectivity and impartiality of information, which are instead considered to be a matter of social responsibility on the part of journalists.⁹⁵ On the other hand, journalists' behaviour and programme content in the audiovisual sector is subject to state regulation and control through laws and administrative acts. The broader tendency that recognises the necessity for television to be subject to greater state-imposed constraints in comparison to the press is justified by the greater power that it arguably exerts over a "captive audience" in its daily life.⁹⁶

State regulation of the audiovisual media does not exclude self-regulatory measures such as codes of conduct. All radio and TV stations applying for permit to the NCRT must also submit a code of conduct, with which they vow to comply. Such codes of conduct must be approved by the NCRT, which may also take them into account when exercising its supervisory functions. Some codes of conduct are also adopted as regular laws, and thus hold a greater power.⁹⁷ Alternatively, their enforcement is the responsibility of internal Ethics Committees (*Epitropes Deontologias*) that national television channels must form.⁹⁸ However, such committees have been inactive and they have not imposed any sanctions, as it is noted by the NCRT in its 2009 annual report.⁹⁹

The quality of programme must exhibit social sensitivity towards sections of the audience that are considered to be particularly vulnerable to the overpowering, but also potentially detrimental influence of audiovisual media, such as minors. For instance, it is stipulated that both public (ERT) and commercial TV stations are obliged to refrain from showing programmes that can seriously injure the physical, mental or moral development of minors. Deemed equally unacceptable is the

⁹⁴ Art. 5(3) of Presidential Decree 100/2000, "Harmonisation of the Greek legislation for radio and television to the provisions of Directive 97/36 of the European Parliament and of the Council of June 30, 1997", FEK A' 98/2000.

⁹⁵ Ch. Anthopoulos, "H aftorythmisi tw n meswn pliroforisis" [The self-regulation of information media], 3-4 To Syntagma (1999) 467, at p. 448-449.

⁹⁶ Anthopoulos, "H aftorythmisi", p. 454.

⁹⁷ This is the case for instance with the "Code of conduct for news broadcasting and other journalistic and political programmes", Presidential Decree 77/2003, FEK A' 75/2003.

⁹⁸ Art. 8 of Law 2863/2000.

⁹⁹ National Council for Radio and Television, 2009 activity report, at p. 24.

dramatised representation of news broadcasting, or the presentation of real acts of violence, that are unnecessary for informing the audience about a particular event.¹⁰⁰ In addition, television channels must refrain from showing programmes or providing information that provokes hatred on the basis of race, sex, religion or citizenship.¹⁰¹

The quality of content depends on the correct use of Greek language, which all public and private radio stations and TV channels must respect. They are obliged to semi-annually organise a series of at least 15 programmes of thirty minutes each that aim to highlight the correct use of the Greek language, or teach it to foreigners and those who are illiterate.¹⁰² At the same time, public and commercial TV channels are also obliged to devote at least 51% of their total transmission time to European works, that is, works that originate in EU member states and other European countries that participate in the European convention for cross-border television of the Council of Europe.¹⁰³

Deregulation and the advent of private television and radio have no doubt expanded the openness, diversity and pluralism in the content of broadcasting in comparison to the past, including that of state television that has been forced to compete with private channels.¹⁰⁴ At the same time, the continuous disregard for the rules of operation of TV stations and for existing codes of ethics, has led the government to augment the powers of the NCRT in order to regulate and control the content of audiovisual programmes.¹⁰⁵ In the context of its reinforced mandate, the NCRT has issued numerous recommendations and decisions, as well as imposed sizeable fines to radio and TV operators that were deemed to violate the rules. However, the way in which the NCRT has performed its regulatory role as such has been heavily criticised for bordering on censorship, if not outright imposing it. It has made highly controversial and dubious value judgments, sanctioning with fines, programmes that violate certain rules, such as overly projecting homosexuality or demonstrating how the porn industry operates, for instance.

Up until now, there has been an uncertainty regarding the legal norms to regulate the content of information transmitted through the internet, including through blogs. There has also been uncertainty regarding how to strike a balance between freedom of expression and other social values such as respect for the private life, honour or personality of others. In part, the content of information transmitted through the internet (i.e. books in electronic form, e-newspapers, e-magazines, etc.) is considered to fall under the provisions for the press (Article 14(1) Const.). Insofar, as it concerns audiovisual content on the internet though, it is covered by the provisions pertaining to the media (Article 15(1) Const.).¹⁰⁶

¹⁰⁰ For instance, it is prohibited to present minors who are witnesses, crime offenders, or victims of crime and accidents, and this can only be done as an exception and on the condition of parental consent.

¹⁰¹ Art. 4(1) of Presidential Decree 100/2000.

¹⁰² At least 25% of their programme (typically more than this) must include shows that are originally in Greek. See Art. 3(18)-(19) of Law 2328/1995.

¹⁰³ Art. 10(4) of Presidential Decree 100/2000.

¹⁰⁴ Papathanassopoulos, "The politics and the effects of the deregulation", p. 361-362.

¹⁰⁵ Panagiotopoulou, "20 xronia", p. 12-13.

¹⁰⁶ Karakwstas, *Dikaio kai internet*, p. 46-47.

3.2.3.1 Rules to ensure impartial and objective information

News broadcasting and other journalistic and political programmes must ensure a level of quality that is in tune with the social mission of the audiovisual media and the cultural development in the country.¹⁰⁷ Regulation of content is based on general principles, such as the right of journalists to freely convey the news in order to inform the public. Meanwhile, they have the obligation to do so in an appropriate manner. For instance, the presentation of facts must be accurate and as complete as possible, without creating confusion, exaggerated hope or panic for the audience.¹⁰⁸ The information that is conveyed must be cross-checked and must have been legally obtained (i.e. interception or secret cameras are prohibited). The journalist has the right not to disclose his/her source. It is prohibited to impart confidential information or pictures that can be damaging for the country's territorial integrity, defence and security. In a controversial provision that can be seen as a vestige of censorship, the law also stipulates that the country's constitution and the legal order in general must be respected when journalists criticise particular laws or institutions.¹⁰⁹

A most vocal assertion of the press' obligation to convey impartial and objective information is contained in the various codes of conduct adopted by Greek journalists.¹¹⁰ By defining information as a social good, and differentiating it from a commercial product or medium of propaganda, the Greek journalists' code of conduct considers their primary mission to be the revealing of truth. Journalists must communicate the truth with accuracy, objectivity, and without prejudice, while investigating *a priori* the facts and refraining from distorting or withholding information about actual events.¹¹¹ Journalists must also collect and cross-check the accuracy of their sources and received information with appropriate methods and always by making known their journalistic profession. Content-related obligations that self-bind journalists include: the obligation to treat equally all citizens without discrimination on the basis of ethnic origin, sex, race, religion, political conviction or social status, to respect the personality and private life of individuals and responsibly use information pertaining to their private life or public role. In addition, they must respect the presumption of innocence while an individual is facing trial in court, among others.¹¹²

Echoing the historical role of the press as a bulwark against state arbitrariness, existing codes of conduct proclaim the duty of journalists to vigorously defend the democratic polity and his/her freedom not to convey inaccurate information under pressure by his/her employer, as well as to denounce state authoritarianism and the abuses on the part of media owners. Finally, journalists acknowledge their cultural mission by undertaking the responsibility to improve the journalistic language, avoiding grammatical or syntactical mistakes, as well as vulgar language, in order to "protect" the Greek language from the intrusion of foreign terms. Consequently, they

¹⁰⁷ See Art. 15(2) of the Constitution.

¹⁰⁸ Art. 5 of Presidential Decree 77/2003.

¹⁰⁹ *Ibid.*, Art. 8 and Art. 2.

¹¹⁰ See the "Rules of conduct of the journalists' profession", which have been adopted by the Association of Editors of Daily Newspapers of Athens (ESYEA) and by the Panhellenic Federation of Greek Editors (POESY). A similar set of principles is contained in abridged form in the "Statement of rules of professional conduct of the International Federation of Journalists", which has been adopted by the Greek Association of Correspondents of Foreign Press.

¹¹¹ Art. 1 of POESY Code of Conduct.

¹¹² Art. 2 of POESY Code of Conduct.

thereby contribute to the national tradition and cultural heritage.¹¹³ Most of the principles contained in the codes of conduct binding journalists in the press, are also reiterated in more condensed fashion in the code of conduct pertaining to the content of news broadcasting and political programmes in the audiovisual sector (both public and private). Reflecting the fact that journalism in the audiovisual sector is subject to stricter limitations,¹¹⁴ this last code of conduct takes the form of a regular law.¹¹⁵

3.2.3.2 Criticism of public figures and the right to redress and reply

The constitutionally protected right to express freely through the media is especially underscored when it comes to criticism of public and political figures, which is justified by the need to ensure democratic dialogue. Individuals, such as candidates for elections, members of parliament, etc., who participate in political discussions and controversies are particularly exposed to unfettered criticism. At the same time, freedom of expression is subject to a series of limitations and requirements aimed at balancing it against a variety of other rights and social goods, such as respect for human dignity, personal data, and the right to privacy. Greek legal and judicial doctrine does not *a priori* determine whether freedom of expression or protection against various kinds of insult, libel and private life intrusion by journalists, is paramount. Instead the limits of journalists' criticism are determined on a case by case basis. Some of the criteria that are considered in such assessments are the nature of insult or libel (statement of facts as opposed to an opinion or normative judgment), the motives, and the consent of the individual, whom a disparaging view or article concerns, among others.¹¹⁶

In both public and commercial television, existing laws stipulate that any kind of programme must respect the personality, honour and dignity, family life and all activities (professional, political, etc.) of any person who is depicted in it (i.e. his/her picture, name, or various information that indirectly refers to him/her).¹¹⁷ This requirement also applies to individuals who are depicted in news broadcasting or participate in political programmes. The views that they express must not be distorted, i.e. by partially reporting their answers or through the use of audiovisual techniques.¹¹⁸

At the same time, a number of legal provisions recognise the right to seek redress for those individuals whose personality, private life or professional, political or other activity are offended, or his/her reputation and business interest are injured by a television or radio programme. Such a right is also accorded to political parties and their members, as well as any professional or trade union association, when its views are silenced or distorted in a way that they create a false impression among the audience. It can be exercised within a particular timeframe of 10 days through a written text or live presentation in the same programme.¹¹⁹

¹¹³ Art. 7 of POESY Code of Conduct.

¹¹⁴ Anthopoulos, "H aftorythmisi", p. 453.

¹¹⁵ Presidential Decree 77/2003.

¹¹⁶ For a detailed discussion, see I. Karakwstas, *To Dikaio ton MME [Media law]* (2005), p. 250-285.

¹¹⁷ Art. 3(1) of Law 2328/1995.

¹¹⁸ Art. 9 of Presidential Decree 77/2003.

¹¹⁹ Art. 9 of Presidential Decree 100/2000. If the TV or radio station turns down the request for redress, then it is forwarded to the NCRT, which must decide within 3 days, and its decision is binding for the radio or TV station.

3.2.3.3 Rules concerning political and cultural pluralism

The audiovisual media provides a platform for political contest during pre-election periods. Legal norms foresee the transmission (free of charge or charged with lower rates) of political party messages during the pre-election periods. Messages by candidates running for national or local elections, however, are not allowed to be communicated.¹²⁰ In the organisation of their programme as a whole, TV stations are obliged to respect and ensure political pluralism by equally enabling all political parties represented in the Greek and European parliaments to access their programme and transmit their messages to voters.¹²¹ During pre-election periods, the presentation of political topics and the broadcasting of relevant news must be done with moderation and clarity, and in compliance with the principles of plurality, equality and respect for the democratic processes. News and other programmes that convey information about protests or violent events occurring in pre-election gatherings must refrain from the use of techniques that give misleading impression of the facts, as well as from inflammatory slogans that incite people to participate in violent and illegal acts.¹²²

This prohibition, which was introduced three years ago, served to restrict the political content of the media to publicise the results of polls fifteen days prior to election day.¹²³ Premised on the view that polls are an important component of the political dialogue as an assessment of experts about election results, legal scholars in Greece have criticised such prohibition as going against the right to freely impart information. Those advancing this view are not convinced by the argument that poll results may influence the voters' preferences in an unfair or illicit manner, at least not more so than other kind of electoral assessments that are routinely made by commentators in the media. Given that the prohibition does not apply to the conducting of polls but only to publicising their findings, it does not prevent leaks and rumours, often intentionally spread by political party campaigners in order to influence public opinion and debate.¹²⁴

News broadcasting and other journalistic and political programmes must also refrain from depicting individuals in ways that reinforce discrimination on the basis of race, sex, nationality, religion and disability, conveying messages that are xenophobic and sexist or expressing intolerant views that offend ethnic and religious minorities.¹²⁵ Similar restrictions also apply to the content of advertising that should not discriminate on the basis of race, sex, disability, religion or citizenship, or insult religious and political convictions, among others.¹²⁶

3.2.3.4 Rules concerning content regulation on the internet

Given that the legal rules regulating the press also apply to the e-versions of magazines and newspapers, any person who is offended by something published on

¹²⁰ Art. 3(13) of Law 2328/1995, which was inserted in Art. 3(9) of Law 1866/1989.

¹²¹ Art. 3(22) of Law 2328/1995.

¹²² Art. 16 of Presidential Decree 77/2003.

¹²³ Art. 7(1)(a)(b) of Law 3603/2007.

¹²⁴ For such a critique, see S. Tsakyrakis, "Antisyntagmatiki i apagorefsi" [The prohibition is unconstitutional], *Kathimerini*, 26/8/2007.

¹²⁵ Art. 4 of Presidential Decree 77/2003.

¹²⁶ Art. 5(3) of Presidential Decree 100/2000.

the internet has the same rights as a person offended by content in the press.¹²⁷ A clear distinction, though, is drawn here with social networking sites: a person is not entitled to the protection of his/her honour, reputation or private life in content transmitted through the internet in such sites (such as facebook) in which s/he voluntarily discloses personal information to a wide circle of internet users. In this case, by voluntarily participating in such networking, an individual *a priori* deprives himself/herself of such protection by having made private information available to public use and display.¹²⁸

Regarding blogs, the regulation of content in order to protect the honour, reputation, personality or private life of persons has not been fully settled in Greek legal and judicial doctrine. Such uncertainty is also evidenced in other countries. A relatively recent decision of a court of first instance in Greece drew a distinction between the electronic media (internet versions of newspapers, TV and radio broadcasting) and blogs, on the basis that the latter is an interactive medium of communication, the content of which is shaped not only by an editor or journalists but by all readers-internet users.¹²⁹ At the same time, because there is lack of legal provisions that specifically refer to blogs, the same court decision applied the provisions that pertain to the press in order to establish the responsibility of the blogger for content that was libellous or detrimental to the honour or reputation of others.¹³⁰

On the other hand, a contrasting legal and judicial approach dwells on the distinctiveness of the blog as a medium of communication rather than a channel of information for the public, which renders it incomparable with the conventional press, and thus the legal norms applying to the press cannot be enforced in the case of blogs. From this perspective, which is adopted in another recent court decision,¹³¹ the responsibility of the blogger, who is often an ordinary citizen, in cases of offence or insult, is not the same with that of a powerful media entrepreneur; therefore, it is not appropriate to extend to blogs the large sums of indemnification that are granted in cases of insult or libel in the press.¹³² From this latter perspective, some argue there is a legal gap regarding freedom of expression vis-à-vis protection of other social goods on the internet, which must be filled. Others, though, claim that such a gap could be filled by general rules for insult against one's personality, which are contained in the Civil Code.

Regardless of which approach prevails, it is generally conceded that insult of someone's personality through libellous or false information in blogs is illegal and the targeted persons are in need of protection. At the same time, each approach has different implications regarding another controversial aspect, namely whether or not bloggers are obliged to reveal their true identity instead of hiding behind anonymity or a false name. Those who view the internet and blogs as a fundamentally distinct

¹²⁷ Karakwstas, *Dikaio kai internet*, p. 56-58.

¹²⁸ *Ibid.*, p. 60.

¹²⁹ Court of First Instance (*Monomeles Protodeikio*) of Rhodope, No. 44/2008.

¹³⁰ P. Kalogirou, "H anonymia sta blogs" [Anonymity in blogs], *Sychnotites*, October-December 2009, p. 21-22.

¹³¹ Court of First Instance (*Polimeles Protodeikio*) of Pireus, No. 4980/2009.

¹³² For this approach, see "O nomos peri typou den efarmozetai sta blogs" [The law on press does not apply on blogs], published in the blog of a Greek lawyer V. Sotiropoulos, available at: <http://elawyer.blogspot.com/search/label/Blogo%CE%BD%CF%8C%CE%BC%CE%BF%CF%82> (last visited on 23/7/2010).

due to its interactive nature, medium of communication are ready to defend the right to anonymity. In contrast to a consultatory response (*gnwmodotisi*) issued by the public prosecutor of Greece's Court of Cassation (*Areios Paghos*), the Hellenic Authority for Communications Security and Privacy (ADAE) has insisted that the internet and bloggers are entitled to anonymity and to the protection of personal data and privacy in communications.¹³³ According to ADAE, the confidentiality of this data can only be lifted in order to investigate particularly grave crimes or for reasons of national security.¹³⁴

3.2.3.5 Rules concerning information gathering processes

In accordance with Article 10(3) of the Greek Constitution, public authorities are “obliged to reply to requests for information and for issuing documents, especially certificates, supporting documents and attestations within a set deadline not exceeding 60 days, as specified by law”. Article 5 of the Code of Administrative Procedure (Law 2690/1999) safeguards citizens’ right to access administrative documents, and is thus of relevance and importance to media professionals.¹³⁵ Administrative documents are defined as those produced by public sector entities, such as reports, studies, minutes, statistical data, circulars, administrative responses, opinions and decisions. Citizens with a legitimate right may also access private documents held by the public authorities. The right of access to documents cannot be exercised if the documents at hand concern the private or family life of others, or if their confidentiality is prescribed by specific legal provisions. Consideration must also be given as to whether the documents are protected under intellectual or industrial property regulations. Public bodies can refuse access if the documents concern discussions of the Ministerial Council or if access can seriously obstruct investigations of criminal or administrative violations, carried out by judicial, police or military authorities. Citizens may access the documents where they are held or obtain a copy at their own cost. Access can be denied, provided that refusal is reasoned and that it is communicated in writing within one month from the date of the submission of the request.

Law 2472/1997 on the “protection of individuals with regard to the processing of personal data” was introduced in order to incorporate Directive 95/46/EC¹³⁶ into Greek law.¹³⁷ In principle, the law prohibits the collection and processing of sensitive data, that is, data “referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership to a trade-union, health, social welfare and sexual life, criminal charges or convictions, as well as membership to societies dealing with the aforementioned areas”.¹³⁸ However, an exemption is introduced for data pertaining to public figures, provided that such data are in connection with the holding of public office or the management of third parties’ interests, and that processing is

¹³³ Kalogirou, “H anonymia stab logs”, p. 23.

¹³⁴ See Art. 19(1) of the Greek Constitution.

¹³⁵ Law 2690/1999, “Code of Administrative Procedure”, FEK A’ 45/1999.

¹³⁶ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23/11/1995, p. 31.

¹³⁷ Law 2472/1997 “on the protection of individuals with regard to the processing of personal data”, FEK A’ 50/1997. The law was amended by Laws 2819/2000 and 2915/2001.

¹³⁸ *Ibid.*, Art. 2(b).

carried out solely for journalistic purposes.¹³⁹ In such cases, data processing, as well as the establishment and operation of the relevant file, are allowed on the basis of a permit that is issued by the Data Protection Authority. The Authority may grant such permit if processing is absolutely necessary in order to ensure the right to information on matters of public interest, as well as within the framework of literary expression and on condition that the right to protection of private and family life is not violated in any way whatsoever. The permit is granted upon request and may impose terms and conditions for a more effective protection of the right to privacy. It is issued for a specific period of time and may be renewed upon request. A copy of it is registered with the Permits Register kept by the Authority.

4. Media policy and democratic politics: an assessment

It becomes clear from the overview provided in this report that Greek media policy is characterised by a large number of legal norms and rules that often exhibit discontinuity, contradictoriness, and haphazardness. Far from paving the way for the emergence of a coherent regulatory framework, deregulation since the 1980s has actually led to a highly unregulated environment, a phenomenon that has been termed as “savage deregulation.”¹⁴⁰ By European standards, Greek legislation for radio and TV licensing denotes a unique situation: dense regulatory rules exist, which yet remain largely inapplicable, not only because of their complexity and often contradictory character but also on account of the state’s inertia to take proper action to implement them.¹⁴¹ The epitome of such a contradictory and unenforceable legal framework that lacks overarching strategic (economic, social and other) goals is the fact that media operators in the private audiovisual sector function without valid licences (and they have done so for the past twenty years). The failure to adopt a sound legal framework for radio and TV licensing has important implications for the type and quality of broadcasting and the power relations that develop between the state and private media operators. This is because licensing procedures guarantee that broadcasting develops in line with specific content standards, in support of a variety of information reaching the public, at the same time ensuring a secure legal environment for operators to pursue their activities.

The Greek licensing adventures of analogue broadcasting testify to the Greek state’s inability, or even unwillingness, to implement a thorough media licensing policy. Following initial surprise, a first set of licensing rules were introduced, which however were prepared in a rather cursory, amateurish manner and therefore did not prevent anarchic private market entry. The second attempt to regulate the market in 1995 was similarly unsuccessful. Bad drafting of the rules enacted prevented the NCRT from proceeding with the allocations of licences. As a result, broadcasters continued to operate under a status of “semi-legality”, a situation which was maintained also after the adoption of Law 3592/2007. In a rather absurd manner, the 2007 act directed attention to the allocation of analogue licences, when what was needed were adequate procedures for the licensing of digital terrestrial broadcasting in view of the 2012 deadline. Critical moments are coming with the imminent passage to

¹³⁹ Ibid., Art. 7(2)(g).

¹⁴⁰ Papathanassopoulos, “The politics and the effects of the deregulation”, p. 359.

¹⁴¹ A. Manitakis, “H anagki rythmisis tis radiotileoptikis arrhythmias enopsei kai tis anathewrises tou Syntagmatos” [The need to regulate the unregulated radio and TV sector in view of the revision of the Constitution], 3-4 To Syntagma (1999) 401, at p. 402.

digital terrestrial broadcasting, as, similarly to its precursors, Law 3592/2007 reflects lack of strategic planning.

In order to understand the failure of successive Greek governments to grant proper and valid licences, we must focus our attention to the intensely politicised nature of the deregulation process already from its inception. Liberalisation in the late 1980s was not a result of explicit government decision on the basis of a national strategy but a political act of the centre-right opposition. The latter was evidenced in the action taken by the municipal radio stations of Thessaloniki, which the centre-right opposition controlled.¹⁴² Subsequently, deregulation was driven by the logic of antagonism among Greece's main political parties competing for government power. For instance, in 1989, the government which was dominated by the centre-right awarded television licences only to media owners who had been critical of the previous socialist governments.¹⁴³ Similarly, in 1993-94 the socialist government did the same for channels, which had been supportive of PASOK during elections.¹⁴⁴

Political parties often adopted contradictory stances depending on whether they were in government or in opposition. While they were in opposition, they advocated soft regulation. But when they acquired government power, they tried through various mechanisms (i.e. cancellation of fines or non-payment for use of frequencies) and restrictive legal rules to pressure the media to adopt favourable attitudes towards the government.¹⁴⁵ In this intensely politicised deregulation process, and despite the fact that clear partisan lines no longer colour television broadcasting, it can still be discerned that in the attempts of political parties to direct and control the media, there is substantial continuity with the past.

In effect, it seems that Greek licensing policy for broadcasting has inadvertently followed a "laissez-faire" approach, which, however, has been a result of political favouritism. The apparent reluctance to introduce comprehensive rules for the licensing of electronic media and guarantee their enforcement could be seen as a deliberate attempt on the part of successive governments not to antagonise powerful business interests in the press and broadcasting, in anticipation that these would in turn support government policies. The result is the absence of a coherent legal framework that can effectively delimit the boundaries of political influence that the media can exert, leading, in the end, to a media environment, which has become difficult, if not impossible to regulate.

Evidently, the failure of the Greek state to licence the broadcasting sector for almost two decades has serious repercussions on the level of independence of the latter. It also creates and reinforces mutual dependencies between private media operators and the government, potentially undermining standards of objectivity and impartiality in news broadcasting. Given the legal ambiguity through which Greek broadcasters operate, one may not rule out the possibility of a certain degree of media self-censorship. Reactionary and averse responses to state action and policies may be sidelined or silenced, so as to refrain from upsetting (or upsetting too much) state bodies and organs that enjoy the capacity to roll back the legal status that has been "temporarily" conceded. On the other hand, media owners and broadcasting directors can exercise unfair and informal pressure upon government officials, which restrictive

¹⁴² Panagiotopoulou, "20 xronia", p. 11.

¹⁴³ Papathanassopoulos, "Broadcasting, politics and the state", p. 394.

¹⁴⁴ Papathanassopoulos, "The politics and the effects of the deregulation", p. 358.

¹⁴⁵ Panagiotopoulou, "20 xronia", p. 18-19.

legal rules have purportedly sought to curb, while also feeling free to operate without following the rules. The interdependencies between government and the media, not only in public service but also in private sector broadcasting, are difficult to tackle considering the weakness of an independent civil society active in the media, which could serve as a vehicle of mobilisation and political pressure. They also augment the impression among the public that the political system fails to ensure transparency and accountability, and to guarantee equality for all citizens in their ability to influence the democratic process.

The most distinctive and controversial aspect of Greek media policy pertaining to the ownership structures in the media has no doubt been the restrictive rules known as the “main shareholder” (*vasikos metochos*). The concentration of media ownership in the hands of few conglomerates is a frequent phenomenon encountered in many European countries. In the Greek context, though, it has received particular attention insofar as it concerns media owners and shareholders who have entered the field since its deregulation, and who simultaneously own or manage enterprises that bid for and engage in public sector contracts. They may be involved in sectors such as construction and telecommunications or in sectors where the state is a significant customer (energy, shipping etc.). This distinctive concern with media investors who are involved in such sectors must be understood in reference to a national context like the Greek one, in which the state has historically been a major economic actor, and has traditionally awarded large public work contracts on preferential basis to businesses with political connections.¹⁴⁶ Since the late 1980s, the entry of entrepreneurs into the media tremendously expanded the ability of business interests to influence and shape public opinion and attitudes vis-a-vis the political class.

The deregulation of radio and television in the late 1980s was a watershed for established relations between the political elites and the economic interests that had established themselves until then. While until then the media had served as a terrain for competing political parties and interests vying for influence, deregulation greatly empowered the media and the business interests vested in it. It shifted the main axis of juxtaposition to one between the political elites on the one hand, and the business interests on the other. While the state and the political class had a reigning position over the media prior to deregulation, the balance of power following the latter shifted with the emergence and gradual expansion of business interests with considerable investment activity, in media outlets. This alarmed politicians. Concerns that public work contractors connected with media undertakings and persons owning or managing them could use the influence afforded by their position to enter into contracts with the state became widespread.

In response to such concerns, restrictions applicable to the conclusion of public work contracts with persons and undertakings that were active or had interests in media enterprises, were first established by Law 2328/1995;¹⁴⁷ however, they proved to be largely unenforceable.¹⁴⁸ As a rare instance of cross-party consensus in

¹⁴⁶ D. Charalambis, “To telos tou ‘basikou’ metochou” [The end of the “main shareholder”], *To Bima*, 21/10/2007.

¹⁴⁷ By adopting this law, the government at the time had arguably sought to circumvent the pressures that media owners exercised upon it regarding large public contracts that were awarded within the second and third Community Support Frameworks (CSFs) established by the EU to assist the less developed economies of the south. See Panagiotopoulou, “20 xronia”, p. 14.

¹⁴⁸ In case of non compliance, Law 2328/1995 did not render the signed public contracts void. It only made provision for the withdrawal of the broadcasting licence. Since no proper licensing procedure had

the highly politicised sphere of the media, the two main parties subsequently reinforced such restrictions and incorporated them in an unusually detailed set of provisions in the Greek Constitution when it was amended in 2001.¹⁴⁹ The drafting of constitutional rules was driven by prevalent distrust towards ordinary legislation.¹⁵⁰ For the political forces of the period, an adequately revised constitutional text would place the legislator under significant strain, indicating the regulatory course to take. Notably, transparency in media ownership and public contract award procedures was also used as a pretext to improve the popularity of the political parties of the time. Political actors competed over who would condemn more fervently the use of the media to influence state conduct.¹⁵¹ The media was criticised for being a platform nourishing corruption and preventing true pluralism and transparency, and action to remedy the situation was presented as protecting democracy.

The restrictions of the “main shareholder” placed upon media owners who were involved in public work contracts introduced much stricter limits than those previously defined by general laws that protect fair competition, and they were extensively criticised on a variety of grounds. First of all, they clearly went against the freedom of economic activity, and were incompatible with EU common market law. Additionally, a question was raised regarding the extent to which the purported illicit interweaving of political and media interests (*diaploki*), which they sought to curb, was in fact a widespread phenomenon and of a kind that had to be redressed in such a draconian manner.¹⁵² In any case, legal and communication scholars amply exposed the misguided assumptions regarding the nature of economic relations among family members and relatives, which underpinned the restrictions placed upon media owners, but also the ineffectiveness of these restrictions to actually curb unfair and illicit influence.¹⁵³ In the end, the existence of strict rules that were not enforced and did little to prevent cross ownership of media outlets and enterprises engaged in public sector contracts, only reinforced perceptions of unrestrained and unaccountable media interests, both among political elites, and also among the public.¹⁵⁴

The spectre of an increasingly empowered media vis-à-vis the political world has alarmed elites across parties and appears to have significantly driven the various legal and policy norms adopted by successive governments. The weakness of political institutions permeated by particularistic interests and their fledgling legitimacy

taken place, enforcement was not possible. Moreover, obligations imposed on the undertakings entering into public work contracts to have registered shares (i.e. shares mentioning the name of their owner) could not be enforced with regard to companies established in the EU Member States.

¹⁴⁹ The relevant amendment was voted by 265 out of the 280 Members of Parliament who were present. See Venizelos, “Oi eggyiseis tis polifwnias kai diafaneias”, p. 430.

¹⁵⁰ Kiki, *H eleutheria tw n optikoakoustikw n mesw n*, p. 209, Venizelos, “Oi eggyiseis tis polifwnias kai diafaneias”, p. 428, N. Alivizatos, “Syntagma kai ‘diaploki’” [The Constitution and the interweaving of interests], 1 DIMME (2004) 16, at p. 19.

¹⁵¹ Kiki, *H eleutheria tw n optikoakoustikw n mesw n*, p. 170.

¹⁵² Tzemos, “O ‘basikos metochos’”, p. 538.

¹⁵³ Alivizatos, “Syntagma kai ‘diaploki’”, D. Charalambis, “Skepseis sxetika me ta zitimata tis diafaneias, tis “asimbibastes idiotites” kai ton “basiko metochos” [Thoughts about the issues of transparency, ‘the incompatible capacities’ and the ‘main shareholder’], 1 DIMEE 2004.

¹⁵⁴ For such perceptions among political elites, see the speech by N. Konstantopoulos (former president of the Coalition for the Left and the Progress, Synaspismos), “O rolos tw n mesw n enimerw sis stin anaptiksi tis dimokratias” [The role of information media in the development of democracy] and Y. Papakonstantinou (formerly press spokesperson for PASOK and currently Minister of Economics), “H sxesi tw n paradosiakw n kai tw n sygxronw n mesw n me tin politiki” [The relationship of the traditional and new media with politics], in *Oi ekselikseis ston chwro tw n mesw n epikoinwnias*.

regarding the ability to represent citizens in a satisfactory and just manner has further bolstered the impression of an all-powerful and influential media with television having prime of place in this regard. Such an impression is shared by a large section of the Greek population, which believes that the national news media play a crucial role in political developments, and which at the same time appears deeply distrustful towards the media.¹⁵⁵ Recent Eurobarometer data shows that the Greek public has low levels of trust in the audiovisual and internet-based media.¹⁵⁶ Nonetheless, television remains the most preferred source of information. More specifically, this preference is found in 70% of the population aged over 15, while almost half the respondents (54%) reported watching television news on a daily or almost daily basis.¹⁵⁷

The widespread perception that the media (and television in particular) has emerged as a centre of power that is unaccountable does little to instil public confidence in the country's democracy. More recently, the development of the internet as a medium, not only of information, but most importantly of interactive communication among users-readers, appears to hold the promise of democratising the media and its relations with the political system. The increasing use of the internet by Greek political parties and the government to communicate their positions on various issues and to directly reach citizens, can arguably bypass the ability of media operators and publishers to shape the flow of information and influence the political agenda.¹⁵⁸ At the same time, online platforms increasingly create alternative information and communication channels with citizens engaging directly in content production and distribution, enhancing opportunities for political participation and democratic debate.

Arguably, digitalisation and the changes brought by new technologies offer an optimum occasion for a re-appraisal of long-standing media policy-making practices in Greece. In a period of profound reflection about the new environment in which the media operate, but also widespread concern about the effects of economic recession on the operation of the media, especially the press, there clearly appears to be a need to return to the real focus of media policy and regulation, that is, the key role played by the media in a democratic society. Considerations about the democratic functions the media should perform and the contribution they should make to democratic discourse must take a prominent position in government thinking and similarly guide the agenda of all those wanting to influence media policy, including journalists and the media themselves.

¹⁵⁵ See, "Oi polites amfisvitoun entona tin aksiopistia tw n MME" [Citizens question strongly the reliability of the media], *Ta Nea*, 1/3/2010.

¹⁵⁶ The TV is the least trusted news source (not trusted by 72% of the population, the highest rate in the EU), followed by the press (65%) and the radio (52%). Data also reveal low levels of trust in internet media too (64%), yet no distinction is made between news websites and blogs. See European Commission, Directorate General Communication, Eurobarometer 69, National Report, "Greece", available at http://ec.europa.eu/public_opinion/archives/eb/eb69/eb69_el_exe.pdf (last accessed on 23/7/2010).

¹⁵⁷ Public Issue, "Ethniki ereuna gia ta mesa mazikis enimerwsis stin Ellada - 2007" [National research on mass information media in Greece - 2007], available at: <http://www.publicissue.gr/128/iom-media-2007/#4> (last visited on 23/07/2010).

¹⁵⁸ See Papakonstantinou, "H sxesi tw n paradosiakwn kai tw n sygxronwn meswn me tin politiki", p. 102-108. In the same volume, see also P. Mandravelis, "Ta monastiria, h typografia kai to diadiktio" [Monasteries, printing and the internet], p. 76-80.

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