

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 Spain

Susana de la Sierra, Emilio Guichot, Marina Mantini, Sara Medina, Irene Sobrino (UCLM)

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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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Information about the authors

Susana de la Sierra is Professor of Administrative Law at the University of Castilla-La Mancha and Co-ordinator of the Master's Programme on European Union Law. Her research interests include European and global administrative law, comparative law and media law. She has recently published a book on film law and has widely published on comparative law as a method of European legal integration. She has been Visiting Fellow at the University of Oxford and the European University Institute in Florence, and Fulbright Visiting Scholar at Columbia University (New York).

Emilio Guichot Reina is Professor of Administrative Law at the University of Seville. His main research interests are European administrative law; property, expropriation and non contractual liability; media law and access to information; and data protection law. He has widely published in these topics and has conducted research in various institutions, such as Paris I-La Sorbonne, Paris 8, Munich and Montreal, the European Court of Justice and the European University Institute.

Marina Mantini had her Ph.D in International Cooperation and Sustainable Development Policies at the University of Bologna and the Complutense University of Madrid. She has specialised in sociosemiotics, communication for social change, and new media analysis. She is particularly interested in assessing how cultural and social values are present in current communications forms, in relation to the ideologies and structures of power conveyed by mass media communication. She is also doing research the relationship between culture and environment.

Sara Medina González is lecturer in Administrative Law at the Spanish Universidad de Educación a Distancia (UNED). She has specialised in media law and, more specifically, in problems concerning free competition and state aids. While publishing widely on various aspects of media law, she has also acted as a consultant to the European Commission on the Revision of the Communication on the application of EU state aid rules to public service broadcasting.

Irene Sobrino is a lecturer and researcher in Constitutional Law at the University of Seville since October 2006. She holds a Ph.D. in Law from the European University Institute on the relations between Welfare state and federalism from a comparative perspective. Her research interests are in political theory and comparative research on social rights, European integration, citizenship and political decentralisation.

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The case of Spain

Susana de la Sierra, Emilio Guichot, Marina Mantini, Sara Medina, Irene Sobrino

1. Introduction

Spain is a young democracy, compared to other long-established regimes, as the Constitution drafted after Franco's dictatorship dates from 1978. Whilst it would be too theoretical a debate to discuss here whether or not it is a federal state, Spain is a territorially decentralised country. It is divided into seventeen decentralised entities called *Comunidades Autónomas* (Autonomous Communities), which have their own basic political norms: the Autonomy Statutes (*Estatutos de Autonomía*). The Autonomous Communities have all some legal competences and, therefore, their own policies concerning the media. It should also be noted that Spain is a medium-size country, with nearly 45 million inhabitants, and some asymmetries between regions. This implies that, even if all the Autonomous Communities are in principle able – from a constitutional point of view - to develop their own media policy, in practice this is not the case. That is indeed a reflection of what happens also in other areas, as there are some Autonomous Communities that push forward their own policies more than others. And it is an interesting research question that could be the object of a case-study in the future. Also, the per capita income of Spanish citizens very much varies from region to region and from city to city. And there are still differences in access to certain services between those living in cities and those in rural environments. As a result, the relationship between media and democracy should be addressed bearing in mind that many inequalities still exist in the country.

The report, whose purpose is to provide a background of the situation of media policies in Spain, is divided into the following parts. Firstly, a thorough historical review will be set out. The reason for its length is the fact that history has played a decisive role in the framing of today's media law in Spain. In other words, it could be argued that historical and cultural influences are too strong in Spanish law for it to adapt to new contexts. Secondly, the legal framework will be discussed. The focus will be on the constitutional provisions that recognise freedom of expression and information, and the limits on their exercise. An explanation will also be given of how the Central State and the Autonomous Communities are granted competences to act in the media sector. Then, thirdly, more specific sub-constitutional norms will be explored, focusing on the main legal bases for the development and functioning of each type of media. The analysis will proceed with the discussion of specific content regulations, such as the legally-protected conscience clause for journalists, the protection of certain rights such as honour or privacy, access to public documents and copyright rules. Finally, an assessment of the relationship between democracy and the media will be provided. It will then become clear that the structural conditions of the Spanish media market, resulting from history and from recent legal frameworks, pose some difficulties in guaranteeing a market that is really free and competitive and which allows consumers to truly choose products and journalists to exercise their activity in an environment that is protective but also free.

2. The media landscape in Spain

The Spanish Constitution entered into force in December 1978, definitively concluding the authoritarian regime that had been imposed by General Francisco

Franco after his military rising against the Republic in July 1936. During the dictatorial period, no rights and freedoms were guaranteed as they would have been in a democratic country. Even less so, of course, the freedom of expression or freedom of the press, as these would endanger the regime. This authoritarian system lasted for almost forty years but it was not homogeneous throughout that time period. In the 1960s, the regime opened up slightly,¹ and this allowed for a revision of some laws concerning the media, which at that time were mainly the press and radio. From this period is the Press Statute, passed in 1966 which – paradoxically - is still in force.

It is indeed therefore not possible to understand the current situation of the mass media in Spain without looking back at the historic evolution of the Spanish state and its society, from the civil war through the Dictatorship to the period of transition to democracy. The pillars of the current system were laid between 1975 and 1990. However, the regulation has changed recently, a new Statute on Audiovisual Communication has been passed (implementing the Audiovisual Media Services Directive – hereinafter AMSD - in Spanish law) and a new media landscape is being shaped, naturally not only due to internal factors but also to international dynamics. Market pressures have led communications groups to merge, and new information and communication technologies are forcing the traditional media to go with the flow and constantly evolve.² At the same time, society is changing, migration movements cause fluctuating and changing situations in the audience, whereas the contemporary hyper-exposure to informational messages causes a continuous need to a reciprocal adaptation between the transmitter and the receiver. This means that several communication channels are used at the same time, the relationship between transmitter and receiver is not bidirectional, and the contents of the message are constantly renegotiated.³ In order to understand the current mass media market it is necessary to place it in its cultural and social context, which is in turn the result of a historical evolution that greatly influences present processes.

The following lines will be devoted to presenting a brief history of the mass media in Spain, focusing on the birth of the main mass media (the press, radio, television and new online media services) and their development up to now. In this section the contemporary media landscape will receive detailed and thorough attention.

The historical review of the media communication system will be divided into the following stages: the evolution of the printed press and radio during the Second Republic (1931-1936); political advertising and propaganda in the Spanish Civil War

¹ On this, see mainly E. Chuliá, *El poder y la palabra. Prensa y poder político en las dictaduras. El régimen de Franco ante la prensa y el periodismo* (2001) and, by the same author, 'La Ley de Prensa de 1966. La explicación de un cambio institucional arriesgado y de sus efectos virtuosos', *2 Historia y política: ideas, procesos y movimientos sociales* (1999) 197. See also, as a written testimony of scholars during the dictatorship, G. Dueñas, *La Ley de Prensa de Manuel Fraga* (1969); M. Fernández Areal, *Libertad de prensa en España, 1938-1971* (1971). See also J. Terrón Montero, *La prensa de España durante el régimen de Franco. Un intento de análisis político* (1981). A bibliography for the study of the history of the press in Spain can be found in J. Altabella, *Historia del periodismo español. Programa y fuentes* (1987).

² An updated study on the situation of the media in Spain is the yearly report of the Advertising Agency *Zenith*. See the 2010 report on <http://www.zenithmedia.es/zenithlibrodemedios.pdf> (last visited on 12/10/2010).

³ For the concept of "flow", in the context of communication, see A. Semprini, *La società di flusso* (2003); for the processes of negotiation and renegotiation in communication theory see J. Lozano, C. Peña Marín and G. Abril, *Análisis del discurso. Hacia una Semiótica de la interacción textual* (1989).

(1936-1939); and the Franco Dictatorship, i.e. when the bases of the mass media system that still exists in Spain today were founded. This period was characterised by governmental control and censorship (with a distinction between the first period, 1939-1966 and the second period, 1966 until the death of the dictator in 1975); the transition to democracy (1975-1990), during which the mass media played an important function; and the current years of democratic government, a time in which democracy is being consolidated and the mass media system undergoes profound changes.

This division is coherent with the historical analysis and the opinions of scholars and experts in Spanish mass media history. Historians have noted how the press, radio and television influenced events and promoted important changes in the course of history, thus contributing also to framing democracy. The relationship between politics and broadcasting was very close throughout the Franco period, so that the phases used to study the dictatorship usually coincide with those established for television.⁴ It is also useful to note that newspapers and the press in general were born as political and ideological expressions of political parties and trade unions. Therefore, they performed the same function as “house organs” do today in companies.⁵ Indeed, throughout Spanish history, the printed press has assumed more ideological and radical opinions than the political parties themselves, and has played an important role in different crucial historical changes (the Second Republic, the Franco dictatorship and the transition to democracy). As argued by Fuentes Aragonés,

*Possibly one could formulate a historical rule that, with exceptions, then became more or less generalised: that newspapers and magazines linked to one ideology or other kept more radical and partisan views than those of the political parties or trade unions to which they were attached.*⁶

2.1 The Second Republic (1931-1936)

The Second Republic lasted from 1931 until the military uprising of 1936. Some authors prefer to consider its course extended until 1939, the year in which the civil war ended. It actually succeeded another dictatorship, namely that of General Primo de Rivera (1923-1930), which contained no relevant elements for today’s understanding of the relationship between media and democracy. The Republic had a brief [but eventful] history,⁷ and some facts that need to be highlighted from the point of view of freedom of expression and democracy. First, it should be noted that press distribution and consumption during this period were widespread. Secondly, radio took its first steps. Thirdly, it can be assumed that the Republic was designed also to protect rights and freedoms, and, indeed, a specific court was established to guarantee the enforcement of the Constitution (*Tribunal de Garantías Constitucionales*). Yet at that time mechanisms to ideologically and politically control the press were still recurrent. Fourthly, the role of the press in the Second Republic can be compared to

⁴ See E. Bustamante, *Storia della radio e della televisione in Spagna (1939-2007)* (2007), at p. 2.

⁵ A *house organ* is a magazine or periodical published by a company in order to promote that company’s products.

⁶ J.F. Fuentes Aragonés, “De la confrontación al consenso: el papel de la prensa en la Segunda República y la Transición” in R. Quirosa-Cheyrouze y Muñoz (eds), *Prensa y democracia. Los medios de comunicación en la Transición* (2009), at p. 68.

⁷ A. Pizarroso Quintero, *De la Gazeta Nueva a Canal Plus. Breve historia de los medios de comunicación en España*, (1992). The same author has published *Historia de la prensa* (1994).

the active one it has played in other periods of history, such as the transition to democracy starting around 1975. Notwithstanding this, even if it can be argued that the press led the Primo de Rivera dictatorship to the Second Republic, i.e. towards a liberal regime, it also contributed to the establishment of another dictatorship, that of General Franco, with the consequent censorship and media control.⁸

This was an exciting time for the mass media, especially for newspapers, considering that all were politically engaged. Due to their influence on public opinion, the term “Paper Parliament” (*Parlamento de Papel*) was created. However, a strict censorship control gradually started to appear, as an aggressive and violent climate built up in society and later culminated in the military *coup d'état* by General Francisco Franco. This is the time when the political polarisation of media began, a polarisation that can be identified even today. Also significant was the role of news agencies, which began to take their first steps at this period. Additionally, the radio became consolidated as an important broadcasting medium. The Government of the Second Republic pushed through the adoption of several statutes and regulations concerning radio broadcasting, and created the first Ministry of Communications (*Ministerio de Comunicaciones*).⁹ Nevertheless, if we compare the Spanish situation with that of England or Germany, the development of Spanish radio was less extensive than in other European nations.¹⁰ This was clear from the European Lucerne Plan of 1934, which divided and assigned waveband frequencies – where radios had to operate - to European states. The licences assigned to Spain exceeded the real necessity of the country.

2.2 The Civil War (1936-1939)

The Civil War¹¹ was a relevant period for the initiation of the propaganda system, which was later used for political purposes during General Francisco Franco's regime. It was also relevant for the development of a new type of media, sound cinema, in particular, with reference to news (propaganda) documentaries. One of the first and main concerns of the Franco side from the beginning of the Civil War was the control of the press and other media. The basic architecture of what would subsequently be the regime's propaganda apparatus, for nearly four decades, was forged during the war. In 1938, Franco's faction passed the Press Statute (*Ley de prensa*),¹² which came into being on a provisional basis, but lasted until 1966. The Statute conceived the

⁸ As pointed out by Fuentes Aragonés, “De la confrontación al consenso: el papel de la prensa en la Segunda República y la Transición”, the Spanish press in these two periods was characterised by tension and political radicalisation. Thus, indirectly, it contributed to disseminating the opinion of a need for a “strong hand” that could restore order.

⁹ The first National Plan on Radio Broadcasting dates back to 1931, whereas the Statute on Radio Broadcasting, from 1934, established a state monopoly of this activity. Moreover, in this very same year of 1934, the central State gave the competence on broadcasting services to the regional Catalan government (evidently to be exercised in its territory only). Yet the Catalan government never took advantage of this new power, due to the outbreak of the Spanish Civil War in 1936. It should be noted that in 1934, some important riots took place in different parts of Spain, thus showing the discontent of certain sectors of the population.

¹⁰ See Pizarroso Quintero, *De la Gazeta Nueva a Canal Plus. Breve historia de los medios de comunicación en España*.

¹¹ Cf. in general Pizarroso Quintero, *De la Gazeta Nueva a Canal Plus. Breve historia de los medios de comunicación en España*; L. Díaz, *La radio en España, 1923-1997* (1997); A. Pizarroso Quintero, “La guerra civil española: un hito en la historia de la propaganda”, 2 *El Argonauta Español* (2005).

¹² 22 April 1938 (BOE/Official Journal 23/04/1938).

press as a public service and provided that public institutions could participate in the management of newspapers and also in determining the content of information. State interference was thus institutionalised. It is also interesting to underline the existence of extensive foreign press presence.¹³ Moreover, many foreign correspondents (as well as international cultural personalities, such as Ernest Hemingway or Henry Cartier Brésson) came to write and describe the dramatic events in Spain. Numerous documentaries and films testifying to the increasing role of the new mass media were produced, even though they were mostly propaganda voices. It should be added that the anarchist and the communist groups also took advantage of propaganda. The phenomenon of *disinformation* or *black propaganda* (*propaganda negra*) that exaggerated or distorted facts and news also dates from this period. This technique was used equally by both parties, the groups sustaining the legitimate Republic and those against it.

Clearly, the strict relationship and interdependency between the mass media and public institutions in Spain, or more precisely, the symptoms of the lack of independence of the media in Spain with regard to public power, became apparent. At the same time the printed press experienced severe censorship, regulated by the aforementioned Press Statute of 1938 and conditioned by the news agency EFE, which was created in 1939 and which still exists today as the major Spanish news agency. Public Radio, *Radio Nacional de España*, was created in 1937, in Salamanca.

It is difficult to assess the relationship between media and democracy during this war period, as, by definition, strictly speaking no state whatsoever exists and, therefore, no political regime, either democratic or authoritarian, can be identified. Notwithstanding this, it is important to understand the dynamics that were created, as they greatly influenced the landscape in later years. Indeed, during the Civil war, the information media became increasingly politicised and polarised, something that will emerge as a characteristic of the mass media that led to social division and which still exists even today. Like the other mass media, even local radios became a propaganda tool.

2.3 The dictatorship of General Francisco Franco (1939-1975)

As already mentioned the period of Franco's dictatorship made a considerable mark on the evolution of the mass media in Spain and produced the lowest level of freedom of expression and information.

Historians divide this time into two periods: the first one stretches from 1939 to 1966 and is usually called "The dark years" (*Los años oscuros*).¹⁴ During this period the dictatorship slowly evolved and consolidated itself. The second period, from 1966 to 1975, is characterised by a certain opening-up of the regime, both domestically and internationally, and it laid the foundations for the future transition to democracy.¹⁵ This does not mean, though, that there was an intention to undertake such a transition at the time. This division of the dictatorship applies perfectly well to

¹³ The Italian Dictatorship led by Mussolini created a especial task force for its propaganda in Spain, directly dependent on the Ministry of Foreign Affairs (*Ufficio Stampa e Propaganda della Missione Militare in Spagna*, instituted in Saragossa in 1937).

¹⁴ A. Pizarroso Quintero, *De la Gazeta Nueva a Canal Plus. Breve historia de los medios de comunicación en España*, at p. 159.

¹⁵ As will be explained later, 1966 was a landmark for the history of the media in Spain.

media development, as 1966 was indeed a crucial year for the freedom of expression and information.

The dictatorship saw the consolidation of a mixed-service radio system (public and private, the only case in Europe), which characterised Spanish radio from its beginning in the early years of the twentieth century.¹⁶ Then, between 1953 and 1962, the regime was internationally consolidated and integration into the international economy started, thus putting an end to autarky. This led to the setting-up of a Spanish Public Television (TVE) that still exists today. An important change was the arrival of Manuel Fraga Iribarne to the leadership of the Ministry of Information and Tourism, in 1962. Manuel Fraga Iribarne, who still serves for his political party, the Popular Party (now in the opposition), has been a controversial figure, as he was in charge of the censorship system run by the aforementioned Ministry and he later formed part of the democratic institutions.¹⁷ He was the author of the Press Statute of 1966, which – amazingly, in the new democratic framework - is still in force.¹⁸ Even if it is impossible to talk of freedom of expression at that time, the difference between the 1938 and the 1966 law lies in the lack of compulsory prior censorship after 1966. As the Spanish writer Miguel Delibes put it: “*Before, they forced you to write what you did not feel, now they are satisfied with forbidding you to write what you feel; at least something has been gained*”.¹⁹ Until 1966, indeed, it could be argued that there was a monopoly system, whereby the State provided information, this being, of course, of a propagandistic nature. Yet from 1966 on, with the new Statute fervently advocated by Manuel Fraga Iribarne, the Minister of Tourism and Information, there was a partial opening towards greater freedom, thanks also to the rapid spread of television, which had started to broadcast on a regular basis in Spain (although initially only in Madrid) on 28 October 1956. This situation did not mean, of course, that the freedom of expression and information was recognised, as only once the Dictator had died in 1975 could a real – and therefore non-programmatic – discourse on rights and freedoms be politically and legally implemented.

The propaganda system which was established in 1938 and consolidated in the 1950s cohabited with extensive censorship.²⁰ Those media that did not respect censorship would be sanctioned and this was, among others, one of the reasons for the slow development of the press in Spain, which was below the European average. This may be seen as the reason for the Spanish disaffection to newspapers which characterised society until the early 1980s (and in part, even today).²¹

¹⁶ Spanish Radio organised itself both on the public and on the private initiative and private stations operated by frequencies assigned by the State.

¹⁷ He has published several books – not academic ones, certainly – that may enlighten those interested in getting to know that period better. See, for instance, his memories: M. Fraga Iribarne, *Memoria breve de una vida pública* (1980). E. Chuliá interviewed him for her research on the Press Statute of 1966, as stated in her publications already quoted.

¹⁸ Statute 14/1966, 18 March, Print Press and Printing (*Ley de Prensa e Imprenta*), BOE/Official Journal 19/03/1966.

¹⁹ M. Delibes, *La censura de prensa en los años 40 (y otros ensayos)* (1985), at p. 5.

²⁰ In order to control news and texts, a system of instructions (*consignas*) was established and, as a consequence of this, the bodies of the authoritarian regime felt free to send texts to newspapers and magazine editors so as to have them published. This is similar to the “Veline” system in Italy, used during the dictatorship of Benito Mussolini.

²¹ See the Yearly *Informe Annual de la Comunicación* [Communication Report] coordinated by B. Díaz Nosty from 1989 to 1992.

From 1969 onwards, Franco's control of radio and television was absolute even if incipient attempts to fight against the regime began to emerge, precisely when the public television broadcaster reached a certain maturity. At that time one of the peculiarities of the National Radio and Television (*Radiotelevisión Española*: RTVE), which is still operating, was the military presence on the boards of the broadcasting system, alongside journalists and professionals.²² Indeed, like in other fascist regimes, there was a particular ideology, which in this case was that of National-Catholicism, but not a highly-structured propaganda system (like, for example, the ones developed under the authorities of Hitler or Mussolini). It worked with official speeches, but did not have its own public propaganda space. This does not mean, however, that it was not aggressive or repressive. On the contrary: for instance, the profession of journalist was fully controlled by the State and access to it could be denied if the opinions of the individual concerned were not in accordance with the official doctrine.

As stated above, television broadcasting in Spain started on 28 October 1956, although at the very beginning it only reached the city of Madrid. Television coverage gradually expanded and reached all regions in Spain in 1964, the year in which the Canary Islands also received the signal. Until 1988, there was only public television in Spain, and therefore private enterprises were not allowed to broadcast. The television which was established in 1956 used a modulated frequency (FM) radio system and its contents – as was the case with radio – suffered from the same mediocrity as the rest of cultural life in Spain, in contrast to the creativity experienced in the Second Republic.²³ At the same time, we should remember the collaboration of RTVE managers and professionals with the Spanish regime, something which negatively affected the plurality of the contents. Concerning radio, though, it should be added that a certain sector of the Spanish population was eager to receive plural information and many would secretly listen to foreign radio broadcasters. This was an increasing phenomenon that worried the regime greatly and which reputedly helped to open it up slightly. This is so because it provided the means to slowly build up a critical public opinion, at least regarding a certain sector of the population, i.e. those listening to foreign radios.²⁴

During 1962 and 1969, the maturity period of the dictatorship, spectacular economic growth took place along with the first protests by social movements. This is the setting in which the broadcasting system expanded dramatically. The regime never ceased its repression of dissidents and, indeed, the opening-up of the system was not really due to the regime's will, but to internal and external pressure by the citizenship, social movements and international actors.

One of the major "legacies" of Franco's dictatorship concerning the media and, in particular, journalism is the regulation established regarding the profession of journalist. Not only did an Official Register of Journalists exist, but also specific schools were created at Universities to provide training. The Faculties of Information or Communication date from this period and are still the norm today, although they are not compulsory, for gaining access to the profession. Clearly, even if a basic knowledge of certain subjects may be advisable, having everybody follow identical

²² Bustamante, *Storia della radio e della televisione in Spagna*, at p. 12.

²³ See Pizarroso Quintero, *De la Gazeta Nueva a Canal Plus. Breve historia de los medios de comunicación en España*.

²⁴ See F. Franco Salgado-Araujo, *Mis conversaciones privadas con Franco* (1976) p. 343-344.

steps to become journalists could impede a real development of pluralism and, thus, of democracy.

The State Press Agency, EFE, as we mentioned before, was created in 1939 and is still functioning today.²⁵ It quickly became the most important press agency all over America, too, with bases in capital cities such as Buenos Aires, Lima, Asunción, and even in New York City and Manila, where EFE installed its first bridge to the East (historically, the weakest) in 1977. During this time, crucial technological changes were experienced, such as satellite connections or computers.

The final years, from 1969 until the death of the dictator in 1975, coincide with the crisis of the regime. This was not provoked by the physical decline of General Franco alone, but also and, more importantly, due to the ever-growing popular rebellions, frequent workers' and students' strikes, as well as a clear opposition to the dictatorship. There were no legal or structural changes on television or radio, and these media simply consolidated their position. The printed press (newspapers and magazines) also experienced, as already stated, the hesitant opening-up permitted by the Press Statute of 1966.

2.4 The transition to democracy (Transición: from 1975 onwards)

To conclude this historical journey, it is necessary to devote a few lines to the period of the transition from dictatorship to democracy, especially because of the existence of controversial opinions regarding this period. According to some, the mass media played an important role in accelerating the transition to democracy. Yet many academics and historians consider that radio and television did not undergo any remarkable change in this period.²⁶ As far as the printed press is concerned, it played a similar role to the one played in the Second Republic. It acted as a driving force to create a critical public opinion and to foster the implementation of rights and freedoms. Indeed, these years were characterised by the growing relevance in quality and impact of the daily newspapers and magazines. Nevertheless, contrary to what was typical in the republican period, the Transition was inspired by a model that did not accept radicalisation or policy "brutalisation". The dominant thought was "freedom without rage", and even the leader of the Communist Party,²⁷ Santiago Carrillo, said, "*No Dictatorship, not even the dictatorship of the proletariat*". Newspapers echoed these views, and the word consensus was a trigger and a leitmotiv. Therefore, even if pluralism was slowly acquired in the press, radicalism was out of the system.

As in the previous phases, there was a close relationship between political events and the evolution of radio and television. The climate of political instability, violence and economic problems was not the ideal framework for a change in the model of government control over radio and television. Nevertheless, some important events should be highlighted. In 1977, the "Spanish Radio and Television" (*Radiotelevisión Española: RTVE*) public body became autonomous – and thus more independent, although not entirely. This was one of the results of the "Moncloa Agreements" (*Pactos de la Moncloa*), which were crucial for establishing a legal

²⁵ See EFE official website, available at: <http://www.efe.com> (last visited on 13/10/2010).

²⁶ See in particular J.M. Baget, *Historia de la televisión en España 1956-1975* (1993); E. Nicolás Marín, *La libertad encadenada. España en la Dictadura Franquista 1939-1975* (2005).

²⁷ The Communist Party in Spain was legalised during Easter 1977.

framework for the future democratic system.²⁸ On 29 December 1978 the Spanish Constitution was published in the Official Journal and thus a new political and legal framework for the media was also established. Article 20 of the Constitution recognised the freedom of speech and freedom of information. On the basis of this article, a Statute on Radio and Television was passed in 1980,²⁹ and was complemented by a Statute allowing the Autonomous Communities to have their own television channels.³⁰ The Statute on Radio and Television was first applied in 1981 and it included elements that did not really permit the development of a system independent of political control. This was so because only one public television broadcaster (and no private ones) was allowed and the political party in power still conditioned very much its activities. Later on, in 1988, the first steps were taken towards allowing private broadcasters to enter the Spanish arena.³¹

Finally, it should be noted that in the 1980s and 1990s, under the socialist governments (from 1982 to 1996), Spain was pierced by a movement of renewal and cultural experimentation, often promoted by public institutions (known as *movida*). This cultural innovation spread to television programmes too. At the same time, a peculiar phenomenon that characterises broadcasting in Spain, and which started during the transition to democracy, was regional television. The Autonomous Communities (or at least some of them) started to create and run their own channels. Their functioning was rather heterogeneous and did not necessarily mirror the national system until 1983, the year in which – as already stated – a Statute on the so-called “third channel” was passed. This Statute allowed Autonomous Communities to actually create their channels, but subject to certain legal conditions. The Federation of Autonomic Radio and Television Organisms (*Federación de Organismos de Radio y Televisión Autónomicos: FORTA*) also dates from this period.

In conclusion, the transition to democracy implied the loss of an opportunity to create a broadcasting system free of state control, something which is a necessary condition for a democratic and independent mass media system. It is not by chance that one of the Spanish specialists in communication has argued that

*The history of Spanish radio and television during the last years of Franco and the transition, but also largely during democracy itself and at least until 2006, cannot be understood without taking into account the early framework created by the dictatorship and applied to television from its beginnings.*³²

With regard to the printed press, as underlined by Seoane and Sáiz, “*neither the opening-up brought on by the 1966 Press Statute nor the expectations awakened*

²⁸ See Bustamante, *Storia della radio e della televisione in Spagna (1939-2007)*.

²⁹ Statute 4/1980, 10 January 1980, *De Estatuto de la Radio y de la Televisión*, BOE/Official Journal 11/1980, 12/01/1982.

³⁰ Statute 46/1983, 26 December 1983, on the Third Television Channel (*Del Tercer Canal de Televisión*), BOE/ Official Journal, 4/1984, 5/1/1984.

³¹ Statute 10/1988, 3 May 1988, on Private Television (*De Televisión Privada*), BOE/ Official Journal 108/1988, 5/5/1988.

³² E. Bustamante, “Radiotelevisión en España: entre el franquismo y la democracia”, in R. Quiros-Cheyrouze y Muñoz, (ed.), *Prensa y democracia...* (2009) at p. 307. The year 2006 is mentioned, because a new Statute was passed then, Statute 17/2006, 5 June 2006, on Radio and Television belonging to the State (*Radio y Televisión de Titularidad Estatal*), BOE/Official Journal 134/2006, 6 June 2006, repealing the abovementioned 1980 Statute.

by the democratic transition and the conquest of freedom of expression resulted in a significant increase in global diffusion”.³³

As stated above, the press played an important role in the transition, as it furthered this process, but this was not translated into greater enthusiasm on the part of readers.

2.5 The media landscape under various governments

Early socialist governments (1982-1986; 1986-1989; 1989-1993; and 1993-1996) were unable to put a definitive end to Franco’s legacy in the topic we are dealing with. Broadcasting was still considered in this period a public service, with the intrinsic limitations that this concept in its classical version usually brings with it in relation to free competition. Indeed, the delay in the admission of private operators to this market hampered competition between broadcasters, a competition that almost only existed for the sake of competing for advertising spaces. This led to a “private commercial” programming model as qualified by Enrique Bustamante. In 1995, a new Statute was passed, regulating satellite and cable television.³⁴

Under the governments of the Popular Party (1996-2000 and 2000-2004) the broadcasting system did not receive the boost it should have been given in this period, when liberalisation and deregulation were key concepts. In fact, the broadcasting system reached a situation of financial collapse.³⁵ The willingness to apply European regulations and to allow private broadcasters to act with greater freedom in a liberalised market was indeed clear.³⁶ Yet in practice this did not work and broadcasting remained a highly regulated sector, with few operators active in the market and with many constraints. In part three of this report a presentation will be made of how the liberalisation of the broadcasting sector is now intended to become more real, thanks to a new Statute passed implementing the Audiovisual Media Services Directive. The Spanish Statute does not only implement the Directive, but goes further and regulates aspects which were not envisaged in the European norm.

As far as the printed press is concerned, the 1980s and the 1990s were important decades, as newspaper sales took off. Yet they generally remained below the European average.

³³ M.C. Seoane and M.D. Sáiz, *Cuatro siglos de periodismo en España* (2007), at p. 309.

³⁴ Statute 37/1995, 12 December 1995, *On Satellite Telecommunications (De Telecomunicaciones por Satélite)*, BOE/Official Journal 297/1995, 13/12/1995, and Statute 42/1995, 22 December 1995, *On Cable Telecommunications (De Telecomunicaciones por Cable)*, BOE/Official Journal 306/1995, 23/12/1995. The latter was later repealed by Statute 32/2003, 3 November 2003, *General de Telecomunicaciones* (General Statute on Telecommunications), BOE/Official Journal 264/2003, 4/11/2003.

³⁵ A recent Statute has been passed precisely on the financing of public broadcasters: Statute 8/2009, 28 August 2009, *On the financing of the Public Corporation of the Spanish Radio and Television (De financiación de la Corporación de Radio y Televisión Española)*, BOE/ Official Journal 210/2009, 31/8/2009. The main novelty is the fact that no advertising is allowed on public television channels and a tax has been imposed on telecommunication companies to contribute to RTVE’s budget. This was something private broadcasters had been demanding for a long time.

³⁶ It should be remembered also the relationship between José María Aznar, Spanish Prime Minister at the time, and Silvio Berlusconi, Italian Prime Minister and owner of the private broadcaster *Telecinco* in Spain.

2.6 Mass media in Spain: the contemporary landscape

A crucial moment has now arrived for the mass media in Spain, as the whole environment is rapidly changing. The most obvious example of this is the Internet, with its new format – compared to other more classical media –, social networks, and especially the interface between different media. Also the integration between telephone systems, computers and television characterises the current changes. Television in particular is undergoing many transformations: the analogue switch-off, the possible merger between channels, the disappearance of advertising on public television and pay-digital terrestrial television (DTT).

These changes will have an impact both on consumption and on programming, and there will be a possible fragmentation of the audience and therefore a change in advertising funding, given the general situation of economic recession.³⁷

The main characteristic of the media in Spain is that they continue to meet certain ideological logic, although commercial ideology is very much present (especially in the case of large international media groups). In the mind of consumers buying this or that newspaper or watching certain television news symbolises a sharing of ideas or membership in a certain political party.

There were five multimedia groups in 2009 (*Prisa, Vocento, Godó, Unidad Editorial, Planeta*), although the trend is for this figure to increase. There are five national daily newspapers (*El País, ABC, El Mundo, La Razón, Público*) and, so far, four free national newspapers (*Qué, ADN, 20 Minutos, Metro*), which have become very popular. Daily sports newspapers are also very popular and two of them exist on the national scene (*AS, Marca*). As far as radio is concerned, there are 6 public radios (*Radio Nacional de España, Radio 3, Radio 4, Radio 5, Radio Clásica y Radio Exterior*), as well as regional and local radios. Concerning the private ones, the following can be mentioned: *Cadena Ser, M80, Los 40 Principales, Cadena Dial* (all of them owned by *Prisa Group*); *Unión Radio; Punto Radio; Radio Marca; OndaCero* and *COPE* (owned by the *Conferencia Episcopal*, i.e. the Catholic Church). In 2009, there were six national analogical TV channels (*TVE 1, La 2, Cuatro, Telecinco, La Sexta, Antena 3*), all of which have now turned digital. On the digital scene, five of the national channels are public (*TV 1, TV 2, 24h, Clan, Teledporte*), and there are many more private ones.³⁸ Concerning satellite TV, there is one operator, *Digital +*, which was the consequence of a merger between the two previous operators (*Via Digital* and *Canal Satélite Digital*). *Telecable, Ono* and *Euskaltel* were the three cable operators, and *Imagenio, Orange* and *Jazztel* were the ADSL providers.

2.6.1 Printed press

Today, the situation of the print press is delicate, as new technologies (in particular, the Internet) have caused a general stagnation common to all countries in the Western world. In Spain, circulation is high due to the specialised sports press and to regional

³⁷ See Zenith, “Los medios de comunicación en España y Portugal 2009” [Media in Spain and Portugal 2009]. ZenithOptimedia is part of the world's largest media services group.

³⁸ See the full list: Ministry of Industry, Tourism and Trade, “Operadores TDT”, available at: <http://www.televisiondigital.es/Terrestre/OperadoresTDT/Paginas/OperadoresTDT.aspx> (last visited on 13/10/2010).

newspapers, even if the number of outlets has been reduced. In addition, newspapers and magazines have embarked on a race, competing amongst themselves by offering promotions of all types of products, such as DVDs, books or even mugs.³⁹ With regard to magazines, in particular, there is a shortage of good-quality small press in Spain. Another peculiar phenomenon, that of the yellow press (*prensa del corazón*), which is also abundantly present in television and radio programmes, remains strong.⁴⁰

The newspaper readership in Spain has not varied substantially in the last decade, but its percentage remains remarkably lower than that of other EU countries.⁴¹ The free press is reaching large audiences and is gaining remarkable commercial strength. The most widely-read newspaper is *20 Minutos*, a free newspaper of national scope launched on 3 February 2000, with an average of 2,889,000 daily readers (in 2008). The second most widely-read paper is the sports newspaper *Marca* (2,597,000) and the third one is *El País*, with a readership of 2,218,000. They are followed by two other free newspapers (*Qué*, 2,255,000, and *Metro*, 1,823,000). *El Mundo* comes only in 6th place, with 1,348,000 daily readers. Newspapers, as stated above, maintain their income rates thanks to product distribution, advertising and merchandising. Women's magazines lead the magazine market, but even this is also stagnated. Most readers are female, despite the prevailing daily intake for men. The highest rate of readership is among persons (both female and male) between 25 and 44.

2.6.2 Television

Television is still the most-consumed media, even more so with the wide range of channels and obviously due to a great extent to all major sporting events, despite their being broadcasted – in many cases - on pay channels. Average daily consumption of television is 227 minutes per person (2008). Most consumers are women between 35 and 54, who prefer *Tele5* and *Antena3*, while men tend to prefer *La Sexta*, *Cuatro* and *TV1*.

The television market is increasingly fragmented, and there is a public entity for radio and television, *Radiotelevisión Española/RTVE*, which broadcasts through two generalist channels of national scope: *La Primera* or *TV1* and *La 2* or *TV2*. In addition, twelve other similar public bodies are grouped around the aforementioned *Federación de Organismos de Radio y Televisión Autonómicos* (FORTA). Each of these regional public broadcasters traditionally had one or two analogical television channels. The transition from analogue television to the digital system – the so called “analogue switch-off” – concluded on 2 April 2010.⁴² The analogical networks belonging to private television companies were *Antena 3*, *Telecinco*, *Cuatro* and *La*

³⁹ *El País*, newspaper leader, joined in 2005 127.8 million Euros. Source: Seoane and Sáiz, *Cuatro siglos de periodismo*, p. 312.

⁴⁰ *Hola*, the most famous and prestigious, started its publication in 1944.

⁴¹ Data sources for all types of media: Gabinete de Análisis Demoscópico (Demoscopic Análisis Office: GAD), *El Informe 2010: Medios de comunicación españoles en las redes sociales* [2010 Report: Spanish media in social networks]; Zenith, “Los medios en España y Portugal 2009”; Asociación para la Investigación de Medios de Comunicación, Estudio General de Medios, *Audiencia de Internet, Abril-Mayo 2010* [Internet Audience, April-May 2010].

⁴² There is an official Spanish government website, where the digitalisation process could be followed and updated information can still be found today. See Ministry of Industry, Tourism and Trade, “Televisión Digital Terrestre”, available at: <http://www.televisiondigital.es/Terrestre/Paginas/Index.aspx> (last visited on 13/10/2010).

Sexta, and they have all turned digital, accompanied by *Vevo TV and Net TV*, which were already digital. With regard to local television stations, there are no precise data, since the map of local television and radio companies is very fragmentary. The penetration of cable television is very low compared to other (former) analogical and digital television formulas.⁴³ With regard to Internet television (IPTV), *Telefónica*, the most powerful and widespread telecommunications company, has been promoting ADSL technology not only by offering Internet connection, but also including interactive television services. It started to offer a new ADSL television service in 2005, called *Imagenio*.

2.6.3 Radio

Radio is still fairly widespread, in particular in the morning timeslot and in big cities (probably because of the time needed to commute by car). The Autonomous Communities of Castilla La Mancha and Madrid are the ones that consume the highest number of minutes of radio listening (between 105 and 116 per day), together with Asturias, Cantabria and La Rioja. So far, DAB radio broadcasting technology has failed totally. Very few people have purchased digital radio devices.⁴⁴ Meanwhile, cheaper Internet radio and, more recently, podcasting have gained great popularity as new digital alternatives to analogical broadcasting. Moreover, radio won the fight for popularity on social networks.⁴⁵

2.6.4 Press agencies

The leadership is held by the public news agency EFE. Founded in 1939, as already indicated, it is present in more than 100 countries today. The EFE agency is the worldwide leader in Spanish. In addition to EFE, there are fifty other agencies of diverse characteristics. Some of them, such as *Europa Press*, the second biggest news agency, are of national scope, while many smaller and specialised news agencies are regional.

2.6.5 Internet

The Internet continues its growth in Spain. In April-May 2010,⁴⁶ 52.9% of people (43% male and 56% female) between 25 and 44 years old used the Internet. 86% of the Spanish population have Internet access at home, and, in a decreasing order, for the following ends: mail (87%); information, news and chat (53% and 51%); social networks, videos and music (37% and 31%, for both video and music).

The most-visited traditional mass media websites were *Marca*, *El País*, and

⁴³ On cable television see, for instance, M. Calvo Charro, *La televisión por cable* (1997); G. Escobar Roca, "La televisión por cable en España: estado de la cuestión", 5530 *Diario La Ley* (24 April 2002) 1; J. Esteve Pardo, "Viejos títulos para tiempos nuevos: demanio y servicio público en la televisión por cable. Comentario a la Sentencia del Tribunal Constitucional de 3 de octubre de 1991 (Cuestión de inconstitucionalidad núm. 2528/1989)", 74 *Revista Española de Derecho Administrativo* (1992) 257; T. De la Quadra-Salcedo, "La Ley del Cable y la televisión local", 1 *Anuario del Gobierno Local* (1996) 59.

⁴⁴ On digital radio cf. M. Fernández Salmerón, *La radiotelevisión digital terrestre* (2009), at p. 40.

⁴⁵ See GAD, *El Informe 2010: Medios de comunicación españoles en las redes sociales*.

⁴⁶ Asociación para la Investigación de Medios de Comunicación, *Audiencia de Internet, Abril-Mayo 2010*.

AS. Internet penetration is greater in Madrid and Catalonia than in other regions.

There is an interesting relationship between the traditional mass media and new social networks. According to the 2010 Report Spanish Mass Media on Social Networks (GAP), 720,000 people follow some mass media on Facebook; 665,000 do so on Twitter and 92,000 on YouTube. Television channels are consumed mostly on YouTube, while radio is the media with the best position on Facebook (335,000 followers). Moreover, the printed press maintains its old leadership on Twitter. In the opinion of experts from the Demoscopic Analysis Office, this is because of Twitter's capacity to broadcast events like sport competitions, elections or demonstrations in real time.

2.7 Journalists' background and education

Journalists during the last years of the dictatorship came from the University Schools of Information or Journalism, as stated before. The Schools traditionally had three areas of specialisation: Journalism, Audiovisual Communication and Advertising and Public Relations. Now new forms of specialised journalism have been included in the official studies (Social Communication, Green Journalism, Advertising etc.) and also numerous Masters' and other courses exist. The official journalists' association is *FAPE* (*Federación de Asociaciones de Periodistas en España*), created in 1922, which now has 48 member associations and 13 others linked to it, even if they are not strictly speaking part of the federation.⁴⁷ All of them represent more than 19,000 associates. As recently as 20 September 2010 the *FAPE* issued the Pamplona Declaration, in which they demand a more professional exercise of journalism, arguing that high-quality journalism makes for high-quality democracy.⁴⁸

2.8 Media literacy and media status in society

Spain has a low media literacy development at institutional level, even if some activities do exist and are currently on the increase. These activities originate from civil society, mainly from associations related to the world of education.

There are no educational programmes in the most important media with the exception of some newspapers that promote the connection between schools and media - or in public television. The development of "Audience Offices", whereby readers and viewers are given a platform to express their opinions regarding the treatment of news in the major mass media, is mainly symbolic. However, users are becoming increasingly more active. Some Audience Protection Associations exist, such as the Communication Users Association [*Asociación de Usuarios de la Comunicación/AUC*].⁴⁹ Only in very recent years has media literacy become a transversal goal in education, but only following the ICT's impulse and forgetting the mass-media. Moreover, regional development of educational policies on media literacy varies considerably: good in some regions, poor in others, almost absent at State level.

⁴⁷ See Federación de Asociaciones de Periodistas en España, official website, available at: <http://www.fape.es> (last visited on 24/09/2010).

⁴⁸ See FAPE, "Declaración de Pamplona", available at: <http://www.fape.es/ptr/vista/vptr002/post.html?D.k=1244301> (last visited on 13/10/2010).

⁴⁹ Asociación de Usuarios de la Comunicación, official website, available at: <http://www.auc.es/> (last visited on 13/10/2010).

With regard to the Spanish Educational System, the compulsory school curriculum (primary and secondary) contains digital literacy and media literacy as part of the skills that students must attain, but currently there are no specific subjects for this area. The annex to Royal Decree 1513/2006, of 7 December, establishes the incorporation of eight basic competences in the curriculum of primary education to emphasise those skills considered indispensable. They refer, amongst others, to the regular use of available technological resources and also to the evaluation and selection of technological innovations, depending on their utility, in undertaking specific tasks. Article 3 of the Royal Decree 1631/2006, of 29 December, establishes that secondary education should contribute to the development of students and their abilities, so as to allow them to develop basic skills in the use of information sources and to acquire new knowledge with critical judgment. This should help them to acquire basic preparation in the field of technologies, particularly in information and communication.⁵⁰

3. Media policy in Spain

3.1 Media regulation and policy actors

In Spain media regulation and policy⁵¹ have been traditionally led by the Ministry of Industry and, coherently, by the Commission of Industry in the Spanish Lower Chamber or Chamber of Deputies (*Congreso de los Diputados*). Yet in some cases there is a different allocation of competences. The General Statute on Audiovisual Communication, for instance, which will be discussed later, was passed in the Lower Chamber by the Constitutional Commission. The fact that, in general, the media are understood as an “industry” from a policy point of view illustrates that they are treated more as a tool than as contents. This may explain why regulations have focused mainly on technicalities, leaving aside other issues, related for instance to fundamental rights. For the protection of those rights one needs generally, though not always, to have recourse to other general norms. Independence, pluralism or democracy do not lie at the centre of those policies.

As far as independent agencies are concerned, three bodies should be mentioned: the State Council on Audiovisual Media (*Consejo Estatal de los Medios*

⁵⁰ This paragraph is a synthesis of: “Media literacy: study on the current trends and approaches to media literacy in Europe”, Country Profile Spain V.4.0 (2007), available at: <http://ec.europa.eu/culture/media/literacy/docs/studies/country/spain.pdf> (last visited on 13/10/2010).

⁵¹ See in general, on the relationship between media and democracy itself, from a regulatory point of view, J. Barata i Mir, *Democracia y audiovisual. Fundamentos normativos para una reforma del regimen español* (2006). There are other works on television, discussing its traditional consideration as a public service: L. Abad Alcalá, *El servicio público de television ante el siglo XXI* (1999); C. Chinchilla Marín, *La radiotelevisión como servicio público esencial* (1988); J. Esteve Pardo, *Régimen jurídico-administrativo de la televisión* (1984); G. Fernández Farreres, *El paisaje televisivo en España* (1997); E. García Llovet, *El régimen jurídico de la radiodifusión* (1991); C. Gay Fuentes, *La televisión ante el Derecho Internacional y Comunitario* (1994); S. González-Varas Ibáñez, “El sector audiovisual, ¿servicio público o mercado?”, 110 *Revista Española de Derecho Administrativo* (2001) 215; J.M. Herreros López, *El servicio público de televisión* (2004); J. M. Souvirón Morenilla, *Derecho público de los medios audiovisuales: radiodifusión y televisión* (1999). A more recent discussion on the characterisation of television and radio as public services, referring also to the funding of public television and radio in the framework of competition law and state aids, can be found in S. Medina González, *Ayudas públicas y libre competencia en el sector audiovisual* (2006). For radio specifically as a public service, see M.A. Martín-Caro Sánchez, *La radio del siglo XXI, un servicio público en la economía global* (2000).

Audiovisuales),⁵² the National Telecommunications Commission (*Comisión Nacional de las Telecomunicaciones*)⁵³ and the National Competition Commission (*Comisión Nacional de la Competencia*). All three have different competences regarding the media, from various perspectives, something which can give rise to discrepancies amongst them. Since all of them are independent bodies, it is difficult to find any coordination or guidance on the exercise of their respective competences. A mechanism to solve conflicting positions would be more than desirable.

Besides State bodies and organs, other actors might contribute directly or indirectly to the framing of media policies. Public opinion, NGOs and other private associations exist in Spain (such as, for instance, the Communication Users Association that was previously mentioned), but they do not – by any means – exercise the type of influence they wield in relation to policy formulation in other parts of the world. Some of these actors are mentioned, when appropriate, in other parts of this report.

3.2 Constitutional provisions and legal implementation

The freedoms of expression and information are recognised in the Spanish Constitution (hereinafter, SC) in Article 20⁵⁴ and are therefore framed within the constitutional category of the so-called “fundamental rights”.⁵⁵ As such, extraordinary constitutional safeguards are bestowed upon the protection of these rights for citizens through a preferential and summary procedure before the ordinary courts, and additionally by an appeal for protection (*recurso de amparo*) before the Constitutional Court (Art. 53.2. SC).⁵⁶

⁵² The State Council on Audiovisual Media will be subject to a detailed explanation later in this report. See on this type of bodies, which also exist in some Autonomous Communities, J. Tornos Mas, *Las autoridades de regulación del audiovisual* (1999).

⁵³ See information on this Commission, Comisión del Mercado de las Telecomunicaciones, official website, available at: <http://www.cmt.es> (last visited on 13/10/2010). Some bibliographical references where questions of interest for this report are discussed are the following: J.M^a. Baño León, “La ordenación del mercado de la televisión y el papel de las autoridades españolas de la libre competencia”, in S. Muñoz Machado (ed.), *Derecho Europeo del Audiovisual. Actas del Congreso organizado por la Asociación Europea de Derecho Audiovisual (Sevilla, octubre 1996)* (1997) 747; L. Castejón Martín (ed.), *Competencia y regulación en los mercados de las telecomunicaciones, el audiovisual y el Internet* (1998); E. Gómez-Reino y Carnota (coord.), *Telecomunicaciones, infraestructuras y libre competencia* (2003); J.J. Montero and H. Brokelmann, *Telecomunicaciones y televisión. La nueva regulación en España* (1999).

⁵⁴ Article 20: “1. *The following rights are recognised and protected: a) the right to freely express and disseminate thoughts, ideas and opinions by word, in writing or by any other means of communication; (...) d) the right to freely communicate or receive accurate information by any means of dissemination whatsoever. The law shall regulate the right to invoke personal conscience and professional secrecy in the exercise of these freedoms*”. Paragraphs b) and c) of Article 20 of the Spanish Constitution respectively envisage “*the right to literary, artistic, scientific and technical production and creation*”, and “*the right to academic freedom*” and have been considered by the Spanish Constitutional Court as specific projections of the freedom of expression (Decision 153/1985, 7 November 1985).

⁵⁵ The fundamental rights are listed in Articles 15 to 29 of the Spanish Constitution.

⁵⁶ In general, on the constitutional limits for TV legislation, see J. García Roca, “Límites constitucionales al legislador de la televisión”, 24 *Revista Andaluza de Administración* (1995) 11; J.A. González Casanova, “Razones constitucionales de una Radiotelevisión del Estado”, in J. García Jiménez (ed.), *Radiotelevisión española y la Constitución* (1981) 19, J.J. González Encinar, “Televisión y democracia”, in J. Asensi Sabater (ed.), *Ciudadanos e instituciones en el constitucionalismo actual* (1997) 387; L. Parejo Alfonso and M. Bacigalupo Saggesse, “El art. 20.3 CE. El control parlamentario de los medios de comunicación del Estado”, in O. Alzaga (ed.),

According to settled case law, beyond the evident link between both rights as guarantees of “free public communication”,⁵⁷ it is conceptually necessary to differentiate between their contents: while the freedom of expression protects the emission and dissemination of opinions, the freedom of information focuses on the protection of processes of transmission of data and certain facts, as long as the existence of those facts has been proved, i.e. the facts exist and are real.⁵⁸ The autonomous exercise of the freedom of expression has led to constitutional conflicts, but its most conflictive projection usually unfolds when it interacts with the freedom of information - i.e. when the opinion has been disseminated through the media.

Freedom of information does definitively constitute one of the most relevant rights of the ones envisaged in article 20 SC for the very existence of a real democracy. It has a dual character, formed by the right to receive information and the right to inform.⁵⁹ Specifically, the actual content of the right to receive information is conditional upon the scope of the right to transmit the information.⁶⁰

Constitutional case law has steadily argued that the right to inform must meet several criteria acting as limits to its exercise, such as veracity and public relevance of the information, whereas the exclusion of all type of humiliating, insulting or offensive expressions would pertain to the realm of the limits to freedom of expression.⁶¹

One of the main consequences of the fact that freedom of expression and information belong to the constitutional category of “fundamental rights and public freedoms” relates to the *type* of legal instrument that can be used for their implementation at the legislative level. According to Article 81 SC, such function is incumbent on the procedures of the so-called “Organic law” (*Ley Orgánica*), whose main specificity lies in the qualified majority voting (i.e. absolute majority in the Spanish Lower Chamber or Chamber of Deputies) that is required in order for it to be passed. From the very beginning the Spanish Constitutional Court has developed an extremely restrictive interpretation of what should be understood by the “legislative implementation” of a fundamental right that would require, therefore, an “organic” law, instead of following the “ordinary” law procedure. Statutes concerning fundamental rights should only follow the more demanding procedure in order to be passed, according to the Constitutional Court, when the legislator is undertaking a *direct* regulation of a fundamental right or freedom (e.g. Decision 6/1982, of 22 February 1982). Otherwise it could be considered an “attack” on democracy, as future parliaments would find it difficult to overcome the burden of changing a statute that has been passed by an absolute majority.

Actually, it was on the occasion of its decision on the constitutionality of the “Statute on Private Television” of 1988, that the Constitutional Court developed its

Comentarios a la Constitución Española de 1978, vol. II (1997) 555; F. Sáinz Moreno, “La regulación legal de la televisión privada en la jurisprudencia constitucional”, 2 *Revista Española de Derecho Constitucional* (1981) 159.

⁵⁷ Constitutional Court Decision 6/1981, of 6 March 1981.

⁵⁸ Constitutional Court Decision 6/1988, of 21 January 1988.

⁵⁹ Constitutional Court Decision 105/1983, of 23 November 1983.

⁶⁰ Spanish Supreme Court Decision, 17.313/1988, of 9 November, 1988.

⁶¹ See, for instance, the following constitutional Court Decisions, 165/1987, of 27 October 1987; 171/1990, of 12 November 1990; 172/1990, of 12 November 1990, and 52/1996, of 26 March 1996.

most restrictive doctrine on the *Ley Orgánica*.⁶² The Court argued that a *direct* regulation of the freedoms in Article 20 SC should only be understood as that which aims to establish a comprehensively global, essential and exhaustive regulation comprising all the possible constitutional and technical modalities for a specific communications medium (Decision 127/1994, of 5 May 1994, 4th legal reasoning). As a consequence, the regulation of a specific technical possibility of dissemination for a broadcast communications medium (e.g. private television) would not be constitutionally required to follow the organic law procedure. It is interesting to note that the recent General Statute on Audiovisual Communication, which came into force on 1 May 2010, is far more ambitious than the Statute on Private Television. It refers not only to television – both public and private – but also to radio. Yet no constitutional concern regarding its being an ordinary – and therefore not an “organic” – Statute was raised.

Furthermore, as a politically decentralised country, the Spanish system rests on the constitutional allocation of legislative competences between the political levels of government. As regards the territorial “translation” of freedoms in Article 20 SC, the central state level has exclusive power over “telecommunications” and “radio-communication” (Article 149.1.21 SC), as well as of the “basic legislation on press, radio, television and, in general, all means of social communication” (Article 149.1.27 SC)⁶³. According to this pattern, the sub-national levels of government (*Autonomous Communities/Comunidades Autónomas*) have power over the legislative implementation and execution of the basic state laws for the second group of competences.⁶⁴

The delimitation of territorial boundaries as regards the media sector has been a highly controversial matter. One stable parameter applied by the Constitutional Court regarding this question has consisted in arguing that those sets of norms whose regulatory object had a prevailing focus on the technical support or instruments used for media dissemination should be comprised within the exclusive competence of the central state (Art. 149.1.21 CE). However, where the prevailing interest of the given law is not in the *instrument* itself, but in the nature of the media as a social communication and diffusion service directly connected to the exercise of the rights and liberties of article 20 SC, it should then be framed within the shared legislative pattern between territorial levels as per Article 149.1.27 SC.⁶⁵

⁶² An early assessment of what was then still the draft of a future Statute on Private Television can be found in G. Ariño Ortiz, *El Proyecto de Ley sobre Televisión privada* (1987). On private television in Spain see also F. González Navarro, *Televisión pública y televisión privada* (1982); E. García Llovet, “El Estatuto de RTVE y la Ley de Televisión Privada”, in J. Cremades (ed.), *Derecho de las Telecomunicaciones* (1997) 413; J.C. Laguna de Paz, *Régimen jurídico de la televisión privada* (1994); E. Malaret i García, “La financiación de la televisión pública y privada”, in *El régimen jurídico del audiovisual* (2000) 153; S. Muñoz Machado, *Público y privado en el mercado europeo de la televisión* (1993) and *Servicio público y mercado*, vol. III: *Televisión* (1998); T. De la Quadra-Salcedo, “La televisión privada y la Constitución” 15 *Revista de Derecho Político* (1982) 37.

⁶³ The Constitutional Court has constantly held that cinema/film is not a mean of social communication. See S. De la Sierra, *Derecho del Cine. Administración Cultural y Mercado* (2010).

⁶⁴ Cf. M. Carrillo López, “Las televisiones públicas en el Estado compuesto”, in *Régimen Jurídico del Audiovisual* (2000) 225; G. Escobar Roca (ed.), *El derecho de la televisión. Situación y perspectivas en la Comunidad de Madrid* (2004); F. Sáinz Moreno, “Las televisiones públicas en el Estado compuesto”, in *Régimen Jurídico del Audiovisual* (2000) 243.

⁶⁵ See, for all, the Decision of the Constitutional Court 168/1993, 27 May 1993, passing sentence on a constitutional appeal against the General Regulatory Law on Telecommunications, 31/1987 (in particular, its 4th legal reasoning).

3.3 Structural regulation

The principle of free market recognised in Article 38 of the Constitution is valid for all kinds of media. General competition rules without a particular media component are applied to the media. There are no cross-media rules, but specific ones for each type of media. Thus particular licensing, ownership and competition rules exist for the audiovisual media, as we shall see over the following lines.

The general regulation of radio and television is contained in the recent Statute 7/2010, of 31 March 2010, *General de la Comunicación Audiovisual* (General Statute on Audiovisual Communication: hereinafter, *LGCA*). There are other state and regional rules governing public media (including those belonging to the state, regional, and local authorities) and different regional norms relating to regional and local private media.

The new LGCA considers audiovisual media to be services of general interest. Nevertheless, there is a distinction depending on the medium used for transmission: as a rule, operators simply need to communicate their intention to begin their activity to the authorities. However, when these services are provided by terrestrial waves (the means by which most of the Spanish people access radio and television), the operators need a prior licence granted by the competent audiovisual authority (the state or regional one depending on the territorial scope at issue). On the state level, licences are granted by the Government. As for the regional or local level, it depends on the provisions of each regional regulation. Tenders for licensing are governed by the principles of publicity and equality. Licences are granted for a period of fifteen years with automatic renewal unless a third party makes a request at least 24 months before the expiry date. This being the case, a competition process takes place. Licences can be transferred and leased.

The activity of social, non-profit-making audiovisual media services – other than public service media – is subject to licence, which cannot be transferred or leased. Advertising (including sponsoring) is not allowed. Unless authorised by the audiovisual authority, annual expenses may not exceed 100,000 Euros for television outlets and 50,000 for radio outlets.

The LGCA has (minimally) regulated mobile television. This activity requires a licence. A criterion to be taken into account for granting licences is the previous experience of the candidates as providers of audiovisual media services, which may be deemed arguable from the point of view of competition rules. In addition, the LGCA also refers to high-definition television, only to allow its release. In both cases, the LGCA states that the transmission and reception must fulfil the standards established by the European Union.

According to the LGCA, the licensee must be a national of (individuals) or be domiciled in (legal entities) an EEA⁶⁶ State or in a third country under a condition of reciprocity (i.e. those countries should accept also that Spanish nationals or entities have access to their broadcasting market). In addition, individuals or legal entities from third countries may not accumulate more than 25% and 50% of shares in one media company respectively.

Other limits aim to guarantee a certain pluralism of information. In television, the initial rule, under the aforementioned Statute on Private Television (Statute

⁶⁶ EEA stands for European Economic Area.

10/1988, of 3 May 1988) did not allow the same person to own more than 25% of shares in a private channel, or to accumulate shares in more than one private channel. Later, when the conservative governments were in power (from 1996 to 2004), these limits were relaxed by successive changes in the law, allowing for greater concentration.⁶⁷ Now the LGCA allows for the simultaneous ownership of shares or voting rights in different private licensees, yet with some limits. Regarding state-wide private television, any natural or legal person can acquire a significant stake in more than one station, if the subject fulfils three conditions: the average audience of all the channels in question has been below 27% of the total audience during the twelve consecutive months prior to the acquisition (there is no consequence if this maximum is exceeded *a posteriori*); the stations in question do not occupy more than two multiplexes; and there are at least three different private stations left. In the case of region-wide private television, the only limit is the prohibition of the accumulation of more than one multiplex. As for the private state-wide radio, the same individual or legal entity is not allowed to control, under any circumstances, directly or indirectly, more than 50% of the licenses granted to operate through terrestrial signals in the same area of reference and, in any case, it is not allowed to own more than five of such licenses. On the regional level, no individual or legal entity may control more than 40% of the licences. Moreover, no individual or entity may directly or indirectly control more than one-third of all terrestrial broadcasting licences with full or partial coverage throughout the state territory.

3.4 Content regulation

3.4.1 General norms applicable to all media regarding media publishing and information-gathering processes

As mentioned earlier, the freedom of information and the freedom of expression, included in Article 20 of the Constitution, constitute the constitutional framework for both professional and non-professional communication activity. The Constitution refers to the so-called “conscience clause” and to the protection of journalists’ sources in the exercise of these freedoms, to be regulated by the law. The relevant statute is the *Ley Orgánica 2/1997* of 19 June 1997, *Reguladora de la cláusula de conciencia de los profesionales de la información* [Organic Statute on the Conscience Clause of Information Professionals].⁶⁸ It is intended to ensure independence in the exercise of journalism. It gives information workers the right to ask for the termination of their contractual relationship with the media company when a substantial change in orientation or ideological position of the company takes place, and when the company transfers the journalist to another media belonging to the same enterprise if its genre or ideological position involves a clear break with the professional career of the journalist. The exercise of this right entails compensation. In addition, journalists may refuse to participate in the drafting of information which is contrary to the ethical principles of communication, without penalty or prejudice.

⁶⁷ On media concentration both in Spanish and in former Community law, see F.A. De Abel Vilela, *La concentración de los medios de comunicación social en los Derechos español y comunitario* (2002); and A. Pérez Gómez, *El control de las concentraciones de medios de comunicación. Derecho español y comparado* (2002).

⁶⁸ Cf. prior to the adoption of such a clause T. De la Quadra-Salcedo, “La cláusula de conciencia: Un Godot constitucional”, 22 *Revista Española de Derecho Constitucional* (1988) 53, and part II in 23 *Revista Española de Derecho Constitucional* (1988) 45.

The second paragraph of Article 20 of the Constitution prohibits prior censorship in the exercise of the freedoms of information and expression, and the fifth section provides that the seizure of publications, tapes and other records can only be decided by the judiciary. Consequently, Article 538 of the Criminal Code punishes by disqualification for six to ten years the authority or public official that has exercised prior censorship, except in the cases permitted by law. The measures that can be taken also include the collection of editions of books or newspapers or the suspension of its publication or the dissemination of any radio and television broadcast.

The third paragraph of Article 20 states that a law shall regulate the organisation and parliamentary control of the media dependent on the state or any public entity and shall guarantee equal access to the media of significant social and political groups, respecting the pluralism of society and the various languages of Spain. This is discussed in the section devoted specifically to audiovisual communication.

The fourth paragraph of Article 20 stipulates that the freedoms of information and expression are limited by the respect for constitutional rights and in particular the right to honour, privacy and reputation and the protection of youth and childhood. In this regard, *Ley Orgánica 1/1982*, 5 May 1982, *de protección civil del derecho al honor, a la intimidad personal y familiar y a la propia imagen* [Organic Statute on the civil protection of the right to honour, to personal and family privacy, and to personal image] defines the intrusions that are considered legitimate and illegitimate. When an intrusion is proven, moral damage is presumed to have occurred. Judicial protection includes all measures “necessary to end the trespass”, such as provisional measures, the right to disseminate the ruling in the media and compensation for damages.

Under *Ley Orgánica 2/1984* of 26 March 1984, *reguladora del derecho de rectificación* [Organic Statute on the right to rectification], any person or entity is entitled to correct information disseminated through any media that he or she considers inaccurate and the disclosure of which may cause injury. The law provides a fast procedure with prior formal notice to the director of the specific medium and subsequent legal action. This process is compatible with the exercise of civil or criminal legal action in the form of different lawsuits as a result of the same facts.

Ley Orgánica 15/1999, of 13 December 1999, *de Protección de Datos de Carácter Personal* [Organic Statute on Data Protection], which regulates data protection, applies the same general rules to the use of personal data in journalism, disregarding the possibility offered by Article 9 of the Directive 95/46/EC to grant some exemptions to this kind of activity.

Finally, with regard to the right of honour, the Criminal Code (Articles 205-216) regulates crimes against honour (insults –“action or speech that injures the dignity of another person, or undermining his or her reputation or attacking the esteem of that person” - and slander –“accusation of a crime knowing of its falsity or reckless disregard for the truth”). The penalty for grave slander (i.e. with publicity) ranges from 6 months to 2 years’ imprisonment, which has been criticised by journalists and academics excessively. The penalty for the rest of the cases, that is to say, for non grave slander, is a fine.

Article 105.c) of the Constitution recognises the right of citizens to access government information under the terms established by law. The general statute concerning this subject is Statute 30/1992 26 November 1992, which concerns the

functioning of Public Authorities and administrative procedure [*Ley reguladora de las bases del regimen jurídico de las Administraciones públicas y del procedimiento administrativo común*]. Section 37 of the statute deals with access to public information in an unsatisfactory manner: access is restricted to documents relating to procedures completed and filed; it can be refused when the public or the private interest prevail; it is not regulated in procedural terms; and its exercise is not monitored through an independent supervisory authority. Along with this regulation, there are other relevant norms, including those related to access to environmental information, the re-use of information for commercial purposes or official secrets. The latter dates from 1968, i.e., prior to the Constitution's entry into force, but underwent a major reform in 1978.

Regarding copyright issues, the relevant legal text is the *Real Decreto legislativo 1/1996*, of 12 April 1996⁶⁹, approving the revised text of the Copyright Act. The most controversial issues today focus on printed journalism and the Internet. In particular, journalistic work is considered to be “collective work” and as such the intellectual and economic rights belong to publishers, not to journalists, as the work has been produced under the direction of the publisher. Publishers have to deal with search engines, newspaper clipping enterprises and news aggregators. They argue that the law requires them to obtain approval from the owners of this information and to pay a fee to use it. *Real Decreto 1/1996* allows articles on current affairs broadcasting by the media to be reproduced, distributed and publicly communicated by any other media of the same category, but the source and the author must be mentioned. This right applies only if the author has not explicitly excluded this possibility, and without prejudice to the author's right to receive the remuneration agreed upon or, failing agreement, as deemed equitable. The unauthorised use of television show excerpts by other television channels or Internet pages has also formed the object of dispute in courts. The sentences have always affirmed the right to exclude such an unauthorised use and ordered such practices to cease and compensation for damages to be paid.

3.4.2 Newspapers

Hardly any regulations exist on the printed press in Spain. The existing one is pre-constitutional and is reduced to some provisions of doubtful validity integrated in the aforementioned Printed Press Statute of 1966. In addition, codes of conduct have been adopted in different geographical areas. At the state level reference must be made to the *Código deontológico de la profesión periodística* (Ethics Code of the journalistic profession), signed by the *Federación de Asociaciones de Periodistas Españoles* (Federation of Spanish Journalists' Associations) and approved in 1993. The Code lays down general principles of professionalism and ethics, such as respect for truth and honour, privacy and the image of others, the protection of minors and the more vulnerable members of society and respect for the presumption of innocence. It refers to the status of the journalist, independence and fairness in the exercise of the profession, safeguards against external influences, confidentiality, the promotion of free access to governmental information and respect for copyright. Finally, it establishes a set of guidelines, such as dignity in the means of obtaining information, respecting the right not to provide information, confidentiality of information sources, the distinction between information and opinion, between information and

⁶⁹ “Decretos Legislativos” are legal norms issued by the Government following a Parliament's delegation. Therefore their legal value is equivalent to that of Statutes.

advertising, the refusal of fees or gratuities, and the prohibition of the use of privileged information of which the journalist has knowledge as a result of his or her profession for personal gain.

Political advertising is not banned in the printed press. As for campaign advertising, the law forbids newspapers to raise ordinary rates in election period and requires all media to offer the same contractual conditions to all parties.

3.4.3 Audiovisual

The general rules applicable to any broadcaster whether national, regional or local, are contained in the LGCA. Further, there are specific regulations for each level of government. At state level two Statutes should be mentioned: *Ley 17/2006*, 6 June 2006, *de la radio y la television de titularidad estatal* [On radio and television belonging to the State] and *Ley 8/2009*, 28 August 2009, *de financiación de la Corporación de Radio y Televisión Española* [On the financing of the Public Corporation of the Spanish Radio and Television], which have already been mentioned.

The LGCA empowers political entities (State, Autonomous Communities and local entities) to own and provide their own broadcasting service. Public service obligations include the production, publication and dissemination of a set of radio and television channels and online information services for all audiences, covering all genres, designed to satisfy the information, culture, education and entertainment needs of society and to preserve pluralism in the media. The norms governing the public broadcaster in each region specify the content of its public service mission. In addition, the Act establishes a control model of public service, based on rules determining the overall objectives for a period of nine years and developing more concrete and specific provisions in the so-called “contratos-programa” [“framework contracts”] between the respective governments and managers of public broadcasters. The LGCA provides for the control of the fulfilling of these public service missions by the representative state, regional or local assemblies as well as by the respective independent supervisory authority. Other limits are the following: (a) the public broadcasters are not allowed to own shares in private broadcasters; (b) the criteria guiding their editorial direction must be developed by a body whose composition reflects the political and social pluralism of the scope of coverage; (c) at state level, the state may not reserve or assign to public broadcasters more than 25% of the radio spectrum available for television, or more than 35% for radio.

As for funding, as a general principle, public funding cannot sustain operations or content outside the public service mission. Each political entity can institute a public service broadcasting system and arrange its funding mechanism, which in any case must be compatible with current legislation on competition. At state level, Statute 8/2009 (mentioned above) on the financing of the Spanish Corporation on Radio and Television has eliminated advertising from the public state broadcaster (RTVE), a decision which has been endorsed by the LGCA. According to the new system, contributions from the national budget and the revenues from its own productions (i.e. those of RTVE) and sponsors are accompanied by a percentage of the tax on the usage of radio spectrum, the contribution made by private television stations (3% of the gross income for free televisions, 1.5% for pay televisions, not exceeding 20% of RTVE’s budget), and telecom operators (0.9% of gross income, without exceeding 25% of the budget of RTVE). This is an import of the current French model. Compatibility with market rules and state aids is being checked by the

European Commission, which has already considered that the French model implies illegal state aid. So far, regional regulations have not eliminated advertising from their public broadcasters.

The LGCA contains provisions to reconcile the freedoms of information and expression and the freedom to conduct a business with the protection of the rights of users, especially the more vulnerable ones. Thus, the rights and freedoms that are recognised in this framework are the following: a) the right to receive a pluralistic audiovisual communication consistent with constitutional values; b) the right to receive transparent audiovisual communication, identifying the content provider; c) the rights of children, including the establishing of the period of the day in which broadcasts which might harm them are prohibited, the classification of programmes by age and limits to the kind of advertising aimed at the minors' audience; d) the rights of persons with disabilities, under the principle of universal accessibility, with obligations of a predetermined ratio of subtitling and audio description, and a ban on using degrading or stereotypical images of disabled people; and e) the right to participate in the control of audiovisual content, with the possibility of complaining to the audiovisual supervisory authority.

Quota rules and obligations to invest in content production in order to promote the European and Spanish content industry also have a place in the Spanish regulation, and in the LGCA. European quota rules imply the obligation to reserve at least 51% of transmission time for European works, excluding the time conferred to news, sports events, games, advertising, teletext services and teleshopping (following Article 4 of Directive 89/552/EEC). At least 50% of that quota is reserved for European works in any of the official languages in Spain.⁷⁰ At least 10% of transmission time shall be reserved for independent producers and at least 51% of that 10% must be works produced in the last five years.

The financing obligation implies the duty to contribute annually to the funding of the European production of films, documentaries, television cartoons and series with 5% of the income earned in the previous year. This obligation is only imposed on channels that broadcast these products if they are less than seven years old in relation to the date of production. For public television broadcasters this duty is set at 6%. Under the previous rules only cinematographic works should be financed. The inclusion of series was a traditional demand of private television stations, which have their own producers. In any case, this obligation has been widely questioned, as it may conflict with the freedom to conduct a business, and is currently before the courts.

As far as advertising rules are concerned,⁷¹ according to the LGCA (following Article 18 of Directive 89/552/EEC), the proportion of television transmission time devoted to all kinds of publicity is limited. Following the Directive, there are rules relating to the forms and moments of interruption of broadcasts to ensure differentiation between content and advertising and the integrity of the work. In addition, the LGCA establishes a series of prohibitions and restrictions concerning the

⁷⁰ This system has been inherited from previous norms and the European Court of Justice has already declared its conformity with Community Law. See ECJ, Case 222/07, *UTECA v. Administración General del Estado*, delivered on 5 March 2009.

⁷¹ See, in general, on the relationship between advertising rules in television and fundamental rights, L.M^a. Díez-Picazo, "Publicidad televisiva y derechos fundamentales", in S. Muñoz Machado (ed.), *Derecho Europeo del Audiovisual. Actas del Congreso organizado por la Asociación Europea de Derecho Audiovisual (Sevilla, octubre 1996)*, vol. I (1997) 649.

advertising of certain products (like tobacco, alcoholic drinks or medical products or treatments). The LGCA prohibits political advertising on public or private radio and television. During election periods, public radio and television stations have a duty to give free airtime to all political groups. The allocation of time and duration is distributed by the administration in accordance with the results obtained in the previous election. Broadcasters also have the obligation to act with neutrality in their reporting of elections.

Spanish law (through the LGCA) has recognised the so-called “right to self-regulation” (in fact, “co-regulation”). It seems strange for the voluntary nature of self-regulatory codes and the existence of their own control mechanisms, but the LGCA empowers independent supervisory authorities to verify the legality of a code, and even to impose financial penalties for non-compliance. Before the existence of this norm, various self-regulatory codes on contents and advertising had been signed. The main codes are the *Código de Autorregulación de contenidos televisivos e infancia* (on television contents and children), adopted in 2004, and the *Código de Autorregulación de la Publicidad dirigida a menores* (on advertising aimed at children), adopted in 2005.

The LGCA recognises the right of operators to contract for exclusive broadcasting, again with some limits. The main one relates to the freedom of information with regard to the so-called events of major importance for society. The state’s supervisory authority, the Consejo Estatal de Medios Audiovisuales (State Council of Audiovisual Media), is in charge of the establishment of a biennial catalogue of the events of general interest to society to be broadcast on free television and with state coverage. However, each event needs to be chosen from a closed list, which contains popular sports events, including the Spanish “Liga de fútbol profesional de Primera División” (Premier league) football match every week. Exceptionally, with a two-thirds majority, the State Council of Audiovisual Media may include other events of major importance for society in the catalogue. The catalogue and the measures for its implementation must be notified by the State Council of Audiovisual Media to the European Commission. This regulation has its origin in the very controversial Statute 21/1997, of 3 July 1997, regulating the broadcasting of sports competitions and events (*Ley reguladora de las Emisiones y Retransmisiones de Competiciones y Acontecimientos Deportivos*, better known as the “Football Statute”) adopted under a conservative government. In practice it was designed to nullify exclusive contracts to broadcast the professional football league matches that favoured a TV operator close to the socialist party. This controversial statute was taken before the Constitutional Court, which in its judgement 112/2006, of 5 April 2006, considered that it did not violate freedom of information or the right to property or free enterprise. The new LGCA, adopted under the socialist government, has maintained the regulation.

3.4.4 Internet

There is no specific regulation of the Internet as a medium of communication, and indeed the courts have refused so far to bestow this status on the Internet as a whole.⁷²

⁷² See, for instance, the decision of the criminal court n° 16 of Madrid adopted on 18 December 2009 (decision n° 531/2009).

3.4.5 Supervision

A new independent supervisory authority of audiovisual media at state level is due to be created soon, following the mandate of Article 44 LGCA: the *Consejo Estatal de Medios Audiovisuales* (CEMA) with important advisory, regulatory, executive and sanctioning powers, licensing excluded.⁷³ The CEMA is composed of nine members elected by the Congress of Deputies by a three-fifths majority from amongst persons of recognised expertise in matters related to the audiovisual sector and appointed by the Government by *Real Decreto* [regulation]. The members are elected for a six-year term and cannot be removed other than for predetermined reasons to ensure the council's independence. The CEMA is assisted by an advisory committee in which civil society is represented. Some Autonomous Communities (Catalonia, Navarra and Andalucía) had already created their own Audiovisual Councils prior to this.

4. Media policy and democratic politics: an assessment

This report on media policies in Spain from a democratic theoretical point of view has explored the most relevant questions under discussion today. The role of history in the framing of media policies is clear. Nevertheless, it seems that this role has been particularly more decisive in the Spanish case for a number of reasons that have been discussed above. The long Franco dictatorship had obvious negative consequences for the exercise of fundamental rights, such as those of expression and information, which are among the most relevant here. Whereas all media were affected by that context, this situation was particularly dramatic with regard to television. This media type came into being precisely during the dictatorship and was then legally (and culturally) shaped in a way that has made it very resistant to changes. The authoritarian environment was, certainly, not homogeneous. Dissident voices slowly found their place in various legal and illegal ways, but it is clear that those almost forty years had a negative impact on the development of a critical public opinion that could contribute to a quality democracy. This might explain, for instance, why Spain is still amongst those countries with a low newspaper readership rate. Stronger policies on media literacy, for instance by increasing the critical approach to media in the school curriculum, may be good instruments for remedying that. Also, citizen participation in decisions concerning media policy should be fostered.

Recent history also explains the approach of the public powers (i.e. the various public bodies *and* the legislator) to media policy. It could be argued that the Spanish public powers and, as a consequence, the Spanish media law, are fairly interventionist. The level of interventionism has evolved over the years and differs from one medium to another. By definition, due to the constitutional context since 1978, the exercise of journalism is well protected, even if this professional sector still raises complaints, some of which have recently – on 20 September 2010 - been set out in the aforementioned *Pamplona Declaration*. The Declaration is based on the concept of quality journalism as an intrinsic element of a quality democracy. Among other claims, it includes the need to protect information sources and the enactment of

⁷³ Very critical with this Council is A. Boix Palop in this legal blog "*bloc jurídico*". Cf. the following entries: <http://www.lapaginadefinitiva.com/aboix/?p=267> and <http://www.lapaginadefinitiva.com/aboix/?p=281>. See also, by this author, *Transformaciones en el ecosistema mediático y nuevas pautas de regulación administrativa del hecho audiovisual*, 29 Quaderns del CAC (2007), available at: http://www.cac.cat/pfw_files/cma/recerca/quaderns_cac/Q29_Boix_ES.pdf.

a Statute on Access to Public Documents. As stated above, a draft for such a Statute has been prepared, but for the moment it lies stagnant. Journalists also claim that an Official Association (*Colegio Profesional*), structurally similar to Bar Associations for instance, should be created, in order to defend not only the particular interests of its members, but also, and above all, the general interest of an adequate exercise of the journalistic profession. This could, of course, have a dark side, as according to some, corporatism may be considered contrary to the essential freedoms that are inherent in the journalistic profession and, furthermore, it could also be seen as an attempt to control private initiatives on the Internet under the heading of “illegal practice of a profession” or “poor quality journalism”. Journalists also propose to put an end to the practice of requiring a Master’s degree in job offers for journalists. On the one hand, it is true that the days when specific training was required to become a journalist are now over. On the other hand, it seems incoherent to argue that an Official Association would guarantee an adequate exercise of the profession and not provide any definition of the educational background for that profession.

As far as television is concerned, interventionism has been more acute, due to the fact that the technical possibilities of broadcasting were very limited in the past. This justified the definition of broadcasting as a public service, even if private companies were admitted to the market in 1988. Today, after the passing of the General Statute on Audiovisual Communication in 2010, the public mission of public broadcasters has been better defined, even if there are still many critics who consider this statute to be a mere “Counter-Reformation”⁷⁴ of the socialist government now in power. Some obligations imposed on private broadcasters discussed in the report may seem more problematic, and may suggest that even if their activities are no longer conceived under the category of public service, a closer look at the contents of the regulation could lead us to conclude otherwise. Scholars and interest groups have long argued that a clarification of the concept of public service with regard to broadcasting is required. This would also imply consequences for advertising (only those broadcasters that do not receive public funding should be entitled to contract advertising companies), as is the case with recent legislation passed in Spain (2009) and accepted by the European Commission. It should also be added that public television has played a vital role in fostering the welfare state in Spain, a line of research that still needs to be followed up.⁷⁵

Political parties and media groups are closely linked to each other in Spain. Even if it is the courts that ultimately decide on conflicts arising in this sector, there is an overwhelming suspicion that every public decision concerning the media will be biased. There are two independent bodies, the National Telecommunications Commission and the National Competition Commission, that have so far dealt with cases related to conflicts arisen in the media market. A third one is expected now, after the entry into force of the General Statute on Audiovisual Communication, namely the State Council on Audiovisual Media. This was a long-standing demand of certain groups, including scholars, as a way of reducing the government’s

⁷⁴ See E. Bustamante, “La contrarreforma audiovisual socialista”, 172 *Le Monde Diplomatique* (in Spanish), 02/2010.

⁷⁵ Among the very scarce references about this topic in Spain, see J.L. Manfredi, *La televisión pública en la transformación del Estado de Bienestar* (2004). The same author has critically revised the history of television in Spain in another book, focusing precisely on some of the problems that have been discussed here, such as the influence of history in today’s media landscape, or the problems existing in this country concerning digitalisation. See *La televisión pública en Europa* (2008).

discretionary power over the media. Notwithstanding this, it should not be forgotten that institutions operate in a certain cultural and social environment. To date the independence of similar bodies has not always been an asset in the practice of certain reputedly autonomous bodies in Spain. Also, the powers that were finally granted to this Council include, for instance, the possibility of banning the broadcasting of certain ads. This has been criticised, as it might be considered a modern form of censorship, for it is not a judge, but a public body, that fulfils these functions.

The conclusions drawn from the analysis conducted in previous sections help to identify some of the key issues that require further exploration. First, implementation of the General Statute on Audiovisual Communication is a priority, as many of the problems that have been listed in the framework of media and democracy are related to this very statute and, of course, to the underlying media policy rationale. Secondly, the development of broadcasting in the new digital environment still has some deficiencies. Audiences have not responded as expected to the new digital terrestrial offer, which is wider than the classical one provided by the analogue signal.⁷⁶ This is so possibly because the offer is not as innovative as it should be. Interactive components are still at a very low level of development. This poses the question of possible inequalities amongst the Spanish population, depending on their access to the new channels and the new services, in particular if some of them are only provided after prior payment. The keywords would be net neutrality, digital breach and pluralism. Thirdly, journalism has to face new realities. A comprehensive survey of those realities, including mechanisms to obtain input from public opinion, would contribute to a clarification of what journalism is today and what role it plays in today's democracies. And, fourthly, in direct relation to the former issue, media literacy is also one of the weaknesses of Spanish public policies today. Well-prepared citizens and a critical public opinion familiar with the new media processes will make democracies worthy of their name.

⁷⁶ Cfr. *Contenidos digitales para la nueva televisión*, Telos (Fundación Telefónica), nº 84, July-September 2010.

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