



## Case study report

Does media policy promote media freedom and independence?

The case of Greece

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## **Project profile**

MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It investigates the configuration of media policies in the aforementioned countries and examines 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, are thoroughly discussed and analysed.

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## **Executive summary**

The present report examines the processes of Greek media policy-making, the regulations adopted that have a bearing on the development of free and independent media and their implementation. The analysis discloses that, despite the proliferation of policy actors and norms, brought about by the liberalisation of the media sector, technological developments and regulatory pressures stemming beyond the state, Greek media policy-making has remained highly centralised in the hands of the government of the day. This cabinet-centred model of media policy-making has been thoroughly influenced, albeit in opaque and informal ways, by powerful economic and business interests who have sought to gain power, profit, or both, at the expense of the normative functions that the media is expected to perform in the public interest. The limited involvement of independent bodies in policy-making, the absence of journalistic professionalism, and the lack of a strong civil society that is able and willing to defend media freedom and independence have all reinforced such trends.

This has resulted in a haphazard style of policy-making that lacks coherence and clear political orientation, and a selective enforcement of the laws enacted to regulate the market structure and the content of the media. The effects of these processes are evidenced in the densely filled and distorted media landscape where most outlets have been for years artificially supported. The economic frailty of the Greek media has rendered them particularly prone to business and political pressures in return for financial backup and support. The limited development of a truly ‘public service’ broadcaster further exacerbates concerns about the degree of media independence in the country.

In terms of media content, EU legislation has been a major source of the normative rules adopted by Greek lawmakers in order to define the contours of an audiovisual media that should be accurate, unbiased and pluralistic. However, the vast number of media outlets available and the absence of a regulatory culture on behalf of the responsible authority, the National Council for Radio and Television, have hampered the efficiency of monitoring compliance with the rules in force. Concurrently, self-regulatory instruments, which were set up to govern journalistic behaviour and to promote certain ethics and principles in journalistic practices, have remained dead letter. The journalists’ unions have managed to act as a lever of pressure vis-à-vis the media owners but have been almost entirely absent from the policy-making process, especially as regards issues of media impartiality and independence. Greek courts have exhibited greater willingness to defend journalists’ freedom of expression and the citizens’ right to information but have done so slowly and often inconsistently. At the same time, the state has given limited attention to the promotion of media literacy in general, and the pursuit of specific goals linked to the protection of freedom of expression and freedom of information for media education in particular.

Besides these longstanding issues, there is an array of challenges presently faced by the Greek media policy which could have a further pervasive impact on the media’s independence, unless proper action is taken to the opposite direction: pressure to accommodate technological developments and the economic recession plaguing the country.

## 1. Introduction

Since the democratic transition of the mid-1970s, the development of the Greek media has been intrinsically linked to the structure of the country's political economy. Both as a sector of the economy, and as a space of public discourse and dialogue, the media has both reflected and fuelled the specific characteristics of the country's democracy and its shortcomings, as well as its distinctive, state-dependent market economy. Constitutional provisions have provided guarantees for the freedom of expression and the freedom of information, prescribed the values that the media should serve, and defined the aims of media policy along the lines of public interest and other normative principles. Nonetheless, the evolution of domestic media policy, since the broadcast market was liberalised in the late 1980s till the present, has been subject to a strong politicisation that has substantially affected the way in which the state has tried to balance the economic interests of the sector against the values of freedom of expression and freedom of information, the media's social responsibility and media plurality. The nature of the interconnections between the political system and the media in Greece and their impact on the media's ability to perform as independent agents of information in a democratic society have transformed over time, as the political dynamics and economic conditions changed along with the possibilities opened up by technological advancements.

The present report forms part of the MEDIADDEM research project, which seeks to identify the policy processes, tools and instruments that can best support media freedom and independence in a specific country context. It examines the processes of Greek media policy-making, the regulations enacted that have a bearing on the development of free and independent media, and their implementation.<sup>1</sup> The report first identifies the institutional structures and the actors involved in media policy design and implementation, paying attention to the values they represent and the powers they enjoy. The objective is to verify whether the institutional arrangements made for Greek media policy-making are guided by genuine concerns for the protection of freedom of expression through the media and the citizens' right to information.

The report then investigates the regulatory framework shaping the media market and media content. Section 3 focuses on the formulation and implementation of the legal rules and other policy tools pertaining to the configuration of the media market. Consolidation of media outlets in the hands of a few powerful proprietors and obstacles to market entry can result in the suppression of information, undermining the democratic process. The main purpose of this section is thus to investigate whether regulatory efforts have been successful in containing or altogether eliminating undue influence of particular individuals, corporations and political or partisan interests over specific types of media outlets in the market, together with the pressures affecting the media's operation, stemming from structural factors, such as financing. The next section is devoted to the legal norms and measures adopted and implemented in relation to the composition and diversification of media content both for traditional and new media services. Media freedom and independence can be undermined by legal constraints imposed on what the media can publish, as well as by impediments to access to information. What are the types of media content that the Greek regulatory framework seeks to promote or obstruct? Have the measures adopted succeeded in ensuring the provision of a wide range of unbiased information

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<sup>1</sup> Media policy processes and the law are reflected as they were on 1 November 2011.

and the expression of alternative voices through the media - an indication of the media's autonomy?

Journalistic practices can be subject to an array of dependencies, ranging from the constant need for novel information to journalists' dependent employment relationship. Part 5 of this report examines the journalistic profession in Greece and its practice, assessing the journalists' ability to offer impartial and accurate reporting. The final part concerns the media literacy initiatives adopted at a state and non-state level, the degree to which they are underpinned by freedom of expression and freedom of information standards, and media transparency. The concluding section offers some final remarks about the direction that the Greek media policy should take in order to address the challenges posed to media freedom and independence in the country.

## 2. Actors and values of media policy

The basis of the protection provided for the freedom of expression through the media lies in the Constitution. Similar to the case in most democratic states, the Greek Constitution safeguards the freedom of expression and the freedom of the press, protects the freedom of information, and provides for the right to participate in the information society.<sup>2</sup> The freedom of speech and the freedom of the press impose a duty of non interference on the state along with a positive obligation to create an enabling environment for a free press to flourish (Dagtolou, 1989: 31; Karakostas, 2005a: 1).<sup>3</sup> Although the Constitution specifically recognises the freedom of the press, the freedom of expression also applies to broadcasting and the Internet (Karakostas, 2009: 41-43). Contrary to the press, however, the broadcast media are under the ‘direct control of the state’.<sup>4</sup> Such a control is aimed, inter alia, at ‘the objective transmission, on equal terms, of information and news reports as well as works of literature and art’.<sup>5</sup> The Constitution also affirms the importance of ensuring transparency and pluralism in information across the media.<sup>6</sup> In line with the constitutional recognition that the press is free, the print media and the online press have been mainly subject to self-regulation,<sup>7</sup> apart from some general civil and penal law provisions that also apply to them. On the other hand, audiovisual media services provided to the general public by electronic communication networks have been subject to extensive state regulation. Structuring the media market in terms of ownership and competition has also rested on state regulation.

In line with their constitutional recognition, the freedom of expression through the media and the right to information are generally accepted media policy principles. Yet, in practice, they have not been a centre piece in the formulation of media policy objectives and in policy implementation in Greece. References to the freedom of expression and the right to information have been almost absent from media policy documents and elite discourse. More pervasive than the appeal to these constitutional values in Greek policy debates has been the declared intent to set the media free from the multiple political and economic dependencies that have shaped it. Governments have since the early 1990s (just after the liberation of the broadcasting market) repeatedly expressed their commitment to combating the interweaving of interests between the political world, on the one hand, and powerful media interests, on the other. In a declarative manner, the goal was to protect democracy and the political system (Skai.gr, 2004). The fight against ‘*diaploki*’, a term coined to describe precisely the clientelistic relationship between politicians and media tycoons, and ensuring transparency in the operation of the media have, up to this day, dominated the media policy agenda and discourse as the overarching objectives of the Greek

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<sup>2</sup> Art. 14(1) and 5A.

<sup>3</sup> Art. 14 (1) and (2).

<sup>4</sup> Art. 15(2).

<sup>5</sup> Ibid.

<sup>6</sup> Art. 14 (9).

<sup>7</sup> Restrictions to the freedom of expression through the media and the right to information (Art. 14(1) and 5A of the Greek Constitution) can be imposed by law insofar as they are absolutely necessary and justified for reasons that are specified in the Constitution (for instance in order to protect the rights and interests of others, protect national security, combat crime, ensure transparency and plurality in information, etc.). The Greek Constitution does not prohibit the introduction of restrictions through self- or co-regulation, provided that such restrictions do not go against the core protection of the freedoms and rights guaranteed. The Constitution thus sets the legal framework and the limits within which self- and co-regulation may operate. Interview 1.

media policy. In reality however, media policy conduct has continued to be driven by instrumentalist considerations and the lack of political will to antagonise the powerful business interests that emerged across the media sector, in fear that these would obstruct government policies through their outlets. These overly conflicting objectives have undermined the formulation of a clear and long- (or even medium-) term media policy strategy, resulting in an array of ad hoc attempts to regulate the media.

The lack of political direction is also evidenced in the frequent reshuffling of the competent bodies for the media without any substantial planning. This is clearly the case of what is currently consolidated as the Secretariat General of Information and Communication-Secretariat General of Mass Media (SGIC-SGMM), the state body that has for years been primarily responsible for formulating media policy. Following repeated competence reassignments,<sup>8</sup> at the end of September 2010 the two Secretariats (then named Secretariat General of Information-Secretariat General of Communication, SGI-SGC) were transferred from the Prime Minister to the Ministry of Interior, Decentralisation and E-Government (MIDE), with the exception of two departments of the SGC directorate on media supervision which were transferred to the Deputy Minister of Culture, and primarily dealt with private and public service audiovisual media.<sup>9</sup> Eight months later, the responsibilities for the audiovisual media were brought back to the two Secretariats,<sup>10</sup> which were placed under the auspices of the Prime Minister<sup>11</sup> and then assigned to the Minister of State (MS, currently also government spokesman).<sup>12</sup>

Alongside the SGIC-SGMM, the Ministry of Infrastructure, Transport and Networks (MITN) plays an important role in media policy-making as it shapes and implements electronic communications policy. The MITN is also in charge of all the technical matters related to broadcasting networks, such as spectrum management and supervision.<sup>13</sup> At present, the acceleration of the digital switchover and the prompt passage to digital terrestrial television (DTT) in accordance with European Union (EU) rules and guidelines is a top priority for the Ministry.<sup>14</sup>

The design of the Greek media policy is a quite centralised process. Important decisions are made at the level of the aforementioned ministries that set the priorities, put forward policy initiatives and prepare legislative documents, often in cooperation with other ministries enjoying shared responsibilities in certain issue areas. A concrete approach to policy-making and the drafting of legislation that would include the involvement of independent authorities, prior analysis, and consultation with the stakeholders and the general public is at the discretion of the responsible ministry. Not only are such instances quite rare, but they are often hampered by limited coordination and institutional instability.

This point has been raised by the Special Permanent Committee on Institutions and Transparency, a cross-party committee which exercises parliamentary control

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<sup>8</sup> For a detailed overview of the evolution of SGIC-SGMM from its establishment until September 2010, see Anagnostou, Psychogiopoulou and Kandyla, 2010: 244-245.

<sup>9</sup> Art. 2 Presidential Decree 96/2010, FEK A' 170/201; Prime Ministerial Decision Y276-30/09/2010, FEK B' 1595/2010.

<sup>10</sup> Art. 2 Presidential Decree 73/2011, FEK A' 178/2011.

<sup>11</sup> Art. 5 Presidential Decree 65/2011, FEK A' 145/2011.

<sup>12</sup> Art. 1 Ministerial Decision Y353/2011, FEK B' 1603/2011.

<sup>13</sup> Some of the MITN's functions in this area have been delegated to the National Telecommunications and Post Commission.

<sup>14</sup> Interview 4.

over the independent regulatory authorities in Greece, and also discusses legislative drafts and makes policy proposals in order to promote transparency in public affairs. In its latest formation (since October 2009), this committee has been particularly active in discussing audiovisual media policy issues. Furthermore, it has engaged in a media independence-related dialogue with regard to the streamlining of the rules governing the passage to DTT, so as to ensure the media's insulation from government influence (Special Parliamentary Committee on Institutions and Transparency, 2010a), and has formulated concrete policy proposals in this respect (Special Parliamentary Committee on Institutions and Transparency, 2010b: 60-67). Nonetheless, it has not framed its discourse from a freedom of expression standpoint, nor has it dealt with issues concerning the media's editorial independence more broadly. Having primarily a consultative role, the Committee has expressed discontent with the fact that its proposals are largely disregarded by the government (Ibid.: 17).

The wish of successive governments to retain control over the shaping of media policy is also mirrored in the limited delegation of agenda-setting and regulatory powers to independent authorities, most notably to the National Council for Radio and Television (NCRT). The NCRT, an independent body since the constitutional revision of 2001,<sup>15</sup> is the authority which has exclusive responsibility for the control of the broadcast media. Set up in 1989, at the onset of the broadcast market deregulation, the NCRT was not entrusted with substantial autonomy and its role remained mainly consultative until 2000.<sup>16</sup> Currently, the NCRT has the mandate to guarantee that public and private broadcasters comply with domestic legislation, and can impose administrative sanctions in case of violations. It is responsible for the supervision of broadcast content regulation and is assigned with the task of licensing the radio and television channels transmitted by terrestrial and satellite networks in line with pre-defined criteria. As such, the role of the NCRT remains limited to ensuring compliance with domestic provisions.<sup>17</sup> The NCRT can draft codes of conduct for advertising and news and entertainment programmes, and has from time to time provided policy-makers with recommendations, which have occasionally been taken into account. On the whole however, its involvement in the formulation of normative rules has been marginal or non-existent.<sup>18</sup>

In the context of its reinforced mandate, the NCRT is authorised to issue directives and recommendations to public and private broadcasters.<sup>19</sup> Presidential Decree 109/2010<sup>20</sup> (which transposed the EU Audiovisual Media Services Directive<sup>21</sup>) has further augmented its powers.<sup>22</sup> However, as it is thoroughly analysed in the fourth section of this report, the way in which the Council has exercised its

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<sup>15</sup> Law 2863/2000 (FEK A' 262/2000) established the status of the NCRT as an independent authority. A year later, its independent status was recognised by the Constitution (Art. 15(2)).

<sup>16</sup> Law 2863/2000.

<sup>17</sup> Interview 9.

<sup>18</sup> Interview 12.

<sup>19</sup> The latter are not binding on broadcasters.

<sup>20</sup> FEK A' 190/2010.

<sup>21</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 15/4/2010, p. 1.

<sup>22</sup> Article 4 of Presidential Decree 109/2010 stipulates that the Council can temporarily prohibit a programme if it promotes hatred on the basis of race, gender, religion, ethnicity or sexual orientation, or if it is necessary for reasons of public order, public health or national security and the protection of consumers.

responsibilities has been criticised for imposing unjustifiable constraints on what the media can report. A recent NCRT directive illustrates a certain level of interest in protecting broadcasters' editorial independence from sponsorship pressures.<sup>23</sup> Nonetheless, the Council's overall activity and decision practice lacks a concrete approach to principles and measures for guaranteeing the independence of the broadcast media from commercial and political constraints on their editorial policy.

The inability of the NCRT to establish itself as an authoritative body that effectively regulates the media and supports media freedom stems mainly from the attitude of the dominant political forces, which have been ambivalent about promoting the Council's independence. This is demonstrated in the politicised procedure for the appointment of the members of the Council's board. All seven members are elected by the Conference of Presidents, a cross-party parliamentary body, with a 4/5 majority upon nomination by the governing party.<sup>24</sup> In the search of candidates meeting the 4/5 majority, this procedure has caused significant delays in the renewal of the Council members. This has resulted in the automatic extension of the term of office of the NCRT's past members, raising serious concerns about the legality of the Council's decisions and independence (Galani, 2008).<sup>25</sup> At the same time, the limited expertise of the members of the board, albeit prescribed by law,<sup>26</sup> and their part-time term of employment have devalued the work of the authority (Oikonomou, 2011).<sup>27</sup> Other factors inhibiting the effectiveness of the Council are the lack of financial independence,<sup>28</sup> and insufficient personnel and information technology equipment (National Council for Radio and Television, 2011a: 13-26).

The National Telecommunications and Post Commission (NTPC) is the authority that regulates, supervises and monitors the electronic communications and postal markets. The NTPC enjoys financial autonomy and is governed by a nine-member board. The president and vice-presidents are appointed by the cabinet council, upon proposal by the MITN, while the remaining members are directly appointed by the MITN.<sup>29</sup> With members that demonstrate a high degree of expertise, the NTPC is generally considered to carry out its tasks in an effective manner.<sup>30</sup> The authority is responsible for the provision of general authorisations to operators providing electronic communication networks and/or services and carries out spectrum monitoring. Following the adoption of Law 3431/2006, it also applies the competition law in the electronic communications markets, and regulates the assignment and obligations of operators with significant market power.<sup>31</sup> The Hellenic Competition Commission (HCC), which has a sector-specific department for the Control of the Media Market, has been given the responsibility to apply competition rules in the media sector.<sup>32</sup> The authority consists of eight members. The president

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<sup>23</sup> NCRT, Directive 1/12.7.2011.

<sup>24</sup> Art. 14 Parliamentary Code. Civil society, professional organisations and academia have no influence on the composition of the Council.

<sup>25</sup> According to a recent judgment of the Council of State (No. 1098/2011), the highest administrative court in the country, the statutory provisions extending the NCRT members' term of office beyond a reasonable period of time are unconstitutional.

<sup>26</sup> Art. 2(3) Law 2863/2000.

<sup>27</sup> Only the president and the vice-president of the NCRT are employed full time.

<sup>28</sup> The budget of the NCRT has to be approved by the minister in charge.

<sup>29</sup> Law 3371/2005, FEK A' 178/2005.

<sup>30</sup> Interview 7.

<sup>31</sup> FEK A' 13/2006.

<sup>32</sup> Law 3592/2007, FEK A' 161/2007.

and vice-president are selected by the Parliament's Conference of Presidents and are appointed by the Ministry of Development, Competitiveness and Shipping (MDCS), while the remaining six members are directly appointed by the MDCS.<sup>33</sup> Both authorities endorse the view that the public interest is best met through a market-led approach to electronic communications and media regulation and do not resort to values of editorial independence or freedom of expression and information to base their reasoning.

Independent authorities with a remit to protect fundamental rights (such as the right to privacy) are also relevant for media policy. The Hellenic Data Protection Authority (HDPa) is the independent administrative body which oversees the implementation of regulations referring to the protection of personal data against processing and the privacy of individuals.<sup>34</sup> The HDPa is governed by a seven-member plenary and its mandate includes amongst others the granting of permits for the collection and processing of public figures' sensitive data for journalistic purposes.<sup>35</sup> However, the Authority openly refrains from granting such permits, as it considers their provision a preventive measure against the press, which is prohibited by the Constitution.<sup>36</sup> The HDPa is also responsible for examining complaints and issuing decisions on alleged breaches of data protection legislation. In examining such cases, the authority seeks to balance the freedom of expression and the service to the public's interest in information with an individual's right to privacy. The Hellenic Authority for Communication Security and Privacy (HACSP) should also be mentioned in this context. This independent authority, established in 2003, pursuant to the constitutional revision of 2001, is charged with the safeguarding of the privacy and security of communications and can proceed to the seizure of the means used to violate confidentiality and to the destruction of information and data obtained illegally. It consists of a president, a vice-president and five members. The boards of both authorities are elected by the Conference of Presidents, requiring a majority of 4/5 of its members. Their operation is under parliamentary control.

Undoubtedly, technological innovations and the Internet have changed the way information and other types of media content are produced and delivered. The Greek state, however, still lags behind in exploring the opportunities that the Internet opens up for freedom of expression and information. Up until now, there has been uncertainty regarding the legal norms regulating the content of information transmitted online, including blogs, and there is a lack of debate on the tools that could safeguard the freedom of expression and information on the Internet. At the same time, policy-makers have been reluctant to explore ways to regulate new applications and media services that do not strictly fit into the traditional regulatory systems for the press and broadcasting. The telecommunications and the broadcasting sectors are still regarded as separate sectors, and no systematic efforts are deployed to

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<sup>33</sup> Art. 12(3) Law 3959/2011, FEK A' 93/2011.

<sup>34</sup> Mainly Law 2472/1997, FEK A' 50/1997 (which transposed Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23/11/1995, p. 31) and Law 3471/2006 (FEK A' 133/2006).

<sup>35</sup> Art. 7(2)(g), Law 2472/1997. The authority may grant such a permit if processing is absolutely necessary in order to ensure the right to information on matters of public interest, as well as within the framework of literary expression and on condition that the right to protection of private and family life is not violated in any way whatsoever.

<sup>36</sup> See Art. 14(2) of the Greek Constitution and HDPa decisions no 26/2007, para. 11, no. 17/2008, para. 18 and no. 63/2010, para. 6.

coordinate in an effective manner the activities of the two independent authorities in charge of them respectively: the NTPC and the NCRT. In line with the government's broader plans to reduce public spending in view of the deep economic crisis faced by the country, the merging of the NCRT and the NTPC has been proposed (Kathimerini, 2011a). Such a proposal was, however, met with opposition by the president of the NCRT primarily on the grounds that the merger would be unconstitutional (Imerisia, 2011a).

An array of media and journalists' associations has been established in order to promote the professional interests of their members. Currently, there are four regionally organised unions for the journalists employed in newspapers and the broadcast media. The Union of Journalists of Daily Newspapers of Athens (ESIEA) and the Union of Journalists of Daily Newspapers of Macedonia-Thrace (ESIEMTH) are among the most significant ones.<sup>37</sup> The Periodical and Electronic Press Union (ESPIT) represents journalists who work for magazines and the online media. Grouped under the Pan-Hellenic Federation of Journalists' Unions (POESY), the unions' principal aim is to negotiate labour contracts, wages, employment conditions and social security benefits with the state and the employers. The unions have also undertaken the task of supervising journalists' ethical performance, self-regulating journalists' professional behaviour, and protecting the principles of journalistic autonomy and editorial independence. The Code of Conduct of Greek Journalists has been adopted to this end.<sup>38</sup> The disciplinary councils of the unions investigate alleged breaches of the code mainly on the basis of specific complaints, but also *ex officio*, and have the power to impose penalties on journalists (i.e. reprimands, suspension of membership or expulsion) found guilty of breaches,<sup>39</sup> such as defamation, distortion of facts or anti-collegial behaviour.<sup>40</sup> It should be noted that it is not mandatory for a journalist to be a member of a professional union, while there are a number of requirements that must be fulfilled before qualifying for entry, such as a minimum of three years of employment as a journalist. As the code and the imposition of penalties apply only to members, self-regulation through the code is limited.

Although not usually understood as part of the policy-making process, courts both at the national and the European level play an influential role in shaping the law affecting the media through statutory interpretation. Individuals claiming that respect for their personality, reputation, private/family life, etc. has been violated by the media can have recourse to the courts. The Greek Constitution does not prioritise *in abstracto* any one right over another. Instead, competing rights claims must be balanced vis-à-vis one another ad hoc and in relation to the context of each case at hand. Domestic courts have emerged as increasingly important norm setters in areas that are directly linked to the freedom of expression and the freedom of imparting and receiving information through the media. While they are the central fora where conflicts concerning journalistic freedom are resolved, nonetheless, their decisions are rarely invoked by political decision-makers when they formulate laws and policies. The European Court of Human Rights (ECtHR) constitutes an alternative platform for

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<sup>37</sup> The list also includes the Journalists' Union of Thessaly & Central Greece (ESIETISEE) and the Journalists' Union of the Peloponnese, Epirus and the Islands (ESIEPIN).

<sup>38</sup> See the 'Code of conduct of the journalists' profession', which has been adopted by the ESIEA and by the POESY, available at: [www.esiea.gr](http://www.esiea.gr) (date accessed 25 October 2011).

<sup>39</sup> The decisions of the disciplinary unions that enforce the code are not subject to judicial review or any review by independent regulatory authorities.

<sup>40</sup> Interview 20.

journalists and individuals to seek correction for the infringement of their rights. Strasbourg jurisprudence, which is discussed in detail in the section concerning content regulation, has challenged domestic courts' case law on a number of occasions. However, the ECtHR's rulings have not contributed to broader domestic legal reforms as far as prevention of new violations of Article 10 of the European Convention on Human Rights (ECHR) on freedom of expression and freedom of information is concerned. Similarly, the EU Charter of Fundamental Rights and in particular its provisions on the freedom of expression and media freedom have not had a significant impact on domestic media policy so far.

### 3. The structure of the Greek media market

The EU membership acted as a catalyst in the late 1980s for the adoption of structural regulation for the media, which at the time was confined to the application of Greek competition law to the media sector.<sup>41</sup> The common market paradigm that the European institutions promoted decisively, coupled with growing disillusionment with the political system and its media tutelage (Kominou, 1996: 237), set the stage for the liberalisation of the broadcasting market.

The European policy trend towards broadcasting liberalisation received judicial support. In *Elliniki Radiophonia Tileorassi*,<sup>42</sup> a judgment delivered in 1991, the then European Court of Justice (now the Court of Justice of the European Union, CJEU) held that EU law did not preclude the granting of a television monopoly for considerations of a non-economic nature relating to the public interest. However, the manner in which such a monopoly was exercised should not infringe EU free movement and competition rules, resulting in the discrimination of other EU Member States' audiovisual products and services. Any restriction imposed on the free provision of broadcasting services in particular, should be appraised in the light of fundamental rights, including the freedom of expression.

These were issues that were left for the national court to tackle but a few months after the case was brought to the CJEU, the TV broadcasting market was liberalised, following the liberalisation of the radio market two years earlier.<sup>43</sup> Contrary to newspapers and magazines that were not subject to licensing requirements in line with the constitutional recognition that the press is free,<sup>44</sup> the state introduced rules to licence the broadcasting sector and subsequently revised them on several occasions. However, they mostly remained inapplicable. This resulted in a saturated broadcasting market with a multiplicity of radio and TV outlets that operate illegally or under a 'para-legal' status even nowadays, based on the 'temporary' recognition of their legality that has been prolonged through various laws. This practice of the Greek state, which was found by the Council of State, the supreme administrative court in Greece, to be unconstitutional, in breach of the rule of law and the principle of equality,<sup>45</sup> has had an important consequence: it led to the development of an abnormal relationship between the state and the broadcasting media. In the absence of a properly licensed broadcasting sector, the insecure market position of private broadcasters rendered them vulnerable to political pressure for support of government policies, irrespective of the government in power. At the same time, in anticipation of positive state coverage, commercial operators were allowed to operate disregarding the rules.<sup>46</sup> A 'balance of terror' - as noted by one of our interviewees - thus emerged, the state and the broadcasting media becoming a 'hostage' to each other.<sup>47</sup>

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<sup>41</sup> Law 703/1977, FEK A' 278/1977.

<sup>42</sup> CJEU, C-260/89, *Elliniki Radiophonia Tileorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others*, ECR 1991, p. I-2925.

<sup>43</sup> See Law 1730/1987, FEK A' 145/1987 and Law 1866/1989, FEK A' 222/1989.

<sup>44</sup> The only requirement imposed on newspapers and magazines is to publish the name of their owner, publisher, director, and the name of the director of the company responsible for their printing.

<sup>45</sup> See Council of State, decision 3578/2010.

<sup>46</sup> Interviews 5 and 9.

<sup>47</sup> Interview 20.

Superficial attempts by successive governments to curb this perplexing relationship - largely aimed at tranquillising public opinion<sup>48</sup> - failed. This is the story of the so-called 'main shareholder' provisions, a form of structural regulation, which in an ineffective and questionable manner, sought to prevent the conclusion of public work contracts with persons and undertakings that are active or have interests in the press or broadcasting. With the argument that access to the media could be used to influence the authorities' contract award decisions, consecutive governments laid down rules that only in appearance could be implemented and enforced. Relevant provisions were fiercely attacked by the European Commission for violation of free movement and the EU rules on public procurement (Leandros, 2010: 897). By means of a reference for a preliminary, the CJEU had also the opportunity to adjudicate on the issue.<sup>49</sup> The Court ruled that whilst the EU Member States enjoyed discretion to adopt measures in order to ensure equal treatment and transparency in the field of public procurement, and media independence and pluralism, the Greek legislation was disproportionate to the objectives pursued.

EU law and policies had a significant impact on the structural regulation of the Greek media. They undermined the state monopoly in radio and television and also struck down controversial rules seeking to preclude investment in and management of both media enterprises and enterprises that engage in public work contracts. The influence on the EU has also been felt through its 2002 Framework and Authorisation Directives,<sup>50</sup> which set out important rules relating to the authorisation of electronic communication networks and services and were transposed in the Greek legal order by means of Law 3592/2007.<sup>51</sup> At the same time, however, structural regulation has been heavily marked by the multiple dependencies and interconnections between the political elites and the media in the country. The following sections examine some of the key issues concerning the formulation and implementation of the domestic rules and identify their effects on the media's ability to perform as facilitators of public debate in an independent manner.

### 3.1 Media ownership

Law 3592/2007,<sup>52</sup> adopted in July 2007, contains the most recent provisions concerning media ownership structures in Greece. Different rules apply to the audiovisual and print media on the one hand, and the audiovisual 'information' and 'non-information' media on the other.<sup>53</sup> Ownership of a radio or TV undertaking, whose programme focuses on the provision of information services, is allowed up to

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<sup>48</sup> Interview 6.

<sup>49</sup> CJEU, Case C-213/07, *Michaniki AE v Ethniko Simvoulío Radiotileorasis, Ipourgós Epikratias*, available at: [www.curia.eu.int](http://www.curia.eu.int) (date accessed 29 August 2011).

<sup>50</sup> See Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24/4/2002, p. 33, and Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive), OJ L 108, 24/4/2002, p. 21.

<sup>51</sup> See Law 3592/2007 above.

<sup>52</sup> *Ibid.*

<sup>53</sup> Audiovisual 'information' media are considered to be the media whose daily programme includes the provision of regular and original news services, political commentary and information programmes (e.g. on current political and economic affairs). Audiovisual 'non-information' media are those media whose programmes primarily consist of entertainment and education programmes. See Art. 5(5) Law 3592/2007.

100%.<sup>54</sup> Participation in another media enterprise of the same type is allowed, provided that it does not lead to ‘control’, that is, substantive influence on the management and operation of the undertaking. No media ownership restrictions exist with regard to newspapers and magazines.<sup>55</sup> However, media ownership in general (i.e. in television, radio, newspaper and magazine outlets) must not lead to concentration in the media market, defined by means of specific market shares that are discussed under section 3.2.

Until the 1980s, the Greek media landscape was dominated by the public service broadcaster *ERT*, which operated as a state monopoly, and large firms whose owners had business interests mainly in publishing and printing. The early 1980s saw the entry of newcomers into the media market, mainly industrialists from other business fields (Leandros, 2010: 890), who channeled capital from activities outside the media into the national press. By the late 1980s, existing publishers, who expanded their activities in commercial broadcasting through preferential legal provisions,<sup>56</sup> dominated the media alongside a new generation of media owners with substantial activity development in other sectors of the economy. These new owners invested in media services as a tool to exercise influence over the political system in the pursuit of particularistic, primarily economic interests. This must be understood in the broader context of the Greek economy where various economic sectors substantially depend for their viability on public contracts and thus the state.

The number of private broadcasting stations and press outlets increased impressively, flooding the media market. A substantial degree of mono-media and cross-media market concentration ensued within the national media, whilst more diversified ownership structures emerged within the regional media. The four conglomerates (*Lambrakis Press Group*, *Pegasus Group*, *Tegopoulos AE* and *Kathimerini AE*) that controlled 71% of the national newspaper market in 2010<sup>57</sup> have all interests in the broadcast media. Quite significantly, most of them, as well as major TV broadcasters, also engage in other sectors of the economy, such as shipping, construction, manufacturing and telecommunications.

Legislation adopted by the Greek state to restrain mono-media and cross-media ownership was ill-prepared and proved ineffective. Restrictive media ownership provisions, such as those contained in Law 2328/1995 for instance,<sup>58</sup> were not enforced. The rules were largely circumvented but the state took no action against the media proprietors whose power had grown considerably within and outside the media sector. In 2007 media ownership regulation was softened by means of Law 3592/2007. Previous press ownership and foreign ownership restrictions were erased, limits to TV shareholding were removed, and the prohibition to participate in more than one electronic media of the same type, as well as in more than two different types of media outlets (i.e. television, radio and newspapers) was abolished.

Even though media ownership regulations were relaxed, the same trend of non-enforcement continues nowadays, as no effective action is taken to verify whether the rules are respected. The NCRT, which is responsible for keeping records

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<sup>54</sup> Art. 5(2) Law 3592/2007.

<sup>55</sup> Art. 5(8) Law 3592/2007.

<sup>56</sup> See Law 1866/1989 above.

<sup>57</sup> See the data provided by the Athens Daily Newspaper Publishers Association for 2010 in relation to morning, afternoon and Sunday newspapers at: [http://www.eihea.gr/default\\_gr.htm](http://www.eihea.gr/default_gr.htm) (date accessed 15 June 2011).

<sup>58</sup> Law 2328/1995, FEK A’ 159/1995.

on media ownership and examining compliance with media ownership legislation (including the scrutiny of media operators' financial means) in the case of acquisitions and changes in electronic media shareholding, cannot carry out its activities in an appropriate manner.<sup>59</sup> This is not only due to the excessive number of media outlets that have outweighed the control resources of the NCRT, but also because the necessary legal acts that would have enabled the NCRT to adequately perform its duties have either not been adopted or contravene other provisions of the Greek legislation, such as the rules on fiscal confidentiality for instance (National Council for Radio and Television, 2011a: 15). Consequently, the NCRT publishes information on media ownership and shareholding following burdensome bureaucratic controls but does not engage in a substantive assessment of their compatibility with the law.<sup>60</sup>

The proliferation of online media services has not had a major impact on the media ownership structures in the country. A variety of telecommunications service providers operate on the market, offering the backbone of online communication, whilst most traditional media have expanded their activities in the online environment, offering some or all of their content in online versions. Major media corporations have also developed new information services which are provided in online form only. Concurrently, the Internet opened opportunities for the entry of new players into the market but a great number of these act solely as news aggregators. 'Independent' news websites run by journalists have also emerged but the extent to which they can pose a challenge to the market position of the traditional media operators is debated. This is also the case with regard to DTT. DTT, which is presently going through a transitional phase as explained below, has not affected the market position of traditional broadcasters (at least of those operating on a nationwide basis) by prompting for example the market entry of new operators.

Media ownership raises concerns about the quality and variety of the information services provided in the country, especially in the case of media proprietors that are simultaneously active in other business sectors. Most of these proprietors have accumulated media outlets and have sustained them financially through the profits of their other business activities. They have done so not because they had a vocation to inform and bring news to the public but because media ownership could allow them to exert pressure on successive governments and influence domestic politics in favour of their (other) business activities. It is indeed not a secret that many press and broadcasting outlets are not profitable or economically self-subsistent but they operate with losses. They have survived in large part due to the inflows of funds from the other economic activities in which their owners engage. The same pattern also applies at the regional/local level. A significant number of regional/local media has never functioned as 'proper' enterprises. They were established to serve as platforms for the promotion of the interests of their proprietors and they were maintained for that purpose despite their falling revenues. Consequently, instances of editorial restrictions requiring journalists to sideline or highlight news that may hamper or respectively promote their employer's business interests are not unusual, as will be explained in detail in section 5. Practices of self-censorship in line with what the journalists believe their employer wants can also be detected.

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<sup>59</sup> Interviews 9 and 10.

<sup>60</sup> Interview 9.

This also partly explains the excessive number of the media outlets available. At first sight, the plethora of the Greek media seems to contribute to pluralism of views and information. In a country of around 11 million, in 2011 the market offered 59 national newspapers, around 500 local/regional newspapers, 126 private TV channels (8 of which were of national coverage) and approximately 950 regional/local radio channels.<sup>61</sup> Nevertheless, such a densely filled media landscape actually reflects a distorted media market that does not operate along the lines of free competition. Most media enterprises are not healthy enterprises that can operate under vigorous competition conditions. Their economic frailty renders them prone to advertising, sponsorship but also political pressures in return for financial backup and support. No doubt, the financial viability of many private media enterprises has depended for decades (directly or indirectly) on state resources, and favourable or lenient treatment, with severe implications on media reporting. Advertisers, channelling resources to the media, have also gradually gained weight in editorial decisions. They have done so first by compelling the media to prioritise entertainment to the detriment of information services and secondly by requiring the media to sideline news that could damage their clients.<sup>62</sup> Due to the economic recession plaguing the country, such pressures have lately intensified.

### 3.2 Competition

Greek competition law, aimed at ensuring the proper functioning of the market, is an important ex post media regulatory tool. By seeking to maintain or restore fair trading, protect consumers' interests and ensure economic growth,<sup>63</sup> it can support the establishment and preservation of a competitive media market. However, it is ill-equipped to promote independent coverage and reporting. Such a contribution can only be indirect, as it may stem from a set of legal provisions that pursue a different policy objective: media pluralism. If competition law can help safeguard a variety of media operators on the market that are free from undue control, then it can attenuate the risk that specific information will be concealed and thus contribute to media independence. As it will be shown, Greek competition law fails to do the former and therefore also the latter.

Greek competition law enjoys a media-specific component in support of pluralism. Whereas standard anti-trust rules apply in the case of collusion among media undertakings and abuse of dominant position,<sup>64</sup> detailed provisions have been laid down for the assessment of concentrations between media undertakings. This has happened in conjunction with the relaxation of media ownership rules, which indicates policy makers' decision to increasingly rely on competition law for media regulation. Although Law 3592/2007 provides no normative definition of pluralism, it has introduced the concept of 'concentration of control in the [media] market'.<sup>65</sup> This is defined as the percentage at which the public is affected by the media, in

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<sup>61</sup> Data from Athens Daily Newspaper Publishers Association, 2011, Secretariat General of Information and Communication-Secretariat General of Mass Media, 2011a, and National Council for Radio and Television 2011b.

<sup>62</sup> Interview 6.

<sup>63</sup> See the website of the Hellenic Competition Committee, <http://www.epant.gr/content.php?Lang=en&id=85> (date accessed 15 June 2011).

<sup>64</sup> Law 3592/2007 replicated the relevant provisions of Law 703/1977 (now Law 3959/2011), the main Greek competition statute, in the media sector.

<sup>65</sup> Art. 3(1) Law 3592/2007.

combination with ownership of, or participation in media undertakings of any type.<sup>66</sup> Concentration of control, which thus builds on both structural market features (i.e. ownership) and the degree of influence that the media can exert on public opinion, denotes dominant position. A dominant position is established when precise market shares are exceeded. These follow a gradually declining scale from 35% to 25%, depending on the number of the media markets in which an operator is involved. The law prohibits concentration when one or more of the media undertakings concerned enjoy a dominant position or when a dominant position is the result of the concentration itself.

With due recognition of the need to protect media pluralism, the government of Nea Dimokratia, the party in power at the time of the law's adoption, proved favourably disposed to a substantive alteration of the general Greek competition rules. The most important changes brought by Law 3592/2007 include: a substantive decrease in the ceilings of the concerned companies' aggregate turnover that trigger the obligation to notify the operation to the HCC (and thus an increase in the volume of the notified concentrations), the definition of precise 'media markets' (i.e. television, radio, newspapers and magazines) to be treated in competition analysis, and the identification of specific criteria for measuring the market shares that indicate dominant position. These criteria include the sum of advertising expenditure and domestic sales income for newspapers and magazines, and advertising expenditure and revenues from the domestic sale of programmes or other audiovisual services for the audiovisual media. The law does not introduce a maximum limit for the media's influence on public opinion (Tsevas, 2011: 70-71) but media viewership, audience and readership data, compiled by private media research companies, must be taken into account by the HCC.<sup>67</sup>

The scope of application of Law 3592/2007 covers the horizontal and diagonal concentrations between media enterprises that affect the broadcasting market or the circulation markets of newspapers and magazines (Deka, 2009). Concentrations in other markets that are relevant for the media (i.e. the market of content production, the market of rights acquisition, the market of content distribution or the press printing market) and concentrations that involve media companies operating at different levels of the supply chain (i.e. upstream and downstream markets) are not assessed on the basis of Law 3592/2007. This is also the case regarding concentrations between media enterprises and undertakings in other sectors of the economy, concentrations that implicate media enterprises with an online presence only, and the evaluation of the vertical effects that the concentrations coming under the scope of Law 3592/2007 may produce. General competition law applies in all these cases and hence, standard competition assessment takes place, without taking into account particular pluralism considerations in an explicit manner.

The introduction of an irrefutable presumption for the establishment of dominant position through concrete media market shares marks a significant departure from a standard competition analysis. This analysis is rarely solely based on market share assessment for the finding of a dominant position. However, and though often thought to the contrary, Law 3592/2007 affords more lenient treatment to concentrations between media undertakings than general competition law. Whereas

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<sup>66</sup> Ibid.

<sup>67</sup> Art. 4(10) Law 3592/2007. The HCC succeeded the NCRT in competition assessment. See Art. 4(1)(d) Law 2863/2000.

general competition law prohibits the concentration of undertakings that may significantly impede competition in the national market or in a substantial part of it by establishing or strengthening a dominant position *among others*, Law 3592/2007 prohibits only the concentrations that either lead to the establishment of a dominant position or implicate a media enterprise that is already dominant.<sup>68</sup> No additional, qualitative criteria can be drawn upon in order to assess whether the concentration under examination can significantly hamper competition.<sup>69</sup>

At any rate, and though praiseworthy the incorporation of a pluralism concern in competition analysis may be, Law 3592/2007 delivers the exactly opposite effect of what it purports to achieve. In a handful of cases examined by the HCC's sector-specific Department for the Control of the Media Market (DCMM) following the law's entry into force,<sup>70</sup> no concentration between media undertakings has been prohibited, as no dominant enterprise could be established either prior or post concentration. Accounting for this is the broad definition of what the law identifies as relevant media markets (television, radio, newspapers and magazines), which obstructs the determination of smaller media markets or sub-markets that would have facilitated the finding of a dominant position.<sup>71</sup> As a result, concentrations between media undertakings that might have been prohibited under general competition law (or perhaps allowed with remedies) are permitted under Law 3592/2007.

So far the DCMM has mainly dealt with merger and acquisition cases, as the number of substantive complaints for breach of competition law provisions concerning agreements, decisions or concerted practices among media operators and abuse of dominant position have been limited. The poor resources the DCMM enjoys, coupled with the breadth and volume of the work that meticulous competition analysis requires, have hampered any sort of ex officio activity. At the time of the adoption of Law 3592/2007, opposition parties had expressed widespread concern about the government's policy decision to assess dominant position on the basis of essentially economic criteria, such as advertising expenditure and sales income. Media viewership, audience and readership data are regularly submitted to the DCMM.<sup>72</sup> Nevertheless, their compilation by operators that might enjoy a powerful position in the market, and criticism raised concerning their mode of collection renders their use questionable.

The advent of digital technologies and the development of electronic communications have substantially affected the allocation of responsibilities for the supervision of the operators' compliance with competition law. Since 2006, the NTPC has been responsible for the application of general competition law to operators providing electronic communications networks and/or services.<sup>73</sup> The expertise the NTPC has progressively acquired in the field of electronic communications might explain the decision of the legislator to entrust it with the powers of a competition

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<sup>68</sup> Note however that Law 3592/2007 affords stricter treatment to the acquisition or holding of a dominant position as such. For the prohibition of a concentration between undertakings, Law 703/1977 (now Law 3959/2011) generally requires a substantive control of its potential anti-competitive effects.

<sup>69</sup> See Art. 7(2) Law 3959/2011 (previously Art. 4(c)(2) Law 703/1977).

<sup>70</sup> See cases 365/V/2007, 393/V/2008, 397/V/2008, 405/V/2008, 409/V/2008, 410/V/2008, 415/V/2008, 422/V/2008, 440/V/2009, 444/V/2009, 461B/VI/2009, 474/VI/2010, 503/VI/2010 available at: [www.epant.gr](http://www.epant.gr) (date accessed 15 June 2011).

<sup>71</sup> Interview 11.

<sup>72</sup> *Ibid.*

<sup>73</sup> Art. 12(a) and (f) Law 3431/2006.

regulatory authority. According to Law 3431/2006, the NTPC may request the assistance of the HCC if necessary.<sup>74</sup>

In the increasingly converged media environment, cooperation between the NTPC and the HCC has generally been smooth, though complexities regarding their responsibilities might arise occasionally. For the most part, collaboration between the two regulatory authorities rests on informal contacts for the exchange of information but institutional collaborative channels might also be established. The ‘Digital Provider’ (*Ψηφιακός Πάροχος*) case, which concerned the establishment of a joint venture by seven private nationwide TV broadcasters for the provision of digital terrestrial network services to their programmes, merits attention. The HCC held that the NTPC was responsible for examining the case. It thus investigated only the effects of the notified operation on the downstream market of content distribution, concluding that competitive conditions would remain unaffected.<sup>75</sup> The NTPC, which assumed main responsibility for the case, assessed the operation as an agreement of undertakings and held that no anti-competitive effects would be generated.<sup>76</sup> However, in view of the primary state of the market of digital terrestrial network services and the absence of data on the market position of both the notified joint venture and its competitors, the parties were required to submit another notification after two years, in order to have their case re-examined in line with market developments. Additionally, they were mandated to inform the NTPC of any contracts entered into with third parties for the provision of digital terrestrial network services. Should the joint venture be found to enjoy a significant market position, the NTPC could impose measures in order to guarantee that network services are provided to alternative content operators under equal terms and with respect to the principles of healthy competition. Although the NTPC did not employ a rights-based discourse in its decision, protecting media freedom might indeed require containing an operator’s excessive influence over access to electronic communication networks and facilities.

### 3.3 Subsidies and other support tools

The Greek print and broadcasting media have benefited from extensive state assistance either in the form of subsidies or other support tools. Whereas the official underlying logic has been to create an environment that safeguards the exercise of the right to information by sustaining the presence of a range of media outlets on the market, many of these instruments, together with other ‘convenient’ state practices for the media, have made many Greek media outlets dependent on state resources.

The Greek print media have been supported by considerable indirect subsidies, such as distribution subsidies, reduced value added tax, and preferential rates for telecommunication services. This non-selective aid policy has been complemented by other highly selective support instruments. Public sector advertising for instance, regulated by Law 2328/1995 and Presidential Decrees 60/1997 and 261/1997,<sup>77</sup> has constituted a staple resource for both the press and the broadcasting media. The distribution system that has been introduced favours regional media on the one hand, and the press and radio outlets vis-à-vis television outlets, on the other. Interested

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<sup>74</sup> Ibid.

<sup>75</sup> HCC, decision 444/V/2009.

<sup>76</sup> NTPC, decision 525/115/2009.

<sup>77</sup> Art. 9 Law 2328/1995 above and Presidential Decrees 60/1997, FEK A’ 53/1997 and 261/1997, FEK A’ 186/1997.

public institutions and bodies must submit each year a detailed advertising expenditure plan to the Department of Administrative Supervision of the Media (DASM), currently under the auspices of the Secretariat General of Mass Media. The plan must be checked by the DASM and then approved by the minister in charge (now the Minister of State). Public bodies must ensure that at least 40% and 10% of their advertising budget is channelled to the press (i.e. newspapers and magazines) and the radio broadcasters, respectively. Regional media (with the exception of those established in Athens and Thessaloniki) must receive a minimum of 30% of the resources allocated to each media category (i.e. newspapers, magazines, radio outlets and TV channels).

Pursuant to Presidential Decrees 60/1997 and 261/1997, the DASM is responsible for verifying whether the minimum percentages mandated by the law were respected by the public bodies implementing an advertising expenditure programme. However, for the discharge of its monitoring duty, the DASM has no responsibility to examine whether state resources were allocated as originally planned. Moreover, it has no powers to monitor whether resources were directed to the operators offering the best advertising price or those that enjoy considerable public appeal, measured for instance on the basis of audience, viewership or readership rates.<sup>78</sup> Notably, domestic legislation does not provide for any penalties in case of non-compliance with the minimum rates. If there are deviations, public authorities are required to justify their spending and the minister in charge is kept informed.

Efforts to ensure transparency in the allocation of public sector advertising have intensified during the past few years. The DASM regularly publishes information on the total advertising expenditure of each public body, as well as the amounts channelled from specific public bodies to specific media outlets. However, there is no comprehensive information regarding public bodies' overall compliance with the expenditure percentages required by the law. Information reported in the press revealed that in 2007 daily and Sunday newspapers that did not sell more than 5,000 copies received around €1,200,000 each, whereas resources channelled to Sunday newspapers with a wider circulation (more than 150,000 copies) did not exceed €1,000,000 (Kathimerini, 2007). In 2008, substantial funds amounting to 45% of total public sector advertising were reported to have been allocated to small conservative newspapers with an editorial line that was friendly to the then party in government, Nea Dimokratia, and the 'free' press of Athens (Eleftherotypia, 2008), which cumulatively enjoyed a circulation of 7.3%. In reply to the allegations of the then opposition party PASOK for preferential treatment afforded to specific press outlets, the Vice Minister of Internal Affairs refused any government responsibility, stressing that each public body is responsible for the management of its own advertising budget (Eleftherotypia, 2009).

The rebates and discounts offered to radio and TV broadcasters for the use of radio frequencies have been another type of media support. Whereas radio operators are not required to pay a fee, on the basis of Law 2328/1995 and Law 2644/1998, pay-TV broadcasters, as well as free-to-air nationwide broadcasters and a limited number of regional TV outlets need to pay 0.5% and 2% of their gross revenue respectively,

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<sup>78</sup> Interview 3.

for the use of frequencies.<sup>79</sup> In pre-election periods, it has become common practice to reduce the fee of the free-to-air broadcasters to 1%.<sup>80</sup> In 2009, the then Minister of Interior and the Minister of Economy and Finance went as far as to reduce the fee to 0.1% for two years.<sup>81</sup>

The lenience that the Greek state has displayed towards the media is also evidenced in the high debts accrued towards the social security system. In 2008, around 150 press and broadcasting outlets were reported to owe the state more than €90 million (Kathimerini, 2008). Some of these undertakings were submitted to debt rescheduling while others continued their activity unrestricted, benefiting from some sort of ‘immunity’ from control. Other measures that ensured cost savings for the media include the implementation – until the end of 2008 – of legal provisions allowing the media to deduct 2% of their gross revenue without proof of payment<sup>82</sup> (thus decreasing their tax liability) and the imposition of a specific tax on advertising in the press and the audiovisual media (i.e. radio and TV), the so-called *aggeliosimo*, which finances part of the social security contributions due by the media owners for the journalists they employ (Kathimerini, 2010). Mention should also be made of an obligation imposed on private undertakings established in the country to publish their annual balance sheets in a daily newspaper of socio-political content that is published in Athens, in a daily economic newspaper, and in a regional or a weekly national newspaper that is established where the undertaking is established.<sup>83</sup> In March 2011, a group of deputies from the governing party PASOK suggested the abolition of relevant provisions, pointing to the considerable cost these entail for enterprises and the usefulness of the Internet for publication purposes. The proposal however did not receive a positive follow-up, as the government did not adopt a united stance on the issue.<sup>84</sup>

State support to the media and the various ways in which it has been provided have created a highly distorted media market that does not operate with due respect for free competition, and whose viability largely depends upon keeping open all these channels of direct and indirect state support. Such a distorted media market is both based on, and in turn reinforces thorough, political interference with its workings. The case of public sector advertising is particularly illustrative. The absence of precise legal criteria for its distribution creates favourable conditions for the exercise of undue influence both from state bodies to the media (i.e. to publish or refrain from publishing specific issues if funding is to be provided) and from the media to the state (i.e. to provide advertising if specific issues are to be covered or neglected in reporting). At the same time, the resources offered have strongly affected the Greek media’s ability to act as competitive enterprises in search of profit (Mandravelis,

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<sup>79</sup> According to Article 1(21) and 5(1) of Law 2328/1995, the TV operators charged with a fee for the use of radio frequencies are the TV operators that were licensed by means of Article 4 Law 1866/1989. These include the TV broadcasters of national reach, Channel 9 and City News. The fee imposed on the pay-TV operators should be increased every two years (Art. 9(7) of Law 2644/1998). Article 6(15) Law 3592/2007 introduced minimum amounts for ‘information’ and ‘non-information’ TV channels.

<sup>80</sup> Interview 3.

<sup>81</sup> See Decisions of the Minister of Interior and the Minister of Economy and Finance 20825/2009 and 20827/2009, FEK B’ 1914, 8/9/2009.

<sup>82</sup> These provisions were first introduced with Law 2065/1992 (FEK A’113/1992) and then were amended with Law 2120/93 (FEK A’ 24/1993). Since 1993, they have been modified several times and they expired in 31/12/2008.

<sup>83</sup> Law 2190/1920, FEK A’ 37/1963.

<sup>84</sup> Interview 7.

2011). The safety of public money channelled to the media's accounts have made them less worried about the quality of their information and other services, and more concerned with gaining access to additional state funds. In a pre-crisis period, indeed it seems that the main preoccupation of the Greek media was not *what* they sold but *how much* they sold (Gewrgeles, 2011). Quantity indicated influence on public opinion and thus more leverage for greedily 'negotiating' their finances with the state.

In this period of profound economic recession, the state's efforts to cut back public resources create a new set of conditions in the market. Public sector advertising in particular, which is reported to have increased from €40 million in 2004 to €83 million in 2008 (Mandravelis, 2011), has been sharply reduced. In 2010 resources amounted to €29,246,691 and in 2011 to €17,308.581.<sup>85</sup> In the absence of generous state funding, the viability of many state-dependent outlets has been seriously threatened. This could inaugurate a new phase in the evolution of the market. Many state-reliant media outlets that are unable to sustain themselves might exit the market, whereas those remaining will need to prioritise information quality policies in order to increase their public appeal and attract private financing from advertisers.

### 3.4 Public service media

A significant element of the Greek media policy has been the state's unwillingness to release the public service broadcaster from its control. The passage from the state monopoly to the dual broadcasting system in the late 1980s failed to introduce the changes that would have equipped the public service broadcaster *ERT* with the necessary safeguards to operate independently from state influence. This has weakened *ERT*'s credibility and delegitimised its claim on the mandatory licence fee, the main source of *ERT*'s revenue, which is paid by the public through common electricity bills.

Although the administrative and financial 'autonomy' of *ERT* has been recognised since 1987,<sup>86</sup> the government has always enjoyed the possibility to exert influence on *ERT*'s managing board by appointing most of its members. Law 3878/2010 which brought changes to *ERT*'s executive structure did not entail any modifications in this regard.<sup>87</sup> The act introduced the separation of the position of the president and of the managing director but required both to be appointed by a joint decision of the Minister of Finance (MF) and the MCT.<sup>88</sup> Following the cabinet reshuffle of June 2011, the latter was replaced by the MS. Pursuant to Law 3965/2011, the MF and the MS are also responsible for appointing four members of *ERT*'s board whereas *ERT* employees elect one board member as their representative.<sup>89</sup>

Changes in government have regularly been followed by changes in the composition of *ERT*'s managing board (Papathanassopoulos, 2010: 224). This shows that selection has for the most part been based on political criteria and affiliation.

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<sup>85</sup> Data available at Secretariat General of Information and Communication-Secretariat General of Mass Media, 2011b. For the year 2011, the amount of public sector advertising covers the resources approved by the DAMS from October 2010 to June 2011.

<sup>86</sup> Art. 1(3), Law 1730/1987.

<sup>87</sup> Law 3878/2010, FEK A' 161/2010.

<sup>88</sup> *Ibid.*, Art. 1.

<sup>89</sup> Law 3965/2011 (FEK A' 113/2011) prescribed that all public enterprises in Greece must be governed by 7-member managing boards.

Interestingly, the law does not prescribe any particular media expertise requirements for those joining *ERT*'s board. Moreover, it renders the managing director particularly prone to political pressure, as it stipulates that s/he can be freely removed at any time.<sup>90</sup>

In addition to the political influences that can have an impact on *ERT*'s governance, the Greek public service broadcaster has seriously suffered from the austerity measures the government has recently adopted. Substantive reductions in labour costs and operational expenses have placed *ERT* under severe strain and could substantially undermine its ability to operate in the public interest. In August 2011, the MS Mr. Elias Mossialos announced an overwhelming plan for *ERT*'s restructuring (Ethnos, 2011; Imerisia, 2011b; Kathimerini, 2011b; Ta Nea 2011). The measures foreseen include reducing the number of *ERT* TV and radio channels whilst placing greater emphasis on the Internet and multimedia services.<sup>91</sup> The MS has also stressed his intention to make arrangements for the evaluation of *ERT*'s personnel and align staff numbers to actual needs.

According to the MS, the reform is aimed at reducing the expenses of *ERT*, which fits in with the government's wider plans to diminish public spending, but also at establishing a genuine, competitive public service broadcaster that is independent from the state, offers a variety of services and operates in a transparent manner (Imerisia, 2011b). Most of the measures that are concerned with a reduction in the number of *ERT*'s channels and programmes have been criticised by parties across the political spectrum (In.gr, 2011a), including by the former Deputy Minister of Culture Mr. Tilemahos Hitiris (In.gr, 2011b). For POSPERT, the Panhellenic Federation of Radio and TV Employees' Associations, the changes proclaimed purposefully seek to undermine the services of the public service broadcaster, so that market opportunities can arise for the commercial broadcasters, most of which are seriously hurt by the economic downturn.<sup>92</sup>

The current restructuring plan for *ERT* discloses the government's firm commitment to implement a policy of cutting down and rationalising expenses. No doubt, *ERT* has been a failing company for years.<sup>93</sup> Far-reaching reforms are indeed necessary to correct widespread maladministration practices. This being said, the changes envisaged leave many fundamental questions unanswered regarding the role of public service media in society and the characteristics that should define them. The plan is heralded as a plan designed to transform a 'state' broadcaster to a 'public' broadcaster but the measures announced do little to reduce or altogether eliminate possible undue pressures and influence on *ERT*'s operation. At the same time, arguing for 'competitive' public service media, as the MS has done, somehow annihilates the very essence of public service media. Public service and private media have distinct roles which should not be confounded. The mandatory licence fee is precisely aimed at protecting the public service broadcaster from financial pressures and competition, so that it can fulfil its public service remit and offer comprehensive services that commercial operators are arguably unable to provide.

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<sup>90</sup> Art. 4 Law 3878/2010.

<sup>91</sup> The plan envisages the creation of a web TV and a web radio, the constant online provision of news, including regional and local news, news services in foreign languages, and various interactive services.

<sup>92</sup> Interview 23.

<sup>93</sup> For the period 1999-2010, its accounts have shown limited or no profit and a permanent high deficit which reached a peak of €130 million in 2006-2007 (Paron, 2011).

### 3.5 Technological innovations: Digital terrestrial television

Digital terrestrial television (DTT) was a watershed for the cumbersome issue of broadcasters' licensing, creating momentum for the rationalisation of the sector. Law 3592/2007, which was presented by the political party that was then in power, Nea Dimokratia, as an act responsive to technological innovation and the EU's requirements,<sup>94</sup> introduced provisions for both the passage to DTT and the definitive switchover.<sup>95</sup> During a first transitional phase, which was however not properly defined, the TV operators already established on the market were allowed to transmit their programmes in both analogue and digital mode. For the definitive DTT phase, the law required frequencies to be allocated to content providers (i.e. nationwide and regional broadcasters), without mandating their legal separation from digital terrestrial network operators. A licensing procedure should be carried for that purpose by the NCRT, which should also assess the programme of the operators.

For the transitional period, a rather biased 'licensing' procedure in favour of national broadcasters was prescribed, reflective of the preferential relations that nationwide media enjoy with the state. Whereas national broadcasters were required to submit a simple declaration to the NCRT, certifying their willingness to transmit in digital terrestrial mode, regional and local operators had to have their programmes checked by the NCRT.<sup>96</sup> While most of the regional operators that received a provisional permit encountered difficulties in starting their DTT activity, mainly due to the considerable investment effort required,<sup>97</sup> seven national TV broadcasters formed a joint company, DIGEA, to provide them with digital terrestrial network services. DIGEA became operational in September 2009 and expanded the provision of its services to regional broadcasters.<sup>98</sup> The public service broadcaster *ERT* had started digital terrestrial broadcasting in 2006, prior to the adoption of Law 3592/2007.

Law 3592/2007 indicated a number of regulatory instruments that should be adopted for the definitive shift to DTT. For instance, all specifications concerning the licensing procedure should be provided by means of a presidential decree, whereas a joint ministerial decision of the MTC and the Minister responsible for the media should define a frequency chart for DTT. The Minister responsible for the media should further determine the number and type (national or regional) of licences to be granted, and together with the Minister of Economy and Economics, the fee for the use of frequencies. The choice of the governing party at the time, Nea Dimokratia, to leave all these matters for future regulation was harshly criticised by the opposition party PASOK. PASOK argued that the intention of the government was to appease TV broadcasters by making promises for the licensing of the sector, but at the same time keeping procedures unclear in order to be in a position to exert pressure on the operators wanting to obtain a licence for positive state coverage.<sup>99</sup> The regulatory model chosen was one of centralised, yet protracted regulation, which marginalised the independent regulators, the NCRT and the NCTP, in the process.

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<sup>94</sup> Parliamentary proceedings, 3/7/2007, p. 11017.

<sup>95</sup> Arts 13 and 14 Law 3592/2007.

<sup>96</sup> Art. 3(3) Decision 21161/2008, FEK B' 1680/2008.

<sup>97</sup> Note that Digital Union, a joint company of 16 local and regional TV broadcasters, started its DTT activity in May 2011, offering network services to regional broadcasters.

<sup>98</sup> Interview 13.

<sup>99</sup> Parliamentary proceedings, 3/7/2007, p. 11018.

Until the change in government in October 2009, and the subsequent transfer of responsibilities for the audiovisual sector to the Deputy Minister of Culture in September 2010, none of the regulatory instruments proclaimed had been issued. Upon resuming his duties, the DMC initiated a consultation with the MTC - renamed MITN - for the preparation of the definitive frequency map and started drafting new legislation for digital terrestrial TV broadcasting.<sup>100</sup> According to the DMC, first, there should be a clear separation between network and content providers, in line with the European experience. Second, frequencies should be granted by means of an auction to network operators, which should then negotiate with content providers in order to provide them with network services on condition that the content providers had received permission from the NCRT for their programmes. In the DMC's view, this would send a clear message that the status of semi-legality characterising the analogue period in relation to the licensing of broadcasters would not be replicated for DTT.<sup>101</sup> Simultaneously, a working group was created under the auspices of the MITN,<sup>102</sup> bringing together all relevant stakeholders (the ministries concerned, the independent regulators NTPC and NCRT, *ERT*, representatives of national and regional TV broadcasters' associations, digital terrestrial network operators, etc.), in order to make recommendations for the modification of the legal framework, among others.<sup>103</sup>

The swift adoption of the regulations under preparation was hampered by the cabinet reshuffle of June 2011 and the resulting transfer of responsibilities for the audiovisual media to the MS. As a result, the DTT market currently develops in a haphazard way under a prolonged transitional period. Investment in DTT is thwarted by the absence of a clear legal framework setting the parameters for the definitive passage to DTT. The operators enjoy no legal certainty as to the number and type of providers that will obtain frequencies for digital terrestrial transmission. They are also uncertain as to whether all existing national and regional TV channels will migrate to DTT and what the conditions of competition will be once analogue TV transmission permanently stops. At the same time, operators, especially those active at the national level, are consolidating their position on the market. There is indeed a serious risk that the present status of semi-legality under which broadcasters lack proper licences will remain unchanged in the DTT era, preserving the multiple dependencies and interconnections between the political elites and the media that have characterised the analogue period. No doubt, economic entrepreneurs want to remain active on the market. Economic sustainability however, is a major concern given the saturation of the broadcasting market, originating in the analogue period, and the economic crisis that has put the financial viability of many TV broadcasters under threat. The state is aware of the economic vulnerability of the market and the need to revitalise it. However, it is reluctant to proceed with the adoption of measures that would set limits to market entry. This would mean bringing the preferential relationship it has enjoyed with the broadcasting media for decades to an end.

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<sup>100</sup> Interview 7.

<sup>101</sup> Ibid.

<sup>102</sup> Interview 4.

<sup>103</sup> Decision 3855/53/F8 of the Minister of Infrastructure, Transport and Networks, 26/1/2011.

### 3.6 Policy formulation and implementation with regard to the structure of the media market

Policy formulation with respect to the organisation of the Greek media market has been profoundly affected by technological innovations and European guidelines and directions. The first effects of the European integration process can be traced back to the late 1980s when a mixed policy trend of market liberalisation, regulation and deregulation emerged, paving the way for the liberalisation of the Greek broadcasting market. Recently, the influence of EU policies has become more pronounced in the context of the passage to DTT and the termination of analogue TV broadcasts. This is clearly evident in the parliamentary discussions that took place when Law 3592/2007 was introduced. Recalling the strategic goals set by the EU in the field of digital communications, the rapporteur of Nea Dimokratia, the then party in government, Mr. Andreas Likourentzos stressed that Law 3592/2007 was intended to create the conditions necessary for the Greek state to benefit from digital technologies in an equal manner with its European partners.<sup>104</sup>

Technological developments and their contribution to the Greek economy and competitiveness were presented as one of the underlying rationales guiding the preparation of Law 3592/2007<sup>105</sup> and in particular, the provisions concerning the transitional and definitive phases of the DTT. Clear differences however emerged between the government party and the opposition parties as to the ways in which benefits from technological changes should be drawn. The socialist party PASOK saw in the law only a superficial attempt to address the technological challenge.<sup>106</sup> The provisions introduced were criticised for delaying the definitive switchover (by leaving various aspects to be defined through subsequent legal acts).

Dissent and controversy accompanied the relaxation of the media ownership rules as well. Although political parties agreed that the previous ownership restrictions were widely circumvented through the use of intermediary natural and legal persons, they disagreed on how media ownership should be henceforth regulated. Nea Dimokratia advocated the introduction of neutral provisions and strict enforcement of the rules enacted in order to ensure transparency in media ownership and as noted, bring an end to the state's tolerant stance.<sup>107</sup> The opposition parties on the other hand argued that Law 3592/2007 made legal the existing illegal configuration of the market.<sup>108</sup>

Diverse positions were also expressed in relation to the media-specific competition rules that Law 3592/2007 introduced. According to Nea Dimokratia, the rules were based on a logic of liberal economy and made arrangements to prevent the concentration of media power.<sup>109</sup> For the opposition parties, the economic criteria used for the examination of whether a media undertaking enjoys a dominant position (i.e. advertising and sales income) were insufficient; qualitative criteria should be prioritised in this respect. Moreover, holding a dominant position in the media market should be recognised as problematic in itself.<sup>110</sup> The responsible minister at the time, Mr. Theodoros Rousopolos, drew attention to the fact that qualitative criteria (i.e.

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<sup>104</sup> Parliamentary proceedings, 3/7/2007, p. 11016.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid, p. 1130

<sup>107</sup> Ibid., p. 11025-11026.

<sup>108</sup> Parliamentary proceedings, 4/7/2007, p. 11057-11058.

<sup>109</sup> Parliamentary proceedings, 3/7/2007, p. 11016.

<sup>110</sup> Ibid., p. 11018, 11022, 11030.

viewership, audience and readership data) should be taken into account by the HCC. As to the issue of the prohibition of dominant position per se, a media company, he observed, should not be punished for being successful; what was prohibited was the abuse of a dominant position, in accordance with EU competition law.<sup>111</sup>

The parliamentary proceedings exemplify a common feature of domestic politics: the bi-polar pattern of support and opposition to legislative reforms. Government parties prepare legal acts and advocate their enactment whilst opposition parties argue against their adoption. The parliamentary proceedings also contain references to the role and influence of media interests in policy-making that apparently intervene in the process, albeit behind closed doors. For Mr. Fotis Kouvelis, a deputy at the time, of the left-wing political party Synaspismos, Law 3592/2007 and the relaxation of media ownership rules in particular, were the result of media pressures for less stringent legislation.<sup>112</sup> Similar pressures had prevented the strict enforcement of the previous ownership restrictions in force.<sup>113</sup>

The parliamentary proceedings attest to the close interconnections and interdependencies between the political elites and media owners in the country. The socialist party PASOK argued that the government tried to 'please' the media via its legislative choices in anticipation of favourable coverage, especially in relation to the upcoming elections.<sup>114</sup> This denoted a 'relationship of complicity', based on negotiation and exchange of favours.<sup>115</sup> The argument was also made that in addition to displaying the state's friendly attitude towards the media (i.e. through ownership deregulation), Law 3592/2007 also made evident the state's efforts to intimidate the media<sup>116</sup> by introducing rules that prolonged the uncertain and semi-legal status of broadcasters' licensing.

The fact that the preparatory phases of regulation are centralised in the hands of the government creates potential for opaque negotiations between the media and the political elites of the country. Limited or no participation of independent authorities and civil society reinforce such trends. Independent authorities are not generally bound to provide comments in cases where laws dealing with issues that are related to their responsibilities are being prepared. But even when they do provide such comments out of their own initiative, there are no safeguards that the government will duly take them into account. The civil society rarely has the opportunity to constructively participate in policy formulation. The government often launches consultations inviting interested parties to state their views but the process lacks transparency. No comprehensive information is provided about the opinions expressed and the government rarely explains the legislative choices made and whether the comments received had any sort of impact on its decisions. Journalists on the other hand are largely absent from the policy-making process as a professional body.

In the field of policy implementation, the NCRT holds a central position, followed by the NTPC and the HCC. The authorities implement the rules and provide technical expertise when required. What is important to stress however is that whilst

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<sup>111</sup> Ibid., p. 11036-11037.

<sup>112</sup> Ibid., p. 11022.

<sup>113</sup> Parliamentary proceedings, 4/7/2007, p. 11057.

<sup>114</sup> Ibid., p. 11046.

<sup>115</sup> Ibid., p. 11044.

<sup>116</sup> Ibid., p. 11018.

the authorities are expected to implement the rules, they are prevented from playing an influential role in their formulation. This undermines the very essence of creating a set of independent authorities to regulate the media sector in the first place. The NCRT, in particular, does not enjoy the necessary powers and instruments to regulate the media market. With respect to licensing for instance, all relevant specifications (i.e. the number of the licences to be allocated, the procedures to be followed, the criteria that the operators need to fulfil in order to obtain a licence, etc.) have been left to the government to determine. Similarly, the NTPC has not been given sufficient powers to formulate the rules governing the definitive phase of the DTT. Policy formulation is exclusively in the hands of the government and it is driven by a logic of 'give and take' that has marked structural regulation for the media in all its facets. Specific concessions are given to the media with specific types of reward in expectation.

#### **4. Composition and diversification of media content**

The need to control and regulate media content arose in the late 1980s following the deregulation of broadcasting and the establishment of private operators. In the preceding period of state monopoly over radio and television, news content was overwhelmingly influenced by the exigencies and political priorities of the government of the day. With the advent of private radio and television though, the need to adopt a regulatory frame and to introduce explicit rules arose. Such rules would enable the free operation of commercial media and its mission to inform the public, while putting in place a set of normative principles and sufficient guarantees for the protection of fundamental rights. The regulation of audiovisual media content has been justified by the fact that audiovisual media operators use frequencies, which are a public good that is allocated by the state. Therefore those using them should operate on the basis of certain rules that each society and political system determine in conformity with prevailing understandings of public interest (Mandravelis, 2006). This section mainly focuses on examining and analysing the factors that influence how these rules are formulated and implemented, as well as the extent to which they are implemented.

Content-related rules, their decision-making and implementation, are central components of media policy-making with far reaching consequences for media freedom and independence. The ways and the extent to which such rules delimit commercial imperatives upon programme content, balance journalistic freedom with other rights and goods, or restrict government or state intervention in public or private broadcasting, all determine whether the media operates in the service of public interest and democratic dialogue, or conversely, is guided by other political or economic interests and instrumental considerations.

In general, audiovisual media content is subject to state regulation, while what is published through the press is expected to be self-regulated on the basis of a variety of codes of ethics (alongside requirements of general civil and criminal statutory law). The regulatory and self-regulatory forms of content control similarly apply to the electronic versions of magazines/newspapers and television/radio channels on the Internet respectively, and media information services provided in online form only. Uncertainty regarding the extent to which news content in blogs should be subject to regulation continues to prevail. It is fuelled by an ongoing discussion and controversy regarding the purported distinctiveness of blogs as a medium of communication from traditional media outlets.

Besides the press, self-regulation was also expected to be an important means for defining and respecting a set of principles and rights in news and programme content also in the audiovisual media. In the mid-1990s, comprehensive media legislation that was introduced provided for the creation of self-regulatory codes of conduct to be adopted by a variety of stakeholders, such as journalists, advertisers and commercial broadcasting.<sup>117</sup> Such codes of conduct would be submitted to the NCRT for approval and would also form part of the arsenal of norms and principles, on the basis of which the NCRT would regulate media content. Self-regulation in practice, though, did not get entrenched; indeed, for the most part it remained a dead letter. Law 2328/1995 had also assigned the responsibility for drafting and adopting codes of ethics for content control to the NCRT itself (along with the requirement for their

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<sup>117</sup> Art.3(15)-(16) Law 2328/1995.

establishment by media operators as a condition for getting licensed).<sup>118</sup> The implementation of this provision, however, did not come to fruition until 2003 when a presidential decree that introduced a code of conduct prepared by the NCRT was adopted as a statute. Its passage had followed constitutional and statutory reforms that in the meantime had enhanced the status of the NCRT as an independent authority.

Between the poles of state regulation and self-regulation, a rare instance of co-regulation is that of the *ethics committees*, which national broadcasting media (both public and private) in Greece are required to establish. Within the existing legal frame, in order to be licensed, radio and television channels must create and enter into multi-party self-regulatory agreements that define and adopt rules of conduct and ethics standards concerning media content.<sup>119</sup> The parties to such self-regulatory agreements are also required to establish ethics committees (*Epitropes Deontologhias*) responsible for overseeing the implementation of the respective content-related rules and principles, which must in turn communicate their decisions to the NCRT.<sup>120</sup> In practice, however, and similarly to the fate of self-regulation, this co-regulatory measure has largely remained a dead letter. To the extent that they have actually been established, these committees have been inactive, not having imposed any sanctions as provided for by the relevant law (National Council for Radio and Television, 2010a: 24). A similar co-regulatory measure has been recently introduced to transpose the EU legislation on the provision of audiovisual media services.<sup>121</sup> However, it is more limited than the preceding one and apparently voluntary, which undermines the essence of co-regulation in the first place. It stipulates that within the existing legal frame, television operators can establish (but they are not explicitly required to do so) alone or with others self-regulatory contracts to control the content of news and programmes.<sup>122</sup>

The decentralisation that emerged with the liberalisation of broadcasting was largely defined by the unrestrained operation of private television and radio channels regarding the content and presentation of their programmes and news. By the mid-1990s, such conditions of ‘savage deregulation’ (Papathanassopoulos, 1997) were widely acknowledged with concern by representatives in the Greek Parliament. Law 2328/95 was the first major statute aiming to define in a systematic and all-embracing manner the legal rules and norms regulating both the structure and content of private radio and television. With regard to content, it sought to define a set of principles and rights that news and programme broadcasting must respect, such as one’s personality, political pluralism, or the protection of minors, among others. It also included a set of positive measures, which required broadcasters a) to devote a few minutes hourly to social messages, and b) to allow all political parties represented in the Greek Parliament to air their views.<sup>123</sup> All the relevant statutes and provisions regulating media content pertained to commercial as much as to public service broadcasting.

Subsequently, and in much greater detail than earlier provisions, the 2003 code of conduct that was adopted as a statute encompassed and elaborated a number of content-related principles, with which journalists and media operators must abide

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<sup>118</sup> Art. 3(15) Law 2328/1995. The NCRT had adopted 2 earlier codes on journalists’ ethics and audiovisual programmes: 1/1991 and 2/1991, FEK B’ 241/1991.

<sup>119</sup> Art. 8(1)-(2) Law 2863/2000.

<sup>120</sup> Art. 8(3)-(4) Law 2863/2000.

<sup>121</sup> Directive 2010/13/EC.

<sup>122</sup> Art. 28(1) Presidential Decree 109/2010, which transposes Arts 4 & 7 of Directive 2010/13/EC.

<sup>123</sup> *Ibid.*

in news and political programmes: protection of political pluralism and generally diversity of views, prohibition of discrimination, respect for one's personality and private life, cross-checking of information, presumption of innocence, and the right of journalists not to reveal their sources supplying information in confidentiality.<sup>124</sup> Still, this code of conduct has been criticised for being arguably sketchy and mostly unresponsive to contemporary needs (Mandravelis, 2002).

Besides media-specific legislation, a variety of laws that safeguard competing and equally valued rights (with the freedom of expression in the media and the freedom of information) interfere with and circumscribe the content of news and information in the broadcasting media. They equally apply to public and commercial broadcasting. Even though it did not specifically pertain to media content, the legislation introduced in 1997 for the protection of individuals from the processing of personal data also applies to the media.<sup>125</sup> Law 2472/1997 prohibits the collection and processing of sensitive data, that is, data 'referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership to a trade-union, health, social welfare and sexual life, criminal charges or convictions, as well as membership to societies dealing with the aforementioned areas'.<sup>126</sup> However, an exemption is introduced for the processing of data pertaining to public figures for journalistic purposes.<sup>127</sup> In such cases, data processing is allowed on the basis of a permit that can be issued upon request by the HDP, provided that it is absolutely necessary to provide information on matters of public interest, and on the condition that it does not violate the right to protection of private and family life.

A recent draft law seeks to criminalise particular forms and expressions of racism and xenophobia. It implements the respective EU legislation<sup>128</sup> and is also based on the 1966 International Convention for the Elimination of All Forms of Racial Discrimination.<sup>129</sup> This law defines as criminal offence the public expression and instigation (through the press, broadcasting or the Internet) of violence and hatred against a person or a group defined on the basis of race, colour, religion, ethnic origin or sexual orientation (Art. 3). It also criminalises views that praise, deny or trivialise genocide, war crimes or crimes against humanity (Art. 4). As the justificatory report accompanying the respective bill acknowledges, such an attempt at sanctioning the above forms of expression has clear limits and cannot be applied to the detriment of the freedom of expression (Art. 10 ECHR) that is fundamental in a democratic society.

Finally, an indirect form of content regulation entailing effects on the exercise of the freedom of expression and the freedom of information in the online environment in particular, can be found in Presidential Decree 131/2003.<sup>130</sup> This

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<sup>124</sup> Presidential Decree 77/2003, FEK A' 75/2003.

<sup>125</sup> Law 2472/1997 as amended by Laws 2819/2000 and 2915/2001.

<sup>126</sup> *Ibid.*, Art. 2(b).

<sup>127</sup> *Ibid.*, Art. 7(2)(g).

<sup>128</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6/12/2008, p. 55.

<sup>129</sup> This convention had been ratified by the colonels' government back in 1970 with Legislative Decree 494/1970 (FEK A' 77/1970) and was implemented several years later with Law 927/1979 (FEK A' 224/1979). This law however, was hardly applied in practice, and it is now replaced by the 2011 law.

<sup>130</sup> Presidential Decree 131/2003, FEK A' 116/2003.

Presidential Decree transposed the EU Directive on electronic commerce<sup>131</sup> and implemented almost verbatim the Directive's provisions concerning the liability of Internet intermediaries. Internet service providers are exempted from any liability regarding the information they transmit or store. No general obligation to actively seek acts or circumstances indicating illegal activity is imposed on them.<sup>132</sup> However, the Presidential Decree also stipulates that notwithstanding the protection of secrecy and of personal data, Internet service providers are obliged to inform the competent domestic authorities of any alleged illegal activities promptly.<sup>133</sup> One considerable exemption to the non-liability rule that the Presidential Decree introduces is the field of data protection. As expressly mentioned in Article 20(1)(b), data protection rules are exempted from the scope of application of the Presidential Decree.

#### **4.1 Positive measures encouraging the diversification of media content**

The liberalisation of broadcasting in the late 1980s undoubtedly promoted the diversification of media content. Such content was much more uniform prior to 1988-89 when radio and television were under the state's monopoly, and the information and news that they aired were substantially under the influence of the government of the day. The establishment and operation of private radio and television opened up the media to all political parties that can now have their views heard, and rendered the media overall more diverse in this regard. This has been the outcome of the more decentralised media landscape, which deregulation brought about, as well as of the commercial competition to maximise viewership. At the same time, the advent of commercial broadcasting made imperative the adoption of content-related rules to place some limits in the broadcasting time allotted to advertising<sup>134</sup> and protect editorial independence from sponsorship pressures, among others.<sup>135</sup> These measures were responsive to EU rules adopted with a view to diversifying audiovisual media content. Other similar EU measures which were transposed in the Greek legal order concerned easier public access to events of 'major importance' on free television and short news reporting regarding events of high interest in the case of exclusive broadcasting rights.<sup>136</sup>

The advent of commercial media also bore substantial influence upon programme content in public service broadcasting – more accurately, 'state' broadcasting, and created pressures to diversify it and throw away its earlier image as an agent of the government. To be sure though, commercial pressures have not been so strong as to make programme content in state broadcasting converge with content in the private media. The revenues of state broadcasting are guaranteed, therefore it does not have to compete for advertising and thus for maximising its viewership. The fact that competition for high ratings among commercial channels bears much less upon state broadcasting is most likely one reason why violations of content-related rules are reportedly much less frequent in public radio and television in comparison

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<sup>131</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), L 178, 17/7/2000, p. 1.

<sup>132</sup> Art. 14(1) Presidential Decree 131/2003.

<sup>133</sup> Art. 14(2) Presidential Decree 131/2003.

<sup>134</sup> According to Article 23(1) Presidential Decree 109/2010, the time allocated to advertising and teleshopping should not exceed 20% per hour of broadcasting.

<sup>135</sup> Art. 11(1) Presidential Decree 109/2010.

<sup>136</sup> Arts 15 and 16 Presidential Decree 109/2010.

with private channels.<sup>137</sup> The intensity of competition for ratings and advertising shares often compels commercial media to bend or disregard content rules in order to increase their audience (and thus market) share i.e. by sensationalising the presentation of news and events.

At the same time, the low share of audience that public broadcasting attracts in conjunction with the fact that it operates with ‘public money’ has from time to time given rise to debates and discussions concerning its programme choices and its spending. In some periods, like the one around the time of the 2004 Olympic Games, the management of ERT sought to augment the broadcaster’s commercial character by entering into the competitive market of sports programmes. The dominant approach that has prevailed though, as expressed by Mr. Tilemachos Hitiris, the former Deputy Minister of Culture, is to resist the appeal of and pressures for commercialisation and to pursue a programme content that prioritises quality and is all inclusive and responsive to the tastes and preferences of a large cross-section of the Greek society.<sup>138</sup>

While it has been able to resist commercialisation and pressures from advertisers, public television has not managed to shed its dependence on the state and the government, at least not entirely. Members of the government cabinet and ministers in particular, at times directly intervene in public broadcasting, for instance to ensure media coverage of an event, in which they are involved.<sup>139</sup> Far from being confined to the occasional party in power, pressures on editorial content actually derive from the whole political spectrum. With the argument that everyone contributes to the budget of public broadcasting via the obligatory licence fee, politicians both from the party in government and the opposition parties, feel particularly at ease to ‘offer’ reporting directions. Resistance to pressure of course depends on journalists’ professional ethos and formation. In fact, most journalists working for the public service broadcaster are generally aware of the constraints that they might have to cope with when providing their services.

Domestic legislation, as explained above, contains several rules devised to promote content diversity in broadcasting. Besides these, broadcast media operators which apply for a licence to the NCRT are required to submit a declaration of the type of programmes they wish to air (‘informational’ or ‘non-informational’) on the basis of detailed criteria prescribed by law.<sup>140</sup> The NCRT is mandated to take into account the quality, diversity and versatility of the proposed programmes for the award of a licence and to monitor compliance. In addition, licensed operators are required to submit to the NCRT at the beginning of each broadcasting season a summary of the types of programmes they are planning to air for the period in question.<sup>141</sup> Regrettably, there are no official statistics that inform on a regular basis on the volume of news, information and cultural programmes, entertainment, etc., provided by the broadcast media in the country. The ad hoc, fragmentary and rather superficial manner in which the NCRT monitors broadcasters’ compliance with the content

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<sup>137</sup> Interview 20. More broadly though, some argue that public television is given a free hand by the NCRT to act, at times even by disregarding the rules (interview 9).

<sup>138</sup> Interview 7. See also in this respect interview 22.

<sup>139</sup> Interviews 6, 7 and 8.

<sup>140</sup> Arts 6(13) and 8(13) Law 3592/2007. To obtain a licence to broadcast a non-informational programme, operators need to declare the specific thematic programme they wish to air. See Arts 8(6) and 13 Law 3592/2007.

<sup>141</sup> Art. 11(9) Law 3592/2007.

standards and obligations that stem from licensing also hampers an accurate measurement of the various genres of programmes transmitted.

As far as the rules regarding political pluralism are concerned, especially during pre-election periods, these are also monitored by the NCRT. According to these rules, media coverage of political parties is determined on the basis of their parliamentary representation.<sup>142</sup> The extent to which these rules promote political pluralism though is questioned: the required exposure of political parties specifically applies to their coverage in the news, disregarding other forms and channels of political information and communication in the media, while in a pre-election period, it is based on the agreement reached by a cross-party committee.<sup>143</sup> Besides, reporting the percentage of news time allotted to each political party, which is contained in the political diversity reports issued by the NCRT,<sup>144</sup> tells us little about how inclusive and balanced is the airing of the different political views and positions that define public debate. The substantive lines of disagreement may not be defined by political party positions but by the stances of different kinds of political and social actors depending on the issue that is covered.

## **4.2 Competing interests and legal restraints on content diversification**

Media content is constrained by a series of legal norms and rights that determine the legitimate scope of the freedom of expression and the right to information. Far from being absolute, these must be balanced vis-à-vis a variety of other rights and values such as respect for one's personality and private and family life, among others, which are also guaranteed in the Constitution. Due to space limitations, an exhaustive review of the Greek case law is far from possible here. Reference is made to several decisions issued by national and European courts, as well as independent authorities in order to highlight the issues that have been raised and the approach taken by national judicial and quasi-judicial bodies with implications for media independence. The implementation of domestic rules regarding journalists' right to gain access to documents and information held by public authorities is also examined. . Though in principle supportive of journalists' work, the application of relevant rules creates hurdles on journalistic activity.

### **4.2.1 National case law by courts and independent authorities concerning the nature and scope of the freedom of expression in the media**

In balancing between competing rights with regard to the freedom of expression in the media and the freedom of information, national courts apply a number of criteria and principles. In the first place, the media has a duty to inform the public primarily about issues and aspects that are of public interest, and not in order to satisfy any kind of curiosity of its audience. The notion of 'justified interest' is invoked to assess the content of articles or news that is of interest to the society at large. In such cases, media content that interferes with one's private life or is sharply critical of one's actions may be justified by the need to inform the public on a matter of broad societal interest. To be sure, it is not always easy or self-evident what or whose actions involve 'justified public interest', and Greek courts have not specified consistent

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<sup>142</sup> Arts 1(1) and 3(22) Law 2328/1995.

<sup>143</sup> Interview 9. See also Oikonomou, 2011.

<sup>144</sup> See for instance National Council for Radio and Television, 2010b.

criteria to determine this. Secondly and closely linked to this is that the need to inform the public must be in accordance with the principle of proportionality, namely, in a way and to an extent that is appropriate to fulfil this duty.<sup>145</sup>

Restrictions on media content also stem from the obligation of journalists to respect established principles and ethics. In publishing information, journalists must abide by the *contractual obligations* (*synallaktikes ypoxrewseis*) of the press, namely, the duty to provide information that is true, accurate and verified. Greek courts accept the existence of such contractual obligations and take these into account in balancing between competing claims and rights.<sup>146</sup> As for journalists' codes of ethics, a central requirement is that the information published in or aired through the media must be true and its truthfulness and accuracy must be checked and confirmed in advance. Journalists or editors who publish information that is false and/or who have not checked the accuracy of their news are much more likely to be sanctioned when claims for insult of one's personality or libel are levied against them.<sup>147</sup> Furthermore, the dissemination of false information by a journalist who is aware of their fictitiousness is a criminal offence, even when there is justified public interest (Criminal Code, Arts 362-367).

As a general rule that is common in many other countries, freedom of expression for journalists is especially protected when it concerns the disclosing of information or the expression of views and opinions about political or public figures. Underlying this distinction is the assumption that the scrutiny of public persons' actions enables the media to perform its 'watchdog' function, to act as a check on political power, and to contribute to transparency in the political and economic system. By choosing to engage in political life, such persons are considered to have knowingly submitted themselves to much greater public scrutiny and criticism in comparison with ordinary individuals. Information about the behaviour and actions of public persons is considered to be a matter of justified and general social interest.<sup>148</sup> Even in this case though, the content of information must be proportionate to the need of informing the public (that is, it should not be unduly insulting or derogatory). Furthermore, the fact that a piece of information may be of interest to the broader public and society does not render limitless the freedom of expression in the media, which can be restricted if, for instance, the intent to insult on the part of the journalist can be shown.

Generally, the balancing of competing rights in Greek jurisprudence and in the decisions of independent authorities like the NCRT,<sup>149</sup> particularly when it concerns political and public figures, has been inconsistent and at times contradictory. It has vacillated between imposing unreasonably strong restrictions on journalistic freedom on the one hand in cases where criticism of political persons is involved, and allowing unjustifiable and excessive intrusion into the privacy of public persons on the other.

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<sup>145</sup> See HDP, decision 17/2008; HDP, decision 100/2000; Athens Multi-Member Court of First Instance (Polymeles Protodikeio Athinon), decision no. 717/2005.

<sup>146</sup> For an overview, see Karakostas and Vrettou, 2011.

<sup>147</sup> See Court of Cassation, decision no. 573/2006, Section A, in *DIMEE*, vol. 3 (2007), pp. 400-403. See also Papadimitriou, 2010. For an overview of the relevant Greek case law, see Karakostas and Vrettou, 2011: 5.

<sup>148</sup> See for instance decision of Court of Cassation (*Areios Paghos*) no. 435/2007, Section A1.

<sup>149</sup> Individuals can both petition to an independent authority such as the NCRT (which is an extra-judicial body) and take recourse to courts. They usually take their case first to an independent authority and then (using also the decision issued by the independent authority, if it is favourable), they may also decide to go to court.

Overall, Greek courts have restrictively approached and defined the freedom of expression in the media in cases where content published through the press or aired through radio and television is allegedly insulting or libelous. The criminalisation of defamation persists in provisions that define insult, libel and slanderous defamation as criminal offences (Criminal Code, Art. 361-363), reflecting a significant constraint on journalistic freedom.<sup>150</sup> At the same time, up until the 1990s, journalists' freedom of expression was considered nearly absolute in the case law of Greek courts when it concerned the publication of information about public persons. In the name of broader public and social interest, it allowed the disclosure of information about such persons even when it clearly involved aspects of their private life that were unrelated to their public activities that are legitimately of interest to the society at large.

Reflecting developing trends in international legal norms and in the ECtHR's jurisprudence, two seemingly contradictory shifts have been underway: while the remit of those who are considered public figures has widened (to include not only public officials but also personalities from the arts, culture, etc., and individuals who are linked to current events), even among those persons the development of case law recognises a core of privacy, which under no circumstances should be transgressed (Alivizatos, 1997). The assumption that the private life of public persons can be given boundless public exposure is no longer accepted. Law 2472/1997 for the protection of private data has established the criteria and conditions under which journalists can process and publish information about personal and private life.<sup>151</sup>

Despite the adoption of private data protection legislation, Greek courts have been slow to recognise that there is a core of privacy for all individuals,<sup>152</sup> including public persons, which cannot be violated even when there is justified public and social interest. For example, in its decision in 2004, the multi-member Athens Court of First Instance (*Polymeles Protodikeio Athinon*) rejected the petition of Margarita Papandreou (wife of late Andreas Papandreou, ex-Prime Minister) who complained of violation of her privacy. Mrs. Papandreou's e-mail correspondence with her son Giorgos Papandreou in 1995-96 (who was Minister of Foreign Affairs at the time) was illegally obtained and subsequently published in the magazine *Nemesis*, the owner of which is a former journalist and current MP Liana Kanelli. Even though the Athens Court recognised that it was private correspondence, in addition to being illegally obtained, it rejected Mrs. Papandreou's claim for violation of her privacy on grounds that there was justified public interest.<sup>153</sup> In another characteristic decision, the HDPA accepted the broadcasting of scenes and conversations of members of the clergy concerning their sexual life, which were obtained illegally and without their knowledge, on grounds that it was necessary to inform the public. The assumption was that the clergy has willingly given up its private life by choosing to devote itself to a religious life.<sup>154</sup>

Legal scholars have strongly criticised both of these decisions for failing to protect the private and family life of persons in complete disregard for the Constitution and the ECHR (Alivizatos, 2005; Karakostas, 2005b). Far from being

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<sup>150</sup> A journalist condemned for such offences may be vindicated if the information s/he published involves 'justified interest' (Criminal Code, Art. 367) provided that its content is true (Criminal Code, Art. 366).

<sup>151</sup> See Law 2472/1997 above.

<sup>152</sup> See HDPA, decision 53/2004.

<sup>153</sup> Athens Court of First Instance (*Polymeles Protodikeio Athinon*), decision no. 65/2004.

<sup>154</sup> HDPA, decision 25/2005. See also Mihailidou, 2005.

aberrant interpretations, the abovementioned decisions have been more the norm than the exception in Greek jurisprudence and in independent authorities' decisions at least until recently, allowing journalists undue interference with the private life of political and public figures.<sup>155</sup> Indicative of the laxity that courts have displayed vis-à-vis journalists interfering with the private life of public persons is the easiness with which they have tended to accept the illegal obtaining of personal data, for instance through the use of a secret camera, in the name of a 'justified public interest'.<sup>156</sup>

On the other hand, decisions by courts and independent authorities have at times unreasonably restricted journalistic freedom in the name of protecting the personality, honour or reputations of persons. The NCRT is a case in point. Generally, the Council's decisions contain no justification and they have often been overly eager to control the content of news and programmes, to the point of being clearly censorious. Two examples can be provided here. First, in several of its decisions the NCRT has condemned radio and TV channels and journalists who express generalised opinions about categories of people, such as physicians or Members of Parliament.<sup>157</sup> As it is argued, the generalised, albeit arbitrary opinions expressed by journalists about various categories of persons cannot be considered libelous and should not be sanctioned. For one thing, it is individuals and not groups, who are entitled to protection from insult or libel; there is no such thing as insulting a political party for instance. As it is pointed out, 'if each time that inaccuracies are heard, exaggerated statements or vague criticisms are made in public dialogue, the journalist expressing them would be fined, then freedom of political expression would lose all meaning' (Tsakyrakis, 2006).<sup>158</sup> In other decisions, the NCRT has condemned and fined journalists and radio/television channels for airing opinions and views that are sharply critical of politicians.<sup>159</sup> It has also done so on grounds that the information provided in a news programme lacked precision or sufficient proof, without, however itself engaging in an in-depth investigation about their actual truthfulness or accuracy (Sotiropoulos, 2008:49). Recently, it fined the presenters of a satirical programme for criticising political institutions such as parliament, a decision that has led many to sharply condemn it for censorship (Chatzis, 2011; Ntarzanou, 2011).

Over the past 10-15 years significant evolution in the case law of Greek judicial and quasi-judicial authorities concerning the freedom of expression in the media have rendered it more in tune with international trends and European human rights norms. Nonetheless, substantial divergences continue to linger. Until 2007, there was only one ECtHR judgment finding Greece in violation of the freedom of expression in the media (Article 10 ECHR).<sup>160</sup> Since then, however, seven more adverse judgments have been issued.<sup>161</sup> As it is compellingly argued, these reveal

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<sup>155</sup> See for instance the famous decision of the Council of State no. 3545/2002, Section D; and no. 1386/2004, Section D, which concerned the airing of photos and information concerning the sexual life of the Greek composer Mr. Stefanos Korkolis. This decision was more the exception than the rule in Greek jurisprudence in so far as the Council of State found violation of the right to privacy. See also NCRT, decision 74/2005.

<sup>156</sup> For a brief overview of the relevant case law, see Kourakis, 2008.

<sup>157</sup> Indicatively, see NCRT, decision 64/01.02.2006; and NCRT, decision. 467/10.10.2006. For critical commentary on the decision, see Sotiropoulos, 2008: 47-48.

<sup>158</sup> See Tsakyrakis, 2006.

<sup>159</sup> See for example, NCRT, decision 485/08.11.2006.

<sup>160</sup> *Rizos and Daskas v. Greece* (6545/2001), 27 May 2004.

<sup>161</sup> *Lionarakis v. Greece* (1131/2005), 5 July 2007; *Kanellopoulou v. Greece* (28504/2005), 11 October 2007; *Katrami v. Greece* (19331/2005), 6 December 2007; *Vasilakis v. Greece* (25145/2005), 17

structural characteristics and problems in Greek jurisprudence that bring it into conflict with European human rights norms and judicial approaches (Voyiatzis, 2009). Besides the criminalisation of defamation, these judgments also pertain to the jurisprudential criteria applied by Greek civil courts in balancing the freedom of expression in the media on the one hand, and respect for one's personality, honour and reputation on the other (Ibid: 293). In the first place, the ECtHR judges do not consider legitimate on Article 10 ECHR grounds any kind of information that may be considered interesting by the public, but specifically information that critically contributes to public dialogue; unlike the latter, the former is more subjective but also subject to the ebb and flow of public sentiment (Ibid: 299). The criterion of contribution to public dialogue has also been applied domestically by the HDPA.<sup>162</sup>

Second, unlike the ECtHR's case law, the Greek jurisprudence has not for the most part and until recently drawn any distinction between fact and value judgment, which is elemental in the jurisprudence of the ECtHR. According to the ECtHR, when journalists present facts, they should document and cross-check them. But when they express an opinion or value judgment, they are not obliged to provide proof for them (Voyiatzis, 2009: 297).<sup>163</sup> The failure to draw such a distinction has led to contradictory and inconsistent interpretations in the judicial protection of the freedom of expression in the media. For instance, Greek courts have condemned journalists for libel on grounds that they do not provide proof for their statements even when they express mere opinions. At the same time, Greek judges do not take into consideration the factual basis of criticisms waged by journalists in order to accept as legitimate on Article 10 ECHR grounds the occasionally exaggerated criticisms voiced by journalists against others (Voyiatzis, 2009: 304-305). Over the past couple of years, the Greek jurisprudence has begun to draw distinctions that echo this distinction between fact and value judgment, for instance, the distinction between reportage (presents facts) and comment (presents opinion and can include critical even caustic remarks). Greater freedom is recognised in a comment where the purpose is not to inform about actual facts but to highlight an aspect of an issue or event.<sup>164</sup>

Third, the ECtHR case law considers thoroughly the context and particular circumstances of a case in order to determine the motive of the journalist who published or aired information that is purportedly libelous or insulting. By contrast, Greek courts have dwelled upon the nature of the specific phrase(s) used by journalists and whether they were necessary to express a particular view in order to determine whether a piece of news was libelous and insulting. This is often fairly subjective and most of the times one can think of a less critical or caustic phrase to articulate his/her view. As the ECtHR noted, 'the role of national courts in defamation cases is not to tell the journalist the tolerable terms and characterisations that should be used, when in the frame of the journalist profession one exercises the right to articulate criticisms, including sharp ones. Instead, national courts are called to examine whether in the context of a case, the public's interest and the motive of the

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January 2008; *Avgi Publishing and Press Agency S.A. and Karis v. Greece* (15909/2006), 5 June 2008, *Kydonis v. Greece* (24444/07), 2/4/2009, *Alfantakis v. Greece* (49330/07), 11/2/2010.

<sup>162</sup> See HDPA, decisions 63/2010, 18/2008, 17/2008 and 39/2007, available at: <http://www.dpa.gr> (date accessed 25 October 2011).

<sup>163</sup> Even though it is naturally expected that value judgments and opinions are made in close reference to facts, the ECtHR does not require journalists to provide proof when they are merely stating an opinion on an issue (as opposed to when journalists declare to relay facts).

<sup>164</sup> See Athens Court of Appeal (*Efeteio Athinon*), decision no. 1897/2007, Section 4. It is published in *DIMEE*, vol. 3 (2007), pp. 403-410.

journalist justify resorting to a dose of provocation or even exaggeration'.<sup>165</sup> Such a freedom may be substantially restricted when national judges search for a milder term that ought to be better. In considering the context of a case, the ECtHR also treats differently articles published in the press and views that are aired live in television or radio programmes, where the host journalist has little control over the views expressed by his/her guest speakers.<sup>166</sup> In sum, the Greek jurisprudence has on the whole been reluctant to place a premium on the freedom of expression in the media, in so far as judicial scrutiny has tended to dwell upon the content of words or phrases whereby journalistic criticism is voiced.

In the absence of specific legislation to regulate content on the Internet and in blogs, Greek courts have been at a disagreement as to whether existing provisions against defamation, insult or libel in the press and the audiovisual media can be applied. While extending existing legislation to the electronic versions of magazines and newspapers, as well as to TV and radio content provided online may be relatively uncontroversial, this is not so with regard to blogs.<sup>167</sup> Blogs are an interactive medium of communication, the content of which is shaped not only by the owner, editor or journalist, but also by all readers-Internet users themselves. A strong defence of the distinctiveness of blogs as a medium of communication (rendering it incomparable with traditional channels of information like the press and broadcasting) was advanced in a relatively recent court decision.<sup>168</sup> In this decision, the court argued that the responsibility of the blogger, who is often an ordinary citizen, in cases of offence or insult, is not the same with that of a powerful media entrepreneur; therefore, it is not appropriate to extend to blogs the large sums of indemnification that are granted in cases of insult or libel in the press.<sup>169</sup> From this latter perspective, some argue that there is a legal gap regarding the freedom of expression vis-à-vis the protection of other social goods on the Internet, which must be filled. Others, though, maintain that such a gap could be filled by general rules for insult against one's personality, which are contained in general statutory rules.

A major stumbling bloc to controlling 'journalism blogs' for content that is arguably insulting, libelous, or violating other rights, whether through existing or new legislation, is the much cherished anonymity of the blogger. While not all journalists possessing blogs are anonymous, not few are those who retain their anonymity on grounds that it allows a less restrained freedom of expression and ability to criticise. This anonymity renders it difficult or impossible to identify who is responsible for content that violates other rights, and it is protected by existing legislation on private data (Art. 9A of the Constitution) and on the confidentiality of communications (Art. 19 of the Constitution). It is now generally accepted that responsible for content in blogs is not and cannot be the Internet service provider, but those who must be held accountable are the owner of the blog and/or the author of a text (if s/he is different from the owner) (Kalogirou, 2009; Tassis, 2006). In either case, as it stands now, it is difficult or even impossible to identify persons who publish content on the Internet

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<sup>165</sup> *Avgi Publishing and Press Agency S.A. and Karis v. Greece* (15909/2006), 5 June 2008, para. 33.

<sup>166</sup> See ECtHR, *Lionarakis v. Greece* (1131/2005), 5 July 2007.

<sup>167</sup> This argument was advanced in a court decision a few years earlier. Court of First Instance (*Monomeles Protodeikio*) of Rhodope, Decision No. 44/2008. The same court decision applied the provisions pertaining to the press (Law 1178/1981 on civil responsibility of the press, FEK A' 291/1981) in order to establish the responsibility of the blogger for content that was claimed to be libellous and detrimental to the reputation of others.

<sup>168</sup> Court of First Instance (*Polimeles Protodeikio*) of Pireus, No. 4980/2009.

<sup>169</sup> For this approach, see Sotiropoulos, 2010.

that is seen to be insulting or libelous, because it requires lifting the confidentiality of communications, which can only be done for serious crimes (Tassis, 2009).

However, there has been a great deal of controversy as to whether bloggers should be allowed to retain their anonymity and to what extent. Such a disagreement arose between Greece's highest Court of Cassation (*Areios Paghos*) and the HACSP: in contrast to the latter, the Court of Cassation has argued that confidentiality applies only to the content of communication between parties and not to their external identifying data (i.e. the name of sender and receiver, the time of communication, etc.) It has also argued that such confidentiality should be lifted also in cases of insult, libel or defamation, and not only for particularly grave crimes as the HACSP argues (Kalogirou, 2009: 23). This met strong opposition from a large number of blog owners and journalists who publish on the Internet.

Yet, recently, the view prevailing in other countries (i.e. the UK) that blogs are not protected by anonymity because the communication taking place through them is of public rather than private nature (The Guardian, 2009), seems to have gained ground among policy-makers. Political figures, including the Vice President of the Government, Mr. Theodoros Pangalos, have also publicly advocated the need to put an end to anonymity in blogs while the government has announced that it is currently drafting a bill in this direction. One issue that has been raised in earlier attempts to legislate on issues related to blogs is whether a distinction should be drawn between information and news blogs (those that publish political, economic or other news and current affairs) and other blogs (Katerinopoulos, 2008). In such a distinction, news blogs would be obliged to identify the name of a person who would be responsible for the content. Recently, the government has created a working group that has as its mission to formulate some proposals on regulatory intervention on the Internet.<sup>170</sup>

#### **4.2.2 Access to documents held by public authorities**

According to Article 10(3) of the Greek Constitution and Article 5 of the Code of Administrative Procedure, any interested party and thus also journalists have the right, upon written request, to access administrative documents held by public authorities. They also have the right to access private documents, insofar as a 'special legitimate interest' can be established. The right of access cannot be exercised if the document at hand concerns the private or family life of others, or if the confidentiality of the document is safeguarded by specific legal provisions. Authorities may deny access to documents that concern the discussions of the Ministerial Council or when access can obstruct investigations of criminal or administrative violations, for instance. While in principle the aforementioned provisions cater for journalists' access to information held by the state authorities, the exercise of this right is circumvented by the bureaucratic procedures that generally characterise the Greek public administration and the complexity that the legal rules display.<sup>171</sup> Moreover, as it was communicated in an interview with an investigative journalist, confidentiality rules are often invoked to deny access to public documents protected under intellectual or industrial property regulations.<sup>172</sup> Instances where journalists have been denied access

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<sup>170</sup> Ministerial Decision ΑΔΑ: 4ΑΜ4Ω – Ι36, Registration no. 73508.

<sup>171</sup> Interview 24.

<sup>172</sup> Ibid.

to public documents have also been reported by the Greek Ombudsman.<sup>173</sup> The degree to which the new law on e-government, which obliges public bodies to publicise their activities on their websites,<sup>174</sup> will facilitate access to administrative documents remains to be seen. This is so, particularly since this new law is ‘without prejudice’ to Article 5 of the Code of Administrative Procedure.<sup>175</sup>

### 4.3 Policy formulation and implementation with regard to media content

In examining the factors that shape the formulation of media policies, it is clear that EU directives (often invoked in conjunction with international conventions) have been a cardinal source of norms and principles to regulate and diversify media content. They have provided the impetus for the adoption of laws that directly or indirectly impinge upon the content of news and other media programmes in Greece. Since the 1990s, the rules regulating media content through successive legislative amendments have followed the reforms of the respective EU directives on the provision of audiovisual services.<sup>176</sup> The introduction for the first time of provisions to regulate media content in the mid-1990s was, in the words of the Minister of Press and the Media at the time, Mr. Evangelos Venizelos, ‘an attempt to harmonise national legislation with the Directive “Television without borders”.’<sup>177</sup>

Following several attempts to introduce such a statute in the past, which were abandoned for various reasons, the adoption of the law for the protection of individuals from the processing of private data (Law 2472/1997) was also very much a response to the pressing need to comply with EU legislation.<sup>178</sup> This was amply made clear in the parliamentary discussions that took place before its adoption.<sup>179</sup>

EU legislation has been a major source of the normative rules and provisions adopted by Greek lawmakers for defining the contours of an audiovisual media that should be socially sensitive, pluralistic and non-discriminating. EU law and the Council of Europe have also promoted the rights-based limitations that regulate what the media can publish and broadcast. A rights-based dialogue and arguments, however, have far from made their way into the media policy debates in the Greek Parliament and in public discourse in general, at least throughout the 1990s and early 2000s. The freedom of expression of journalists or the protection of one’s privacy and family life are rarely invoked and discussed from a rights perspective by political representatives.

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<sup>173</sup> Following the rejection of an application for access to administrative documents, applicants may lodge a claim of treatment with the Greek Ombudsman. See for example: Greek Ombudsman, Department of Human Rights, case 21016/2007, available at: [http://www.synigoros.gr/pdf\\_01/6978\\_1\\_sindiamkout.pdf](http://www.synigoros.gr/pdf_01/6978_1_sindiamkout.pdf) (date accessed 21 October 2011).

<sup>174</sup> Article 6 of Law 3979/2011, FEK A’ 138/2011.

<sup>175</sup> Ibid.

<sup>176</sup> Presidential Decree 100/2000 (FEK A’ 98/2000) transposed Directive 89/552/EEC the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17/10/1989, p. 23), as it was amended by Directive 97/36/EC (OJ L 202, 30/7/1997, p. 60). More recently, PD 100/2000 was replaced by PD 109/2010.

<sup>177</sup> Parliamentary proceedings, 12/7/1995, p. 542.

<sup>178</sup> The deadline for the Greek government to transpose Directive 96/46/EC was approaching (it was in 1998). The adoption of a private data protection law had also been rendered obligatory in the framework of Greece’s accession to the Schengen agreement, in order to guarantee such protection in the cross-border processing and transferring of private data in police cooperation.

<sup>179</sup> Parliamentary proceedings, 12, 13 and 18/3/1997.

Moreover, in parliamentary discussions, it is not possible to discern clear party differences on the rights issues that are implied in media policies. Instead, the two largest political parties for the most part have been haunted by the fear of politicians being exposed to unlimited media criticism and intrusion. The parties of the left on the other hand, have often adopted a reactionary stance when it comes to fundamental rights including those in relation to the freedom of expression in the media. For instance, in the parliamentary discussions on the personal data protection bill, their representatives dwelled on the processing of personal data, and completely overlooked the provisions that define the limits within which it should take place. They saw this law as an illegitimate mandate of the EU to keep on file and circulate across borders personal information of thousands of people, and advocated the banning of all personal data processing.

Within the framework of EU legislation, national policies that directly or indirectly impinge upon media content have been thoroughly influenced by the mutual interdependencies, but also by antagonism and conflict between the political class as a whole on the one hand, and media owners on the other. Since the advent of private radio and television, Greek politics has been characterised by the pervasive fear and suspicion of the media and its potential to influence public opinion and the political views and preferences of social groups and voters. For example, this was very clear in the parliamentary discussions that took place when the first major bill for radio and television was introduced: Law 2328/1995. Implicitly referring to owners and the economic entrepreneurs linked with the media, parliamentary representatives across political parties stressed the need to prevent extra-political actors from interfering with the functioning of the political system and the democratic process.<sup>180</sup>

Widespread concern and a similar aversion of parliamentary representatives to granting the media and journalists greater freedom to publish or express views on public officials also amply surfaced in the parliamentary discussions of the bill that later passed as Law 2472/1997 on the protection of the individual from the processing of personal data. It was the case for both the socialist government and the center-right opposition. Most controversial was Article 7 that allows journalists to process sensitive personal data of public persons under conditions that they do not violate the protection of privacy and family life. Agreeing to the need to protect personal data, the leader of the opposition party and ex-prime minister Mr. Konstantinos Mitsotakis raised the question ‘Whose personal life is now protected by the current system of the media, which function in a well known way and comprise economic-publishing conglomerates?’<sup>181</sup> Most recently, the initiative of the current government of PASOK to regulate journalistic content on the Internet is also, at least in part, driven by a similar concern. In a vocal statement against anonymity in news blogs, Mr. Pangalos, Vice-President of the government, referred to such blogs as ‘blackmailers’ journalism’, purportedly hiding behind anonymity (Pangalos, 2011)

Regarding the role and influence of media interests on laws and policies concerning the regulation of media content, there are indications that they do intervene but they do so behind the scenes. For instance, when the data protection bill was discussed in Parliament in 1997, the Minister of Justice at the time mentioned that the Association of Newspaper Owners had submitted expert opinions of

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<sup>180</sup> Parliamentary proceedings, 11/7/1995. See the intervention of the rapporteur of the majority party, Mr. Konstantinos Sofoulis, p. 465; see also the views of the main opposition party, p. 478.

<sup>181</sup> Parliamentary proceedings, 13/3/1997, p. 4773.

constitutionalists and intervened to pressure the government against restricting what the press publishes.<sup>182</sup> From the interviews, it transpires that media policy-making is replete with pressures and interventions by media owners and managers.<sup>183</sup> However, their interference with decision-making is opaque and therefore difficult to be detected in official documents. The term *diaploki* that is abundantly used to describe the relations between media, the government and the state refers precisely to the informal contacts and practices whereby media entrepreneurs with vested interests in other economic activities pressure public officials to systematically disregard or bend the rules. Individual journalists, who hold positions of influence or who have become media owners themselves are also part of such interweaving of interests, contacts and practices. As a professional group though, journalists have been largely absent from the policy-making process, despite the fact that they are directly concerned with issues and rules pertaining to media content, as these thoroughly influence how they practice journalism.

Central to the implementation of content-related rules in the media is the NCRT. Since the 1990s, the NCRT has chosen to perform the content regulatory functions by imposing administrative and pecuniary sanctions to the media operators. It imposes fines when it finds media operators and journalists in violation of rules on a broad variety of issues such as illegal obtaining of information, insult to one's personality, political pluralism, the use of secret cameras and presumption of innocence among others. The decisions that it issues are made by its presiding Council on the basis of internal reports by scientific experts, which, however, are not always followed. Moreover, most of its scientific staff but also of its seven-member council do not have media expertise. This contradicts the foundational reason for having an independent authority in the first place, namely, its ability to provide technocratic and specialised expertise for the purposes of policy-making and implementation. The NCRT does not thoroughly investigate the complaints, and its decisions are poorly justified or not justified at all, leading to several of them being criticised by many, including by constitutional lawyers, as arbitrary and censorious.<sup>184</sup> For the most part, implementing content-related rules needs to be premised upon the careful balancing between different kinds of claims and rights and close consideration of the context of each dispute. In suggesting how contextual the issues at stake are, Paschos Mandravelis notes that for instance, the NCRT is not capable of deciding whether the use of a secret camera by journalists is legitimate; only courts can do that (Mandravelis, 2005).

Overall, regulating media content through sanctions has not been an effective form of intervention and it has done little to bolster the authority of the NCRT. As a long term member of the NCRT's scientific staff recognised, the imposition of fines should have been a measure of last resort, rather than invariably a means of enforcing compliance (Oikonomou, 2011). Others too have urged that the NCRT should not impose fines but it should make effective, substantive and well-founded interventions, and that the Council should not disclaim its responsibility for content control arguing that it is not a 'court of substance' (Sotiropoulos, 2008: 50). While its sanctions have rendered media operators and journalists more conscious about certain ethics and principles that they should respect, the NCRT has not helped to clarify, promote and

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<sup>182</sup> Parliamentary proceedings, 12/3/1997, p. 4735.

<sup>183</sup> Interviews 6 and 9.

<sup>184</sup> Indicatively, see NCRT, decision 64/01.02.2006; and NCRT, decision 467/10.10.2006. For critical commentary on the decision, see Sotiropoulos, 2008: 47-48.

in the long run embed these in media practices. The Council could have developed alternative forms of intervention with the goal of enforcing the implementation of media policy. For instance, it could have focused substantively on selected issues and worked closely with media operators, journalists, and other stakeholders in order to clarify, disseminate and promote norms and principles on issues concerning the objectivity of information, accuracy, and journalistic freedom, among others.

## 5. The journalistic profession

### 5.1 Journalistic freedom

The deregulation of the media sector in the 1980s diversified ownership patterns and promoted media plurality. It also helped erode the close connection between the newspapers and traditional publishers on the one hand, and political parties and the government on the other, as it is subsequently discussed. Liberalisation paved the way for greater freedom and independence for journalists, most of whom had previously worked in newspapers where they were expected to have a clear political identity, if not affinity with a party. Nowadays, as it was explained in an interview, the editors-in-chief of the major dailies no longer recruit their journalists on the basis of their political profile, but largely with the goal of assembling a diverse group of journalists who also complement each other. It is more important to have a team that can cover a diverse repertoire of topics and views, than one that more or less falls into a particular political orientation or party line.<sup>185</sup>

While the privatisation of broadcasting in the late 1980s was a major turning point that augmented journalistic freedom, many of the pre-existing state dependencies survived. The public sector continued to subsidise the newspapers and to provide financing through the banks, most of which were still publicly owned. Moreover, as already analysed, the rules for the allocation of public sector advertising among different media enterprises were often circumvented through informal and non-transparent connections between state bodies on the one hand, and media owners and journalists on the other.

The extensive dependence of newspapers and radio/television channels on advertising contracts both from the public and the private sector to ensure sufficient revenues has substantially interfered with journalistic freedom. For years, public sector advertising has kept alive a number of newspapers that would not have survived in the market, in return for coverage of news and issues in ways that were favourable to the government.<sup>186</sup> More often than not, such favourable coverage has not been the result of governmental or state intervention in a newspaper, but a result of journalists' self-restraint and self-censorship.<sup>187</sup> Substantial influence, both direct and indirect, has also been exercised by private sector entities that pay for advertisements. As it was communicated in an interview, advertising companies have gained an increasingly important role in the management of content. In doing so, they occasionally advise against the provision of information that is critical, for instance, of another client, from which either the advertising agency or the media enterprise, accrue substantial revenue.<sup>188</sup>

That commercial media earn considerable revenue from advertising and are therefore prone to interference or pressure from their corporate clients is a perennial phenomenon that defines the constraints, within which the commercial media operates in many countries. The question is to what extent such a phenomenon is more pronounced in the case of Greece in comparison to other countries, and to what extent it has a substantial impact on media freedom and independence. One additional factor

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<sup>185</sup> Interview 14.

<sup>186</sup> Interview 18.

<sup>187</sup> Interview 19.

<sup>188</sup> Interview 6.

that renders the commercial media in Greece particularly prone to corporate interference is the fact that nearly all newspapers and broadcasting channels are not economically self-sustainable. Indeed, most of our interviewees argue that the main source of constraints upon media freedom and independence after deregulation is not the state, but the economic and corporate interests that invest or advertise in the commercialised broadcasting sector and the press.

In this decentralised landscape, with the media shifting away from fulfilling its traditional information mission towards becoming primarily an instrument of political pressure, the role and the outlook for journalists also changed. While in earlier periods, journalists were identified in relation to the media outlet where they worked and their political orientation, since the 1990s many increasingly asserted an individualised kind of autonomy. A substantial number of journalists cultivated personal relations with political parties and members of the government and economic elites. This bolstered their value in the media market that increasingly put a premium on individual journalists' ability to facilitate connections with political decision-makers and win their support.<sup>189</sup> For media owners, especially broadcasters, winning the favour of political officials has been necessary in order to continue to operate unrestrictedly, despite the lack of proper licences to use frequencies. On the other hand, members of the political elite also instrumentally nurtured relations with journalists, publishers and media owners: they used the distribution of resources and favours in return for positive coverage of their views and actions to achieve their re-election. This systematic use of the media as a tool by broadcasters/publishers, corporate economic interests and the political class has restricted journalists' independence and distorted the professional commitment to provide responsible and accurate news information.<sup>190</sup>

Journalistic freedom is not an abstract notion and it is far from being an attribute of the lone reporter. In fact, journalists work together with their colleagues, section editors and editors-in-chief, among others, and what they publish is, in a way, a product that is shaped by such communication and collaboration that most see as legitimate. For instance, editors may advise journalists to re-write a piece by removing information that is not sufficiently documented, in order not to publish an article for which the newspaper may be sued.<sup>191</sup> Interference by media editors or owners, however, is not always legitimate. Overall, the interviews that we conducted show that undue ownership and/or editorial interference with journalists' output varies substantially in the various media outlets ranging from minimal to considerable. It tends to be occasional, and limited or non-existent in the large newspapers, but more frequent in the ones that have a small circulation.

On the whole, ownership interference or interference by the news director tends to be more prevalent, direct and systematic in broadcasting, but less likely to occur as undue meddling with journalistic discretion in the press.<sup>192</sup> Unlike television, newspapers, especially the large ones, develop a more lasting relationship with a particular audience, which they target and to which they are committed. Such a relationship is based on each newspaper's particular editorial line, as well as political and societal profile. In these large newspapers that are not simply instruments of

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<sup>189</sup> Interview 14.

<sup>190</sup> Interview 21.

<sup>191</sup> Interview 19

<sup>192</sup> Interviews 6 and 14.

particular economic or partisan interests, such a profile of non-interference is more or less consistently followed and carefully guarded.<sup>193</sup> Undue interference to distort or censor journalistic freedom is arguably likely to break down a relationship of trust that a newspaper has developed with its audience, and to be detrimental to its chances of survival in the longer run.<sup>194</sup> A considerable number of journalists believe that the political profile of a newspaper, which no longer translates into support for a political party (at least for the large dailies), does not pose a problem for media freedom and independence. Indeed, some argue that this is normal and legitimate, even necessary, in order for a newspaper to establish and nurture a long-lasting relationship with a particular audience.

Generally, journalistic freedom vis-à-vis media owners, publishers or editors is greater now than it used to be back in the 1980s, certainly in the large publishing houses and their newspapers. Individual journalists do not ordinarily come into much contact with the publisher or the editor-in-chief, but mostly with their section editor. Our interviewees, journalists with longstanding experience, have conveyed that the standards of responsible presentation of news are more or less upheld in the large established dailies. In these newspapers, editorial interference with journalists' output is rather limited.<sup>195</sup> The individual journalist is aware of what the editorial limits are when s/he goes to work for a newspaper and such limits are not insuperable, at least in the established dailies. If a journalist builds a case on solid documentation, s/he may be able to cross these limits and publish pieces, with which the publisher or editor-in-chief disagrees.<sup>196</sup>

If the nature of journalism that has prevailed in the large and established newspapers upholds certain standards of professionalism, as described above, such standards in television have dominantly been shaped by a tendency towards populism. A large number of journalists, mainly (albeit not only) those working in television, are reluctant to cover issues and express opinions that are not popular in the sense that they do not sit well with majority views and public sentiment. Journalists waive their right and duty to communicate the truth with accuracy, and to exercise a check on political power,<sup>197</sup> in order to be accepted and well-liked by their audience.<sup>198</sup> While such an attitude may be prompted by the race for increasing viewership and ratings, it is also closely linked to the lack of independence and pervasive self-censorship among journalists who lack the kind of professionalism that is based on the power to convey the news in a well-documented, reliable, and authoritative fashion. Instead of acting as a check on and 'watchdog' of the political power, they tend to succumb and line up with the latter. It is not surprising that not few are the journalists who use their profession as a stepping stone for a political career and go off to become Members of Parliament or political party personnel.<sup>199</sup>

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<sup>193</sup> Interview 17.

<sup>194</sup> Interview 21.

<sup>195</sup> Interview 18.

<sup>196</sup> Interviews 15 and 19.

<sup>197</sup> See Arts 1 and 3 of the Code of conduct of the journalists' profession, available at: [www.esiea.gr](http://www.esiea.gr) (date accessed 25 October 2011).

<sup>198</sup> Interview 18.

<sup>199</sup> Interview 14.

## 5.2 Journalists' associations and self-regulatory standards

Traditionally, journalists' associations represented a selective group of professionals, a small and closed elite club, which was difficult to enter.<sup>200</sup> As a privileged interlocutor of the political class, which was concerned with maintaining good relations with the press, journalists enjoyed advantages unparalleled to other professional groups, such as the notorious *aggeliosimo*.<sup>201</sup> Following the deregulation of the media in the late 1980s, and along with the other changes that it has prompted, the journalist profession has also transformed from a small elitist and privileged club to a more diverse, open and accessible one. Journalists' densely populated associations include among their ranks journalists of very different calibre, ranging from well-paid, recognisable and privileged members, to journalists who are unknown and poorly paid. Similar to employees' unions in other sectors of the economy, journalists' associations have acted as a lever of pressure vis-à-vis the government and media owners. A good number of their elected presidents and members of their governing councils eventually have gone to pursue a political career.<sup>202</sup>

While earlier in the 20<sup>th</sup> century journalists' associations were entities that embodied and expressed a certain culture and commitment to the ideals and the social mission of journalism as a profession, after the transition to democracy in the mid-1970s they have transformed themselves into unions representing particularistic interests. Most of our interviewees have spoken critically of the journalists' unions, including the main one, the ESIEA, for displaying, for the most part, indifference on issues pertaining to the nature, quality and ethics of the journalistic profession, as well as to the ways in which it is practised in Greece. Instead, their activism has put the emphasis on trying to guard or augment the privileges they have gained over the years.<sup>203</sup> In representing the corporate interests of their members, journalists' associations have mainly focused on issues related to the salaries, social security and other employment-related matters. This 'syndicate' mentality (*syndikalistiki antilipsi*) that has prevailed has arguably contributed to the degeneration of journalism as a profession.<sup>204</sup> While compliance with the journalists' code of ethics is among their professed goals, these associations have not engaged in self-regulation in practice nor have they in any way shown interest in entrenching a code of ethics as a central pole and defining element of their profession.<sup>205</sup> In addition, the associations have generally paid scant attention to the education of their members in the light of changing conditions in society and the media, and they do little in this direction in the form of seminars or other educational activities.

It is no surprise, considering the above, that the existing code of ethics has remained or been rendered inactive. While in principle the journalists' code of ethics is a tool for self-regulation, self-regulatory approaches have not worked in practice. This is both a cause and a consequence of the fact that a great part of journalists is

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<sup>200</sup> Traditionally it was difficult to become a member of a journalists' association, a process that could take years. This was also a prerequisite for doing political reporting and attending the political briefing by the different ministers of the government of the day. With the enormous increase in the number of journalists over the past 20 years though, and the pressures to enlist them, the criteria for entry have become less stringent. See interview 6.

<sup>201</sup> Ibid.

<sup>202</sup> Interview 14.

<sup>203</sup> Interviews 6, 17, 18 and 21.

<sup>204</sup> Interview 15.

<sup>205</sup> Interview 6.

embedded in relations of multiple dependence on political or party officials, and private businesses, which invest or advertise in the media. Bearing heavily upon them, such dependencies act as a lever of censorship or, more often, self-censorship.<sup>206</sup> Nearly all of our interviewees who are journalists admitted (including some who were authors of the code) that the code of conduct that is espoused by the journalists' associations is obsolete, and out of touch with contemporary conditions,<sup>207</sup> in particular due to the rise of the Internet. For some journalists, in order to boost its binding nature, any code of conduct for journalists must arguably be adopted by parliament as a statute and it should contain clear rules that are consistently followed and complied with.<sup>208</sup> Of course, such an argument undermines the very essence of self-regulation and additionally, does not address the issue of non-compliance that generally characterises media regulation in the country.

### 5.3 Working conditions

The deregulation of the media market in the late 1980s reinforced a diversification and change in the working conditions of journalists, and for a large segment of them it led to their worsening. Unlike in the public sector, in the private media sector, the negotiating power of the journalists' associations declined. The emergence of the private media opened up a considerable number of new jobs and triggered an increase in the number of journalists. This has led to an abundant supply of labour with competition driving down average salaries often below the levels that are stipulated in the collective agreements.<sup>209</sup> Many journalists simultaneously sought to secure a position in the public sector, either radio/television or in the press office of a public administration unit. The reason for trying to secure such a post is that a public sector job pays for the social security contributions, which the employer in the private media sector often refuses to pay. In this way, the public sector has essentially subsidised indirectly the private sector, relieving private employers from the obligation to pay social security benefits to journalists. Other journalists have sought additional employment in the private sector or in the press office of a political representative.

The resulting situation of multiple job-holding (*polythesia*) that has been prevalent among journalists has had negative effects on the quality of the journalistic output and has prevented a culture of professionalism and independence from taking roots.<sup>210</sup> It has also created opacity, and mistrust permeated the journalistic profession and possibly the media audience at large. It is usually not known whether or not a journalist who may publish a piece of information about the government or the state sector is also employed in this government/state.<sup>211</sup> This raises serious issues of journalistic ethics, as it undermines the mission of providing to the public objective and impartial information. The controversial practice of employing journalists, who at the same time act as the press representatives of specific state institutions, public bodies or private enterprises, has also persisted in *ERT*, the public service broadcaster. A journalist that is charged with the task of promoting the interests of a public or

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<sup>206</sup> Interview 24.

<sup>207</sup> Interview 19.

<sup>208</sup> Ibid.

<sup>209</sup> Interview 17.

<sup>210</sup> Interview 14.

<sup>211</sup> Interview 17.

private body through the media cannot be expected to engage in impartial and unbiased news coverage.

While for many journalists, multiple employment is seen as a normal and income-raising choice, it may involve a serious conflict of interests.<sup>212</sup> A kind of self-censorship prevails among journalists who work for different employers with competing interests (i.e. in the public relations office of a pharmaceutical company, and for a newspaper or broadcasting channel covering health-related issues).<sup>213</sup> Journalists' associations though have systematically overlooked the incompatibility of professional interests and duties that may arise in the context of multiple employment.<sup>214</sup> They have turned a blind eye to it despite the fact that the General Secretariat for the Mass Media annually compiles a list of journalists who are employed in various departments of the state sector and submits it to the journalists' associations.<sup>215</sup>

The profound fiscal crisis and economic recession that set in about two years ago has thoroughly reduced revenue levels in media enterprises, some of which have closed down or are about to do so. This has been due to the large decline of advertising budgets, both from the public and the private sector, but also due to the diminished, for the most part, ability of owners to finance their media operations by other economic activities. Under these conditions, unemployment among journalists has risen significantly, and salaries have been substantially cut.<sup>216</sup> The economic squeeze of the recession has further deteriorated the working conditions of journalists who have managed to retain their job, along with the quality of their output. Tight resource constraints have also largely ruled out the pursuit of investigative journalism, which has always had a weak tradition in Greece to begin with.<sup>217</sup> While such conditions of economic decline evidently put a profound strain on journalism, not few among our interviewees believe that they can trigger a process of adaptation, whereby the most competitive media outlets are able to survive and function in a media market that is truly free from dependence (at least) on the state.

#### **5.4 Technological developments**

Since the 1980s, technological developments have influenced journalistic practices in a variety of ways and in various directions. In the first place, the Internet has set the standards of investigative journalism higher, as it has enabled easy and instant access to multiple sources of information and documentation. By diversifying news sources, the Internet has undermined the previous monopoly of a single news agency that belongs to the state. More broadly, technological developments have contributed to multiplying and decentralising the sources of information, and speeded up their dissemination, without necessarily enhancing their credibility. For instance, prior to the 1980s, political reporting directly originated from the government itself via its spokesperson and representatives, who used to brief journalists. While government briefings to the media also continue nowadays, they are no longer nearly as important

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<sup>212</sup> Interview 18.

<sup>213</sup> Ibid. See also interview 24.

<sup>214</sup> Interviews 15 and 19.

<sup>215</sup> Interview 20.

<sup>216</sup> Interview 6.

<sup>217</sup> Interview 17.

and as central in finding out the news about an issue.<sup>218</sup> Technology and the Internet in particular have greatly facilitated and accelerated the diffusion of news from a variety of different sources. At the same time though, the concern for cross-checking the information for accuracy is put aside and sacrificed in the name of speed with which information can travel through the Internet.<sup>219</sup> Evidently, this is extremely pronounced in the case of news blogs, where the journalist's responsibility and potential liability are eroded by anonymity.

It already becomes evident that if the Internet has raised the standards for investigative journalism, it has not necessarily improved its quality; indeed, in Greece it has actually enabled a kind of degenerative 'blog journalism' to flourish. Besides a few major news portals established by the large publishers, there are some news blogs that engage in responsible and reliable news reporting. On the whole, though, real news blogs that publish original information, as opposed to copying from what newspapers and the large news portals publish, do not exist in Greece. It transpires from the interviews that the vast majority of 'journalistic' blogs exist to disseminate any kind of real, but more often false or distorted information, leading to the proliferation of insulting and appalling texts against individuals, and to a kind of journalistic product that is unreliable and of bad quality.<sup>220</sup> Alternatively, they may be used by journalists to channel information or commentary, which they cannot publish in an established newspaper or another medium. While this may provide a way out of editorial or other constraints upon journalistic freedom, and may therefore be seen to bolster journalistic independence, it is more often used to distort objective reporting and pervert journalism.<sup>221</sup>

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<sup>218</sup> Interview 14.

<sup>219</sup> Interview 19.

<sup>220</sup> Interview 21.

<sup>221</sup> Interview 17.

## 6. Media literacy and transparency requirements

The promotion of media literacy as a goal of media education is a very dynamic issue that is increasingly being given priority by the European institutions.<sup>222</sup> In the Greek policy context, however, media literacy is not yet put firmly on the agenda and it is not possible to identify a precise media literacy policy of the state. This is also reflected in the lack of a single body with responsibilities for media literacy education. This can be mainly attributed to the limited attention afforded to the definition and elaboration of the concept of media literacy at the state level, and to the development of specific goals for media education around the freedom of expression, the freedom of information, critical citizenship and citizen empowerment. Although the Constitution recognises the importance of ensuring transparency in the workings of the media sector,<sup>223</sup> the imposition of transparency requirements (for instance with regard to media ownership or the media's modes of financing) is not linked to media education. This undermines the ability of citizens to make informed choices about the media services they choose.

In the formal educational context, media literacy education has not been fully integrated into school curriculums. It is not a distinct core subject domain or course at any level of the formal education system. In view of the advancement of the Internet, a course on 'information and communications technology' has been included in the upper secondary school curriculum, and since 2010 also in primary schools. Yet, its focus is on digital literacy and the technical aspects of using computers and the Internet, important as these may be for the exercise of the right to information, and not on the development of critical skills for the interpretation of information available in the digital news media environment (Andriopoulou, 2009). Elements of media literacy education have further been introduced under the 'Flexible Zone' (FZ) programme, which is applied formally in primary education since 2005.<sup>224</sup> The inclusion of media-related thematic areas in the FZ programme sounds promising, yet its implementation is not formally assessed and neither it is compulsory. Therefore, there are no available data on the exact focus, breadth and depth of classroom discussions. Moreover, under this scheme, the selection of media related topics, among a range of others, is highly dependent upon the students' interests and the individual teacher's motivation, competences and experience with the topic.

Experts have argued that the lack of an official media literacy policy of the state in schools stems mainly from the perception that the media represent popular culture and are therefore incompatible with the more conservative profile of the national educational system.<sup>225</sup> At the same time, many educators start recognising the importance of media education at school (Hellenic Audiovisual Institute, 2011).<sup>226</sup> The Hellenic Audiovisual Institute (IOM), established in 1994 and presently under the auspices of the SGIC-SGMM, is the state body with the mandate to draft and develop

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<sup>222</sup> See Recommendation of the European Commission of 20 August 2009 on media literacy in the digital environment for a more competitive audiovisual and content industry and an inclusive knowledge society, C(2009) 625, OJ L 227, 29/8/2009, p. 9–12.

<sup>223</sup> Art. 14(9).

<sup>224</sup> See Ministerial Decision F.12.1/545/85812/G1, FEK B' 1280/2005.

<sup>225</sup> Interview 2.

<sup>226</sup> See 'Σύνοψη συμπερασμάτων. Τα πρώτα αποτελέσματα της έρευνας του Ινστιτούτου Οπτικοακουστικών Μέσων για την Παιδεία στα Μέσα' [Synopsis. The first results of the survey by the Hellenic Audiovisual Institute about media education], p. 7, available at: <http://www.iom.gr/default.aspx?lang=el-GR&page=166&newsid=568> (date accessed 2 September 2011).

audiovisual literacy projects, programmes and seminars for the media literacy education of students, young people, teachers and parents. The Institute has engaged in substantial work in this regard<sup>227</sup> and has succeeded in increasing the profile of media literacy education. However, so far, no projects explicitly linking media education with citizen empowerment and knowledge about media regulation have been developed. It should also be noted that the Institute's activity is highly dependent on the wish of other state institutions, such as the Ministry of Education, Life-Long Learning and the Religious Affairs (MoE), as well as the public service broadcaster for the launch of relevant actions, and often subject to bureaucratic procedures.<sup>228</sup> At the same time, many initiatives by educational establishments and NGOs have been implemented, both in formal and informal educational settings. Nevertheless, in lieu of an official media literacy policy and of a body with statutory duties in the field, such projects are often hampered by limited consistency, coherence and coordination, while no systematic evaluation procedures for them have been established.

Over the last years, several measures to increase transparency in the operation of the media have been adopted, though these are not explicitly linked to media literacy. The Secretariat General of Mass Media keeps record of the allocation of state subsidies and other support tools targeting the media, including the amount of public sector advertising that is channelled to specific outlets and the amount of total press distribution and telecommunications subsidies, which are published on its website.<sup>229</sup> Such information, however, is not always presented in a comprehensive manner or is regularly updated. As regards the electronic media, the NCRT publishes on its website the list of television channels and radio stations that have some kind of licence to air, comprising the company name, its address and contact details as well as the scope of the outlet's territorial coverage (national, regional/local).<sup>230</sup> The authority is also charged with keeping record and shareholder information of media and media-related enterprises (including press undertakings, advertising and media research companies).<sup>231</sup> While this information is accessible to the public through the authority's website, there is no data on the degree to which people are actually aware of it or access it. PD 109/2010, which transposed the AVMS Directive, further contains rules that cater for increased transparency in the audiovisual media sector by mandating audiovisual media service providers to make their company name, their address and contact details available through their website or teletext service.<sup>232</sup> Press undertakings are required to list the name(s) of their owner (natural or legal person), publisher and manager in their edition.<sup>233</sup>

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<sup>227</sup> For an overview of IOM's media literacy actions, please consult the relevant webpage: <http://www.iom.gr/default.aspx?lang=el-GR&page=151> (date accessed 2 September 2011).

<sup>228</sup> Interview 2.

<sup>229</sup> See [http://www.minpress.gr/minpress/index/currevents/draseis\\_diafaneia.htm](http://www.minpress.gr/minpress/index/currevents/draseis_diafaneia.htm) (date accessed 25 October 2011).

<sup>230</sup> See <http://www.esr.gr> (date accessed 25 October 2011).

<sup>231</sup> See Art. 10a PD 213/1995 (FEK A' 112/1995) and Art. 10 Law 3310/2005 (FEK A' 30/2005) as amended by Law 3414/2005 (FEK A' 279/2005).

<sup>232</sup> See Art. 6 PD 109/2010.

<sup>233</sup> See Art. 3 Law 1178/81, FEK A' 187/1981.

## 7. Conclusion

Following a thorough overview of the evolution of Greek media policy and policy-making since the country's transition to democracy in the mid-1970s, it is clear that the liberalisation of the media sector since the late 1980s was a major turning point. By bringing an end to the state monopoly of radio and television, it promoted greater diversity and pluralism in the news and information for the public. At the same time, it had far-reaching repercussions for the press where the close relations between the main publishers and the government of the earlier period began to loosen. A second major turning point was the profound technological developments from the 1990s onwards, and specifically the advent of the Internet and the progressive convergence between the media and communications more broadly. All these fundamental shifts contributed to a proliferation of actors, norms, and institutions beyond the state, which are either directly involved in media policy-making and implementation or indirectly bear upon these. Most importantly, a proliferation of independent authorities has been established to pursue the regulation of the market structure and content of the media, as well as to deal with the increasingly technical issues that such regulation involves.

In spite of this, media-policy making in Greece has remained highly centralised in the hands of the state, and of the government of the day in particular, even as it has exhibited substantial discontinuity with different governments shifting and reallocating responsibilities among the various state bodies. Its state-centred and government-centred character cannot be understood outside of the distinctive structures of the Greek political economy more broadly. More specifically, the market economy that developed in Greece post-World War II in large part remained closely dependent on the state for its development. It relied on the state for contracts, revenues and profits. The privatised media sector very much followed the same pattern of development.

Media policy-making in Greece has strongly been conflict-ridden; however, the lines of divisions do not follow party lines. Furthermore, far from being autonomous, the government-centred model of media policy-making has been thoroughly influenced by economic and business interests, which however, have not taken an organised form but are rather fragmented. Different media owners and entrepreneurs exert pressure and influence over media policy-making through the cultivation of informal relations and opaque practices vis-à-vis the government and state officials. While this is not a uniquely Greek phenomenon, in Greece the influence of media owners and business interests has been overwhelming due to the fact that it has been unchecked in the absence of a strong and independent professional journalism and in the absence of civil society pressures.

The country's membership in the EU imposed strong obligations and rules to ensure fair competition in a free market economy. Yet, such rules have for the most part been unable to counter and change the distinctive Greek political economy structures, as well as the informal practices of dependence and favouritism that have distorted the media market. The EU has also been a cardinal source of the norms and regulatory tools adopted in Greece for regulating media content. Their implementation, however, has been greatly hampered by the lack of indigenous institutional and other (professional, civil society) interests able and willing to defend and fight for media impartiality and independence, against the government-state or commercial-corporate interests that seek to undermine these. The decisions of the NCRT in particular, have disclosed a low level of compliance with the rules,

particularly on behalf of TV broadcasters. Co-regulation has remained a dead letter, and the current model of journalists' self-regulation has largely failed in upholding a set of journalistic values. In addition, while Greek courts have over the past ten years exhibited a greater willingness to defend journalists' freedom of expression and the citizens' right to information by striking a more appropriate balance with competing rights, they have done so slowly and often inconsistently.

In addition to these longstanding problems that explain the deep crisis of confidence which has developed between the media and the public (European Commission, 2010: 3-4), there is an array of challenges faced by the Greek media policy in particular, pressure to accommodate technological developments and the economic recession plaguing the country. The legal framework governing digital terrestrial television still needs to be determined whilst technological convergence and the emergence of online information services have created uncertainty regarding the legal norms to regulate and supervise the content of information transmitted over the Internet. At the same time, technological innovations have pointed to the need for a proper demarcation of responsibilities between the regulatory authorities involved in media regulation. Mandates should be better defined and the powers that the independent authorities enjoy upgraded. This could provide a basis for a new culture of policy-making that favours regulatory independence and takes into account the democratic functions that the media should perform.

Unsurprisingly, it transpired from nearly all the interviews that the severe economic climate can have a further pervasive impact on the media's independence unless proper action is taken to the opposite. The financial crisis has exposed the weaknesses of a defective media market which has been for years artificially supported. During 2010 and 2011, many print outlets, even large and established ones closed down, while TV channels have introduced cuts in their output and many journalists have lost their jobs. In such a context, specific government initiatives could significantly affect the media's role to inform the public and provide a platform of public debate in a democratic society. The current restructuring plan for *ERT* and the austerity measures that the government has recently adopted are expected to undermine the volume and quality of *ERT*'s reporting and information services<sup>234</sup> and its ability to serve the public interest. In a media market where the commercial media are constrained to face financial and advertising pressures - intensified due to the present economic crisis and likely to affect news coverage and reporting - the existence of public service media that enjoy the means to provide a variety of services that abide by quality, accuracy and impartiality standards is imperative. All reforms and measures concerning *ERT* should be seen and pursued from this standpoint.

Under the harsh economic conditions, the viability of news media will generally depend on their ability to promote high standards of journalism and prioritise information quality policies. The government and all implicated stakeholders are called to reflect on the appropriate form of regulation (state regulation, self-regulation, or co-regulation) for achieving those goals. Concurrently, some form of a 'media council' which brings the press, audiovisual and online media under its regime could be given consideration. A particular area of concern will be to ensure that such a body is sufficiently distanced from undue pressures and that its

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<sup>234</sup> In addition to other reductions in operational expenses, to comply with the recently adopted Law 3899/2010 (FEK A' 212/2010), *ERT* was compelled to eliminate all live programmes from its Sunday schedule, including information programmes of a socio-political nature. Interview 22.

operation is underpinned by considerations about the contribution that the media are expected to make to democratic discourse.

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## **9. List of interviews**

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Interview 3 with officials from the Department of Administrative Media Supervision, Secretariat General for Mass Media (previously Secretariat General of Communication), by Anna Kandyla, Athens, 16/5/2011

Interview 4 with the general director of Communications, Ministry of Infrastructure, Transport and Networks, by Anna Kandyla and Evangelia Psychogiopoulou, Athens, 25/7/2011

### *Politicians*

Interview 5 with Mr. Miltiadis Papaioannou, former president of the Parliamentary Committee on Institutions and Transparency and current Minister of Justice, Transparency and Human Rights, by Anna Kandyla, Athens, 23/5/2011

Interview 6 with Mr. Vasilis Mouloupoulos, former journalist, former president of the Pan-Hellenic Federation of Journalists' Unions, current member of the Parliamentary Committee on Institutions and Transparency, and MP with the SYRIZA political party, by Anna Kandyla, Athens, 1/6/2011

Interview 7 with Mr. Tilemahos Hitiris, former Deputy Minister of Culture and MP of the PASOK political party, by Anna Kandyla and Evangelia Psychogiopoulou, Athens, 19/7/2011

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