



Case study report

Does media policy promote media freedom and independence?

The case of Romania

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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

Twenty years after overthrowing the Communist regime and despite years of political and economic pressures and harassment, the decreasing editorial quality and the rise of the new communication technologies, the **media remain one of the most trusted institutions** in Romania, with a trust quota of over 60%.

The main pillars of the media policies are the freedom of expression and the freedom of information, duly limited by the values associated to the protection of human dignity and privacy. Beyond the constitutional formal protection, the **media freedom is not valued consistently by the society** or by the political parties. **Media campaigns** aiming at state institutions appeared as “**state vulnerabilities**” in the draft National Security Strategy, marking the lowest point in the relations between the media and the state.

The state is the main actor in formulating and implementing media policies, although all the other important stakeholders – the industry, the professional associations, owners’ and employees’ unions, media development NGOs – are present on the advocacy scene.

The **main level of policy is the legislative one**, despite the overarching lack of confidence people (professionals and general public the same) are having in the Romanian Parliament. There is a **tendency to over-regulation** but limited implementation. **Self-regulation was never really functional** in Romania: there were a number of attempts to it but none was effectively implemented.

The Romanian **media market is agglomerated** and mainly **populated with private-owned entities**. There is no legislation in Romania that can limit the **concentration of property** in the print media, and cross-ownership is not regulated at all.

The public media – especially radio and television – have been subject to a seemingly **never ending reform process**, affected by obsolete laws and lack of political will to change them. The accountability mechanism (i.e. the politically appointed Board members and the Parliament’s power to sack the board) is in fact an invitation to politicisation.

Content regulation is quite present in the Romanian broadcast and relatively weak in the other forms of the media. The electronic media have a series of public interest and diversity obligations but their implementation is far from good. There is no content regulation as such for the print and the restrictions for Internet content are related to illegal and harmful content, based on European documents.

Lawsuits against journalists became less and less numerous and most of them are filed under accusations of libel and defamation. Journalists generally won the cases against them, the Romanian courts complying with the practice of the European Court of Human Rights.

New technologies affect significantly the media environment in Romania. The speed and the virtually omnipresence of the Internet (especially on mobile devices) forced the traditional media to adjust on the go. The online environment strives on personal initiatives and individuals with little or no journalistic background of ethical sensitivities emerged as opinion leaders.

Despite the considerable dimensions of the media field and its puzzling complexity, there are no permanent state-sponsored **media literacy** programmes and the only advancement relies on the efforts of media-related NGOs and, to some extent, on some media companies.

Conclusion

In general, all the “traditional” actors – the state, the autonomous regulators, the industry, the profession, the specialised NGOs, the public - are active in negotiating the policies. Most of the times, the state has the upper hand in **making** or **not making** a decision and it tends to do so in a traditionally paternalistic “state-knows-better” manner. The media policy in Romania remains the result of virtually no long term strategic planning, limited interactions, knee-jerk reactions, a tendency to over-regulate by law and the influence of informal conduct of the people in power positions affected by a deficit of democratic understanding.

1. Introduction

Twenty years after overthrowing the Communist regime, freedom of expression – and its corollary, media freedom is still considered to be two of the main gains of the democracy in Romania. In the beginning years, as the political scene was still maturing, the media have been largely seen as the real opposition in the country and both the members of the public and the politicians turned to the media to either complain or explain. The relation between media and politics had its ups and downs, encompassing all the instances one can imagine: “honey moon” feelings, harassment, economic and political pressures, “co-habitation” and obedience, aggressions and abuses on both sides. Still, the media remain one of the most trusted institutions in Romania, with a trust quota of over 60%, down from the 80 per cent some years ago.

Over the last years, the Romanian media market evolved from a “media landscape” status to a “media eco-system” one. The relief is changing, the actors are interacting and influencing each other and the power lines are shifting. The media consumption habits are also shifting, with an increased prevalence of the Internet and multi-media, both in terms of number of users, content offered and advertising money injected into it.

The Romanian media market grew organically, with too little care for strategic development, goals to be reached and benefits to be counted. As one of the interviewees for this report¹ said, Romania never had a “media policy” approach, as it hardly has one in other sectors. Therefore, the media sector is the outcome of a balancing game of business interests, political interests, personal emotions and hast responses to crisis.

Populated in the beginning with small entrepreneurs, with small budgets and medium to low managerial skills, the media market evolved in time toward a polarized structure, with a cluster of big media conglomerates and a cloud of small local media outlets, trying to survive by either joining the big networks or trading off their editorial content for access to public resources for their owners. The model of media-owner - cum businessman - cum politician was quite an epitome for the Romanian media in the early 2000s. The profile is still present and even the owners of the big conglomerates are fitting it, which attracted them the nickname “moguls”.

The hundreds of media outlets employed thousands of people as journalists and technical staff. Entry to the profession was easy, with no accreditation or qualifications needed for working as a journalist. This advantage played against the profession though, as the level of professionalism decreased and the professional solidarity never got to really coagulate. The only thing that could enflame this solidarity were the harassment by authorities, in the late 1990s and early 2000s, when the media managed to bring its freedom on the public agenda. A relative relaxation of the general context (economic growth, EU accession negotiations) in the mid 2000s diluted this solidarity. The economic crisis that marked the end of the first decade of 2000 deepened even further the divide among journalists, who see themselves as competitors on a shrinking market.

¹ Interview with a public radio board member, by Cristian Ghinea and Ioana Avădanei, Bucharest, 04/09/2011.

Associations and trade unions are numerous but not necessarily effective in promoting the journalists' interest or defending the professional standards. Nor are the associations of the owners, publishers and broadcasters, as they seem rather unwilling to influence the state policies using the traditional social dialogue tool, advocacy and lobbying.

The advent of the Internet found the traditional media rather unprepared and caught in their own fight over readership and audience shares. For a while, they even refused to see the online media as a threat, therefore they started rather late to provide content specially designed for Internet or mobile consumption. Even to day, some media companies apply a 'print first' policy in order not to cannibalize their own product. This delay of the traditional information providers allowed for a new breed of publications – institutionalized or stemming out of individual efforts – to attract the young readership. A majority of the Internet users are between 20-45 years old, representing the dynamic layers of the society. Some of these online publications were born as a result of the political or editorial pressures the journalists had to face in the newsrooms, others from the public's frustration to the highly tabloidised content provided by the traditional media. Online also brought increased interactivity, a wider, almost infinite choice and an easy access to online information. The decrease in the quality and relevance of the content offered by the traditional media, alongside with the perception that, grace to technology, everybody can be a content provider (aka journalist) eroded the social status of the profession and, ironically, diluted the concern for professional standards, that should have been the strongest selling point of the professional journalists and traditional media platforms. The internet is currently perceived as "the medium" to be, a no-man's-land in terms of legislation and editorial responsibility and a free source of information and media materials, where copyrights do not apply.

The study here under addresses the status of the media sector, the position of the key players and the relationship and power lines between, as well as the influence of their actions and agendas on the overall media environment.

We will focus on the general idea of "media policy". Is there a coherent thinking behind the media development? Who has the upper hand in deciding such a policy? Are there feedback and correction loops? Are they used? What have been the dynamics of media policing in Romania and to what extent these (non-)existing policies have impacted the freedom of the expression and its exercise by both individuals, professionals and media outlets? In short, we will draw the road map of the freedom of expression concept over the last years during which Romania evolved from a post-communist country to a budding democracy to a full-fledged EU member.

2. Actors and values of media policy in Romania

The main pillars when dealing with media freedom are the freedom of expression and freedom of information. These values enjoy constitutional and legal protection and are the stepping-stones of any regulation, co-regulation and self-regulation.

Equally important – and, historically speaking, older – are the values associated to the protection of human dignity and privacy. These values enjoy also constitutional and legal protection and are regularly seen as legitimate limitations to the media's freedom. Balancing these two categories of values was not always easy

and Romania being the paternalistic society it is, their protection by the state was always put in front of the freedom of expression.

Professionalism and responsibility of the media are relatively new values, as their culture was fostered only for the last twenty years. Their internalization in the media profession was greatly helped by a cornucopia or media development programmes offered to Romania in the 1990s and challenged continuously by political and economical pressures.

Fair competition is also a new concept and it is still under construction in a country whose economy did not even get to maturity before being seriously hit by the economic crisis. The economic crisis put under question marks the economic choices made over the last years. Avoiding the formal rules was a general behavior of the economic actors (e.g. avoiding the taxation) and the crisis hit even harder those who chose to play by the rules.

The Romanian Constitution does explicitly guarantee the freedom of expression but beyond this constitutional arrangement this freedom is not valued consistently by the society, nor by the political parties. Verbal and sometimes physical abuse against journalists do not trigger public outcry. The Romanian politicians have generally a hostile attitude towards the media, almost all of them being convinced that journalists are either the puppets of their adversaries or mercenaries of their owners. This hostility was transmitted in the last years from the top level down, with President Traian Basescu publicly attacking some journalists using trivial, discriminatory language. On the other hand, Basescu himself is treated unfairly by many media outlets whose owners are in open conflict with the President. The situation took an aggravating turn for the unthinkable when the draft of the National Security Strategy of Romania (a document embodying the dangers and threats to the country's security and is the basis for the law enforcing agencies – intelligence services included) listed "media campaigns ordered and paid with the aim of weakening the state institutions" as "vulnerabilities" (threats from within). For the first time in the last 20 years of democratic construction, media evolved officially from a watchdog to a vicious dog.²

This sort mentality makes difficult honest debates about media policy and cancels any chances to imagine neutral or consensual media policies.

The common thread throughout our interviews was the outmost lack of confidence people are having in the Romanian Parliament as a referee and regulator of the media market. This lack of confidence has two main roots: a) the generally hostile attitude of the MPs towards the media and b) the common practice to name political protégés rather than professionals in the autonomous bodies that oversee the media (the Broadcasting Council – *Consiliul National al Audiovizualului*, CNA or the Boards of Public TV and Radio).

a) The attempts of the Parliament to pass media laws have pointed rather towards the will to control and over-regulate rather than a genuine preoccupation for the systemic development of the media sector. Thus, a senator proposed a bill to prohibit the press to publish images with villas

² The draft of the strategy was submitted to the Parliament for approval. Media NGOs and Journalists' trade unions filed a petition with the European Parliament. While EP has no direct decisional power over the national Parliaments, the intention was to put political pressure on the Romanian MPs. A mission of the Petitions Committee of the EP was due to visit Romania at the time this report was submitted (November 2011).

belonging to officials of the Romanian state for instance. In 2008, two other senators, a Liberal and a Nationalist, proposed a law that would have imposed a compulsory quota of -50% of “good news” in the newscasts. As it was not clear what “good news” meant, it was left up to CNA to define and implement the law. However, CNA publicly protested against the law, which did not impede the Parliament to vote on it; the bill was vetoed by president Basescu and later on rejected by the Constitutional Court. In another instance, the Chamber of Deputies adopted another draft law that asked journalists to be certified by the state in order to publish and undergo psychological check-ups regularly. The above mentioned examples are just a few of the cases illustrating the aggressive mood of the MPs towards the media. Instead, no benevolent or protective policies in favour of the media have been proposed.

“There are a lot of bad laws pending in the parliament. As a rule, the positive laws are drafted and proposed from outside of the parliament, rather than by the MPs themselves.”

Interview with official of the Broadcasting’ Association, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/4/2011.

b) There is no established practice on how the Parliament appoints people in the regulatory or autonomous media bodies, despite the clear procedures described by laws. There is rarely any public hearing and when there is, substance lacks. Everything is negotiated behind closed doors and those who are named in these leading positions tend to regard themselves as obedient instruments of the party that installed them in those seats. Furthermore, some of these persons are either former politicians or politicians who failed to get elected. Others are artists and singers with no real knowledge of the media field. The appointing procedure for staffing these institutions is a pure political trade off. For instance, in 2007 the Social Democrat Party (PSD) and the Liberal Party (PNL) made a deal, one of them taking the office of Director of Public Television (naming for this position the person that was in charge of PR and media relations in the Party) and the Liberals taking the presidency of the Broadcasting Council).

“The procedure to appoint people in the Broadcasting Council and in the boards of public outlets is a joke. The public hearings in the Parliament’s Committees are a joke, there is no dialogue, as for the plenary vote there is no consensus whatsoever.”

Interview with lawyer and NGO activist, by Cristian Ghinea and Ioana Avădani, Bucharest, 28/4/2011.

The National Broadcasting Council (CNA) is the regulatory autonomous body that grants licences and oversees the TV and radio content. It is vouched to be the warrantor of the public interest in issues pertaining to audiovisual content and market, but no definition of what public interest is was provided either in the Broadcast law or any other legislation. The basic values of the CNA functioning, as per law, are, on one

hand, the freedom of all programmes to be broadcast and reach their intended audience and, on the other hand, the freedom of all citizens to receive any programme of their choice, without interference and in a private manner. Freedom of the content providers and their editorial independence is also mentioned, including a specific prohibition of all acts of censorship.

CNA members are appointed by the president, the government and the two chambers of the parliament. They are usually a mix of former journalists and former politicians. There was a positive tendency in the last years to appoint more professionals than politicians. Such was the case of former BBC-Romania director. Nevertheless, the political affiliation of CNA's members is still visible in their voting patterns. The president of CNA is elected by the members, but the Parliament has to validate this election. In practice, the majority in CNA has to elect a president that is already agreed by the majority in Parliament. The last two presidents of CNA were elected as a result of wider political bargaining between the political parties (in 2007 the Liberal Party took this position in exchange of the Social Democrat Party getting the presidency of the public TV).

“We initially decided to postpone the decision of a new president. But the day after this decision, some colleagues received several phone calls from people in the Parliament saying they traded off the job so we had to vote then, and they indicated who was the person to be elected.”

Interview with a member of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/5/2011.

Nevertheless, the legal guarantees of CNA members are bigger than in the case of other similar bodies. The board of Romanian Public Television is usually changed after the parliamentary election. The new majority in Parliament can reject the yearly activity report of the Board and thus it forces the end of its mandate. This is not the case for CNA, which submits an activity report to the Parliament, but its rejection does not imply a change of the Council members. This may explain why the Parliament shows in fact no interest for CNA's reports. Thus the CNA is more stable and coherent compared with other Romanian institutions under the control of the Parliament. Ironically enough, the parliament is not interested in applying the same successful solution to the other public bodies, such as the public radio and TV.

The individual accountability of CNA members is lacking. Transcripts after CNA meetings are kept but they are not ex officio published and each member's votes are not recorded. In 2011 the situation in the CNA was somewhat balanced, with half the members being appointed by President Basescu or by the current parliamentary majority, and the other half appointed by the former government and former majority in Parliament. In 2012, an election year, the terms of five of CNA members expire and other persons should be appointed by the current majority which could create a major imbalance in a sensitive political period.

The new media is neither regulated nor self-regulated in Romania. Any suggestion from outside the “blogosphere” to propose ethical codes for bloggers created open and overwhelming hostility. In fact, new media reproduces the same problems of the old media. But over the last years, as some of the “professional bloggers” established themselves as opinion makers, trendsetters and new media

experts or reference point, the ethical conduct became a preoccupation for them. Thus, the most influential bloggers adopted a minimal set of rules of conduct that converge toward the accepted journalistic standards (decent language, no personal attacks, no hate speech, etc.).

The impact of the European Convention on Human Rights (ECHR) over the Romanian media, judiciary and the legal framework was important at the beginning of the transition but slightly declined in the last decade. Romania inherited strict and paranoid media laws from the communist regime, obliging the journalists to serve the state's interest and punishing with prison such felonies like spreading information that could affect the country's prestige. Some of these laws became de facto obsolete after 1989, although they were not formally repealed. Libel was legally punished with prison in Romania until 2005 and remained a criminal offence until 2006. The European Court of Human Rights (ECtHR) decided in several cases against this practice. After such ECtHR decisions, there were no other cases with journalists going to jail. Nevertheless a decision to formally abandon penal punishment of libel came only in 2006 (that put libel under civil law, with claimants asking for damages). The new law was contested in the Constitutional Court and to the amazement of the media community the Court decided that it was unconstitutional. The Court decided that the honour of a person cannot be bought with money, thus the civil law was not enough to punish the libel abuses. The Parliament was expected to change the law in order to obey the Constitutional Court decision, but the Parliament did nothing on the issue. Thus, it was not clear what law was in force – the old one with penal sanctions or the new one with civil damages. Different judges made different judgments, although most of them preferred to apply the civil law. In 2010, the General Prosecutor appealed the Supreme Court (that has the role of unifying legal practice) in order to have a unitary interpretation and a final decision was made to judge libel cases under the civil law. It is not clear if this new arrangement is constitutional (the Constitutional Court has not attacked for the time being the Supreme Court's decision). In the meanwhile, new Civil and Criminal Codes have been adopted and libel is no longer considered an offence, the emphasis being put on privacy and the protection of human dignity.

Self-regulation was never a really functional mechanism in Romania. Until present, there have been a number of attempts that emphasised the need to adopt an ethics code, but none was implemented. One of the attempts belonged to a coalition of 30 media NGOs, the Media Organizations' Convention. Their attempt consisted of discussing and drafting an ethics code and promoting it amongst the existing media outlets. However, the main constraint the coalition faced was its own lack of power to influence the media owners. On the other hand, the Romanian Press Club (CRP) enjoyed this sort of influence. The club was created in the early 1990s as an alliance of major media directors and editors and it was rather efficient in promoting the interests of the media business (e.g. fiscal exceptions, collective deals with state owned distribution companies). Nonetheless, although it was an influential player, or because of it, CRP rejected any inclusive debate about ethics for several years, sticking to its own Code of Ethic and Council of Honour. The attempts of the media NGOs to organise public debates concerning this issue led to a virtual public war and strike-back effects. The Club claimed to be the only legitimate representative of the Romanian press, although it showed no interest in opening a debate on self-regulation.

“There is no chance with self-regulation in Romania. We have an ill press, there are no taboos. How does anyone expect to impose self-regulation on the press we have?”

Interview with former manager of a media holding, by Cristian Ghinea and Ioana Avădani, Bucharest, 8/4/2011.

The CRP’s reluctance towards any inclusive ethical approach was a symptom of a deeper structural problem. The club was after all representing the interests of media directors and owners, in a rather personalised manner. At that time, Romanian newspapers were not fully-fledged press institutions but were seen as institutions centered on some personalities, some “star” columnists. Everybody was referring to X’s or Y’s newspaper rather than the newspaper itself. Such powerful personalities tended to consider debates on ethics as an attack on their own personal leadership. Their will represented the rules and no other rules were needed. Most of the Romanian media outlets, especially the newspapers, never made the transition towards fully-fledged institutions in order to function independently and following predictable rules. The CRP was a fit expression of this reality. It itself depended a great deal on the personality of its leader. Its first president, Dumitru Tinu, editor in chief of *Adevarul* newspaper, was representative for the old style former communist journalists who, in the early 1990s, had privatised newspapers in their favour. He rejected any attempt to debate ethical codes, therefore this was the official stand of the Club as well. However, he tragically died in an accident and the club was taken over by another prominent journalist, Cristian Tudor Popescu.

He reluctantly established the first connections and dialogue with the NGOs and later pushed forward some discussions about ethics and an ethics code. Following, the Club drafted and agreed upon its own ethical code; however, its implementation again depended too much on Popescu’s personality. He and the club were not able to force their peers to impose rules that contravened their interests.

Nevertheless, some progress existed. In the middle of the 2000s, a number of scandalous cases occurred and the Club took some stands. Bogdan Chirieac, a prominent talking head in the TV debates, was involved in a scandal regarding his double-sided life: a newspaper revealed that the journalist was at the same time a prosperous businessman dealing with substantial contracts for selling equipment to the secret services and used his position as a journalist to promote his business interests. Another case involved Sorin Rosca Stanescu, director and shareholder of the *Ziua* newspaper, who was accused of having blackmailed the head of a public institution. In both of these cases the Club reacted publicly, criticising those involved in these scandals. Yet, it was obvious once again that the Club had its limits. Following the scandals, the Club asked the television outlets to refrain from further inviting or at least presenting the two as “journalists”. Realitatea TV, the most prominent news TV station at the moment, issued a statement that it would not invite Chirieac as a contributor anymore. This situation lasted for no more than a month as Chirieac was the close friend of the owner of this TV station and he reappeared on screen as nothing would have ever happened. He also appeared to the public television, TVR, also a member of the Club. Until today, he remains a constant and apparently respected presence at the Romanian television.

As for the Romanian Press Club, it lost most of its relevance and influence in the past few years, as its evolution has been strongly connected to the evolution of media property in Romania. The influential journalists and media owners who had founded the Club lost their control over newspapers and televisions in the late 2000s. Lacking the capital and skills necessary to conduct business, they were forced to sell to powerful Romanian investors who were not as much motivated by profit from media businesses in their choice to acquire these assets as they were motivated by the prospect of being politically influential. Popescu also sold his shares in his newspaper to a company and the Club he was leading went through an identity crisis. Press freedom NGOs had pointed out repeatedly the internal conflict of interests stemming from the idea that the owners represent their employees and asked the Club to make the necessary distinction. As the head of the Club, Popescu accepted to separate the interests of the owners from those of the journalists (up to that moment the Club had a diverse membership including both institutions, represented at management and editorial level, and individual journalists). Therefore, following his plan, the journalists withdrew their membership from the Press Club and founded their own association, AZR (The Association of Romanian Journalists). According to the same plan, the owners were expected to create a separate organisation and the two entities were supposed to function together, maintaining the Press Club as an umbrella organisation. However, Popescu resigned and that was an impulse for the plan to collapse. In practice, AZR never took off as an association due to lack of resources and the owners dragged their feet in creating a separate organisation, nonetheless keeping the initial Club. At present, there is no organisation that can rightfully claim to represent “the profession” and fulfil an overarching and nationally recognised self-regulation function.

In the case of the public television and the public radio there are ethics commissions elected by the employees. The situation here seems to be better than in the case of private institutions, although at times the commissions tend to function as trade unions in defending their colleagues rather than imposing some rules. On the other hand, the rulings of these commissions are just consultative for the administrations of the two organisations, which weakens even further the accountability systems inside the public media.

An attempt of the state to push for self-regulation was made in 2011, via the National Broadcasting Council (CNA). This council is an autonomous body that grants television and radio licences and supervises the broadcasting content. In 2011, the owner of the Realitatea television, Sorin Ovidiu Vantu was prosecuted for alleged criminal acts (not connected to his media business). When the case was taken to court, the prosecutors included the transcripts of conversations between Vantu and journalists that were employees of his television. The transcripts revealed how Vantu was directly giving orders regarding the content of the programmes of his television and this was the epitome of overtly expressed interventionist behaviour of a television owner. The National Broadcasting Council reacted and asked all televisions to publish their ethic codes.

To conclude, self-regulation in Romania is by and large ineffective and unenforced. Still, there is a firm standpoint of journalists and NGO activists who are not willing to let the state regulate their profession as their distrust in politicians is higher than the distrust in owners and other influential people controlling the media.

“Ethic codes are worthless at the moment, but the solution still lies within self-regulation of the media.”

Interview with lawyer and NGO activist, by Cristian Ghinea and Ioana Avădani, Bucharest, 28/4/2011.

3. The structure of the media market

3.1 Competition policies and media concentration

The Competition Council is the Romanian institution that enforces the competition legislation. Before and after Romania's accession to the European Union, the Council was the beneficiary of a number of assistance programs and it became more and more active in the past few years in enforcing legislation and sanctioning deals that are uncompetitive. Any take-over of a company evaluated at a value higher than ten million Euro must be brought to the attention of the council and consequently approved by it. Given that the traded media assets were ranked under this value, the Council did not play a role in this field until now.

Not only the Council, but generally speaking the Romanian state is rather a missing actor in the media competition field. The concentration of media property has been increasing in the past five years around five big media trusts. Four of the five big owners are controversial persons. Three of them are prosecuted for criminal behavior (and the accusations are credible), one of them is a certified collaborator of the former communist political police, all of them made their fortune in close collaboration with the state institutions, benefiting from preferential treatment, especially through controversial privatisation in the 1990s and all of them have openly political stances and ambitions to play some roles as politicians. They control about 90 percent of the media market. They are engaged in fierce competition and do not have necessarily good personal relations among themselves. Nevertheless, in some cases they can act as a cartel as it was the case in the precedent elections when four out of the five media holdings played against President Basescu, with their owners publicly demanding their journalists to stage war on Basescu. But such a public bias was counterproductive. Basescu won another term and the mobilisation of the media owners against him showed that their power was rather a myth than a reality. The presence of such powerful businessmen with political connections behind virtually all mainstream media outlets makes impossible an honest debate and neutral media policies. Each of them tries to buy favours (not for their media business, but especially for the other businesses they own) and they do not act collectively in the interest of media industry. No need to mention that state regulation to protect the freedom of journalists is not welcomed by these owners. They need media people to be obedient instruments, not self conscious professionals.

The distribution market has changed a lot during the last years, following the bankruptcy of RODIPET, the former state company that until 2003-2004 had a quasi-monopoly position over the distribution of the print media. RODIPET was privatised as a result of the political decision of the former Prime Minister Adrian Nastase.

RODIPET was an inefficient company with a management which was both politically appointed and unaccountable. These characteristics, combined with powerful trade unions, led to grave financial blockages that were affecting the newspapers. RODIPET took the money from selling the newspapers but did not pay it back to the media outlets. The owners, who offered Adrian Nastase a rather friendly media treatment, turning a blind eye on the corruption that he patronised, were calling upon the government and even Prime Minister himself in order for the officials to pressure RODIPET to pay. To avoid this situation, Nastase decided to privatise the company. The decision was accepted by the press, although the way in which it was

implemented was a disaster. RODIPET was bought by a company lacking both the capital and the experience to develop it, but it did not lack the political connections. After years of struggling with private competition (that developed in the meantime) RODIPET went officially bankrupt in 2009.

“Nastase’s idea to get rid of ROPIPET was the right one, the company gave him headaches. All the newspapers’ owners were calling Nastase to call RODIPET to reclaim their money. Nastase had had enough of the whole story. However, the way in which the privatisation took place was deplorable.”

Interview with former manager of a media holding, by Cristian Ghinea and Ioana Avădani, Bucharest, 8/4/2011.

Meanwhile, the media companies started to develop their own distribution networks. The extreme fragmentation makes this business quite difficult and receiving revenues from the distributors is still problematic. In order to cover the entire country territory, every newspaper has to contract tens of regional and local distributors.

The subscription copies are usually distributed through the Romanian Post company (state owned), but the post is late in delivering the newspapers, at best delivering them in the afternoon. Given that we live in the era of the Internet and news televisions, it comes as no surprise that subscription numbers are decreasing by the day.

Between 2005 and 2008, the media market in Romania experienced an investment bubble, the five media conglomerates that have concentrated the property, each backed by powerful businessmen, have entered an investment vicious circle meant only to capture the chunkiest market share. As for the newspapers, the most widespread practice was to sell books, CDs and other products together with the newspaper. This created an artificial demand and an artificial growth model of investment without return. Adevarul Holding, owned by Dinu Patriciu, the richest Romanian in the Forbes list, took this practice to an extreme end. The company reached the top positions both for tabloid newspapers (*Click*) and for quality newspapers (*Adevarul*).

That was the moment when the foreign investors in the media lost ground. Big foreign media companies that had previously invested in Romania, especially in print media such as the German WAZ and the Swiss Ringier, could not keep up with the investments made by the Romanian owners and sold their media outlets. At present, there is no quality newspaper in Romania that is owned by a foreign investor. The CEO of WAZ claimed that the Romanian market was artificially inflated and the local competition was evidently using media not necessarily for profit but for buying influence. On the other hand, a former Romanian manager of Ringier that later worked for Patriciu said in a interview with the authors that the foreign companies have not paid enough attention to investments and lost on economic grounds.

“The fact that the market is unfair for them is a bad excuse of the foreign investors. Until 2006 Ringier was unbeatable, they dominated the market. Then the local investors did what they had done before: they invested.”

Interview with former media manager, by Cristian Ghinea and Ioana Avădani,
Bucharest, 8/4/2011.

During the economic crisis the media market collapsed and investing in market shares proved to be disastrous. The costs of selling books and CDs together with the newspapers became unbearable and the public renounced buying them without these inserts. The overall circulation collapsed in 2011 compared with 2009 (see the bellow table). The main revenue of the newspaper – advertising money – declined dramatically (see the second table). Adevarul Holding is experiencing grave financial problems, and it has fired a quarter of its employees and has cut back salaries by almost half. The second media concentration (owned by Sorin Ovidiu Vintu) went bankrupt and sold or closed each media outlet it had.

Fig. 1. Total circulation of newspapers, 2009 - 2011

	Title	March 2009	June 2011	Category of journalism
1	Click	249,656	177,176	Yellow
2	Libertatea	203,052	97,968	Yellow
3	Adevarul	91,231	43,415	Quality
4	Cancan	98,751	36,442	Yellow
5	Jurnalul National	62,589	28,170	Quality
6	Gazeta Sporturilor	79,229	30,904	Sport
7	Romania Libera	50,661	40,602	Quality
8	PRO Sport	42,175	27,497	Sport
9	Evenimentul Zilei	37,637	16,336	Quality
10	Gandul	17,180	10,333 (March – remained online only)	Quality
	TOTAL	932,162	508,843	

Source: Romanian Bureau for Auditing Circulation

Fig. 2. Total amounts paid as advertisement in Romania in 2006 - 2010 (millions Euro)

Media category/ Year	2010	2009	2008	2007	2006
TV	209	222	337	306	229
Print	27	37	82	79	71
Radio	23	25	35	30	23
Out-door	35	42	70	58	40
Internet, Cinema	14	13	16	9	6
TOTAL	308	339	540	482	369

Source: paginademedi.ro

There is no legislation in Romania that can limit the concentration of property in the print media, and cross-ownership is not regulated at all. Since 2008 the broadcasting law prohibits that a company cumulates more than 30% of the market share. The Broadcasting Council should apply this rule, yet it has failed to do so until now. On the other hand, it is understandable that this law is hard to apply when it is not clear what a market share means – we should count ratings, incomes or property? Well, the Broadcast law has an answer: a combination of thereof. The operational tool in judging the dominant position of the market is the capacity of influencing the public opinion.

With a view to protecting pluralism and cultural diversity, ownership concentration and the extension of the audience in the audio-visual field are limited to dimensions that can secure economic efficiency, but to not generate a dominant position in influencing the public opinion.³

The way to calculate this immaterial indicator is indicated in the same Article 44. The calculation takes into consideration several parameters: the type of the market (national, regional or local), the share hold by a legal or natural person (only if it is over 20% in a given media company), the audience or market share of the informative programs (newscasts, debates, current affairs programs “on latest political and/or economical topics”). All these elements are composed in a weighted average. One is considered to hold a “dominant position” once this parameter reaches 30% “on the relevant market”. In this calculation, one should also include the share hold by the family members of an individual: “spouse, kin and in-laws, up to the second kinship”.

Such calculations are extremely complicated and are actually a step back from the former way of establishing the dominant position, related only to the level of

³ Audiovisual Law (Legea Audiovizualului), art. 44, available at: www.cna.ro (date accessed 6 November 2011).

participation of a shareholder. The current way is not only complicated, but it based on information not available to the general public, such as the market or audience shares of certain programmes and family ties of the shareholders. Moreover, only the audiences of big national TVs are monitored, but not those of the local TV and none of the radios'. Therefore, it does not fulfill its intended role of civic control over the concentration of ownership and influence and only adds to the lack of transparency of the media ownership structures.

“Up to 2008, the law was clear; whoever was holding a licence could not have more than 20% in another television. We changed that and introduced the market share and the influence share. Problem is that the 20% provision was easy to follow. This new method, we don't follow, therefore nobody knows clearly what is there.”

Interview with member of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/5/2011.

The limitations of the ownership over the broadcast media are an attempt at limiting the influence a (legal or natural) person could exert over the public opinion and have been present in the broadcast legislation from the very first version of the law, in 1992. These limits have been used in the process of allocating new licences, but they were hardly checked afterwards. The media concentration and the dominant position of a broadcaster was not a topic of public debate, with the notable exception of the media freedom NGOs. They have consistently asked for a system able to limit the cross-ownership and the increasing influence power of the “media moguls”. The changes in the legislation meant to limit the “influence power” rather than just the sheer ownership made things even more complicated and did not address the major problem: cross-media ownership.

The NGOs demands have been meant with reluctance by both the regulatory body, the industry and the politicians, for various reasons. Some do not see the value of such a system, others enjoy the benefits of an unregulated cross-ownership while still others fear that the move would be too risky, especially because of the aggressive and short-sighted politicians. As a consequence, the status quo is preferred, even though it is not satisfactory. This could be a general feature of media policies in Romania: the social trust is so low that everybody tends to prefer the status quo rather than to open the debate and promote some systemic, fundamental changes (see another illustration of this tendency in the chapter below on must carry rules).

Due to the technological delay that led to the lagging of the terrestrial broadcasting, back in the 1990s, Romania made one vigorous step forward towards cable coverage. Therefore, 90% of the population is receiving TV via cable, both in the urban areas, as well as in the rural areas where the cable companies have aggressively extended during the last years (the EU average being below 50%). Television outlets depend on cable retransmission. As a result, the digital switchover is a lengthy process and Romania has delayed it until 2015, which is the final deadline of the EU. Taking into consideration that digitalisation only affects directly the remaining 10% of the population (the poorest and living in the remotest areas), there are no incentives for investing in this new technology.

In 2010 - 2011, the cable companies have also turned into players on the television market. The cable market in Romania is dominated by two companies - RCS and UPC – which together have 90% of the households. At the beginning of 2011 there were persistent rumours that RCS would have made an offer to buy UPC and this news made the press quite often. During the interview that we have conducted with the president of the Competition Council, he stated that the Council was not officially informed about a possible transaction, but if this was the case, the Council would surely object as a single company would be holding a monopoly over 90% of the market. These rumours sent a shock wave among televisions which are dependent on cable transmission, even the more so when RCS announced its intention to create its own TV stations. A generalist television station, 10TV was launched by RCS in 2011 but it proved to be a flop due to misunderstandings between RCS and the editorial board. Nevertheless, RCS launched a sports TV station that is transmitting the football matches of the National league only for those holding a RCS subscription and is also on the verge of launching an all-news channel.

The entry of cable companies on the television market brought worries among old TV owners and raises some concerns even among officials, but there is no strategy to counter or prevent this situation. RCS and UPC are mammoths when it comes to comparing their turnover to the turnover of televisions. RCS has a turnover that is ten times higher than the strongest private television.

The CNA members that we interviewed admitted that this might be a problem, but do not see the Council as the institution that can take the matter in its hands.

“The National Broadcasting Council cannot legally refuse to grant a TV licence to a cable company because the law does not specify this motivation.”

Interview with member of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 13/04/2011.

3.2 Public television and radio

The Romanian Public Television (TVR) has 6 channels, the last having been launched in 2011 as a news channel to compete with the already existing three private such channels. TVR has always been the object of political dispute between the governing power and the opposition, thus every change of power brought about the change of the existing board and the naming of a new Director General. TVR functions on the basis of a 1994 law (subsequently amended, see below) and according to this law, its Board members are appointed by the President, the government and the Parliament.

What allows for the change of the board after each election is one detail in the law: the Parliament has to approve the annual activity report of the TVR Board. Once the vote is negative, the board is automatically dismissed and consequently changed. This detail was initially meant to ensure the accountability of the board, yet the activity report has been consistently used as a tool by the parliamentary majority to control or even to dismiss the boards. This mechanism has been functioning flawlessly after each of the last four parliamentary elections (1996, 2000, 2004 and 2008). Unfortunately this process does not even save the appearances and the Board is usually staffed with political cronies who perceive themselves as the representatives

of parties in the public television, each of them making sure that his party looks good on the news.

The institutional design is similar for the Public Radio, but given its smaller impact the political pressure is lower there (the board of Radio company was prematurely replaced only once after 2000)

In the case of TVR, the fact that the parliamentary majority has a word to say in changing the board has ridiculous effects in practice. At the beginning of 2011, the Agriculture Committee of the Parliament called the General Director of TVR to a hearing due to the fact that an agriculture related show was taken out of the broadcasting programme. At the same time, the responsibilities of the board are not clearly defined either in the law or in the internal regulations. Theoretically the board should oversee the way in which the management implements the objectives and the public mission; at least by comparison with what other boards of more successful similar institutions are doing (e.g. BBC). In practice the board is involved in micromanagement activities (approving salaries, budgets, etc.) but has no legally defined mission.

The law stipulates that two directly elected representatives of the employees should be in the board. In fact, the boards are usually dominated by insiders with good political connections. The political parties have their own favourites inside the institution and they are the ones who will be named in the board. Under these circumstances reforming the public television is virtually impossible. Despite the economic crisis that hit the Romanian media quite heavily (40% drop for advertising sums, approximately 6,000 employees fired by private media outlets), there is hardly any visible change for TVR. The institution is overstaffed and the annual deficit reached 8 million Euro.

Out of the 80 million euro yearly budget, 90% are tax money and 8 million euro are advertising revenues, which is a lot less compared to private televisions. TVR also faces some legal restrictions that prevent it from advertising for more than 8 minutes per hour, while a private television is allowed to advertise for 12 minutes per hour according to the same broadcasting law. Furthermore, TVR is not allowed to advertise within a programme, but only in-between one programme and another. Although this makes watching movies on public TV more enjoyable, it hits a real blow to the possibilities of TVR to attract more advertising money.

The radio and TV taxes are collected on the electricity bill by all the households having radio and TV receivers. If a person declares they do not have such receivers, they are exempt from paying the taxes. The value of the taxes, the way the tax is collected, the penalties for the delays and the sanctions for the erroneous statements regarding the receivers are to be decided by Governmental order. The current value for the radio tax is at 2,5 RON/month/household. (approx. 60 eurocents), while the TV tax stays at 4 RON/month/household (approx. 95 eurocents). The taxes have not been updated since 2007. At this level, the TV tax is the last but one in Europe. According to TVR officials, bringing it to 7,5 RON/month/household (approx. 1.8 euro) would solve the economic deficit of the public TV. Still, these arguments and the need for a balanced public media system have not prevented a group of opposition MPs to submit a series of draft amendments to the PBS functioning law scrapping off completely the TV tax (but leaving intact the radio one, calculated and paid under the same rules). They argued that the TV tax is double taxation, as TVR receives also money from the state budget – which is both fallacious

and inconsistent. The public media receive state budget funds with a very clear destination: to pay for their technical facilities (relays, etc) owned by another state company. In the same time, the public radio also receives money from the state budget – and for the same reasons. There is no reasonable ground on which one can consider the TV tax as being double taxation, while the radio one ‘correct’. The proposal was even more difficult to understand as one of the initiators used to be a member in the TVR board, so he was supposed to know exactly how the TVR is budgeted. Moreover, he is an artist whose works are broadcast on TVR and whose wife works with TVR, so he had more than one opportunity to inform himself correctly. The initiative – that was adopted tacitly by the lower Chamber of the Parliament – was stirred by the “un-Christian” and critical tone the public TV used when covering the funerals of Adrian Paunescu, a Social-Democrat senator, reputed for his poetry exulting Ceausescu’s regime and the communism. This draft laws is but one more episode in the political fight against – or over – the public television.

The way in which the regulation and organising of the public television is done is deeply flawed. The employees are overprotected by strong collective contracts and the managing structure made any reform impossible. The funding scheme led the institution on the verge of bankruptcy and the accountability mechanism (politically appointed Board Members and Parliament’s control) is in fact an invitation to politicization. The current head of the news department was rudely attacked by the leaders of the opposition who do not hide their intention to change once again the management once they are in power. According to media reports, the ruling party is equally unhappy with the TVR management for not “having done enough for the party”.

3.3 Licensing and must-carry

The licensing process has improved in the recent years. True, there were fewer licences to grant, therefore the pressure on the Broadcasting Council (CNA) was lower. Charges of corruption and political bias were numerous in the previous years. At the same time the procedures are not clear. According to the law, televisions and radios stations that require a licence must submit a detailed content proposal. CNA members are voting to accept or deny the application but these votes often take into consideration other factors rather than the proposal itself.

According to the must-carry rule in the Broadcasting Law, the cable companies are obliged to take over:

- all public television’s channels;
- the French television TV5, due to a special convention between Romania and France;
- the other private televisions in order of rating, up to a limit of 25% of the total number of channels that are on the offer.

This very strict regulation offers one huge advantage: a clear and predictable rule that is applied to everyone. The discretion limit of cable companies is much reduced. In Romania ratings are measured by a single company which is selected periodically by ARMA (The Romanian Association for Rating Measurement – it includes televisions and the big payers for publicity). The auction is taking place under the direct supervision of the Broadcasting Council (CNA). The state’s direct

intervention in this matter via CNA was meant to assure the creation of a unitary and widely recognised system to measure ratings (previously, different private measurements existed). The goal was achieved although there are always some complaints regarding the technicalities of this system.

Despite the advantage it offers, the must-carry rule in the form it is now has some perverse effects in practice. Those televisions that have a high rating and are retransmitted automatically by the cable companies have a clear advantage; the market is blocked and new entries are very difficult. In some cases the rating criteria imposed by the state led to a blatant disregard towards the quality norms and ethical criteria that the state itself should also impose. The best example is the tabloid television station OTV that made scandal, blackmailing and triviality the functioning norm. OTV is under the constant supervision of CNA which fined it repeatedly and has even decided its broadcasting to be interrupted. However, the fines are not high enough and therefore do not discourage the television which has made enough rating under the must-carry rule to compulsorily be retransmitted. It is a paradox that CNA is trying inefficiently to impose discipline upon OTV and at the same time it is mandated to oblige the cable companies to retransmit OTV for free.

“We had a complaint against a cable company that was refusing to redistribute OTV and we had to oblige them because that is the law, but OTV made these ratings by not respecting other chapters of the same law.”

Interview with Member of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/5/2011.

The public television seems to be advantaged by must-carry provision covering all its channels. This is only partially truth. All the other major private TV stations are abusing a loophole in the law. Usually, big TV stations have “sister” smaller stations owned by the same company. The ‘mother’ station is the one that makes the high ranking and the cable companies are forced by law to retransmit it (by free). Although it is a legal obligation, the cable companies still need the approval of each television to retransmit it. This leads to the situation where the ‘mother’ television is conditioning the retransmission approval with the retransmission of the smaller stations that belong to the same owner and they ask money for this.

There were heated debates inside the CNA in 2011 for changing the must carry rule. A draft law supported by a group of CNA members wanted to liberalise the system (the cable companies would have only been coerced to retransmit public TV and the public televisions of the other member states of the European Union). Although cable companies are disadvantaged by the inflexibility of the current must-carry rule, the Association of Cable Companies did not support this modification. Our interviews⁴ have revealed that the cable companies preferred a predictable status quo than a modification that would have rendered them vulnerable to political pressure. It must be mentioned that although the cable companies would have had an advantage in the negotiations with the television stations, there was also the possibility that

⁴ Interview with two members of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/5/2011 and 13/4/2011.

politicians or other authorities, such as ministries or city halls on which they depend for authorisations, might pressure them in order to promote or ban some TV stations.

As it was expected, the big TV companies lobbied for the status quo. In the end, the idea was set aside and nothing changed. This is yet another case that illustrates how an unsatisfying status quo is preferred to a well-intended change due to the fact that the stakeholders fear a flexible system that leaves room for abuses.

“There is no pressure from the cable companies to abolish the must-carry rule, that’s a myth. They too can become the targets of political pressure. If the law does not coerce them to retransmit certain television stations, they too will be pressured by the televisions themselves, as well as by the politicians.”

Interview with official of the Broadcasters’ Association, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/4/2011.

3.4 Concluding remarks: structural regulation for free and independent media

As a rule, the legislation adopted by Romania before its accession to the EU was converging to a swift harmonisation, the Romanian state having not allowed itself the reserves or the delays that most of the Directives allow for. Most of the changes for the best in the media legislation in Romania have been adopted under the (more or less visible) pressure of the EU accession.

Once in the EU, the situation started to backslide slowly, but noticeably. For example, only weeks after the official accession, the Romanian Constitutional Court has decided that decriminalisation of libel violated the Constitution and has ordered insult and calumny back into the Penal Code. Six months into full-fledged EU membership, a high political figure, active in a party, was appointed as head of the public television – an occurrence never met in the 18 years of democratic construction.

Slowly but steady, the old reflexes were revived and this time the EU could not put pressure on a fully-fledged member. An interesting case is the attempt at increasing the transparency of the media market, using a provision of the Romanian Constitution. Article 30 (5) reads that “The law may require the media companies to reveal their sources of funding”. As the Constitution is not directly applicable, this provision needed a special law – which was never drafted. The NGOs active in media freedom considered that such a law would bring some clarity on the media market and the rather obscured and convoluted ownership structures. Media market observers had noticed that there are media outlets that are running in the red for years without any signs of distress. Incidentally, those media outlets were also the carriers of the most favourable government coverage. While discussing with several media owners and EU experts, it turned out that this provision can no longer be transposed as such in a piece of law because it would violate the commercial secret and the principle of free competition, two important assets of the common European market.

While the contribution of the EU acquis to the modernisation of the Romanian legal system and practice was invaluable, the EU accession was also an opportunity for easing out on the reformist urge and to revert at some previously dropped conduct in relation with media freedom. “European trends” and “models” (sometime inexistent) are quoted for various legislative initiatives in the media field, in the hope

that this would ease their acceptance. Usually, nobody in the Parliament questions these “trends” or “models”, but media NGOs do.

All these aspects demonstrate that the Romanian media market is agglomerated and mainly populated with private-owned entities. Still, the major policy maker appears to be the state, as it holds the key to the principal engines: the free and fair competition, technical advancement and financial mechanisms. It is important to note that in some domains, the state authorities refuse to play the key role, preferring to leave the matters unaddressed (i.e. concentration of the media ownership, the dominant position of cable operators). While in the pre-accession period the state worked as an enhancer of the movement forward, pushing for the harmonisation of the legislation, the post-accession period witnessed some feet-dragging in this respect. Also important to note is that the state authorities do not seem to find an equal partner in the owners’ associations when it comes to media market development. The state made (or postponed) several decisions that harmed the interest of the business players, based mainly on momentary conjunctures, political interests or opportunistic reasoning. At the same time, the media business owners do not use all the advocacy and lobbying leverage offered by the Romanian legislation to negotiate with the state favourable settlements. This was particularly clear during the economic crisis that hit the Romanian media quite hard over the last three years. Paradoxically enough, the “fourth estate” seems to be powerless in its negotiations with the state.

NGOs seem to be better connected to the European standards of freedom of expression in a free market environment and are the ones pushing on the forefront of the public agenda issues such as avoidance of dominant positions, equal access to state resources (mainly state advertising), transparency of media ownership and the switch-over to digital television.

Quite importantly, there is a gap between the legislation and the policy formulation process and the implementation. This decreases the value of an otherwise well-meant and well-written legislation and erodes the credibility of the genuine good intentions of the state actors.

4. Composition and diversification of media content

As a rule, there is a clear distinction between the intensity of the content regulation between broadcast and other types of media in Romania. The broadcast sector is highly regulated, via broadcast law (transposing EU directives almost to the letter), secondary legislation and self-regulatory documents. The print media is regulated by the general legislation dealing with privacy, child protection and hate-speech, as well as the general “public order and moral” norms. In addition to these, the online media are faced with special legislation aiming mainly at cybercrimes, stemming out of the European relevant documents (mostly Council of Europe documents).

The Broadcast law was first adopted in 1992 and underwent major revamping in 2002, when a new law was adopted, harmonized with the EU acquis, and again amended in 2006, to incorporate the new Audio-Visual Media Services Directive (AVMS). It includes specific content regulating norms.

Article 3 of the law reads:

(1) Political and social pluralism, cultural, linguistic and religious diversity, information, education and public entertainment are accomplished and ensured by the broadcasting and the retransmission of program services with the observance of the freedoms and fundamental rights of the person.

(2) All audiovisual media services providers must ensure the objective information of the public by correctly presenting the facts and events and they must favor the free formation of opinions.⁵

The liability for the content of broadcast programme services, including audiovisual commercial communications lies with the audiovisual media services provider.

The law offers strong guarantees for the editorial independence, including a specific prohibition of censorship (so transposing the similar Constitutional principle).

(3) Any kind of interference of public authorities or any Romanian or foreign natural or legal persons in the content, shape or illustration methods of elements comprised in the audiovisual media services is forbidden.⁶

The Audiovisual Law also offers an extensive and detailed guarantee for the protection of sources, in line with the rulings of the ECtHR.

As important and formal, all these guarantees can hardly be more than just statements of principles. Documenting and punishing such interferences is virtually impossible in practice. The law does not provide for any specific sanctions for the violation of these norms.

Other content-related areas are normed under the law’s Chapter 3, entirely dedicated to provisions meant to secure a fair, balanced and diverse content. As the text is a transposition of the EU Directives in the field, it addresses the specific topics of interest of the said Directives: events of major importance, quotas for EU productions (“a majority of ... broadcast time”), a quota (10 per cent) for independently produced programmes, the terms and conditions for commercial communication (advertising, product placement, teleshopping), child protection, and

⁵ The Audiovisual Law, 504/ 2002 and subsequently amended, Text in force as of February 28, 2011, available at: <http://www.cna.ro/Legea-audiovizualului.html> (date accessed 6 November 2011).

⁶ The Audiovisual Law, art. 6, idem.

the right of reply. The content of these provisions does not differ from the content of the AVMS Directive.

These latter aspects are more clearly protected under the law, with the Broadcast Council (CNA) being mandated to follow their observance and apply sanctions for infringements. The Broadcast Council is seen as the “guarantor of the public interest” and acts accordingly in making sure that the human and civil rights – pluralism of opinions, independence, and free speech among them - are observed and respected by the broadcasters.

Complementing and detailing the legal provisions, CNA negotiated with the broadcasters and the civil society a collection of more specific norms regarding the broadcast content: the Code on the Broadcast Content⁷ (here under “the Broadcast Code”). It details the way the broadcasters should interpret the law in aspects pertaining to: child protection (where “child” is any person under 18 years of age), human dignity and the right to self-portrait, the right of reply and due correction, pluralism and correctly informing the public, cultural obligations, terms and conditions for interactive programmes, games and contests and commercial communications (including advertising for food, drugs, alcohol and political advertising).

The Broadcast Code has the statute of secondary legislation and is the main instrument for the CNA to judge and sanction the violations of the law. CNA sanctions are immediately effective and can be reverted by court decision.

While the law and the Broadcast Code are pretty extensive, they deal with only the content matters that are lawfully addressed by the EU Directives. Considering that other aspects of the editorial content deserve some ruling too, the CNA asked all broadcasters to display on their websites their own Code of Conduct, starting with October 1st, 2011. Various broadcasters adopted various Codes. For example, Pro TV, one of the major commercial broadcasters, part of the US-based Central Media Enterprises group, adopted the Code used by the mother-company, while other local broadcasters adopted the Code of the Convention of Media Organizations. The Romanian Association of Audiovisual Communications (ARCA), an organisation gathering the biggest broadcasters, issued its own Code, but it did not impose it on its members, just “offered” it to those interested.

The code deals with subjects such as editorial standards, (described as necessary, but not outlined as such), promoting the correct interpretation of laws, correct information, value judgments and opinions, independence and impartiality, editorial responsibility, public interest and protection of individual rights, and representation of violence.

The ARCA code has a couple of points that can be perceived as controversial. Thus, the Code states that the editorial control stays with the “broadcaster in its capacity of commercial company, meaning to its ownership and management structures”. Moreover, the ARCA Code states that “the broadcaster can intervene in the editorial activity whenever they deem it necessary, especially when the delegation of the editorial powers has not produced the expected effects”. It also states that its

⁷ The Code on Broadcast Content (Codul de reglementare a conținutului audiovizual), last version as per 28 July, 2011, available at: <http://www.cna.ro/Decizia-nr-220-din-24-februarie.html> (date accessed 6 November 2011).

provisions are based on the “presumption of creativity”, leaving the broadcasters with the complete liberty to apply them how they see fit.

*“However, it is specific for the above stated principles to remain but guidelines, being impossible for one to judge if the editorial practice is abiding by them or not. For us it is enough for these principles to remain a preoccupation and for their implementation to produce value built on each editor’s creativity. This is the principle of the “presumption of creativity.”*⁸

Such wording stirred the criticism of some free speech activists, who found the ARCA Code just a modality to furthering the control of the shareholders over the actual media content and evading genuine self-regulatory mechanisms.

“It’s a joke; it throws the very idea of self-regulation into ridicule. It just shows how little interest the big boys have for a genuine cleaning of their act.”

Interview with Media NGO leader, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/11/2011.

Other self-regulation mechanisms active or impacting the broadcast field is the Code of Conduct in Advertising⁹ adopted and enforced by the Romanian Advertising Council. The Code states that all communication should be “honest, true, clear and decent” and should not undermine the public’s trust in communication, in general. RAC is a partner of CNA in assessing the fairness of commercial communications in broadcasting. Still, it is not a rare occurrence for CNA to suspend from broadcasting ads that are not in line with its own rules and regulations. Such suspensions are imposed until legality is restored – so no ad is prohibited from airing for good.

Special diversity requirements are imposed to the public broadcasters – both radio and TV. They have their own functioning law: Law 41/1994.¹⁰ Based on this law, the two public broadcasters have the legal obligation to secure, in all they do, “pluralism, free expression of ideas and opinions, free flow of information as well as the correct information of the public”. They also have a legal obligation to abide by the professional standards.

The law also imposes quotas for programming. Thus 30% of the “European programs” should be Romanian (including productions of the ethnic minorities in Romania), and at least 35% of the Romanian programmes should be cultural.

A series of articles consecrate the editorial independence of the public broadcasters and of the journalists working with them, as well as content rules

⁸ ARCA Deontological Code (Codul Deontologic), last version as per 30 September 30 2011, available at: <http://static.a1.ro/Cod-Deontologic.pdf> (date accessed 6 November 2011).

⁹ Code of Conduct in Advertising (Codul de practică în publicitate), Romanian Advertising Council, available at: <http://www.rac.ro/cod> (accessed date 6 November 2011).

¹⁰ Law on the organization and functioning of the Romanian Radio Society and the Romanian Television Society, available at: <http://www.cna.ro/LEGE-Nr-41-din-17-iunie-1994,2196.html>, (accessed date 6 November 2011).

regarding the correctness of information, fairness of reporting, the right to reply, due corrections and the protection of sources.

Company by-laws, such as the Code of Conduct or the Statute of the Employee add more details to the editorial conduct of the public broadcasters. As described above, the structural weakness of the Ethics Committees called to implement them affect their effectiveness.

Regulating the online environment has proved to be quite a challenge for the Romanian authorities and attempts at doing so hit a stark resistance from the part of organized civil society (mostly press freedom NGOs). While cyber-crime covers many aspects, when it comes to news media, the main areas of concern are the protection of privacy, the fight against racism, xenophobia and hate speech, the protection of the children against illegal and harmful content and, marginally, copyright issues.

All these aspects are dealt with via various legislation, stemming from the Council of Europe's Convention against Cyber Crime and its Additional Protocol¹¹. The main document in this respect is the Governmental Ordinance on Fighting Racism, Hate Speech and Xenophobia, adopted in 2002. As per the Additional Protocol, crimes committed via the Internet are punished more severely, given the higher penetration of the Internet as a medium.

4.1 Positive measures encouraging the diversification of media content

As presented above, content regulation is quite present in the Romanian broadcast and relatively weak in the other forms of the media. The regulation is mostly done via legislation and, in the case of broadcasting, via co-regulation too. This makes the state and the authorities the main promoters of the diversity in broadcasting, at least at normative level and the European harmonization the main engine of such diversity.

The main stakeholder of such regulations was, for the most part of the last years, the Broadcast Council (CNA), even if the institution has not the right to initiate legislation itself. Though, being the main authority in broadcasting, CNA stayed closely linked to the European field and its European counter-parts, and made sure that the harmonization stayed the course. For example, Romania was the first EU country to transpose the AVMS Directive in the national legislation, even if leaving out any mentioning of the online services covered by the Directive.

As good as the situation may look from the legal point of view, the implementation of such generous and solid protections for the editorial freedom is far from good. More and more cases of editorial influence and, in some cases, direct intervention of the ownership in the editorial content are brought to the public. CNA has been busy sanctioning the misbalance in covering various political parties. For example, in the presidential election in 2009, all major TV channels broadcasting electoral materials have been fined for unbalanced coverage and unfair treatment of the candidates. Noteworthy, the TV stations continued to air unbalanced coverage

¹¹ Council of Europe, Convention on Cyber-crime, 2001, available at: <http://www.legi-internet.ro/legislatie-itc/conventii-internationale/conventia-privind-criminalitatea-informatica.html>, Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 2003 available at: <http://conventions.coe.int/treaty/en/Reports/Html/189.htm> (date accessed 22 October 2011).

after the first sanctions, sending a very clear message: it was not a mistake, it was a clearly, openly assumed editorial policy.

“CNA’s activity is overlooked and ignored. The fines we impose are many but small, they do not deter anybody.”

Interview with member of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/5/2011.

Besides granting the TV licences, CNA is supposed to control the way broadcasters are abiding by the programmes grids approved in the licence-granting process. The members of CNA that we interviewed pointed out another deficiency: the Council’s incapacity to follow up on the content proposals once accepted. The CNA structure was created in the early 2000s and remained the same although the media landscape changed a lot since then (there were not all-news TV stations in 2000, now there are four of them and two others are preparing to launch). CNA is supposed to oversee this market with only 13 people who monitor all TV stations in Romania. Therefore, its content control activity is neither coherent nor comprehensive. CNA mostly reacts when is notified or receives complaints. The sanctions that it can give go from fines to suspension of the broadcasting. CNA has been active in the last couple of years in enforcing the Broadcast Code. It sanctioned the violators and imposed fines, but once again they were small and have no deterrent effect.

Not only CNA members vote on whether or not to fine the broadcasters, but they also vote on the actual amount. As a result, flagrant violations of the law result in very small fines, depending on the balance of forces within CNA at the moment of the vote. As mentioned before, for some TV stations is more profitable to pay the fine than to comply with the law.

The issue of pluralism and the editorial freedom became even more relevant when scandals and traded accusations of editorial interference have been brought before the Council. CNA showed interest for what was happening inside the TV stations and tried to stop owners’ interventions in the editorial content. Some of these owners made no secret that they dictate who is to appear on TV and what positions the stations should express. A group of CNA members became more vocal in 2010 - 2011, trying to impose some equilibrium in the TV content (continually biased against the President Traian Băsescu because of the conflicts between Băsescu and most of the big media owners). An interesting legal debate started. Formally speaking, CNA interacts neither with the journalists nor with the owners as persons, but with the companies that own the licences. The law protects the broadcasters against interferences from outside, and CNA can only act when its counter-parts– meaning the broadcasters – complain about such interference. The law does not afford for any intervention when the pressures are exerted in house.

“Dan Voiculescu (a TV owner) called in a live show of his own TV station to rebuke the moderator for inviting a former Justice Minister in the show. And the moderator behaved OK and defended her guest. It was a brutal

intervention from the ownership, but at the CNA we faced a dilemma: to fine the moderator or the TV station?”

Interview with member of the National Broadcasting Council, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/5/2011.

“CNA creates confusion when it speaks about defending freedom of expression. The law is referring to the TV stations as such and CNA has nothing to do with what is happening inside the station.”

Interview with official of the Broadcasters Association, by Cristian Ghinea and Ioana Avădani, Bucharest, 5/4/2011.

On the other hand, NGO activists interpret the law as protecting the freedom of expression of journalists as individuals, as they should be protected against their employers. This point of view is also supported by the group of CNA members willing to involve the Council in protecting journalists against their owners. Anyway, this group is not numerous enough to sanction the TV stations on these issues. CNA organised public debates when journalists publicly complained about the owners’ interventions, inviting both journalists and representatives of TV stations. These hearings have not resulted in any sanctions, as the legal means of intervention for solving such cases were non-existent.

This situation has created frustration among a part of CNA members who sent an open letter to the Parliament saying that the Council has no legal means to fulfil its mission. The group was composed of the CNA members apparently closer to President Basescu and they were themselves attacked by the TV stations that were biased against Basescu. In response to these complaints, MP Raluca Turcan, the head of the Media Committee in the Chamber of Deputies, drafted a set of amendments to the Broadcast law that would significantly modify it. The major changes are:

1. A cumulative increase of fines for violating the same article of the law. In other words, instead of receiving small fines for similar violations of law, the broadcasters were to receive increasing fines if repeated the same type of offence.
2. It would introduce the concept of ‘censorship inside the newsroom’ (expressly exempted by the current legislation); and
3. It would transpose into law most of the provisions of the Audiovisual Code.¹²

Two are the most important consequences of the draft if adopted as such.

First, an external body – CNA – would have the right to examine editorial conflicts between journalists and editors or editors and owners. As we saw above, such a development is received with mixed feelings by the industry and the civil society.

¹² At the time of this report, the draft law was adopted by the Chamber of deputies and was waiting debates in the Senate, the decisional chamber. The form adopted by the Chamber of Deputies is available at: <http://webapp.senat.ro/pdf/11L401FC.pdf> (date accessed 12 October 2011).

Anyway, the CNA is an autonomous body, but its members are nominated by the political forces in the Parliament, the Prime Minister and the president, so they bear a political weight. If the law is passed in its current form, that would allow for the political factor to have a saying in the internal editorial disputes, so far reserved to the newsrooms, and, in few cases, to the professional bodies (if journalists addressed them). Allowing political appointees to act as referees in matters of editorial freedom seems to some members of the civil society very questionable, while others salute any kind of protection journalists may get from the part of regulator.

“I welcome the CNA's activism on this issue. The freedom of expression is a right of the human being, of each individual. There is no such thing like the freedom of expression for the TV stations.”

Interview with lawyer and NGO activist, by Cristian Ghinea and Ioana Avădani, Bucharest, 28/04/2011.

The second major consequence of the adoption of the draft as it is would be the transfer of provisions of the Audiovisual Code into the law per se. This move may not have practical consequences, as the Code's provisions were already opposable to the broadcasters and the CNA imposed fines were effective immediately. What would be lost in the process would be the very exercise of co-regulation. The Code has been negotiated extensively with the broadcasters, on the one hand, the NGOs with an interest in the freedom of the media and freedom of expression. It is the product of a long process which also resulted in trust-building and dialogue. Turning most of the Code into a law would deter any further self- or co-regulation attempts, as people would fear that whatever they agree as a good practice can soon be turned into a legal obligation. This effect goes right in the face of one of the provisions of the draft amendments that reads that CNA should “encourage coregulation and self-regulation in the audiovisual field”.

Moreover, the broadcasters and the NGOs have only a limited access to the debates in the Parliament, their presence there being subject to approvals and their speaking time limited. Thus, what was the result of negotiations and compromise among practitioners and experts can be amended by politicians on grounds others than the concern for the freedom of expression, pluralism and diversity.

The “absorbtion” of the provisions of the Broadcast Code into law made the draft bill to lose even the support of the CNA members that asked for the Parliament's intervention. Anyway, due to the broader political blockages that affected the Parliament in 2011, the bill is still pending.¹³ This story was relevant for the lack of communication between CNA and the Parliament, as well as between parliamentary bodies (both the Media Committee and the chairmanship of the Chamber belong to the ruling party). It also illustrated the danger inherent to any Parliament's attempt at ‘helping’ the media sector: an apparently benevolent change ended up in reducing the status of the CNA.

¹³ The Media Committee of the Chamber of Deputies debated it, inviting also the stakeholders and a series of changes have been brought to the initial draft. Still, as the plenum of the Chamber has not adopted the draft in due time (45 days), it was considered adopted tacitly in the initial form, and all the corrections brought by the broadcasters and freedom of speech NGOs were lost. The draft is now pending debates in the Senate. There is no time limit for the Senate to debate and adopt the law.

The decreasing quality of the media programmes, the degrading professional standards and the lack of effectiveness of the CNA remedies prompted several legal initiatives aimed, in the opinion of their authors, to contribute to a healthier media content and a more responsible conduct. Thus, only since Romania joined EU, there were 14 attempts at changing the broadcast legal framework, as follows:

- 2007 – three attempts, two adopted;
- 2008 – two attempts, both rejected;
- 2009 – three attempts, two adopted;
- 2010 - three attempts, all three pending;
- 2011 – three attempts, one withdrew by the author, two pending.

Most of them were minor, but some of them would have put an important pressure on the broadcasters. For example, one such draft has asked for all Romanian broadcasters to reserve 40% of their air time (excluding times dedicated to news, current affairs, debates, sports and advertising) to Romanian music, while another imposed a compulsory 120 minutes/week for cultural programmes for generalist broadcasters and a minimum of 30 minutes/week for the news channels. Yet another draft law asked for all the programs to be dubbed in Romanian (TV stations in Romania traditionally use subtitling, which is seen as one major aid in learning foreign languages).

The most important one, still pending debate, is the proposed set of amendments to the Audiovisual Law that would have required all publications – print or online – to get a licence for functioning and would have enabled the broadcast council CNA to monitor all the media content and sanction the violations of the law. In its philosophy, this proposal does not differ from the Hungarian media laws. But while the Hungarian laws have stirred a huge national and international outcry, the Romanian draft was at most laughed at, due to the poor legislative technique used in its drafting. The draft simply adds a couple of articles to the Broadcast law, without taking into consideration the changes of system that such a modification would attract.

Important to note, most of the modifications brought to the Broadcast law were meant to restrict the editorial freedom or the leeway of the broadcasters, imposing on them new obligations that would have translated in additional costs. We have witnessed a “piranha model”, where the body of a law, conceived as a policy instrument, overarching, coherent, predictable, harmonized with the EU *acquis* and resulting from a negotiation with a multitude of stakeholders tends to be, in time, chopped bit by bit by amendments that will restrict it and, in some cases, distort its meaning.

The same dynamics can be identified when analysing the Law of the public media services. Adopted in 1994, the law has been criticised by both the representatives of the two public broadcasters, politicians and NGOs. It is considered to be the root of the malfunctioning of the public television that had to suffer more political pressures, given the more visibility of the TV, as a medium. Adopted in 1994, the law has been amended repeatedly: two times in 1998, once in 2003, and two times in 2004. In 2005 there were 7 attempts, all rejected or withdrawn, and in 2006 – 6 attempts, all rejected. After joining EU, the law suffered the following attempts or amendments:

2007 – 2 attempts, all rejected;
2008 – 1 attempt, rejected;
2009 – 3 attempts, 1 rejected, 2 pending;
2010 – 2 attempts, one adopted, one pending;
2011 – one attempt, pending

Noteworthy, changing the PBS law was on the electoral agenda of all the parties in the 2004 elections, as well and on the ruling program of the Governments ever since. Still, all attempts at reforming the public institutions, focusing more on their public mandate and less on their control by the Parliament and political forces were met with a remarkable lack of political will, even when they were generated and led by MPs belonging to the ruling party.

“We cannot talk about policies, in Romania. We have actions. A policy means a system, a certain approach, an evolution aimed at a certain goal. We don’t have such a thing. We have our own style, the “fireman style.”

Interview with PBS, by Cristian Ghinea and Ioana Avădani, Bucharest, 9/2011.

With such a distorted media market and unruly commercial players, a well-constructed and appropriately funded public media system can easily emerge as the most secure source of balanced, fair and correct information for the public, a hub of pluralism and a platform for meaningful public debates. A recent survey shows that, despite the sustained accusations of political interference, the public opinion still perceives the public television as “objective”, “serious” and “reliable”, even if they prefer to watch the more spectacular commercial TV channels.

As one of the PBS interviewees pointed out, the paradox of Romanian media policy is that we have highly regulated (over-regulated, according to some) broadcasting, but no specific regulation for the print and Internet media. Still, there is no major difference in quality between TV on one hand and the press and the Internet on the other hand and if there is, it is due to the advantage of the less regulated media. This speaks volumes about a policy failure in fact: having a strict regulation and a state institution to oversee TV stations made no real difference in terms of quality of serving the public interest.

Media activity was positively impacted in 2001 by the adoption a freedom of information law (FOIA). Romanian Law followed a US inspired liberal model. The law defined as being of public interest any information produced, held or regarding a public institution, with limited and clear exceptions. Later on, the law was modified to explicitly cover not only public institutions but also state owned companies that ensure public services. The adoption of FOIA in Romania was often quoted as an example of good practice in cooperation between civil society and the state authorities. The bill was proposed by an NGO coalition and there was a positive competition between the Government and the Liberal Party (then in opposition) to promote and vote the bill in Parliament.

The law has produced some results and forced public institutions to communicate better with media and citizens. An entire chapter of the law is dedicated to the media's access to public information. It grants the journalists a privileged access to information (media requests should be answered on the spot, if possible or within 24 hours) and all the public bodies are held under the law to have a spokesperson and to have press conferences at least once a month. But the implementation proved to be more difficult than the law's promoters initially hoped. This clearly shows a structural problem: it is difficult to change an old, obtuse and corrupt administration just by introducing liberal laws. In fact, the governmental follow up and the allocation of resources for the implementation of the law was weak and incoherent. Right after the law was voted, NGOs supported its implementation by organising trainings or by opening case law suits against institutions reluctant to provide information. A lot of state institutions, both at the national and local level, have created special departments dedicated to public information. However, as time passed, the efforts have decreased. It is a real paradox that the access to public information is today weaker and more problematic than it was in the early 2000s. The government agency that was centralising statistics regarding the access to information and was providing training for other institutions became a victim of the budgetary cuts in 2009. Plenty officials have meanwhile discovered that the FOIA could offer sensitive information to the journalists and political opponents so they started using imaginative ways to disobey the law. There is a great difference between the way in which institutions treat the requests regarding general and statistical information, out of which the majority receives an answer, and the way in which they treat the requests for politically sensitive information, or the ones that bother the head of the institution. Of the latter category, most do not receive an answer and the institutions would rather go to court. This casts down the people from asking for information. Anyway, the journalists frown upon any attempt of going to court, as they desire to receive the information quickly and not to wait for the end of law suits that might take years. The incentive given to the people in order to sue the state for the access to information are very limited, as the courts rarely pay reparations. The Romanian judges, very much like their counterparts in the ECtHR, do not believe that the cases involving access to information are worthy of financial reparations. In exchange the costs of the trials are paid, which seems to have a perverse effect: some institutions hire very expensive law firms to represent them in court, even though their law departments could handle the cases. In these cases the danger that the one that went to court should pay very high trial costs in the event they lose is a further deterrent from using the FOIA as an instrument for public accountability.

“The trend of public transparency is going down. They care less and less about this. For instance, the governments stopped publishing the draft laws on its website, you have to wait now the final draft to be sent to the Parliament. The implementation of the FOIA is weaker as the time passes. The institutions abuse their power to declare some information as a job related secret and this is difficult to challenge in courts because you have to attack first the secretisation order.”

Interview with lawyer and NGO activist, by Cristian Ghinea and Ioana Avădani, Bucharest, 28/4/2011.

A step behind was marked, paradoxically enough, by the transposition of the Directive for the reuse of the public information, adopted by Romania in 2007 despite the fact that it had its own better pre-existent, which was more permissive for access to public information. If the Romanian law provides for an answer within a 10-day term, the European one allows the authorities 30 days before answering. The Romanian law does not allow the authorities to ask how the information requested will be used nor to charge for its release (just for the costs of multiplication of print materials). The transposed Directive introduces the concept of “re-use for commercial purposes” and gives the authorities the right to charge for the information. Even until today the two laws co-exist (even if they overlap on many aspects and conflict on some others), the one modelled after the Directive being virtually unknown not only to the public, but to state administration too.

4.2 Competing interests and legal restraints on content diversification

Apart from the special legislation, the media content is also subject to all the legal provisions regulating public communication, out of which the most important are the Civil Code and the penal Code. Recent changes¹⁴ in this type of legislation emphasise the importance given to the media and the strong defences in-built in the Codes against the media activities.

The Civil Code has a special chapter dedicated to the protection of the “Respect of the human being and its inherent rights”. Under this chapter, the first section deals with the “Respect of the privacy and the dignity of humans”. The Code consecrates the right to freedom of expression (art. 70), as well as the right to privacy (art. 71), human dignity (art. 72) and own image (art 73). Article 74 of the Code also lists a series of acts that can be construed as violations of privacy. Paragraph f) deals specifically with media activities: “*disseminating news, debates, investigations or reportages, in print or broadcast, regarding the private, personal and family life, without the prior accord of the person interested.*” Some other paragraphs also deal with “dissemination” of photo materials or video or audio recordings, but, with the advent of the new technologies, this type of dissemination is not solely reserved to the media.

As restrictive as it sounds, this chapter has two major defences for journalists. Article 75 makes it clear that shall not be punishable the deeds that are allowed by law or by the international conventions to which Romania is a signatory part. Also unpunishable are deemed the deeds resulting from “exercising in good faith and in the respect of the international pacts and conventions Romania is a signatory of.” These provisions may sound superfluous, but they are in fact a clear reference to the fact that the European Convention on Human Rights, as well as the deriving jurisprudence of the European Court of Human Rights, are to be used as a defence in such cases. All the same, article 76 offers a good guarantee for journalists, as it states that if somebody provides information to a person they know is working in public information, the accept for publishing that information is implicit. In other words, if somebody talks to a journalist that introduced themselves as journalist, their approval for publishing all information volunteered is implicit and there is no need for an expressed approval.

The violation of privacy is also an offence under the Criminal Code, art. 226.

¹⁴ The Civil and Penal Code were adopted in 2009. The Civil Code came into force as per October 1, 2011. The Penal Code is still pending. We will discuss their content as they will be the relevant legislation for the years ahead.

Violation of privacy (privacy in this case is restricted to somebody's house) is punishable by one to six months in prison or by penal fine. Disseminating the materials resulted from such a violation "to another person or to the public" attracts a prison term from 3 months to 2 years or a penal fine. This provision was also interpreted as being directed to the media, as the dissemination of materials is punished more severely than the violation per se. Still, the article includes a "public interest" defence, which exempts from prosecution "if the materials reveal acts of public interest, with significance for the community life and whose dissemination has advantages bigger than the harm brought to the person."

A similar protection is provided for the violation of correspondence (Art. 302 of the Penal Code), when again the dissemination of the materials resulted from a violation of mail or communication is bigger than the act per se.

Noteworthy, the initial drafts of the Codes were much tougher, had no public interest or good faith guarantees. The Civil Code also included a quite extensive section on the compulsory right to reply. The Codes were supposed to pass by Government decision, without any public or Parliamentary debate. Under the pressure of the civil society, a Parliamentary Commission was called for each of the Codes. The drafts have been amended during the debates within these parliamentary commissions, where NGOs asked to be allowed and presented their point of view.

"With all due respect, I do not think that the authors of the initial drafts of the Codes acted in good faith when it comes to freedom of expression. They chose to ignore Article 10 of the Convention for the sake of privacy, meaning the privacy of the politicians. These Codes seemed to be written against journalists."

Interview with NGO activist, by Cristian Ghinea and Ioana Avădani,
Bucharest, 11/2011.

As modernised as they are, the Codes are still behind the technologic development and make some provisions already obsolete. For example, the Civil Code provides for the possibility of "cessation of the illicit deed", which in the case of online media, cannot be effective. Even if the harmful material is withdrawn from one site, by judge's order, it can be replaced on servers outside the Romanian jurisdiction and thus the harm control is just virtual. But this type of issues are not specific only to Romania and the cross-border and international nature of the Internet makes legal solutions hard to find and even harder to implement.

Lawsuits against journalists became less and less numerous and most of them are filed under accusations of libel and defamation. In most of the cases signalled by the Active Watch – Media Monitoring Agency's "Freedom of Expression in Romania" 2010,¹⁵ the journalists won the cases against them, the Romanian courts complying with the practice of the European Court of Human Rights.

¹⁵ 'Freedom of Expression in Romania, 2010' (2010), pp 35, available at: <http://www.activewatch.ro/uploads/FreeEx%20Publicatii%20Press%20Freedom%20in%20Romania%20Report%20May%202011.pdf> (date accessed 20 October 2011).

Thus, in November 2011, the High Court of Cassation and Justice ruled in favour of journalist Mălin Bot of *Evenimentul Zilei*, who had been sued by the local businessman Stelica Malaiesteanu in 2006. The businessman had requested compensation amounting to Lei 500,000 (approx. 100,000 Euro), claiming that a series of articles written by the journalist, in which his aggressive and illegal way of conducting business had been described, had been detrimental to his image. The court dismissed the action.

Also in November 2011, the 3rd District Court of Law ruled in favour of journalist George Lăcătuș, sued by the National Agency for Integrity (ANI) for defamation, on the grounds of having made “undocumented and tendentious claims” against the institution, in an article. The text, published in the *România Liberă* newspaper in January, documented the fact that ANI had purchased electronic archiving services at a price of EUR 3 million from a firm initially considered ineligible to participate in the auction. The 3rd District Court of Law dismissed the application filed by ANI, considering it ungrounded. The following passage of the court’s motivation is illustrative: “upon reviewing the contents of the article published by the defendant, the court finds that it is not of an aggressive nature, but that it is quite balanced, containing information combined with personal deductions of the author, without, however, exceeding reasonable limits. Furthermore, the court finds that the defendant justified the terms he had used by a logical undertaking” and that “given the fact that the defendant showed good faith in drawing up and publishing said article, he took sufficient steps towards a correct information, twice requesting information from the plaintiff, as well as the fact that all personal deductions of the defendant are based upon a logical argumentation and upon factual elements, the court considers that his use of words such as <<dubious>> and <<evasive>> does not go beyond the limits of the press’ freedom of speech, regulated by article 10 of ECHR”. In its concluding statement, the court found that coercing the defendant, according to the action’s summaries, would represent interference in his freedom of speech, which was not necessary in a democratic society, as it did not correspond to an imperative social need, in the sense of the European Convention for Human Rights. Also, for all of the aforementioned considerations, the court noted that, by publishing the mentioned article, the defendant did not commit an illicit act; therefore his liability in tort couple not be entailed, thus the request filed by the plaintiff was to be dismissed, as ungrounded”.

5. The profession of journalism

The number of journalists in Romania is not known and can hardly be approximated, as there is no commonly accepted definition of who is a journalist. Several attempts have been to give a definition, but various factors prevented such a definition to gain an overarching support. The traditional definition links the “professional journalist” to their belonging to a newsroom and to the continuity of their remunerated activity on its behalf. The new technologies diluted both elements of such a definition that is no longer sufficient to encompass the new professions in the media and the new, more flexible forms of employment.

While one cannot count the Romanian journalists, one can count their associative forms such as organisations, associations and trade unions. The Convention of Media Organization lists 40 such associations.¹⁶ Many of them function at local level, some gather journalists sharing the same field (such as health, sports, environment, photojournalism), and some of them have a national vocation. Still, they have a rather weak public presence and their advocating and negotiating capacities vary greatly from organisation to organisation.

The most influential media organisation is MediaSind, the federation of the trade unions in the media, gathering both editorial and technical support employees. MediaSind is affiliated to the International Federation of Journalist. Gaining legal representativity (by affiliating itself to a representative trade unions’ confederation), MediaSind imposed itself as the negotiator of the collective work contract on behalf of the employees.

Paradoxically enough, the journalist’s trade unions were stronger and better connected than the owners’ association, which resulted in a quite unbalanced work contract, very favorable apparently for journalists, but virtually unenforceable.

“The collective work contract is badly done. Some live with the impression that it is good for them, but they are wrong. Anyway, Mediasind negotiated with an organisation of owners with no relevant presence in the media field. Hence the need to create a strong owners’ organisation.”

Interview with former media manager, by Cristian Ghinea and Ioana Avădani, Bucharest, 8/4/2011.

The collective work contract imposes a minimum wage for journalists, additional payments for the extra hours or for weekend working hours, and free time compensation. More importantly, it enshrines the editorial independence and recognises for the media workers the “clause of conscience” that allows journalists either not to write against their personal convictions or to leave a company with impunity if the editorial line changes dramatically. Moreover, this contract has as an annex a Code of Conduct that, if properly enforced, would allow the journalists to

¹⁶ Convention of Media Associations (Conventia Organizatiilor de Media, COM) is an informal platform for common action of media organisations – professional associations, trade unions, owners’ associations, available at: <http://www.organizatiimedia.ro/index.php?p=1> (date accessed 6 November 2011). COM is coordinated by the Center for Independent Journalism and the Active Watch – Media Monitoring Agency.

conduct their work based on their professional standards and at bay of any political and extra-editorial influences.

At the time this contract has been negotiated, the owners of the big media conglomerates were not organised in patronal structures, therefore they could not officially participate in the negotiations (the Romanian labor laws allow only for organisations registered officially as trade unions and patronal associations to conduct such negotiations). Hence the frustration of the big players on the market – and their move to create their own patronal association.¹⁷

However favourable to journalists, the collective work contract is virtually unknown to many of them and virtually unenforced in most of the media companies. Still, MediaSind managed to prevail in a series of cases in favor of journalists against big media companies, thus proving its efficiency and usefulness. Thus, the trade unions supported the journalists at Realitatea TV to obtain their overdue salaries and other patrimonial rights. They also assisted the journalists in Galati working with local edition of Adevarul de Seara and with Cronica Romana (Bucharest). Mediasind has also led a sustained campaign against what they call the abuses and the “slavery” in the National Press Agency “Agerpres”. The work contracts have been invoked also in the cases of journalists fired from the public TV and from “Romania Libera” daily newspaper. In all these cases, the courts ruled in favour of the journalists who have been re-employed and financially compensated.

New labour legislation looks likely to dissolve this advantage of the journalists over the owners. In the summer of 2011, Romania changed completely all the laws that govern the social dialogue, including the Labour Code and the Law on social dialogue. These laws abrogate, among others, the trade unions law, the patronal laws and the law on the collective work contracts. Thus, the whole social dialogue has to be reshaped. Both the Labour Code and the Law on Social Dialogue have been passed without parliamentary debate, as the Government used the shortcut of “assuming the political responsibility”.¹⁸ The new labour framework gives a new blow to the trade unions and owners in mass media. Up to now, the mass media was recognised as an economic sector per se and the negotiations were hold among trade unions and owners active in this branch. The new arrangements may include mass media in the “communications” sector, together with the communications operators. Thus, the media trade unions would be in the position to negotiate the work contract with the owners of big mobile and Internet companies, with only too predictable results. In another yet work version, the “branch” would also include “culture”, which would bring to the negotiations table the unions of artists and the state authorities that manages cultural organisations such as museums, libraries and theatres.

“It’s a terrible blow for us. On TV, the politicians fought against the “moguls” in the media, crying crocodile tears for the fate of poor journalists. Now they throw us to even big sharks. What kind of protection is this?”

¹⁷ The Patronal Association of the Romanian Press (Patronatul Presei Romane) was created in December 2009.

¹⁸ Under this procedure, the laws for which the Government assumes the responsibility are not debated, but the opponents can initiate a censorship motion. If the motions passes, the Governments resigns. If not, the law is considered adopted as such.

Interview with media trade union leader, by Cristian Ghinea and Ioana Avădani, Bucharest, 09.2011

In January 2011, the Collective work contract for the mass-media industry was extended without any changes for two additional years, which buys both journalists and media owners time to coordinate their moves and find a common solution to oppose the moves that would put everybody in a disadvantageous situation.

This new development can increase the dependency of the journalists from their owners. The journalistic profession has been already badly hit by the crisis in the last three years. Jobs have been lost (a Mediasind report puts the figure at 6,000 by 2010), titles disappeared and publications have been “slimmed down”. According to some media managers the advertising figures went down by 70 per cent.

“You cannot prepare for this. You are a good manager, you save a margin of 30 % of your revenues and you hope you’ll get through. But how can you survive a decrease of 70 per cent? How can one dream about preserving the same quality of journalism with just one third of the money left?”

Interview with *local media manager*, by Cristian Ghinea and Ioana Avădani, Craiova, 3/2011

This immense economic pressure affected both the big and small companies, the local as well as the national ones. The survival strategies included lay-offs, cuts in the wages (in some cases as severe as to down the minimal national wage), reducing the air time or the number of pages. As a result the information available to the public via the traditional media is less and of a poorer quality. At the same time, there are a number of good, experienced journalists unemployed or who chose to go freelance rather than work in these conditions. As the media seems to prefer to work with temp juniors (for their low salaries and low expectations in terms of work conditions, including editorial freedom), the employment future of such valuable journalists seems uncertain and their return to the media – questionable. Their experience and time-consolidated standards risk to be lost to the media community, as the newsroom-based accountability systems, that may secure the passing on of the professionals standards when generations change, are virtually non-existent.

The decrease of the advertising funds made the media outlets more vulnerable to economic pressures from their advertisers – private or state-owned. Therefore, as part of their “survival strategies”, some media outlets allowed their advertisers to dictate their editorial content or sweetened the tone of their reporting of the local authorities. A report produced by the Center for Independent Journalism in 2009 showed an increase in the unruly use of state advertising contracts (including – and especially of – the European contracts) for supporting “friendly” media. Some of these contracts explicitly included “buying news” favourable to governmental actors.

The situation is complicated by the close relations between the media owners, the public authorities and the business field, especially in the provinces. As a result, there is an overspreading public opinion that “all media belong to somebody” and that independent journalism is no longer possible.

This downbeat approach to media was fuelled also by the public discourse in Romania, who demonised indiscriminately “media” and “journalists”. One important vector of such a speech was the President Traian Basescu, reputed for his attacks against the media and journalists. His lead was followed by many other political actors, whose deprecating assertions contributed to the erosion of the social status of journalists.

“We are more free than ever, we can write whatever we want. They didn’t even bother to sue us anymore. We simply do not count.”

Interview with local journalist in Hunedoara County, in a focus group organized by CIJ, by Cristian Ghinea and Ioana Avdăanei, Deva, 14/3/2011.

Such a low morale conducted to a further erosion of the interest for ethics, good practices and self-regulation in general. These issues are one time too often regarded as “seminar stuff”, “ridiculous concerns”, “a theoretical approach with no concrete link with the reality” and irrelevant in times of crisis when “jobs have to be saved”. Against this no combat attitude on the part of the journalists, the “offensive” of the supporters of the regulation by law are understandable and have chances of success, passing as acceptable in the eyes of the public.

Quite predictable, the public reacted to both the crisis and the decreasing quantity and quality of the information and entertainment provided by traditional media. The circulation of newspapers as well as the TV viewers continued to decrease, while the number of the Internet consumers increased steadily. The trend was fuelled by the high speed Internet available, Romania raking a high second in a world top of broadband speed.¹⁹ The number of Internet users stays at 7,7 million, out of a population of 21 million.²⁰ As a result, the number of Internet sites multiplied rapidly, as well as the sources of information.

According to domestic studies,²¹ the Romanian Internet is dominated by women (53 % of the users), and by youth: 20-24 age bracket (22 percent), 25-29 age bracket (16 percent), the 30-34 age bracket (14 per cent). Regarding Internet consumption habits, Romanian users log on at least once a day (90 percent), most of the time from their homes (90 percent) and from work (34 percent). When surfing the web, the attention of both sexes is directed in 72 percent of cases towards online newspapers or magazines, online communities - 53 percent, job sites - 43 percent and auto sites - 31 percent. While offline, the Romanian user is interested in fields such as medicine, health and eating (46 percent), followed by Romanian news and current events (45 percent), family and couple life (37 percent), tourism and travelling (40

¹⁹ According to Business Club News, ‘Internet speeds in UK and US “slower than Latvia and Romania”’, 22 September 2011, available at: <http://www.businesscloudnews.com/cdn/570-internet-speeds-in-uk-and-us-qlower-than-romaniaq.html> (date accessed 3 December 2011).

²⁰ According to Internet World Stat, the (still) unofficial results of the census conducted at the end of October 2011 indicate a population of 19,5 million, available at: <http://www.internetworldstats.com/eu/ro.htm> (date accessed 14 October 2011).

²¹ A survey conducted by traffic.ro in 2010. Quoted by Doing Business.ro, ‘Women dominate Romanian internet usage’, 3 August 2010, available at: <http://www.doingbusiness.ro/stiri-afaceri/17948/women-dominate-romanian-internet-usage> (date accessed 6 November 2011).

percent). Among the respondents to the survey, the web surfing (70 percent) is the most enjoyable past time activity, slightly higher than TV watching TV (60 percent).

With this generic user's profile, no wonder than the online media in Romania developed quickly, bringing to their users not only news in almost-real time, but also the gratification of a personalised news consumption and the possibility of interactivity. The traditional media were a bit slow in catching up with the wave and even now there are publications and broadcasters who stick to the "print first" or "screen first" policies, neglecting the need-for-speed of the Internet users.

The speed and the virtually omnipresence of the Internet (especially on mobile devices) forced the traditional media to adjust on the go. The journalism schools were not up to the task and have not provided the media labour market with qualified work force. The multi-media courses are few and far apart and journalists have to adapt to the news skills and new rhythms nobody prepared them for.

"I interviewed 200 young candidates for jobs for our online publication. I told them that I have only one requirement: nobody works less than I do. No more, just as much as I do. On some days, this may be 16 hours a day. Only 3 of them stayed."

Interview with the editor in chief of an online publication, by Cristian Ghinea and Ioana Avădani, Bucharest, 20/10/2011

The speed of the Internet information put a huge (and sometimes artificial) pressure on the traditional media, who tried to keep up the pace, instead of trying to redefine their content policy and offer added-value journalistic products. The Internet is largely used as reference ("why don't we have this story in our programme/paper?"), a measuring stick (journalists are judged by the number of the hits their posted articles collect rather than by the quality and the social relevance of their work) and an endless source for (falsely) royalties free materials. It is not uncommon to see TV channels broadcasting short movies taken from YouTube (and indicating YouTube as a "source") or pictures from Facebook. On some spectacular occasions, traditional media re-run such materials without performing a minimal double-checking, falling victims to intoxications or nasty pranks.

A new breed of opinion leaders is coming up: the bloggers. Some of them became influential enough so that the advertisers offered them lucrative contracts. The PR agencies developed special activities aimed at bloggers on behalf of their clients. Hidden advertising and product placement, prohibited by law or strictly regulated for the traditional media, are flourishing in the online environment, via blogs and social media accounts. It is probably interesting to note that the big PR and advertising companies are applying to the Internet products the same strategy they did with tabloid newspapers (large circulation, poor quality), thus furthering questionable techniques such as advertorials "masked" as real reporting, teasing campaign masked as real testimonials, etc. While such controversial practices could have been contained and sanctioned in the "organised" world of the traditional media, the individual nature of the blogs makes any regulation attempt futile and any expectation of self-regulation unrealistic.

The new technologies pose a challenge even for the quite formalised labour market developed under EU regulations. Professional qualifications obtained outside the formal education are subject to a process of “recognition” managed by a governmental unit in charge of adult’s formation, the Adults’ Professional Training National Board. This body is managing all the professional standards listing the abilities required for all and each recognised profession in Romania. In the last two years (2009-2010), the Board developed just one standard related to online journalism: multimedia editor.²² Such standards are important, as they are the base for the formation and training, as well as the legal ground for people who seek work as individual contractors in a given profession. For freelance journalists, the lack of such “official standards” can turn into an impediment to find contracts and be paid legally for their work. On the other hand, when these standards will be in force, the freelancer may be required to go to an “accreditation center” to obtain a certificate attesting their skills. Such a mechanism can easily turn into a mechanism of accreditation of journalists, rejected by the media community and avoided over the last 20 years.

Thus, a mechanism put in place to facilitate the free circulation of the work force across the European market turns into a restrictive tool for journalists and brings uncalled for limitations to the freedom of expression and the free practice of journalism.

²² FREEEX Report, 2010, p. 58, available at: <http://www.activewatch.ro/uploads/FreeEx%20Publicatii%20/Press%20Freedom%20in%20Romania%20Report%20May%202011.pdf> (date accessed 6 November 2011).

6. Media literacy and transparency requirements

Despite the considerable dimensions of the media field and its puzzling complexity, deciphering media and critically receiving them is not a preoccupation for the state authorities or for the formal education system. There are no permanent state-sponsored programmes to this avail and the only advancement relays on the efforts of media-related NGOs and, to some extent, on some media companies.

The most consistent efforts are those of Active Watch – Media Monitoring Academy who have developed a multi-year program aimed at training the teachers willing to teach media literacy courses (as optional classes or extra-curricular activities), producing teaching aids and materials aimed at increasing the use of the media in class room activities.²³

Similarly, the courses for high school students run by the Center for Independent Journalism use a newsroom-like environment to teach kids about information, the people's right to know, and the responsibilities of the media. Such exercises familiarise the participants with what it takes to be a reporter, a photojournalist or an editor, thus increasing the social respect for the profession.

These projects are funded with grants from EU programs and from local foundations, but no public money has been invested in them

Several media outlets organised summer journalism classes or open their pages or air time for productions of the young people, as part of hands-on education. Similarly, several newsrooms across the country held introductory media courses for “citizen journalists” contributing to their user-generated content sections.

Another form of media literacy is the “behind the doors” programs aired by some television outlets, describing how a certain story has been developed and why certain editorial decisions have been made. A handful of newspapers publish regularly columns to the same avail.

In a recent development, the public television initiated a project to reformulate its public mandate and to bring its activities closer to the public. Media literacy events are part of this project, but the concrete plans were not unveiled yet.

The only way media literacy is present in schools is via the optional courses or the extracurricular activities. Although they are subject to the approval of the school management and education authorities, such courses are the initiative of individual professors – and they can be approved or not.

Despite the spread indifference to media literacy courses, many schools have their own publications and contests for the best school publication are organised regularly. These publications are rarely of a hard-journalistic type. They host mostly interviews with the school management of professors, soft (and positive) news about the school, games, books and films reviews, papers presented in seminars and conferences, poetry, etc. Such publications do not encourage social engagement, critical thinking and definitively not a critical approach to the educational system or the school itself. There were cases when pupils have been reprimanded for publishing as much as a “Top of the nicest teachers” or even expelled from school for publishing a photo of pupils smoking on the school's premises. The media are considered by and large as a bad influence on the young generations, promoting false models, spoiling

²³ Details at: <http://www.activewatch.ro/Cercetare-si-Educatie-Media> (in Romanian).

the traditional values and offering cheap (in both senses of the word) entertainment. The lack of interest for the media literacy is not outside the general framework of the Romanian curricula. The civic education courses, that should equip the young people with the basic knowledge of human rights and educate them into the spirit of participatory democracy are delivered only in secondary school (kids age 13-14), but not at a later age, closer to the moment of their social and political insertion (voting age is 18).

The treatment the new media gets is not much different, as most of the school activities in this respect are concentrated on either formal and dry lessons of programming or on activities meant to raise the young's awareness of the dangers that the Internet can hide, not on its educational, informative and social role. Though, the tolerance to the Internet as a medium is bigger: many young teachers develop educational software and use new technologies in class to support their teaching.

Despite the bad image of the media in the formal education system and the little media literacy the young are exposed to, journalism is one of the most coveted professions in Romania. For example, in 2010, the University in Cluj registered eleven candidates for each available place in the Journalism Department. In Bucharest, over 6 candidates per place were registered in 2011, when only half of the high school graduates passed the final exam and could apply to universities.

7. Conclusion

1. The Romanian media environment is populous, vivid, agglomerated and has a tendency to agglutinate around big media players, most of them private. The development of the market has been organic and spontaneous rather than planned and strategized. Media policies are mostly at legal level, which enforces the state's position as a gate keeper on a market populated by private entities.
2. The legal framework regulating the functioning of the Romanian media allows for the necessary protections for freedom of speech and press freedom, duly balanced with other important constitutional values such as privacy and human dignity. There are almost continuous attempts at narrowing the press freedom, propelled mostly by personal or group dissatisfaction with some media conduct or journalistic exposure, but most of these initiatives die in the adoption process, under the pressure of the organizations of the civil society.
3. While enjoying satisfactory constitutional and legal protection, freedom of the media seems to become a less and less social value. Attack against journalists (including physical ones), harassment of media professionals, censorship accusations do not stir public outcry. The media learned to make such instances public and even exploit them in their own benefit (tuning them into spectacular news). Still, the opinion that media exceeded their allowed freedom and that the state should intervene to put things "in order" is getting more and more prevalence among the politicians, as well as the members of the general public.
4. Freedom of expression and press freedom are more and more enforced by the courts, who rule in the light of the ECHR and the rulings of the European Court of Human Rights. The modernization of the legislation and the elimination of obsolete penal crimes such as insult and calumny cleared the air and increased the freedom guarantees of journalists. Still, the heavy accent put on privacy issues by the recently adopted Romanian civil and penal legislation may indicate that the number of law suits on these grounds may increase.
5. The Romanian legislation regulating the activity of mass media allows for or even invites to self-regulation as an acceptable, legitimate alternative to settlement through law and court. It is only too bad that such opportunity has been lost on Romanian media, who did not manage to enforce reliable, credible and publicly respected self-regulatory mechanisms. Attempts at self-regulation have been feeble, insincere or ineffective.
6. The Romanian media market is dominated by television, which is seen as a regular source of information for the overwhelming majority of the public. Print circulation is going down, while radio market is almost insignificant in terms of revenues. Online is on the rise, both in terms of consumption and advertising budgets. Still, both legally and in practice the activity of online publications is not automatically assimilated to journalism and some bloggers had difficulties in accessing Parliamentary proceedings.
7. Entrance to the media market is free and it is limited only by the economic powers of the interested investors. Romania kept steadily over the years its liberal approach to the market entrance, which allowed for the market to flourish and the media companies to mushroom. But this approach also resulted in a multitude of small, vulnerable actors that adopted various survival strategies, such as affiliation

to big networks or trading of editorial content for economic advantages. In both cases, the editorial freedom had to suffer.

8. Media concentration and the abuse of the power to influence the public opinion have been topics for heated public debates with heavy political connotations. The President and some of the big media owners are in overt disputes which managed to influence some media policies mainly related to control of editorial content. Still, important legitimate controlling tools such as transparency of ownership rules, cross-ownership limitations and transparency of funds invested in media have never been initiated or used, raising doubts regarding the real reasons behind these disputes.
9. The public media is dominated by the public radio and television, while the national news agency has a lower profile. The three institutions have not completed the transition from “state” media companies to “public” as their mandates, functioning and management are still suffering from lack of clarity or from political dependencies. The successive governments showed a lack of political will to change the legislation that allows a direct control of the public radio and TV, despite promises to foster reforms. Maintaining untouched the possibility to dismiss the board by rejecting the activity report in the Parliament weakens all attempts at independence of the public media leadership.
10. Access to profession is free and unconditional. No special licensing or study levels are required to work as a journalist. This policy allowed many people coming from various walks of life to join the profession, bringing with them a variety of skills. In the mean while, journalism seen as a vocational profession allowed unqualified and unprepared persons to work as journalists, which eroded the quality of the profession, as well as its social status. Skills and experience are not necessary an asset in the newsrooms and it is not rare to see seasoned professionals leaving their jobs and the profession, accusing a burn out syndrome.
11. Organized forms of associations are more frequent among the journalists than among media owners or managers. Journalists and media workers trade unions gained representatively and were able to impact the relationship between employees and employers by negotiating a collective work contract that favors the employees. Moreover, the trade unions also managed to impose the application of the contract’s provisions in court or using the leverage of the state authorities. Although displeased by the negotiated contract, the owners of the big media company have not been able up to now to impose their views and re-negotiate it.
12. In general, all the “traditional” actors – the state, the autonomous regulators, the industry, the profession, the specialized NGOs, the public - are active in negotiating the policies affecting the media functioning, but their effectiveness varies from case to case. Also, the result of such negotiations varies based on the equilibrium of forces active around a certain topic. The ideal solution would be for all the actors to have their interest represented and respected in all policy decision. In reality, the solutions reflect the capacity of various actors to impact the policy making at a certain moment. Most of the times, the state has the upper hand in making or not making a decision and it tends to do so without consulting the other actors, in a traditionally paternalistic “state-knows-better” manner. No real democratic mechanism can be instated and function unless all the stakeholders develop comparable advocacy skills and are given/allowed/offered equal space for expressing themselves. Until then, the media policy in Romania will remain the

result of virtually no long term strategic planning, limited interactions, knee-jerk reactions, a tendency to over-regulate by law and the influence of informal conduct of the people in power positions affected by a deficit of democratic understanding.

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9. List of interviews

Alexandru Lăzescu, general director of the Romanian public television, March 2011, Bucharest
Georgiana Iorgulescu, director of the Center for Legal Resources, April 2011, Bucharest
George Chiriță, executive director, Romanian Association of Broadcasters, April 2011, Bucharest
Răzvan Cornățeanu, former manager Ringier România and Adevărul Holding, April 2011, Bucharest
Christian Mititelu, member of the Broadcasting Council (CNA), April 2011, Bucharest
Gelu Trandafir, member of the Broadcasting Council (CNA), May 2011, Bucharest
Bogdan Chirițoiu, president of the Competition Council, 24 March 2011, Bucharest
Cezar Ion, president of the Association of the Romanian Journalists, April 2011
Demeter Andras, General Director, Romanian Public Radio, September 2011
Adrian Voinea, Director, Gazeta de Sud, March 2011
Florin Negrutiu, editor in chief, Gandul online, October 2011
Mircea Toma, president, Active Watch - Media Monitoring Agency, November 2011
Cristi Godinac, President, MEDIASIND, Federation of Trade Unions of Journalists and Printing Workers, September 2011

10. List of discussion groups

Two discussion groups with journalists and editors from local newspapers:

Deva, Hunedoara County, March 2011

Galati, Galati County, April 2011