



Case study report

Does media policy promote media freedom and independence?
The case of Spain

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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

Several factors compromise media freedom and independence in Spain. These factors are related to dependencies both on the political powers and on private interests. The Spanish media system is characterised by a strong link between the media and the political system. The media in general align with one political option or another, and the public understands this logic and acts accordingly by choosing the medium that fits in best with each individual's ideology. Moreover, political actors have traditionally shaped media policy, although now private interests of various types influence the process.

Political parties are the main category of political actors involved in media policy framing and implementation, through their representation in Parliaments and/or when they participate in Governments. The use of the plural in Parliaments and in Governments reflects the Spanish political reality, i.e. the fact that it is a territorially decentralised country where seventeen regional Parliaments and Governments can potentially adopt measures on media policy, including for instance the creation of their own public television stations. Since political parties play a relevant role in media policies, a shift in this area may well occur soon. This is because the general elections on 20 November 2011 have led to a new majority of the People's Party in the Spanish Parliament, only a few months after the regional elections (22 May 2011) overwhelmingly placed this party in the Government of almost all the regional Autonomous Communities in Spain. This is the first time in the history of the Spanish democracy that all levels of power are occupied by one and the same political party.

Other institutional actors, such as regulators and courts, are crucial for the development of media policies, as they are the bodies in charge of implementing regulation and in some cases also public policy documents. They strike balances between the freedoms of expression and information vis-à-vis other freedoms, rights and interests. Nevertheless, the freedoms of expression and information are not, by any means, the main values in Spanish media policies. Power relationships underlie all measures adopted in this field. However, it is true that other values are considered, such as cultural diversity, pluralism of information and free access to and transparency in the use of telecommunications.

Telecommunications are still regarded mainly from a mere technological perspective and no clear pattern regarding the Internet as a communications medium can be identified. Media convergence in Spain has not been clearly addressed in Spanish media policies. One of the conditions for media convergence to succeed in practice is that users should know how to deal with this new reality. Therefore, media literacy becomes necessary, also from the perspective of media freedom and independence. The media are increasingly dependent, as stated above, on private interests. It is said that today they follow a business-based logic to the detriment of pure informational logic. In order to assess the degree of freedom and independence of the media in relation to private interests, transparency regarding ownership of these media is vital. This is where media literacy can also be useful, as policies on this area can provide the tools for citizens to become critical and actively participate in control of the media.

All media, television, radio and the press, are now facing difficult moments due to the economic situation and also due to technological developments, which has consequences on the quality of information and, thus, on the quality of democracy. Self-regulation, co-regulation and classical regulation are strategies for dealing with this from different perspectives: whereas classical regulation is usually the tool for structural measures, self-regulation and co-regulation are developing as mechanisms for addressing media contents. As a consequence, it is only logical

that a detailed analysis of these instruments be conducted, so as to assess their potential for stimulating media policy, in particular with regard to media freedom and independence.

1. Introduction¹

If a Spanish citizen is asked whether he or she considers the media in Spain to be free and independent, most probably the answer will be no.² Yet the grounds for that answer are far from being unanimously agreed upon or based on a single premise. Some may link “independence” to a space free from the inherence of public power, whereas others may well think that private stakeholders, rather than public ones, jeopardise independence. Finally, there will also be a group that is simply critical in general terms towards the media and their role in today’s society, so their response could be considered a consequence of their generally critical attitude.

There are no complete and reliable data on the perceptions of Spanish citizens regarding the independence and freedom of the media.³ What researchers and other interested persons can find are thorough data related to media and channels preferences, which is useful for purposes such as advertising. Interestingly, these data show for instance that - in the realm of television - the main public service broadcaster (PSB) channel, *Televisión Española 1*, is the one preferred in Spain and also that it is considered the one that most satisfactorily addresses social questions and has the highest commitment to society.⁴ A majority of television viewers agree on the fact that the nationwide PSB⁵ is of reasonable or high quality⁶ and, asked about the features that make television a quality product, they place neutrality and impartiality of information in only fourth place, after education/training, entertainment/fun and originality/innovation/creation.⁷ They also answer that the PSB is the one that addresses information in a neutral and impartial way.⁸

Clearly, neutrality and impartiality of information do not cover the whole content of free and independent media, but they constitute the only element out of the

¹ The authors would like to thank the colleagues who have read and commented on the draft of the report, in particular Emilio Guichot, Juan Luis Manfredi and Saturnina Moreno.

² Spanish citizens are aware of mass media partisanship and this gives rise to disaffection and loss of confidence in said media, especially the traditional ones, such as classical dailies or major television broadcasters (Fundación Alternativas, 2010: 8 and 220). Also, there is a widespread assumption that communication systems do not follow public interests, but the strategies of political parties. Slowly, citizens also seem to become aware of the weight economic groups have on media freedom and independence.

³ The Centre of Sociological Research (*Centro de Investigaciones Sociológicas*: CIS), which carries out official issues enquiries and is supported by the Government, periodically launches a Barometer, in order to measure certain political, social and economic indicators. Only rarely have the media been the focus of specific questions, one exception being the Barometer for May 2010, mentioned in the following footnotes.

⁴ Various sources point this out. See, among others, the enquiry carried out by the CIS in May 2010, *Barómetro de Mayo 2010*, study number 2.836, http://www.cis.es/cis/opencms/-Archivos/Marginales/2820_2839/2836/es2836.pdf (last accessed 5 December 2011), questions no. 12, p. 14, and no. 19, p. 25. Tradition could play an important role here, as for many years the PSB was the only one to provide television channels in Spain and audiences are still highly loyal to the former monopoly.

⁵ There are also public broadcasters in some regions (*Autonomous Communities*). On this, see S. De la Sierra (et al.), *Background Information Report (BIR), Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Spain*, October 2010, <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/BIR.pdf>, p. 389, 400 and 401 (last accessed 5 December 2011).

⁶ CIS, *Barómetro de Mayo 2010*, question no. 14, p. 16.

⁷ CIS, *Barómetro de Mayo 2010*, question no. 15, p. 17.

⁸ CIS, *Barómetro de Mayo 2010*, question no. 20, p. 27. 23.4% of viewers share this opinion, whereas second in the list comes a private operator, *Antena 3*, with 11.9%.

public enquiries that can be linked to this debate. Public opinion, as we have seen, does not generally support the idea that the Spanish media are completely free and independent. Yes this does not seem to cause much concern and the debate is not in the public arena. There is no clear political will concerning the definition of free and independent media and, more importantly, regarding the possibilities of public policies to deal with this question and act accordingly. There seems to be a vacuum both from a policy point of view and from a public opinion perspective. No will, no clear opinion, no definition. The main purpose of this paper is precisely to try and ascertain who, if anyone at all, contributes to the definition and, directly or indirectly, to the framing of public policies.

The definition of free and independent media is elusive as it was put forward in MEDIADEM's first European Policy Brief (EPB).⁹ Indeed, two meanings, at least, of independence can be identified: one connected to public power and the other related to private forces. Both pose problems in Spain, but on different levels. On the one hand, in relation to the first perspective (media and public power), it should be noted here that liberal conceptions of media freedom and independence, which focus on editorial freedom from government influence, could indeed be considered a classical approach by courts both national and supranational.¹⁰ This is, indeed, the classical approach in Spain, and the Constitution includes a specific prohibition of prior censorship in Article 20.2. This provision was included in order to avoid practices that had been common under the dictatorship. There is no absolute right to freedom of expression and information: courts need to strike balances, as occurs in other areas, and the Constitution itself sets some limits thereto (Vázquez Alonso, 2011: 29). New approaches suggest that modern conceptions of the relationship between public power and the media have emerged. Regulation can indeed be considered a limit to media freedom and independence under certain circumstances.¹¹ Yet public intervention is desired and, in some cases, constitutionally required, to protect other rights and freedoms, such as children's rights, and also to protect precisely freedom of information. Intervention can take place through regulation, through public aids to the media, and through public policies on media literacy, to name just a few.

On the other hand, public intervention is needed in some cases to counterbalance the effects of private interests on media freedom and independence, as the latter can be compromised by various means. Media ownership and the continuous demand for finance and information are two categories of the analysis. Regarding media ownership, for instance, the recent situation in Spain is somewhat paradoxical. The General Statute on Audiovisual Communication (hereinafter,

⁹ See First MEDIADEM policy brief (EPB), p. 2, to be found under <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/Policy-brief1.pdf> (last accessed 5 December 2011). The first EPB is based on a more thorough research study, namely D. Anagnostou /R. Craufurd-Smith/E. Psychogiopoulou, *The formation and implementation of national media policies in Europe and their relationship to democratic society and media freedom and independence: A theoretical and analytical frame for the MEDIADEM project*, October 2010, <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/theoretical-report.pdf> (last accessed 5 December 2011).

¹⁰ EPB, p. 2.

¹¹ This was, for instance, the opinion of two freelance journalists interviewed [Interview no. 17], who endorsed the classical opinion that no regulation is the best of regulations. They further noted that there is never an ideal regulation and thus they might imply that this justifies the former opinion.

LGCA¹²) has allegedly liberalised the market, but in practice it has led to more concentration, as will be explained later on.

It is not only the freedom and independence of television that may be affected. Other media may suffer the same evil and all under one and the same heading: advertising, i.e. a specific and very important source of financing. Corporations well-known for their generous advertising campaigns, which clearly benefit media budgets, are suspiciously never the object of reporting in the media. Self-censorship, of which this behaviour is just one example, is a key to understanding modern dangers for media freedom and independence. Moreover, the media could be impelled to introduce contents which in principle they would not have included (e.g. newspapers incorporating news on fashion), only because they want to reach a certain audience which is favourable to certain advertisements.

Financing can therefore be a source of lack of freedom and independence, inasmuch as it could imply a sense of loyalty on the part of a specific media outlet towards the financing source. Advertising and sponsorship has already been discussed. State aids also come under scrutiny here, bearing in mind that these do not only include direct state aids, but also indirect ones, such as tax relief or any other type of particularly beneficial taxation system. Interestingly, the Internet has kept out of all the aforementioned debates so far. Public discussions on the Internet relate mainly to intellectual property issues and net neutrality. Convergence is thus absent from Spanish public policies, with some minor exceptions that will be analysed in this text.

In the following lines, the questions above will be canvassed in detail. Firstly, the landscape of actors involved in the framing of media policy and implementation will be presented, focusing mainly on the internal, subtle and not always easy-to-identify dynamics that lead to the adoption of norms and political measures. This has consequences on the structure of the media market (remember the result of the LGCA concerning concentration of broadcasters), on contents (why certain contents are not included or, conversely, are included in the agenda “too much”), on the journalistic profession (what lies behind recent movements that foster professional associations whereas certain journalists’ associations are bluntly against this) or other questions such as media literacy and transparency (what are the inputs for the policies in question). As a result, it will become clear that public powers are still too passive concerning the protection of media freedom and independence, and policy recommendations are therefore necessary.

¹² Statute 7/2010, of 31 March 2010, *General de la Comunicación Audiovisual*.

2. Actors and values of media policy

We could argue that the Spanish media policy has been determined over time by power relationships, rather than by the democratic principles of freedom of expression and information established by the Constitution. Clearly this does not imply that those freedoms have been absent from media policies, but it does suggest that they cannot be considered policy drivers. In the processes of decision-making and implementation of media policies in Spain, we can observe the end of a path that has led to a change in the levels of influence and importance of the actors involved. For instance, new private actors are now more influential than they were before. However, the underlying logic of the system has not changed much, as we shall analyse in the following lines.

In general, every mass media system implicitly involves power, as mass media power is used to persuade citizens to contribute to maintaining a certain system “stable”, and thus not question the underlying power relationships (Reig, 1998: 22). Whereas political influences may have affected media freedom and independence in the past, and may still affect them, the Spanish media system now follows a more or less clear business logic. This has been increased recently by a concentration of power in the media, not least because of the penetration of foreign capitals in the first decade of the twenty-first century (Reig, 2011: 206). What has changed is the type of influencing power, shifting the balance from the political to the economic, something which follows the global trend towards commercialisation of the media systems (Hallin and Mancini, 2004: 248).

The actors who participate in the process of media policy and implementation from this power perspective are numerous. Some of them are institutionalised, and others are not. Their interaction within the communication system promotes general values in a progressive process of identification of tools and definition of mid-term goals (Fernández and Santana, 2000; Quintana Paz, 2005: 157). The influence of the two main political parties, the Socialist (PSOE) and the People’s Party (*Partido Popular* – PP, conservatives), is easily identifiable in some of the choices made. However, even if there are differences regarding mid-term strategies and objectives as a consequence of the bipolar politics that characterise the Spanish media system (Reig, 2011: 207), perpetuation in power and influence on the mass media for electoral purposes are, according to some voices, the ultimate objectives for both political parties.

2.1 Institutional actors

The political parties are (or should be) the main institutional actors with a role in the designing and implementation of media policies. Traditionally there has been a close relationship between the media (in particular, large media groups) and political/ideological power. In the past, the latter was always linked to political parties, whereas at present, it is argued that political and ideological power resides in economic lobbies (Reig, 2011: 208). Two further groups of actors are also decisive in implementing media policies, and their contribution is so significant that one could argue that they actually shape media policies with their activities. These groups are public bodies (in particular, regulators) and courts.

2.1.1 Political parties

Political parties seem to be the obvious choice when dealing with the actors, institutional and otherwise, who drive the process of media policy shaping and implementation. Clearly, the more closely linked to power they are (i.e. mainly, when they are in Government), the more influential they prove to be. This is tautological, but we should stress here (because one would hope that this is the case) that due to their relevance, political parties (at least the main political parties) must have a clear concept of the media policies they wish to carry through. A look at electoral manifestos shows that this is not the case. They usually include specific measures to deal with certain problems, but they do not propose a general overview of what media policy should be like.

On the level of values, little can be found in the political manifestos for the general elections in 2008,¹³ but it would be unfair not to mention certain exceptions. Minority groups which strongly support the existence of national identities inside Spain, such as *Esquerra Republicana per Catalunya* (ERC), *Izquierda Unida* (United Left: IU) and *Iniciativa per Catalunya Verds-Esquerra Unida i Alternativa* (ICV-EUiA), insist on the need to protect pluralism and cultural diversity, mainly in television.¹⁴ Cultural diversity is further linked to the Internet and to audiovisual contents in the manifesto of the Socialist Party (PSOE).¹⁵ More general values such as information pluralism¹⁶ and freedom of expression are included in the manifestos of two political parties which, interestingly, may be considered to be politically antagonistic: *Izquierda Unida* and *Partido Popular*.¹⁷ The *Partido Popular* also lists free access, transparency and education as goals to be promoted in telecommunication policies.¹⁸ Due to the strong link between traditional media and telecommunications, within the framework of a general discourse on media convergence, such goals could indeed be considered common goals for a media policy. Finally, one party (ICV-EUiA) refers to veracity and objectivity of information.¹⁹

¹³ At the time of writing the political manifestos for the elections of 20 November 2011 had been just made public, so other than a general overview, little more can be accomplished here. Not enough time has elapsed for implementation to be appropriately evaluated.

¹⁴ Electoral Manifestos: ERC (2008: 74); IU (2008: 91 and 2011: 72); ICV-EUiA (2008: 237). Cultural diversity and, more precisely, linguistic diversity are absent in practice from Spanish television, something which is denounced by some, in particular with regard to the PSB. Interview with Andrés Boix, Professor of Media Law and blogger, by Susana de la Sierra, 23/09/2011.

¹⁵ Electoral Manifesto 2008: PSOE, p. 130 and 2011: PSOE, p. 116.

¹⁶ Some representatives of private broadcasters have argued that they do not need to be impartial, since they contribute to pluralism. See Maurizio Carlotti, vice-president of *Antena 3*, in the debate on *The triumph of low-cost culture: Journalism without journalists* [El triunfo de la cultura *low cost*: Periodismo sin periodistas], in the IX *Coca-Cola Journalism Conference: Los efectos de la crisis: Periodismo sin periodistas* [The consequences of the crisis: Journalism without journalists], organised by the Spanish section of the Association of European Journalists. Audio available at: <http://www.aeuropeos.org/ix-jornada-de-periodismo-coca-cola-los-efectos-de-la-crisis-%C2%BFperiodismo-sin-periodistas/> (last accessed 5 December 2011). The second panel of this Conference addressed the issue of how the quality of information is diminishing, thus eroding freedoms. This seems to be a generalised feeling about journalists in Spain. What the quality of information is, as stated in various parts of this report, is discussed.

¹⁷ Electoral Manifestos 2008: IU, p. 87-89; PP, p. 248-249. Electoral Manifesto 2011: IU, p. 72.

¹⁸ Electoral Manifesto 2008: PP, p. 248, 251 and 253. In the Electoral Manifestos 2011, the main parties include transparency and free access to the Internet as part of the universal service: PP, p. 52, 146 and 173; PSOE, p. 23 and 115; ERC, p. 65 and 126; IU, p. 26 and 77, UPyD, p. 18 and 37.

¹⁹ Electoral Manifesto 2011: ICV-EUiA, p. 238.

Besides values, specific measures have also been included in the manifestos. In the first place, some parties (IU) want Internet to be recognised as a means of social communication,²⁰ which at this stage has not yet occurred. With regard to the Internet, others are more focused on concrete questions related to intellectual property rights (PSOE, PP, ERC, ICV-EUiA), free access to the Internet (*Unión Progreso y Democracia*: UPyD), privacy protection and net neutrality (both by ICV-EUiA).²¹ Other media also receive attention and proposals that can be considered as shared proposals by all or many groups include the following: promotion of quality public television, a new statute on communication, the statute of the journalist profession and digital literacy. Compliance with European norms (the authors guess that this will relate mainly to cultural diversity) is included, as well, by ICV-EUiA, as is the revision of European norms concerning electronic communications (PSOE). Finally, some proposals are related to institutional design. These refer to the reform of various regulators, such as the Competition and the Telecommunications Authorities, in order to foster their independence (PP, and more generally UPyD),²² and the creation of new entities, namely, an Agency of Intellectual Property (PP), a Council on Audiovisual Media and/or Multimedia (PSOE, ICV-EUiA) and an Agency for Information Society (UPyD).²³

Not all political parties include references to the media in their electoral manifestos and the ones that do so fail to offer a complete media policy picture. There are, however, some elements that could contribute to the existence of free and independent media: the existence of independent regulators/bodies and the adoption of norms (for the audiovisual media and for journalism) which would set parameters for the media to act according to the aforementioned goals. Free and independent media are also defined in accordance with a critical public opinion that finds a space for itself in them.²⁴ In order for such an opinion to be constructed, literacy is required and, therefore, media literacy is also included in most electoral manifestos. Notwithstanding this, it should be stated that very little has been done since those manifestos were prepared.

2.1.2 Public bodies

The public bodies that participate in the framing and implementation of media policies in Spain are Parliaments, Governments and certain independent agencies.²⁵ The use of the plural in Parliaments and Governments responds to the decentralised territorial structure of Spain as explained in the *Background Information Report* to

²⁰ Electoral Manifesto 2008: IU, p. 91.

²¹ In the Electoral Manifestos for 2011, the main political parties demand a new Statute on, or modifications of intellectual property rights: PP, p. 50, 130 and 152; PSOE, p. 27; ERC, p. 115; IU, p. 75; ICV-EU, p. 2; UPyD, p. 42.

²² Electoral Manifestos 2011: PP, p. 29 and 155; UPyD: p. 18.

²³ Notwithstanding what has been asserted in the main text, it should be noted that the Electoral Manifestos for 2011 have considerably reduced the demands for new agencies or new bodies. The exception is established by parties located on the political left or centre-left, which still include the need to create a State Council for Audiovisual Media: PSOE, p. 116; ERC, p. 115; and IU, p. 77.

²⁴ Indeed, the public asset behind the freedoms of expression and information is public opinion, considered an essential element of democracy (Vázquez Alonso, 2011: 29).

²⁵ The expression “public body” is used here in very broad terms, as it includes parliaments, whereas usually it refers only to public administrations.

this project,²⁶ and this should therefore be borne in mind here. Parliaments act through representatives of the people organised in political parties. Governments are also, indirectly, the result of elections of representatives. Both Parliaments and Governments are in principle linked to the electoral manifestos that have been mentioned under the previous heading and, as a consequence, in general terms no more needs to be added here.

The purpose of this section is to discuss particular actors within the framework of Parliaments and Governments which are actively involved in media policies. Independent bodies will also be addressed here. At State level, there is no particular Ministry competent for media issues. In recent political history, the Ministry of the Presidency has taken the lead in this and in many other issues: the General Statute on Audiovisual Communication was conceived by this Ministry, as was the draft for a Statute on Transparency and Access to Information, which has not been passed in this legislature, and the initiative to create a State Council on Audiovisual Media. In this Ministry several projects which have never been seriously discussed in public opinion were designed but not adopted. These include a system of state aid for the printed press and a more intense agenda in relation to media literacy.²⁷ The latter has not really been the object of a clear policy, even though some elements can be identified within the sphere of work of the Ministry of Education. The Ministry of Culture has been highly active with regard to intellectual property and the *Sinde* Statute which will be analysed in detail later on, whereas the Ministry of Industry, Tourism and Trade has been in charge of all technicalities concerning the digitalisation of television and radio. Moreover, licences for broadcasting operators acting at State level have been handled by the same Ministry so far.

Two more actors which should be borne in mind are RTVE/*Radiotelevisión Española*, the Spanish Radio and Television Corporation, and FORTA/*Federación de Organismos de Radio y Televisión Autonómicos*, the Federation of Autonomous Radio and Television Bodies. Both are very powerful, especially when negotiating with the Spanish football league and the broadcasting of football matches, an important income source for media in Spain due to the advertising linked to it. As recently as on 11 November 2011, only nine days before the general elections, the Government passed a regulation on advertising in the audiovisual media clarifying its limits, including advertising in sports events. It should be noted here that a case against Spain on this was pending at that time before the Court of Justice of the European Union. Advocate General Yves Bot raised substantial doubts, in his opinion delivered on 7 April 2011, on the conformity of the Spanish regulation on this particular point with the requirements of EU law and, in particular, with the *Television Without Borders* Directive, and the Court followed his opinion in its ruling of 24 November 2011.²⁸

Of the various independent bodies relevant for media policies, two are of particular interest: the Commission for the Telecommunications Market (CMT/*Comisión del Mercado de las Telecomunicaciones*) and the National Competition Authority (CNC/*Comisión Nacional de la Competencia*). They are both

²⁶ Not all regional Parliaments have been equally active in this regard. Those with strong historical identities linked to a particular language other than Spanish (Catalonia, Galicia and the Basque Country) have in general promoted their own media policy which is strongly linked to language.

²⁷ Interview with official working at the Ministry of the Presidency, competent on media issues, by Susana de la Sierra and Isaac Martín Delgado, 14/03/2011.

²⁸ ECJ, C-281/09, *European Commission v. Spain*, 24 November 2011, not yet published.

linked to the Ministry of Industry, but retain their independence. The State Council for Audiovisual Media (CEMA/*Consejo Estatal de Medios Audiovisuales*), due to be created according to Article 44 of the LGCA, has so far not been set in motion. Since all these bodies are relevant to the discussion concerning the structure of the media market and media contents, more information on their performance will be provided under the relevant headings.

2.1.3 Courts

The courts have proved to be active institutional actors regarding media freedom and independence. We should bear in mind that freedom of expression and information are freedoms on which media freedom and independence is based, together with pluralism²⁹ and other constitutional values. Typically, rights, freedoms, assets and values recognised in the Constitution have a broad sense and it is up to the courts to define their contents. Various courts come into play in the Spanish case, building up a mosaic and developing policies through judicial dialogue³⁰: the Constitutional Court, ordinary courts and the European Court of Human Rights. In the first place, the Constitutional Court must be mentioned, because of its role as the main interpreter of the Spanish Constitution. The Constitutional Court has long established the basis for a constitutional understanding of the freedoms of expression and information. It could be argued that it has adopted a fairly liberal approach, and by “liberal” we mean an approach in favour of the maximal development of fundamental rights.³¹ Even if the freedoms of expression and information are, as such, rights directly applicable once they have been recognised in the Constitution, until now they have been subject to regulation. Some authors even consider that the intensity of the regulation applied to these freedoms is actually far too high (Linde Paniagua/Vidal Beltrán/Medina González, 2011: 174-175). This is mainly so for the broadcasting sector and less true for the printed press, where such a regulatory intensity does not exist.

As far as ordinary courts are concerned, one should distinguish between the various jurisdictional branches, namely, civil, criminal, administrative and social. The Spanish judicial system is composed by a single judicial power, i.e. a single jurisdiction governed by the same constitutional norms and organised according to common rules. Notwithstanding this, the judicial power is internally structured according to specialisation criteria. Each branch has its own set of judges and courts are ruled by specific procedural rules. All of them have competences on issues related to the media.

Civil courts have competence for the civil protection of the rights of honour, personal and family privacy, and also the right to personal image.³² Since the entry of private television into the audiovisual market, they have actively dealt with issues related to the protection of those rights *vis-à-vis* alleged violations by the media. They

²⁹ See Judgment of the Constitutional Court 31/2010, 28 June.

³⁰ The concept of judicial dialogue has been theorised in the framework of the EU and also, more broadly, in relation to the protection of fundamental rights, regarding diverging and/or complementary rulings issued by national courts, the Court of the European Union and the European Court of Human Rights (ECtHR).

³¹ This idea, in more general terms, can be found in authors such as Vázquez Alonso, 2011: 24.

³² Ley Orgánica 1/1982, de 5 de mayo, de Protección Civil del Derecho al Honor, a la Intimidad Personal y Familiar y a la Propia Imagen [Organic Statute on the Civil Protection of the Right to Honour, of Personal and Family Privacy, and Personal Image].

have not always acted in accordance with the criteria set out by the Constitutional Court, something which has led to judicial controversies between both bodies. Some argue that the recent case law of the civil section of the Supreme Court shows a change of approach, the Court being now less favourable to media and more protective of other fundamental rights (namely the aforementioned ones of honour, privacy and image).³³ Supreme Court judges acknowledge that rumours in the media sector assert that because of their more restrictive case law regarding - mainly - freedom of expression, the media are now more cautious.³⁴

Criminal courts have played a very discreet role in our area of interest. There are, of course, criminal offences in the Spanish criminal code dealing potentially with the media, such as insult or slander, but others also exist, such as crimes concerning the disclosure of secrets. Yet in practice not many cases have arisen. In general, courts are deferential towards the media, but some cases have been denounced by Reporters Without Borders, which has urged Spain to change its regulation in some aspects. This will be discussed in detail in section 4.2.

Administrative courts are relevant, as they supervise the decisions taken by public bodies and, in particular, regulators. So far no Audiovisual Authority exists on the national level, but Competition and Telecommunications Authorities do. The Competition Authority has issued rulings concerning mergers in the audiovisual sector, and also some important decisions in relation to the radio and the press, as reported in section 3.3. At the regional level, courts can of course control the decisions taken by the audiovisual authorities. The most active of these is the Catalan Audiovisual Authority, whose decisions have in some cases been controversial.³⁵

Finally, social courts are of importance in relation to the working conditions of communication professionals. The financial and economic crisis has led to a large number of labour adjustment plans in various economic sectors, the media being one of them. This, according to those involved in the media, clearly affects the quality of information. The fact that the number of professionals working for the media is decreasing, coupled with the fact that the hunger for news is constantly increasing, gives rise to an awkward equation. The quality of information is affected and, therefore, the quality of democracy is also affected. Because labour courts will in the last instance control adjustment processes and, more generally, the working conditions of communication professionals, they will be relevant media policy actors as they will take decisions concerning the quality of information. Furthermore, adjustment processes show how dependent the media can be on economic groups, thus limiting their autonomy and, perhaps, freedom.

Spain ratified the European Convention on Human Rights (ECHR) in 1979 and, since then, the European Court of Human Rights (ECtHR) has delivered 91 decisions concerning this country. In 31 of those decisions, it found no violation of the Convention, but it did find at least one in 56 of the cases. Violations by Spain mainly concern Article 6 of the Convention (the right to a fair trial). Article 10 of the Convention, on the freedom of expression, has been compromised several times and recent rulings address this issue. Eight judgments of the Court rule on issues concerning the freedom of expression in Spain, including also the freedom of

³³ Interview with member of regional audiovisual council, by Susana de la Sierra, 20/06/2011.

³⁴ Interview with Judge of the Spanish Supreme Court, by Susana de la Sierra, 04/10/2011.

³⁵ See *El País*, 10/05/2011, *El Tribunal Superior catalán exonera a la COPE de una demanda*.

information.³⁶ Indeed, as some authors have argued when referring to Spanish law, these two freedoms are actually only one, but with different protection systems (Díez-Picazo, 2008: 331). In broad terms, two main groups of cases can be identified: cases in which politics and/or terror in the Basque Country are involved and cases in which the monarchy, both Spanish and foreign, is involved. Of the eight cases, the Court found that a violation had taken place only in three cases. Since these cases are related to elements that potentially limit content diversity, they will be further explained in section 4.2. However, with regard to the implementation of ECtHR cases, we should point out here that it is controversial. The ECHR has a privileged position in Spanish constitutional law, as it should be used to help interpret the rights and freedoms contained within the Spanish Constitution (Article 10.2 of the Spanish Constitution). Yet it is not considered to have constitutional value *per se*.³⁷ Implementation measures are therefore not structured and will depend on each case. As for violations of Article 10 in particular, implementation measures typically consist of individual measures, mainly the award of compensation.

2.2 Non-institutional actors

The main non-institutional actors in the field of media policy framing and implementation are economic groups, lobbies and, in more general terms, public opinion. Public opinion and lobbying in Spain are not as demanding as they are in other countries. Also, lobbies or interest groups are not as structured and organised as they are elsewhere. Actually, some political parties recently proposed passing a Statute to regulate lobbies in the way they are regulated on European level.³⁸ Actors related to the lobby system have an increasingly strong influence on public actors (political parties, Government, judicial institutions), and they therefore indirectly determine regulation and policy in different sectors.³⁹ Also, it should be borne in mind that whilst economic power expressed by large groups is a stable, lasting power, political power often changes (Reig, 1998: 25; Labio Bernal, 2006: 25; Reig, 2010: 100-117).

The influence of economic groups on the shaping and implementation of media policies has been underlined several times and there is a certain consensus regarding their decisive role in this field. Yet the data available do reveal an apparent

³⁶ See ECtHR, *Castells v. Spain* (no. 11798/85), 23 April 1992; ECtHR, *Casado Coca v. Spain* (no. 15450/89), 24 February 1994; ECtHR, *De Diego Nafria v. Spain* (no. 46833/99), 14 March 2002; ECtHR, *Etxeberria, Barrena Arza, Nafarroako Autodeterminazio Bilgunea and Aiarako and others v. Spain* (no. 35579/03, 35613/03, 35626/03 and 35634/03), 30 June 2009; ECtHR, *Gutiérrez Suárez v. Spain* (no. 16023/07), 1 June 2010; ECtHR, *Eusko Abertzale Ekintza-Acción Nacionalista Vasca (EAE-ANV) v. Spain* (no. 51762/07 and 51882/07), 7 December 2010; ECtHR, *Otegi Mondragón v. Spain* (no. 2034/07), 15 March 2011; ECtHR, *Palomo Sánchez and others* (no. 28955/06, 28957/06, 28959/06 and 28964/06), 12 September 2011.

³⁷ In this regard, see the recent judgment of the Constitutional Court delivered on 29 September 2011, no. 150/2011 (related to article 8 of the Convention), which includes interesting dissenting opinions on the value of the ECHR. Also, on the value of the Convention, see Queralt Jiménez, 2008.

³⁸ This is position maintained by José Antonio Bermúdez (People's Party) in a political debate in the radio for the general elections due to take place on 20 November 2011 in Spain. See *En días como hoy* (Juan Ramón Lucas), 20/10/2011 *Radio Nacional de España 1*, on 20 October 2011. Audio available at: <http://www.rtve.es/alacarta/> (last accessed: 5 December 2011).

³⁹ About Digital Terrestrial Television, see Rui, 2009: 139 and Bustamante, 2008: 21; about audiovisual regulation, Labio Bernal and Benítez Eyzarrigue, 2010:6, 8, 11-12; about media ownership rules, Llorens 2010: 851.

contradiction in this regard: it seems that the specific gravity of the media sector in the context of the Spanish business sector is relatively small. Therefore the significance of economic groups on the media system must be assessed according to other scales (other than their general value in the economy), related to their real influence and power which is inherent in the very nature of information and communication activities (Díaz González, 2005: 107; Segovia, 2005: 23).

At the lowest influence level, we find communication professionals (journalists), civil society (associations - mainly consumers associations -, NGOs, trade unions) and research centres (universities, observatories - national and international - public and private), excluded from decision-making and implementation power centres. Civil society and research centres basically act on public denunciation, promoting awareness and trying to replace public institutions (as is the case concerning the issue of media literacy for instance). The public sphere, occupied and divided into media groups of “friends” or “enemies” of the Government, led to the exclusion of social movements and citizens’ voices which are not enrolled in these bipartisan lines because of their criticism of the powers in general. It would appear that economic media liberalisation was undertaken without democratic political enrichment (Quintana, 2005: 158).

3. The structure of the media market

The main policy instrument regarding the structure of the media market in Spain is regulation. The legal framework for the media in general in Spain is still rather orthodox; the regulatory techniques are usually the classical ones (parliamentary Statutes, governmental decrees), although slowly attempts are being made to award more space to other techniques, such as self-regulation and co-regulation. Limits exist to the freedoms of expression and information, and some of them can already be found in the Constitution. As already noted, courts play a decisive role in balancing these rights and freedoms and, therefore, also in designing the regulatory framework for the structure of the media market.

Political parties are, for obvious reasons, key actors in the regulatory process concerning media structure, but their strategies differ. It is difficult to generalise and draw conclusions as to whether conservative parties prefer a specific regulatory option (self-regulation or deregulation, for instance) whereas others would promote more regulation and would not share the need to liberalise the market in legal terms. An analysis of the manifestos of political parties with representation in the Spanish Parliament until September 2011 shows that some types of regulatory technique were included in some of those manifestos. Self-regulation of television contents was, for instance, proposed by the People's Party, whereas the United Left party supported "self-regulation agreements" in case of controversies in the audiovisual sector. But for the structure of the media market, all the main political parties included references to a future statute on the audiovisual media (clearly because there was a need for implementing the Audiovisual Media Services Directive – hereinafter AMSD) and therefore opted for classical regulatory techniques in this field, at least in general terms. Finally, as we have mentioned before, three parties wanted to promote a Journalists' Statute, which would include some structural measures (for instance, the definition and characteristics of "journalistic enterprises"). This translates, paradoxically, into both regulation and self-regulation. It implies regulation, as a new norm is proposed. And indirectly, it implies self-regulation, because the drafts that have been proposed include self-regulatory and co-regulatory mechanisms.

Norms related to the structure of the media market are typically classical public law norms. Whereas the printed press lacks a detailed regulation and follows general legal patterns concerning the creation and running of businesses,⁴⁰ broadcasting is fully regulated. No cross-media ownership rules exist so far, but actors (agencies, courts) may take cross-media ownership into consideration when judging the potential damage of a merger operation in the media market. New media are still a no man's land, but some general structural norms can be found in the Statute regulating the services of the information society and electronic business, which implements Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) in Spain.⁴¹ This includes, for instance, requirements set for service providers, such as the information they need to include in their websites.

⁴⁰ Two norms regulating the printed press passed during the dictatorship are still (at least in theory) in force, but their practical significance is dubious: Statute 14/1966, 16 March, on Press and Printing [*Ley de Prensa e Imprenta*], and Decree 744/1967, 13 April, on the Statute of the Journalistic Profession [*Estatuto de la Profesión Periodística*].

⁴¹ Statute 34/2002, 11 July.

3.1 Media ownership structures and business

As explained in the *Background Information Report* (p. 396-397), norms concerning the media market are highly detailed. We stated then that the principle of a free market recognised in Article 38 of the Constitution is valid for all kinds of media.⁴² This is important because only the printed press lacks regulation, other than the pre-constitutional Statute on Press and Printing of 1966 which raises doubts regarding its validity today, even if it has never been officially repealed. General competition rules without a particular media component are also applied to the media and, furthermore specific licensing, ownership and competition rules exist for the audiovisual media.

3.1.1 The printed press

No specific title or qualification is required for one to work in the printed press sector or establish a press outlet. A draft for a statute on the printed press was presented by several journalists' associations (*Foro de Organizaciones Periodistas/Forum of Journalists' Organisations*)⁴³ during the last socialist government (2008-2011) with the support of one political party in Parliament, United Left.⁴⁴ Previous attempts to pass a Statute on the Journalistic Profession are also documented in the period 2000-2004. In the draft, no specific structural provisions concerning information outlets were included. There is one article "on the journalistic enterprise" (Article 10) which considers these to be "special socio-economic enterprises" and that their economic objectives should therefore include the conditions necessary for providing a fundamental right (namely, freedom of information), in line with Article 11 of the so-called European Code of the Journalistic Profession.⁴⁵ According to this code (and its Spanish "implementation" in the draft that is now being commented), transparency concerning the ownership of the media outlet and its management is required. Transparency here means information on the identity of the owners, their level of economic participation, any changes in shareholders, as well as making their Profit and Loss Statements available along with an account of any public aid they have received. This information should be made public at least once a year or whenever any substantial change occurs. Not only does the European Code have a direct influence on Article 10 of the Spanish draft, it also serves as a general guideline, as established in the draft. Therefore the contents of the Code could be understood as indirectly assumed in the Spanish draft, which indeed includes the Code as Annexe II.

This type of structural norms in the printed press have been linked by relevant actors (mainly journalists' associations) to quality of information, which in turn can allegedly only exist once the freedoms of information and expression have been

⁴² See judgment of the Constitutional Court no. 88/1985, 19 July 1985. For a full account of the constitutional case law on this, see, among others, L.M^a. Díez-Picazo, 2008: 353-356.

⁴³ It should be noted that this forum brings together associations but not all associations. Therefore, its representativeness may not cover all sensibilities existing in the journalistic world. Indeed, some people indicate that the forum is mainly associated to public media, something which makes its value for all media less important.

⁴⁴ Draft for an Organic Statute on Guarantees of the Right to Information of Citizenship (DOSRIC), to be found at <http://www.periodistes.org> (last accessed 5 December 2011). Text approved on 12 April 2010. A similar proposal had already been presented by a parliamentary group composed by parties linked to the political left, *Izquierda Unida*, *Izquierda Verde* and *Iniciativa per Catalunya Verds* on 23 April 2004 (Boletín Oficial de las Cortes Generales/Official Journal of the Spanish Parliament, 44-1).

⁴⁵ See Resolution of the Parliamentary Assembly of the Council of Europe on the ethics of journalism (resolution no. 1003 of 1993), adopted on 1 July 1993.

guaranteed. Here democracy is considered a corollary of quality of information, as understood in these terms.⁴⁶

3.1.2 Radio and television

As far as broadcasting is concerned, several limitations exist, as reported in the *Background Information Report* (396-397). According to Article 10 of the ECHR, a system of previous authorisation for enterprises active in broadcasting can be established by the States. The Spanish Constitutional Court very soon accepted that this was compatible with Spanish constitutional law, since a public asset, the radio-electric space, is scarce and, therefore, limitations can be set.⁴⁷ This approach is now under review, as new technologies offer more possibilities than classical analogue ones.⁴⁸

Regarding media ownership in broadcasting, the recent situation in Spain is somewhat paradoxical. The LGCA has allegedly liberalised the market, but in practice it has led to more concentration. Indeed, since its entry into force, important mergers of broadcasters have taken place and the competition authority, whilst allowing the mergers, questioned whether this was adequate for a healthy media market.⁴⁹ Also, international groups have strengthened their presence in the Spanish media market,⁵⁰ thus raising doubts on the entrepreneurial independence, and therefore the freedom, of national outlets once foreign shareholders participate in them. Furthermore, Digital Terrestrial Television (DTT) has led to the birth of a great number of television channels, linked to enterprises active in other business areas, which are not necessarily interested in acting as watchdogs. Finally, since 2006, the Spanish PSB has been involved in normative and institutional changes to promote its independence, with a fair amount of success, but recently certain events have affected it. Indeed, the Board of Directors of RTVE, linked directly or indirectly to political parties represented in Parliament, decided on 21 September 2011 that its members would have direct access to *iNews*, the computer system for editing the news of the public broadcaster. This would imply that they would have access to the contents and what many feared was that they would then control them. The Council of News

⁴⁶ See the Pamplona Declaration promoted by the Federation of Spanish Journalists' Associations (FAPE) on 20 December 2010, available at: <http://www.apmadrid.es/la-fape-aprueba-la-declaracion-de-pamplona-que-constata-la-mayor-crisis-de-la-historia-del-periodismo> (last accessed 5 December 2011). See also the Preamble of the DOSRIC, where it is claimed that "under today's circumstances, the need to make effective the right of citizens to be informed, inexorably demands regulation of the activity of those actors entrusted by the community to provide information (...)". This view has also been shared by all journalists interviewed for this research.

⁴⁷ See Judgments of the Constitutional Court no. 12/1982, 31 March 1982; 88/1985, 19 July 1985, and 31/1994, 31 January 1994.

⁴⁸ See, among others, Judgment of the Constitutional Court no. 206/1990, 17 December 1990, related to cable television.

⁴⁹ Interestingly, Paolo Vasile (CEO of *Mediaset España*) has recently criticised the role of the CNC because of a fine imposed on *Mediaset España* in the framework of the merger procedures mentioned in the main text. The group's CEO stated that the CNC is "one of the greatest tragedies of the country", and that [media outlets] "continuously live under a threat of blackmailing" and the only guide they follow is allegedly Kafka's *The Trial*. See *El País*, 06/10/2011, *Seis canales que conviven*. Even if these opinions will not be discussed here, they clearly show that the CNC is taken seriously as an actor within the dynamics of media regulation and implementation.

⁵⁰ Liberty Acquisition Holdings bought shares of the main Spanish multimedia group, PRISA, on 27 November 2010 and became the main shareholder of the group. This has had consequences so far, such as the labour adjustment plan undertaken by PRISA, who continued to manage the Board of Directors.

Programmes of TVE (*Consejo de Informativos de TVE*) publicly condemned this, as did both the Socialist and the People's Party, as they perceived it as a kind of censorship incompatible with constitutional standards. The Board of Directors finally decided to repeal the decision and one of its members (appointed by a trade union) resigned. Nevertheless, this scandal also brought to light similar practices conducted in regional public broadcasters.⁵¹

There has been one exception in the form of a public television station whose independence is generally praised. Indeed, it has been considered one of the major successes of Prime Minister Rodríguez Zapatero.⁵² Yet some voices – linked to the same media group that has praised this aspect – have argued that Rodríguez Zapatero's legacy in media policy has been “very negative”.⁵³ Juan Luis Cebrián, PRISA's CEO, has pointed mainly towards the bureaucratic “chaos” at the Ministry of Industry and towards direct interventions designed to modify the structure of the media market in the pursuit of “political and economic goals”. He underlined that no difference regarding this could be detected between governments of the Socialist and from the People's Parties. Finally, he also added that no public policy has been conducted in the printed press sector, even though this is a key sector for the “exercise of democratic freedoms”.

3.1.3 Labour adjustment plans as structural measures and their impact on the freedom and independence of media

As we mentioned before, when explaining the role of labour courts in the framing and implementation of media policies, labour adjustment plans have affected television, radio and the printed press. In today's economic circumstances this is an element to bear in mind when addressing the question of how media outlets are managed and governed. And it is linked, as stated before, to the concepts of quality of information, quality of journalism and thus to free and independent media in a democratic society. In television the plan carried out at RTVE, the public broadcaster, is one of the most representative examples. The plan was controversial, as it has implied the dismissal of journalists (around 4,000) from the older generation in favour of younger ones, thus getting rid of reputed professionals and therefore losing memory and know-how. In certain circles it has been considered a big mistake, as “journalists given golden handshakes”, “the best RTVE professionals, are now watching TV from their living rooms at home”.⁵⁴ Also, some consider this a manoeuvre by the Government to benefit two private broadcasters, *Cuatro* and *La Sexta*, by diminishing the quality of public television.⁵⁵

⁵¹ See, for instance, with regard to *TV3* (Catalan public television), <http://www.intereconomia.com/noticias-gaceta/sociedad/tv3-denuncia-que-sus-consejeros-tienen-acceso-editor-noticias-20110928>; with regard to *Telemadrid* (public television in Madrid), <http://es.globedia.com/ext/200000072755-denuncian-que-el-presidente-del-consejo-de-telemadrid-tiene-acceso-al-inews> (last accessed 5 December 2011).

⁵² See leader in *El País*, 04/10/2011, *RTVE, en peligro*.

⁵³ See *El País*, 21/09/2011, *Cebrián achaca a la política de Zapatero una contribución “muy negativa” al sector de los medios*. This is the reference for the following sentences on the same issue.

⁵⁴ See <http://www.elmundo.es/elmundo/2008/03/07/telettridente/1204880467.html> (last accessed 5 December 2011). *El Mundo* is a daily usually critical of the Socialist Party, in Government at the time when the adjustment plan took place. The reference is to a blog in this daily.

⁵⁵ *Ibid.*

The biggest media group in Spain, PRISA, has carried out several of these adjustment plans, mostly in the audiovisual sector, but also in the printed press. The latest plan is related to radio and it follows along the lines of similar plans for the radios of other groups, such as *Vocento*.⁵⁶ Radio stations that do not form part of big media groups such as COPE (which is owned by the Conference of Spanish Bishops and other catholic institutions) have undergone similar processes. In the printed press, *El País*, the leading daily owned by PRISA, has suffered these processes too, along with other newspapers.

3.2 Competition and pluralism

Regulation in Spain includes provisions to protect competition in the media market and, more precisely, the audiovisual media market.⁵⁷ No cross-media ownership rules exist, as already stated, and therefore general competition rules apply. This places the Competition Authority (*Comisión Nacional de la Competencia: CNC*) in a privileged position for conducting a genuine media policy, as it has already decided upon issues concerning television mergers,⁵⁸ radio mergers⁵⁹ and even mergers in the printed sector.⁶⁰ Some of these recent cases have been discussed in other parts of this report and we should underline the fact that competition issues in the media sector entail a dimension which is not only economical. There is clearly a human rights dimension, as freedoms of expression and information are compromised if competition is not sufficient and therefore insufficient space is provided for pluralism. These are the arguments that have been brought up in the debate on the creation of the State Council on Audiovisual Media. The CEMA would be in charge of taking measures to render effective rights and freedoms recognised both in the LGCA and in European legislation (Article 47.1a) LGCA), and it would watch over the audiovisual market in order to keep it competitive, transparent and plural (Article 47.1h) LGCA).⁶¹ Mr. Cortés Martín, MP of the People's Party in the Spanish lower chamber, considered in a discussion in Parliament that the CEMA is "a sure threat for freedom of expression, because it is given competences on censorship and other repressive competences".⁶² The Minister of the Presidency, Mr. Ramón Jáuregui, replied that the creation of such a body "is a legal obligation in a mature and profound democracy such as the one we want for Spain".⁶³ Thus, on 3 June 2011, an agreement was adopted by the Government which urged the creation of the CEMA, considering that it would not only guarantee free competition, but also transparency and pluralism. Arguing that it

⁵⁶ See, for instance, <http://www.prnoticias.com/index.php/radio/183/20109727> (last accessed 5 December 2011).

⁵⁷ For further information on this see S. De la Sierra et al., 2010: 396-397.

⁵⁸ Decision of 10 November 2010, case no. C-0231/10, *Prisa/Telefónica/Telecinco/Digital +*, which concluded a procedure on the legality of the merger of two major television broadcasters on the basis of the LGCA. This operation has been criticised, because it reduces competition in the audiovisual media market following the LGCA, which was intended to promote it.

⁵⁹ Decision of 20 January 2011, case no. C-0312/10, *SER/Radio Lleida*, where the CNC sets out conditions for the legality of the operation; Decision of 26 May 2010, case no. C-232/10, *COPE/UNIÓN RADIO*.

⁶⁰ Decision of 16 December 2009, case no. C-0188/09, *RBA/EDIPRESSE*.

⁶¹ This body would also be in charge of promoting media literacy in the audiovisual sector (Article 47.1o) LGCA, and on sanctioning the violation of the voluntary self-regulatory codes that audiovisual service providers can adopt to address contents issues (Articles 47.1m) and 58.12 LGCA).

⁶² See debate included in the report of proceedings of Parliament (*Diario de Sesiones del Congreso de los Diputados*), no. 252, plenary session of 15 June 2011, p. 16.

⁶³ *Ibid.*, p. 17.

is an independent and neutral body, the agreement also insisted on its function of protecting viewers' rights, in particular those of minors.⁶⁴

3.3 Financing rules (state aids, taxation and the regulation of advertising)

Funding clearly has an impact on media freedom and independence in Spain. Information is provided through media outlets that need economic resources to survive. Public funding can take place through various channels: direct state aids or privileged tax systems (tax relief, beneficial treatment in the case of specific taxes, etc.). The risk of not gaining access to these public funding systems may lead information providers not to be too critical towards the political parties in power, in order to benefit from the aid. There is no specific tax system for media outlets and no proposals in this direction can be found in the political parties' manifestos for the general elections on 20 November 2011. Some funding schemes for film production, including documentaries (which could be considered an expression of freedom of information) exist (De la Sierra, 2010; Moreno González, 2010) and, again, this may be changed after the general elections.

However, a more important matter today is the influence of private funding on the survival of media outlets. For instance, the media may be impelled to introduce contents which in principle they would have not included (such as the abovementioned example of newspapers incorporating news on fashion), only because they want to reach an audience which is favourable to certain advertisements. This was the acknowledged case of *El País*. The Reader's Ombudswoman of this outlet was forced to respond to criticism addressed by readers in relation to a magazine that started being sold jointly with the newspaper in September 2011. The focus of this magazine was mainly fashion and beauty, and readers considered that they were forced to pay for contents they were not interested in. The Reader's Ombudswoman explained that these contents were necessary, because income originating from advertising in the fashion and beauty industry is an important source of financing, implying also that the survival of the daily greatly depended on this.⁶⁵

In other parts of this report we have pointed to the difficult situation journalists and media outlets are facing now as a result of the financial and economic crisis, too. The situation is becoming even more critical due to the "thirst for information" of today's society, which has received many names such as "24/7 journalism" or "F5 journalism". The latter, as most people probably know, refers to the computer key which allows one to refresh the contents of a web page (*¿Cómo se financia la información?*, 2011: 42). As far as the printed press is concerned, at one point the Government considered the possibility of granting public aids to this sector.⁶⁶ Yet this never materialised and indeed some journalists consider that this

⁶⁴ Order of the Ministry of the Presidency PRE/1483/2011, 3 June, on the publication of the Agreement of the Council of Ministers of 3 June 2011, to foster the effective constitution of the State Council on Audiovisual Media.

⁶⁵ See Milagros Pérez Oliva [Reader's Ombudswoman of *El País*], *Temas de corazón en la prensa seria*, *El País*, 09/10/2011.

⁶⁶ Interview with official working at the Ministry of the Presidency, competent on media issues, by Susana de la Sierra and Isaac Martín Delgado, 14/03/2011. Public aid to other media does not exist either, with the exception of the financing system of public broadcasters. As far as the State broadcaster is concerned, its financing system was changed in order to comply with EU norms, although this is still under scrutiny by the European Commission (Linde/Vidal/Medina, 2011: 294-304; Guichot (ed.), 2011: 139-142. For more on this, see Medina González, 2006). Institutional advertising, which implies

could interfere with the exercise of their constitutional freedoms. More recently, in the light of the general elections on 20 November 2011, the Association of Spanish Newspapers (AEDE) has asked for the press to be declared a sector undergoing industrial rationalisation following a report prepared by a law firm specialising in labour law.⁶⁷ As occurred with other economic sectors in the 1980s, this would allow newspapers to promote changes in their business structures, including (mainly) labour adjustment plans. Nevertheless, the particularities of this sector, in which vital fundamental rights are at stake, should not be underestimated.

Advertising is still the main source of financing for the press and the recession has had a negative effect on advertising income. In this regard, it should be noted that one important aspect related to radio and television is the fact that Article 18.6 of the LGCA abolished political advertising both on television and on the radio, unless otherwise stated and under the conditions established in the Organic Statute 5/1985, of 19 June, on the General Electoral Regime. As a result of the fact that, as we have already noted, radios play an important role in local politics, this measure was harshly criticised. This would imply, on the one hand, that local politicians would have their voice quietened. On the other hand, it would strongly affect the radios' budgets, because they are extremely dependent on these incomes. As a consequence, their freedom and independence could be damaged, inasmuch as they would be forced to search for new financing sources and thus, possibly, compromise these values (following the general discussion in this section of the financing of media outlets).

This regulation was changed very quickly in order to allow political advertising on radio stations, but this was carried out in an obscure way, because the Government included an amendment in a Final Provision (Final Provision no. 3) of the Organic Statute 4/2011, of 11 March, complementary to the Statute on the Sustainable Economy. This is an Organic Law that has to be passed following a special and very strict procedure established for certain issues, as indicated in the Spanish Constitution. Political advertising is not one of these issues and indeed, the heading of this Final Provision reads "Amendment of the General Statute on Audiovisual Communication and nature of this final provision as an ordinary statute". Such an amendment, if made at all, should have been included in a very controversial Statute passed one week earlier: Statute 2/2011, of 4 March, on the Sustainable Economy.⁶⁸ Rumour has it that the Government was forced to make this amendment because it was demanded by a radio station, *SER*, considered to be a supporter of the Socialist Party, at least in a broad sense. As expected, this could not be confirmed by interviewees.

3.4 Specific obstacles to radio development: concentration and patronage

In Spain, the policy on radio is strictly linked to the audiovisual sector. Therefore, much of what has been stated regarding television is applicable to radio. In fact, as a consequence of this, large companies tend to foster multimedia activities. It could be argued that the radio is increasingly seen as a satellite of television (Cebrián Herreros,

high incomes for media outlets, could nevertheless be considered an indirect public financing source [Interview with Andrés Boix, Professor of Media Law and blogger specialising in political and legal issues, by Susana de la Sierra, 23/09/2011].

⁶⁷ *El Confidencial*, 13/10/2011.

⁶⁸ The reason for its controversial nature is mainly due to intellectual property issues, as is explained in various parts of this report when referring to the so-called *Sinde Statute*.

2001: 96). The progressive concentration within the Spanish radio system has generated a few powerful groups, with few stations concentrating audience and advertising.⁶⁹ Certainly, radio continues to play an important role in the provision of up-to-the-minute news and is still the main outlet for local news (Fundación Alternativas, 2011: 239). However, as is the case for television, radio is experiencing the consequences of the liberalisation policies within the telecommunications sector (Cebrián Herreros, 2001: 100). This has actually increased the already high level of concentration (Cebrián Herreros, 2001: 96; Iglesias, 2005: 110; Arboledas, 2009: 923). Thus, the radio market focuses principally on commercial issues (maximum audience) to the detriment of social public service programmes (Cebrián Herreros, 2001: 104). In principle, no public policy on the radio can be identified which directly or indirectly addresses the freedom and independence of this medium, aside from the general ownership limits that were already discussed in the BIR (2010: 397). The fact that the radio continues to be the main outlet for local news illustrates what kind of policy could be required in this regard. Local news, local issues and local politics will only be relevant as long as an active public policy protects this kind of radio. Private ownership rules, advantageous financial treatment or direct state aids as compensation for their public function may be possible measures to be included in this policy.

The most significant recent structural measure concerning the radio was adopted on 10 June 2011, when the Government approved the radio digitalisation stimulus plan (Ministry of Industry, Tourism and Trade, 10/06/2011), which complies with Transitional Provision Fifteen of the LGCA. The plan establishes the principle of technological neutrality and promotes digital radio diffusion technology and new programmes, introducing multimedia contents, as allowed by digital technology. This reform was expected, because technically radio had not developed as much as it should have and because of the need to develop the radio industry as well as other cultural industries. The radio industry has the best penetration capacity on national and local markets (AIMC, 2011: 3) and is now a powerful tool of political and social influence (Franquet Calvet, 2008: 14). Communications groups are particularly aware of this. Some argue that, traditionally, the Spanish radio landscape was characterised by Franco's legacy, evidenced by licences being granted to private companies close to the government or oligopolies, and thus political control over radio stations was apparent (Arboledas, 2009: 909; Franquet Calvet, 2008: 12; Bustamante, 2006⁷⁰). Consequently, the sector underwent a progressive concentration process: radio stations sought protection under a common brand, guaranteeing strength and coverage in highly-competitive global contexts (Franquet Calvet, 2002: 188). In fact, the most important radio group is *Unión Radio*, created in 1992 by the union of *Cadena SER* (PRISA group) and *Antena 3 Radio* (Godó Group)⁷¹ which, thanks to further international movements, consolidated itself as the largest Spanish-speaking radio network in the world (El País, 13/11/2006).⁷² This merger resulted in a quasi-

⁶⁹ The first five radio stations account for 96% of the audience and advertising (Iglesias, 2005: 105-106).

⁷⁰ E. Bustamante, *Radio y televisión en España*, 2006, quoted by Franquet Calvet, 2008: 12.

⁷¹ As we see, with regard to large communication groups in Spain, both PRISA and Godó are amongst the most important in Spain, developing their activities in almost all communication sectors.

⁷² *El mayor grupo de comunicación en España* [The largest Spanish communications group], El País, 13/11/2006.

monopoly⁷³ and some argue that no public body reacted against this anomalous situation (Reig, 2011: 219). A case was brought to the courts by journalists from other media groups, but finally the Supreme Court decided - contrary to the court in the first instance - that they had no legitimate interest for filing a lawsuit against the merger. As a result, groups with consolidated audiences and satisfactory advertising are not really interested in supporting digital progress, because of the possible access to the market of new actors (potential competitors) (Albornoz, 2011: 241, 242).

3.5 The role of corporate, economic and social interests

Like elsewhere in Europe,⁷⁴ in Spain international economic power elites exert their pressure on public institutions, on both a national and European level. These are the same institutions that should guarantee and act according to democratic communication values (Labio Bernal, 2006: 25-26). This strategic alliance between the owners of communication groups and public institutions works as a favourable interchange system, because the press, radio and television influence people's preferences and political attitudes (Fundación Alternativas, 2009: 255). Consequently, there is a widespread assumption that communication systems do not promote public interests, but rather political strategies (Fundación Alternativas, 2010: 8; 220).⁷⁵ Of the most powerful lobbies in the media sector, for the audiovisual segment, two are worth mentioning, as they have actively influenced regulatory processes relating to the structure of the media market: the Union of Associated Commercial Televisions (*Unión de Televisiones Comerciales Asociadas/UTECA*)⁷⁶ and the Association of Editors of Spanish Newspapers (*Asociación de Editores de Diarios Españoles/AEDE*).⁷⁷ Other enterprises, such as telecommunication groups, media groups or advertising agencies, can also be identified as having contributed to this process.

⁷³ For an exhaustive analysis see M.J. Pérez Serrano (2010), 'Concentración de SER y Antena 3 en Unión Radio' in *La concentración de medios en España. Análisis de casos relevantes en radio, prensa y televisión*, p. 397-581.

⁷⁴ Interview with Enrique Bustamante, Professor of Audiovisual Communications at University Complutense of Madrid, by Susana de la Sierra and Marina Mantini, Madrid, 13/04/2011, and his conference in *Teledetodos Meeting*, 14th February 2011 (available at: <http://www.teledetodos.com/component/contushdvideoshare/player/23/18.html>, date accessed 5 December 2011).

⁷⁵ It is interesting to note that, from 2008 to 2011, the rating of democracy in Spain, according to the annual reports of the *Fundación Alternativas*, has steadily decreased during the period of Socialist Government 2004-2008 (6.2/10 in 2008, 6 in 2009 and 5.8 in 2010). The average mark awarded to the Spanish democracy in 2011 has been 5.9, slightly above 2010's assessment but worse than that of 2008 (Fundación Alternativas, 2011: 10). In some fields the results are similar to those of previous years. However, the evaluation of the protection of minority rights and freedom of expression remains positive. A significant deterioration has taken place in the scores awarded to the international sphere where the experts perceive a greater interference in our democracy from international institutions and economic powers. The methodology employed by *Fundación Alternativas* since 2008 was developed at the *Human Rights Centre* at the University of Essex, in the United Kingdom. It focuses largely on two principles of the theory of representative democracy: 1) citizens' control over politicians and policy decisions, and 2) equal access to the political arena for all, so that this control can be exercised. For an extended description of indicators and survey, see *Fundación Alternativas*, 2011: 362-402.

⁷⁶ Since 1998 UTECA has protected and lobbied for the interests of private television. See <http://www.uteca.com/uteca/> (last accessed 5 December 2011).

⁷⁷ <http://www.aede.es/> (last accessed 5 December 2011).

One example of how powerfully private actors have imposed a prosaic evolution of media policies in Spain and how regulation has had more to do with the media groups' interests than societal goals (Llorens, 2010: 844) is the adoption of the LGCA. The draft was judged by some public authorities (CNT, CMT) and by some political parties as being clearly devoted to increasing the earnings of private operators (*Comisión Nacional de Competencia*, 2009: 20; *Comisión del Mercado de las telecomunicaciones*, 2009: 19; *Boletín Cortes Generales*, 17/12/2009, 19/02/2010, 17/03/2010; *Diario de Sesiones del Congreso de los Diputados*, 3/12/2009, 7/01/2010, 5/03/2010). Nevertheless, the Statute was passed and these contrasting opinions did not find much echo in the media.⁷⁸ It should be borne in mind that lobbies become more relevant when no absolute majority exists in Parliament and political groups are forced to reach agreements with other groups which may have competing interests. Finally, MPs state that they receive perfect drafts of legislation from various interest groups, something which has recently occurred both with audiovisual and with printed press legislation.⁷⁹

It is not self-evident that political actors are the driving forces behind the process of formulating and implementing public policy measures regarding the media structure in Spain. As far as the press is concerned, little regulation is to be found and media policy is based on liberalisation and self-regulation. Some initiatives to legally design the structure of the press market have actually been proposed by the press sector, with the support of minority political parties. With regard to television and radio, the main policy instrument is a Statute, the LGCA, which has in theory led to more liberalisation, but has in fact provided grounds for mergers in this sector and is allegedly the result of pressure applied by broadcasters. Public bodies, such as courts and independent authorities, seem to play a more important role in the framing and implementation of media policies than classical public organisations, such as Ministries. This is mainly so when verifying that competition, pluralism and transparency are respected. Moreover, financing is vital for understanding the freedom and independence of the media. The traditional approach to this issue has focused on public funds and whether public bodies may use them to influence the media structure by supporting some outlets and not others, a problem which may disappear because of lack of resources. This is not the debate at issue now in Spain, even though public aid exists for public broadcasters and even though the possibility of a system of public aid for the press has been suggested by some. As far as media freedom and independence is concerned, the influence of private capital is now the issue, as interest groups both national and international are financing media outlets. In doing so, they may quite simply be following business logic to the detriment of a logic in which the main goal is to provide quality information.

⁷⁸ With exceptions, such as E. Bustamante (2010) 'La contrarreforma audiovisual socialista' [Audiovisual Socialist Counterreform] *Le Monde Diplomatique*, *Fevrier 2010*, 2, 172.

⁷⁹ E.g. Interview with MP (MP2) of the People's Party, by Susana de la Sierra, 22/06/2011.

4. Composition and diversification of media content

4.1 Positive measures encouraging the diversification of media content

Regulation of media content has always been problematic, as the question has evident links to potential censorship. In Spain measures to encourage the diversification of media content are mainly linked to diversity and, in particular, to cultural diversity (De la Sierra, 2011). If media outlets are impelled to broadcast contents that reflect cultural diversity, they may well consider that their independence is being compromised. But on the other hand, unless cultural diversity is promoted, regional media outlets could suffer and eventually disappear. In any case, as stated above, cultural diversity is one of the public goals pursued by Spanish media policies. Article 5 of the LGCA stipulates that the broadcasting of programmes reflecting the cultural and linguistic diversity of citizens is a common right. This is one of the rights the LGCA confers on the public and it is linked to other legal provisions, some of them containing specific obligations. Thus Article 4.3 of the LGCA recognises the right to receive a plural audiovisual communication and requires operators of services of audiovisual communication to promote the knowledge and dissemination of the official languages of Spain, as well as their cultural expressions.⁸⁰ Public broadcasters are further required to promote the cultural industry, in particular those audiovisual creations which are linked to the various languages and cultures existing in the State. This obligation is also coherent with a fairly controversial regulation, which could disappear after the general elections on 20 November 2011, namely the one addressed to television broadcasters to devote a percentage of their income (currently 5% for private broadcasters and 6% for public ones) to films produced by independent producers.⁸¹ The Court of Justice of the European Union, in a case referred for a preliminary ruling by the Spanish Supreme Court, ruled that this was indeed contrary to the Treaty provisions on free movement, but that it was justified by an overriding interest, namely culture.⁸² Therefore, in this case European Union law was a strong argument in favour of the promotion of diversity and pluralism in Spain.

Another relevant example of a measure promoting the diversification of media content is the regulation of political advertising on television during the electoral period. This is regulated in the Organic Law of General Electoral Regime [*Ley Orgánica de Régimen Electoral General*: LOREG],⁸³ Articles 60 to 66. Free advertising space will be provided to the political parties which obtained seats in Parliament in the previous elections. The amount of time each party will enjoy, and the order in which they will appear in the advertising space, is established in detail. A public body with competences during the electoral period, the Central Electoral Board (*Junta Electoral Central*), is in charge of monitoring the whole process. This obligation has been criticised by journalists, who consider that the measure is

⁸⁰ The link to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed in Paris on 20 October 2005, would appear to be self-evident.

⁸¹ Art. 5.3 LGCA.

⁸² Case C-222/07, 5 March 2009, *Unión de Televisiones Comerciales Asociadas (UTECA)*, [2009] ECR I-1407.

⁸³ Organic Statute 5/1985, 19 June. This particular issue has been revised by Organic Statute 2/2011, 28 January.

intended to substitute their professional criterion on what is relevant news.⁸⁴ Therefore, it could be argued that freedom of information is affected here, as specific contents are imposed by the legislator. Arguably, this is so because pluralism and neutrality need to be protected under these specific circumstances. Yet some consider that this could have a negative effect precisely on those political parties which usually enjoy no or little media attention.⁸⁵

4.2 Competing interests and legal restraints on content diversification

4.2.1 Competing interests and the role of courts

Freedom of information in Spain may, as in other jurisdictions, be nuanced by the opposition of other rights and freedoms. Even the Spanish Constitution includes references to rights which restrict information contents, namely children's rights.⁸⁶ There are further limits which have been accepted by the Constitutional Court, including the protection of honour and family life, on the basis of Organic Statute 1/1982, 5 May, on the Civil Protection of the Right to Honour, Personal and Family Life and Personal Image. Persons with a public dimension, such as politicians, enjoy less protection of these rights as long as there is an "informative interest".⁸⁷ Other interests which may collide with freedom of information and prevail are issues legally defined as secrets and rules on court reporting (file confidentiality). Hate speech as such is not considered a crime *per se*, unless a clear and present danger concurs. The Spanish courts thus follow the approach of the US Supreme Court, as well as – more directly – the case-law of the ECtHR.

The Spanish courts commonly balance different rights and interests to see which one prevails in each case. Some sentences have been denounced by Reporters Without Borders/RSF.⁸⁸ One of them was judgment 531/09 of criminal court no. 16 of Madrid. The court condemned the director and the news director of a private radio station, *Cadena Ser*, to 21 months imprisonment, for "revealing secrets on the Internet". The station's website had published the names of people who had allegedly been improperly registered as members of the People's Party in Madrid. They had received this information from reliable sources and considered it to be of public interest. This was not only denounced by RSF,⁸⁹ but also by other associations, including the International Federation of Journalists,⁹⁰ as it was considered a violation of freedom of information.

⁸⁴ This is a recurrent and explicit claim by journalists conducting news programmes, before they proceed to inform on current political affairs.

⁸⁵ See Andrés Boix Palop, *Las teles de los políticos*, *El País*, 07/11/2011: http://www.elpais.com/articulo/Comunidad/Valenciana/teles/politicos/elpepiespval/20111107elpval_5/Tes (last accessed 5 December 2011).

⁸⁶ Article 20.

⁸⁷ On this, and on the following examples, see L.M^a. Díez-Picazo, 2008: 343-353.

⁸⁸ It should be recalled that Spain occupied place number 39 in the 2010 report, thus moving up five positions in comparison to the previous year.

⁸⁹ See 2010 World Press Freedom Index, available at: http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf (last accessed 5 December 2011).

⁹⁰ <http://www.ifj.org/en/articles/ifj-condemns-flagrant-violation-of-freedom-after-sentence-of-spanish-journalists> (last accessed 5 December 2011).

Another case, which goes back to 2007, relates to cartoonists convicted for having insulted the Spanish monarchy. A front-page cartoon showing the Crown Prince and his wife having sex and implying that their workload is not very high was the ground for the sentence. The cartoonists were condemned to pay a fine of 6,000 euro and the corresponding issue of the magazine was seized, something unprecedented in the Spanish democracy. RSF denounced this and urged Spain to revise and update its legislation on crimes against the Crown.⁹¹

Recently, criminal courts have also been involved in cases related to the Internet, even though most of them fit into a category which will not be discussed further here: copyright issues or, more broadly, intellectual property. Intellectual property has received much political attention in Spain of late. A controversial Statute was passed in March 2011, colloquially known as the “*Sinde Statute*” in an allusion to the Minister of Culture, María Ángeles González-Sinde, who promoted it.⁹² This new piece of legislation seeks to prosecute those who illegally download material from the Internet which is protected under intellectual property rights. In order to do so, a special procedure has been introduced, whereby judges are allowed to shut down websites. The first draft of the Statute conferred the police and the judiciary the power to do so. The norm caused much controversy amongst public opinion, and arguments have been advanced concerning potential violations of the freedom of expression due to the closure of websites and, therefore, the restricting of access to them. The risk of a violation of the freedom of expression by these procedures may be correct in theory. Yet as long as there is judicial supervision and judges balance the relevant rights and freedoms, these suspicions should not be a real danger. Finally, it should be noted that Spain is a country with a very high rate of violations of intellectual property rights and has been listed by the US Congress at the top of the intellectual piracy leader board in 2011, together with Canada, China, Russia and Ukraine.⁹³ Indeed, Spain has always been at the top of this yearly list prepared by the Congressional International Anti-Piracy Caucus.

The ECtHR has also had the opportunity to deliver rulings on the protection of freedom of information in Spain. The first case, mentioned above, goes back to 1992 (*Castells*). A lawyer and *Herri Batasuna* senator had published an article criticising the Government’s counterterrorist policy and holding it responsible for the impunity of armed groups. He was sentenced to imprisonment for insults to the Government and the ECtHR considered that a violation of Article 10 of the ECHR had thus taken place. A recent sentence (*Otegi Mondragón*) relates to pro-independence movements in the Basque Country. A political leader of these movements, Arnaldo Otegi, was convicted for insulting the King of Spain. The Court held that “the interference by the

⁹¹ See RSF’s Press release issued on 14 November 2007: <http://en.rsf.org/spain-court-s-decision-to-convict-14-11-2007,24380.html> (last accessed 5 December 2011). It was included in a preferential position in the RSF Annual Report 2008, together with two other cases involving the royal family. Report found under http://www.rsf.org/IMG/pdf/rapport_en-2.pdf (last accessed 5 December 2011). The cartoonists appealed the sentence of the court of first instance, which was confirmed. The case is now pending before the European Court on Human Rights.

⁹² The so-called *Sinde Statute* is a Final Provision, Final Provision no. 43, of the Statute 2/2011, 4 March, on the Sustainable Economy. This provision modifies various Statutes, including *Real Decreto legislativo 1/1996, de 12 de abril, por el que se aprueba el Texto Refundido de la Ley de Propiedad Intelectual* [Legislative Decree 1/1996, 12 April, on Intellectual Property] in order to prosecute behaviour contrary to intellectual property.

⁹³ <http://www.bsa.org/country/News%20and%20Events/News%20Archives/en/2011/en-05262011-watchlist.aspx> (last accessed 5 December 2011).

public authorities in the applicant's right to freedom of expression, namely his conviction, had had a legal basis in the Criminal Code, which made it a punishable offence to insult the King. It pursued the legitimate aim of protecting the reputation of the King of Spain." The Court finally considered that the limitations imposed upon the freedom of expression of Mr. Otegi were not "necessary in a democratic society" on the grounds expounded by the Spanish Supreme Court. The comments were, according to the Court in Strasbourg, to be understood in the framework of a particular political debate concerning the visit of the Monarch to the Basque Country. Also freedom of expression and information is of particular relevance when elected representatives or politicians in general are involved. Another Monarch, the King of Morocco, lay at the root of the third case in which Spain was found to be in violation of Article 10 of the ECHR, *Gutiérrez Suárez*.⁹⁴

Even if the latter case does refer to Morocco, it seems that a pact of secrecy has been established between the Spanish media and the monarchy. Journalists have usually exercised self-restraint when reporting on the royal family,⁹⁵ although this situation appears to be slowly changing and journalists have started to be less deferent.⁹⁶ A similar deferential relationship can be identified between the media and strong economic groups, such as *El Corte Inglés* (department store) or *Banco Santander*. Journalists denounce their own self-censorship, attributable to the fact that these economic groups are the bodies that contribute to the financing of the media through rich advertising contracts.⁹⁷

4.2.2 Regulation, self-regulation and co-regulation

Regulating media contents has always been a delicate issue, as the debate on censorship is ever-present. This could be the reason why recent legislative instruments include self-regulation and co-regulation as regulatory strategies for media contents. In Spain this is the case both for the audiovisual media and for the printed press.

As far as the audiovisual media are concerned, the starting point is Article 12 of the LGCA, which recognises self-regulation as a right of providers of audiovisual communication services, in a chapter containing rights and obligations of the public and of providers (De la Sierra, 2011). Self-regulation is a right, not an obligation, and it can be exercised by one operator or by a group of them. In the event that only one operator proceeds to self-regulate, then others may adhere to the code. Codes can refer either to contents of audiovisual communication (including, of course, advertising) and/or professional ethics. Some political groups proposed during parliamentary debates that reference should be made to existing codes of professional ethics in the printed press, as coherence requires that deontological standards be

⁹⁴ A detailed comment of this ruling can be found in MEDIADEM's website: *Spain's violation of article 10 ECHR in a case involving King Hassan II of Morocco*, <http://www.mediadem.eliamep.gr/spain%e2%80%99s-violation-of-article-10-echr-in-a-case-involving-king-hassan-ii-of-morocco/> (last accessed 5 December 2011).

⁹⁵ Interview with two freelance journalists with accreditation for the main public institutions, by Marina Mantini, 13/10/2011.

⁹⁶ See *La prensa dispara contra la Casa Real*, www.vanitatis.com, 19/10/2011 (reported by Alberto Lázaro) (last accessed 5 December 2011).

⁹⁷ Among others, interview with two freelance journalists with accreditation for the main public institutions, by Marina Mantini, 13/10/2011.

applied equally in all media.⁹⁸ A system of dispute resolution must be included in the codes and techniques to control compliance with the codes can also be established, but on a voluntary basis. There are some procedural requirements for the adoption of the codes, including the participation of consumers associations. The audiovisual authority will check whether these codes comply with the legal order and will then proceed to publish them. Because the LGCA is still a fairly new norm, there is a lack of practical implementation. As a result, it is not clear what type of publication it refers to - whether a publication on a website, enabling anybody to have access to the code and demand its implementation, will suffice, or whether publication in an official journal is required. Publication could also mean that the audiovisual authority integrates the code in one of the legal instruments the LGCA envisages: instructions and recommendations.⁹⁹ Finally, in the event of a breach of a code's provision, the CEMA could sanction service providers.¹⁰⁰

Because the CEMA has not yet been created and because it is very possible that it will never be created as such, as stated in other parts of this report, time will be required for this system of "self-regulation" to be put into practice. The reason why we put "self-regulation" in brackets is the fact that its legal regime leads one to wonder whether the LGCA really has created a system of self-regulation. Since the Statute includes specific requirements for the adoption of the codes, and since a public body oversees its compliance with the legal order and its implementation, it seems rather that the technique is of co-regulatory nature. It should moreover be noted that the LGCA includes other references to self-regulation in relation to audiovisual contents. One is the specific mention of self-regulatory codes to protect minors.¹⁰¹ This could be regarded as an involuntary repetition, because Article 12 is so general that it implicitly includes this type of codes. The second reference to self-regulation is Article 9, where the right to control the conformity of audiovisual contents with the law is recognised for any physical or legal person. As stated in paragraph 1 of Article 9, this refers either to "ordinary" regulation of contents or to self-regulatory codes. Therefore, citizens are given a legal instrument, a right recognised in a Statute, to control the compliance of service providers with self-regulatory codes on audiovisual contents.

As stated above, some political parties already included references to self-regulation in their manifestos for the general elections in 2008. There was little parliamentary debate on the need for self-regulation in the audiovisual sector, but a debate did take place on the contents of the system. For example, as we have already indicated, some political groups proposed to expressly mention deontological codes of the journalistic profession, so as to introduce common standards for all types of journalism. The general discourse that has been addressed in other parts of this report on the relationship of deontological standards and the quality of information, and their relationship with free and independent media, applies here too. Also, during the parliamentary process, a common assumption prevailed that there was a need for a dispute resolution mechanism in relation to these codes. It also seems that lobbying has carried some weight in the process, which may explain why the Consumers' and Users' Council has been assigned a privileged position to the detriment of other bodies or associations in the procedure for adopting a code. The fact that specific

⁹⁸ E.g. *Esquerra Republicana per Catalunya*.

⁹⁹ Article 48.1 LGCA.

¹⁰⁰ Article 58.12 LGCA.

¹⁰¹ Article 7 LGCA.

actors, such as the Consumers' and Users' Council, have an influence on the self-regulatory codes imposed by Statute, could interfere with media freedom and independence (regarding contents, in this particular case), because their partisan position may determine the contents of these codes. Nevertheless, their participation could in principle be considered a positive element, as generally, participation is a positive feature of any democracy.

The printed press has also been the object of regulatory proposals. The mantra "the best regulation in the printed press is no regulation" maintains its credibility among journalists, but new perceptions have been included into the debate. The economic recession, the constant need for information, and the lack of professionalism of certain people who apparently consider themselves to be journalists and are not, have been reported as causes for a reflection on the future of the press, as we have asserted in other parts of this report. The response, as already explained, is a draft for an Organic Statute on the Guarantees of the Right to Information of Citizens proposed by journalists' associations. The draft starts with the definition of a professional journalist and includes a system of co-regulation. Traditionally, self-regulation has been the main regulatory instrument in the printed press and, indeed, the draft sets out some deontological principles that should guide journalists' activities. But now, according to Article 25 of the draft, a Co-regulatory Council for Journalism should be created. This Council would be in charge of guaranteeing compliance with deontological principles and is comprised of representatives from various sectors: journalists' trade unions, communication companies, lawyers, journalism schools, consumers' associations, human rights NGOs and regional co-regulatory councils, in the event that these are created.

This is only a draft and most probably will not be transformed into actual law in the near future, due to the political change after the elections on 20 November 2011. Nevertheless, it refers to a debate that is ongoing in the journalistic profession. It is presented as a core debate for the preservation of the free media, as co-regulation and co-regulatory councils should serve the purpose of ensuring that media effectively exercise the freedom of information from the perspective of users, i.e. from the perspective of the right to receive quality information. Finally, even if the draft does mainly refer to journalists active in the printed press, as was argued previously, it would be incoherent for different deontological/ethical standards to apply depending on the medium which is being used at any given time. The phenomenon of technological and media convergence should lead to this conclusion.

4.2.3 Contents and the Internet: specific Spanish debates on privacy and transparency

As in the rest of Europe, the Internet in Spain has evolved rapidly during recent years, with a particular acceleration in the evolution of technologies, applications, uses and interactions with the rest of the mass media system. It is configured as a new platform for the audiovisual, radio and press sectors, at the same time offering new opportunities to existing cultural and communications' industries (Albornoz, 2002: 6).¹⁰² Consequently, new competitors and actors arrive on the scene (especially

¹⁰² Conclusions drawn by a research coordinated by Prof. Bustamante, the purpose of which was to study the impact on the cultural industries caused by the sprouting-up of the new digital networks. They revealed some resistance from traditional agents - in many cases powerful media conglomerates - to losing positions on the emergence of new digital networks. Consequently, these agents have

telecommunications providers) and national communication policies have to adapt existing rules as well as provide legal and political guidelines based on democratic principles. Even if the Internet is not yet considered one of the existing social communication media, but a technological tool by Spanish courts (confirmed by public initiatives on the Information Society, such as *Plan Avanza*)¹⁰³, undoubtedly it is an increasingly substantial contributor to the country's economy (*Ministerio de Industria, Turismo y Comercio*, 13/5/2011) and an important factor which influences the traditional mass media system more and more.¹⁰⁴ For practical purposes and for most Spanish people, the Internet is becoming the convergence platform of all communication sectors. This changing state of affairs continually raises new legal issues (such as neutrality) or an adaptation to the new context of old issues (for instance, the transparency, privacy and freedom of expression we are considering in this section). Besides, it is necessary to describe the political, economic and social interests involved in these transformations, not least because the Internet is one of the themes people are very sensitive about.

The diffusion and use of the Internet as a mass medium is significant and shows a clear tendency to expand in the short term (AIMC, 2011: 15-16; Fundación Orange, 2010: 159-165; INE, 2011: 25; 36-37). Hence it is necessary to analyse how the diffusion of new technologies opens up new possibilities for freedom of expression and information and at the same time, from a regulatory point of view, to describe existing policy approaches and focus on new problems and challenges imposed on existing regulation by telecommunications' technology.

In the public arena, privacy regulation is one of the main debates, together with the matter of the Right to Oblivion on the Internet, and the commercial use of users' data gathered by practices and tools (specifically, cookies¹⁰⁵) that allow access to personal information (Agencia Española de Protección de Datos [Data Protection Agency: AEPD], 2010: 9). Even though the debate is usually not conducted in terms of fundamental freedoms and independence, the fact that the protection of privacy can interfere with the contents provided on the Internet has led some to argue that this regulation may indeed violate freedom of information in certain cases and, therefore, media independence and the freedom to choose what is and what is not news.

Due to the sensitive issues related to the free flow of information on the Internet, the national and local Data Protection Agencies established themselves as

committed to building new barriers to entry, both economic and legal, with the arrival of potential new agents in each sector. The research and their results were published in Spain in full, through the publication of two books: *Comunicación y cultura en la era digital. Industrias, mercados y diversidad en España* (2002), and *Hacia un nuevo sistema mundial de comunicación. Las industrias culturales en la era digital* (2003).

¹⁰³ *Plan Avanza* [Advance Plan] is a Spanish government programme that encourages the spread of telecommunications and the use of new technologies among citizens. Through agreements with financial institutions (banks), citizens can receive money in advance to purchase equipment or an Internet connection, and return it within 3 years without interest. *Plan Avanza 1* started in 2005 and *Plan Avanza 2* is scheduled in 2012. Available at: <http://www.planavanza.es/Paginas/Inicio.aspx> (date accessed 5 December 2011).

¹⁰⁴ For the impact of the Internet on traditional mass media, see Bustamante, E. (ed.) *Las industrias culturales audiovisuales e Internet* (2011); Cebrián Herreros, M. *Desarrollos del periodismo digital en Internet* (2010); Almirón, N. (2011) *Journalism in crisis* and *El mito digital. Discursos hegemónicos sobre Internet y periodismo* (2008).

¹⁰⁵ A "cookie" is a piece of information that is stored on the hard disk of the computer of the person who visits a website. This information can later be retrieved by the server that stores the web page and accessed on subsequent visits.

the main actors on the stage, regulating privacy issues with their rules and recommendations (Guichot, 2011: 93). For instance AEPD, while maintaining a cooperative attitude with the telecommunication companies (e.g. both Tuenti and Facebook have been cooperative with their privacy policies), has stated that the main Internet service providers have repeatedly overstepped the line of respect for privacy.¹⁰⁶ Moreover, they have launched several lawsuits against Google for violation of privacy rights.¹⁰⁷ Considering that the Internet may indeed be a media platform, this implies that its freedom needs to be counterbalanced against other rights, such as privacy. Or, to put it another way, service providers may have exceeded the bounds of protection provided by the freedoms of expression and information. Notwithstanding this, even though privacy regulation relating to the Internet has improved, it is unlikely that stricter rules will be passed because of the growing economic importance of the sector¹⁰⁸ (Deloitte, 2011: 17).

A User's Bill of Rights of electronic communication services has been passed in Spain [*Carta de Derechos del Usuario de los servicios de comunicaciones electrónicas*].¹⁰⁹ The aim was to provide legal protection for telecommunications' users, coherent with European standards. Regulation should be completed with a new General Telecommunications Statute, the draft of which was presented on 13th May 2011 (Consejo de Ministros, 13/05/2011) but which has so far not been passed by Parliament. The draft keeps expectations high, as it allegedly addresses some of the regulatory gaps that had been denounced by stakeholders (expensive broadband, discrimination against small operators, lack of real competition in the sector, user's protection). These gaps have been considered an example of negative regulation, constituting an obstacle for the significant advance of the Information Society (Fundación Orange, 2010: 73). According to this view, unless these issues are regulated, contents will not flow freely and independently in the Internet.

4.3 Who drives media policy vis-à-vis media contents?

We noted above that it is not self-evident that political actors drive along the process of media framing and implementation related to the media structure. The same could be argued in relation to media contents, although some exceptions may exist. At the same time, it is important to stress the active role courts have in monitoring whether media contents are acceptable from a legal point of view. In this context, courts conduct their own media policy, by telling other actors (principally, the media outlets) what is and what is not allowed. Even if this is required by the legal order, and in particular by the rule of law, the line between constitutional judicial control and unconstitutional censorship can in some cases be slim. Potential censorship (which would compromise media freedom and independence) is always an issue when regulating media contents and controlling compliance with regulation. This is the reason why self-regulation and co-regulation initiatives for the various types of media

¹⁰⁶ See AEPD (2010) and various articles in the press, such as La Vanguardia, 18 October 2010, Público, 19 October 2010, El País, 18 January 2011 and New York Times, 9 August 2011.

¹⁰⁷ Interview with public prosecutor specialising in cybercrimes by Marina Mantini, Madrid, 2/10/2011.

¹⁰⁸ As asserted in the interview with the public prosecutor specialising in cybercrimes, by Marina Mantini, Madrid, 2/10/2011, over recent the AEPD has increased its autonomy and power, and this has led to disagreements with the courts.

¹⁰⁹ *Real Decreto 899/2009, de 22 de mayo, por el que se aprueba la carta de derechos del usuario de los servicios de comunicaciones electrónicas* [Royal Decree, 22 May 2009, through which the User's Bill of Rights of electronic communications services is approved].

have proliferated. As a result, policy inputs are driven elsewhere. Media – television, radio and the press - are placed in a privileged position for deciding the measures to be adopted on media contents, but they are not completely free. Courts are still there to monitor compliance with the legal order, but also independent authorities are meant to be created in order to deal with these issues in the first instance for some particular types of media. The debate specific to Spain on whether an independent audiovisual authority should be created, or whether its functions could be fulfilled by one of the independent authorities that already exist (the Competition Authority or the Telecommunications Authority) is intrinsically linked to media freedom and independence, as some argue that an audiovisual authority would simply censor media contents, whereas others insist on the fact that mature democracies might require such a body.

5. The journalistic profession

In Spain the press is the media sector that is undergoing the most radical and extensive changes at present, and this would appear to bring into question the very existence of professional journalism. The journalistic profession has been associated, overtime, to values of independence and freedom of expression and information, the most important guidelines (together with neutrality and objectivity) designed to stimulate the making of the information products. Unfortunately, we know that this ideal view is far removed from the daily professional tasks and duties of journalists, because of different factors related to the pressures, both external (applied by owners, politicians and advertisers) and internal (applied by managers and editors-in-chief) described in this section. Moreover, many 'influences' imposed on journalists are related to the deep-rooted transformation of the sector, due not only to new technologies (and the social use of them) but also to the commercialisation of information and working conditions. In summary, the tasks of interpreting and analysing information in order to turn it into news, the possibility of influencing the agenda throwing minority issues into the public arena and making them more visible are no longer journalistic priorities. Apparently it has become very difficult nowadays, in Spain, to avoid certain obstacles to the free and independent exercise of the journalistic profession. In addition, all media, but especially the printed press, are experiencing radical changes as a consequence of the implementation of new technologies, new production routines, new platforms of distribution and the structural modification of the market. Convergence is one of the key words and therefore, much of what is being discussed here is valid for journalists working in all types of media.

Firstly, it is important to reflect upon the relationship between this state of affairs and regulation, for the most part comprised of professional codes (international, national and local), and ethical recommendations. There have also been some attempts to link self-regulatory codes to journalists working in all types of media, as stated in section 4.2.2., when dealing with the right to self-regulation that Article 12 LGCA confers on providers of audiovisual communication services. Ethical standards exist and there are commissions in certain journalists' associations, such as FAPE, which deal with claims for breaches of the standards set in self-regulatory codes (Complaints' and Deontology Commission/*Comisión de Quejas y Deontología*).¹¹⁰ On 28 July 2011 a Foundation was created by FAPE in order to promote the existence of such a Commission, but not only for journalists linked to FAPE - the goal is to open it up to other associations and even to Journalism Schools.¹¹¹ However, the effectiveness of these mechanisms is regarded with reluctance in the sector.

Secondly, it is important to remember here that, as mentioned above, the printed press is the oldest and least-regulated sector with laws dating back to the Franco dictatorship (S. De la Sierra et al., 2010: 399). Moreover, it is immersed in a general reshuffle, with different factors forcing journalists to the centre of a complex process. Convergence, the economic crisis, new channels and platforms (in particular the Internet) and worsening working conditions have been generating an undefined

¹¹⁰ <http://www.comisiondequejas.com/> (last accessed 5 December 2011).

¹¹¹ A thorough explanation on this Foundation has been included by FAPE in a recent issue of its journal *Periodistas*, which is almost entirely devoted to the debate on regulation vs. self-regulation. See *Periodistas*, no. 26, Autumn 2011, available at: www.fape.es (last accessed 5 December 2011).

situation over recent years. This uncertainty has led Spanish journalists to develop unwritten rules, which have been changing profoundly traditional ethical standards as a result of the modified landscape and power relationships between the various actors in the sector.¹¹²

Journalism and the printed press are hence experiencing transformations of communication and information processes, linked to structural changes (Cebrián Herreros, 2010: 30-33) and the consequences of economic losses¹¹³ which further forced measures to adapt to new markets. There is general agreement surrounding the affirmation that the press suffers the competition of the Internet and new information technologies more than the other mass media. Free daily newspapers, free access to the digital editions¹¹⁴ and the business practices of news aggregators (e.g. Google News, Yahoo etc.) are the main competitors of traditional newspapers. News aggregators use newspaper content to add value to their services, providing no remuneration for those who invest in and create these contents (ENPA, 2010: 9). Paradoxically, the press is also experiencing an idyllic relationship with social networks, used by publishers to disseminate contents (Guallar, 2010: 170; Gad3, 2011: 5). All these elements have turned journalism into a highly competitive environment, with multiple producers and channels that diffuse news, with the consequence that professionals have to work very fast and dip into the *mare magnum* of the informational sources. This situation obviously reduces time for research, analysis and control of the issues. Notwithstanding this, the causes cannot be entirely attributed to the appearance of the Internet, even if there is a sort of 'obsession' in the sector regarding the topic. In fact, as noted by Nichols and McChesney (2010: 4-5), the main cause of the global press crisis, rather than the Internet or economic recession, is the loss of journalistic quality that started in the 1970s due to the concentration of companies. As explained above, the increasing 'financialization' of big communications' groups, which in some cases became the property of foreign capitals, deeply affected the exercise of journalism and working conditions (Cebrián Herreros, 2010: 32). Actually, the traditional role of journalists as democracy gatekeepers is very hard to play in the global market, which is moved by economic interests. Moreover, the crisis of journalistic values and objectives, far from pursuing democratic and collective interests, is independent from ICT and the Internet. The real problem is that professionals are barely able to conciliate their traditional values with market-oriented practices, which are at the same time antithetical to social responsibility (Almiron, 2006: 12).

Information theory and text analysis studies qualified objectivity and neutrality as strategic rituals through which journalists protect themselves from

¹¹² For example, journalists know that there are some names (of people or companies) that it is better not to include in the news. Also, the phenomenon of "black lists" described below responds to the same logic.

¹¹³ All press companies recorded large losses in 2010, and although the rate at which they are dropping has slowed down all indicators maintained the downward trend (APM, 2010: 138-144). These data are consistent with the decline in advertising spending, which increased overall in 2010 in the mass media (+1,4%, Infoadex 201: 3) but registered a negative inversion in the printed newspapers (-4,2%, Infoadex 2011: 9).

¹¹⁴ In Spain, the decline of newspapers was caused more by the effect of new free newspapers, printed and distributed on paper and online (accentuated by the recession) than by the emergence of the so-called digital newspapers, traditional media or new ones distributed over the Internet (Almiron, 2006: 5).

possible criticism from their public or their superiors, as well as the initiation of legal proceedings (Tuchman, 1996; Burguet, 2004: 148). It is useful to remember at this point that news consists of historically and culturally situated discourses, making sense and building reality (Abril, 1997: 209) and that journalists continuously mediate experiences and interpretations of the world for the citizens (Peñamarín, 2008: 67). Consequently, if they are subjected to pressures and their working conditions and practices do not allow them to do their job independently, inevitably the information produced will bear the marks of an unrealised commitment to an independent and free account of the world. Nevertheless, if Spanish journalists are asked about the influences in their day to day job, the highest scores are awarded to the influence of supervisors, professional conventions and news sources (respectively 3.88/5, 3.70/5 and 3.84/5), although management and the shortage of resources are still important elements of influence (3.36/5 and 3.67/5).¹¹⁵ In general, professionals do not explicitly assert that they are the victims of direct pressure or attempts to modify agendas in accordance to private interests and not to journalistic criteria. But at the same time, when asked about the origins of these influences, they identify publishers, politicians (this trend increases year by year) and advertisers (APM, 2010: 42). Obviously, it is difficult to prove precisely how important the pressures coming from political and economic elites are in the daily work of journalists, although there is a broad consensus regarding their relevant influence on the news (Labio Bernal, 2006: 133). Understandably, no or very few journalists would publicly declare by whom and what kind of pressures they received,¹¹⁶ due to their precarious working conditions. Also, the current economic recession makes them afraid of losing their job (or of being substituted by younger workers) and the weak protection provided by law or publishers.¹¹⁷

Some studies on journalists in the last ten years in Spain demonstrate the lack of independence of professionals (Canel, Rodríguez and Sánchez Aranda, 2000: 90; García de Cortázar and García de León, 2000: 132). In addition, manipulation is more difficult to detect if it is ‘hidden’, such as in the use of ‘black lists’ or ‘informational advertising’, practices imposed on journalists by publishers¹¹⁸ (Labio Bernal, 2006: 134). Actually, it is more dangerous to identify pressures (Quirós, 1998: 9) when censorship works at a higher level. Self-censorship still exists even though it is less strong than in the past (Reig, 2011: 264). Journalists, especially reporters without editorial responsibility, apply self-censorship in two directions: by avoiding certain economic news (about owners and advertisers) or particular political ones. Politicians especially influence the treatment of news (how the news are reported, the point of

¹¹⁵ Source: *World of Journalism Study*, network project coordinated by University of Munich, 2006-2011. Available at: <http://www.worldsofjournalism.org/download.htm> (last accessed 5 December 2011).

¹¹⁶ And when any journalist dares to tell of pressures and shared attempts to manipulate by politicians or powerful businessmen, censorship kicks in, even in the PSB. See for example the censored interview of famous journalist José María García in the RTVE programme of Jesus Quintero, on 31 October 2007. Available at: http://www.elmundo.es/especiales/2007/02/comunicacion/quintero_garcia/index_menosfotos.html (last accessed 5 December 2011). As Labio Bernal affirms, all private interests within the mass media are more dangerous and worrying in the case of the public ones (2006: 141 and following).

¹¹⁷ Interview with two freelance journalists, by Marina Mantini, 13/10/2011.

¹¹⁸ The practice of ‘black lists’ concerns the prompt and immediate publication of all pejorative news about some people included on a ‘black list’, whilst ‘hidden advertising’ consists of making up an advertisement as a news piece without giving any warning of it. Black lists can also work in a positive sense, for example by publishing many positive news items about certain people.

view etc.), for example when professionals are tele-directed in real time from the management office via a headpiece while they are covering an event,¹¹⁹ or journalists who explicitly declare that they are close to certain politicians. Readers of two main daily newspapers in Spain clearly identify themselves as supporters of the two main political parties¹²⁰ (Reig, 2010: 49). In addition, analysts can find many cases of censorship of some journalists who are excessively independent or ‘deaf’ to ‘suggestions’, although they are quite simply trying to do their jobs well (Labio Bernal, 2006: 174). It is useful to stress, as well, the inverse rate between big advertisers¹²¹ (the most important funding source in Spain for the printed press) and the number of news items published about these same companies¹²² (Reig, 2010: 48). It can therefore be said that the main problems of journalism in Spain today do not stem from the Internet.

Nevertheless, questions like how to conciliate free and pay products or the digital newspaper versions with the printed ones (Reig, 2011: 262), currently at the centre of debates in Spain, strictly concern the convergence of new technologies. As the sources of survival for journalism, many professionals and experts identify the cohabitation of print and digital media (Bastienier, 2001: 3), the quality of contents (Burgueño, 2011: 4)¹²³ and the adoption of new economic and organisational models (Gallardo Olmedo, 2011). Following what has happened with some foreign newspapers (*The Financial Times* or *Die Zeit*¹²⁴), these cases also show that the type of funding or medium channel does not exclusively determine the success of newspapers. To sum up, all these issues do not involve the end of journalism, but they serve the purpose of identifying some keys for the adaptation to a changed environment.

At the same time, many experts claim that the information production process has changed, as a consequence of the easy access to information on the Internet, which means that very few professionals are willing to do field work and look for information by themselves (Reig, 2011: 264).¹²⁵ On the contrary, journalists agree on considering that documentation is a fundamental task of their job, which cannot be reduced to a simple search on the Internet. However, they no longer leave their offices because speed is required when compiling news and this does not leave them time for research (Col·legi de Periodistes, 2006: 126). On the other hand, young graduates, with masters’ degrees and experience on international placements, are occupying the editorial offices, whereas older, expert professionals are dismissed or given a “golden” handshake (Reig, 2011: 266). This situation means that many professionals (trained by “old” journalism schools) are unable to do their job as they know it (with time for analysis and research) and, at the same time, that they cannot

¹¹⁹ Interview with regional television journalist, by Marina Mantini, 13/11/2011.

¹²⁰ There is a broad consensus regarding the association of electors or supporters of the People’s Party with readers of *El Mundo* and those of the PSOE with *El País*.

¹²¹ In 2010 the list of the most important advertising companies was (in euros): Telefónica (173.8 m); Procter and Gamble Spain (131.9 m); L’Oreal Spain (107.7 m), El Corte Inglés (96.4 m). Source: Infoadex, *Estudio de la inversión publicitaria en España en 2008* [Study of advertising investment in Spain in 2008], available at: <http://www.infoadex.es/infoadex.asp> (last accessed 5 December 2011).

¹²² Interview with two freelance journalists, by Marina Mantini, 13/10/2011.

¹²³ Interview with two freelance journalist, by Marina Mantini, 13/10/2011; Interview with autonomic television journalist, by Marina Mantini, 13/11/2011.

¹²⁴ *El País* 31/10/2010, Interview with Giovanni di Lorenzo, *Die Zeit* Director. Available at: http://www.elpais.com/articulo/reportajes/periodismo/digital/hace/todo/dinero/elpepusocdmg/20101031elpdmgrep_6/Tes (last accessed 5 December 2011).

¹²⁵ Interview with freelance journalists, by Marina Mantini, 13/10/2011.

pass their skills on to young professionals - precisely those who lack experience. Meanwhile some professionals, especially amongst the information managers, have turned themselves into “techno-believers”, seeing the Internet as a panacea and an information paradise.¹²⁶ All these factors explain why journalists are no longer able to exercise their role as independent and objective reporters of reality. In addition to the reasons explained hitherto, publishing guidelines are almost audience-oriented, with editors-in-chief and directors obsessed with the internal and external competition (different products). The final objective is 'more and more' audience, leading to a situation where information is in practice transformed into entertainment (Marín Lladó, 2008). Furthermore, journalists themselves believe that the bad opinion people have of them (reinforced by surveys on evaluation of journalists¹²⁷) is caused by certain programmes and contents which practise disinformation journalism and employ dramatisation techniques (APM, 2010: 51).

By the same token, the evidence that journalistic texts are less objective, more partial and full of clichés is also due to the deterioration of working conditions. In fact the economic recession has significantly worsened journalists' daily work. Analysts denounce unemployment, lay-offs and the loss of rights as the causes of the decline in the earnings of press workers and journalistic prestige (APM – Press Association of Madrid, 2010: 63-80; AEDE- Association of Spanish Newspapers, 30th of November 2010; Valera, 2011: 2).¹²⁸ This job insecurity is related to communications' companies, interested in reducing costs. On the other hand it is a consequence of 'instant' news production, made possible thanks to new technologies (Díaz Arías, 2010: 188). In particular, the conditions of cyber-journalists are worse than the conditions of traditional ones: lower salaries, longer working days and abuse of apprenticeships (Almiron, 2008: 229; Sandoval Martín, 2005; Mellado Ruiz and López Hidalgo, 2006: 165), something which does not precisely favour commitment to traditional values. According to the figures provided by trade unions, nowadays more than 50% of the information produced in Spain is created by workers without a contract or alleged freelancers in a clear evasion of the law. The absence of specific regulation of the journalistic profession causes this complicity between communication companies and governments.¹²⁹ Nevertheless, in spite of this deregulation which has led to a lack of control of social and working conditions (Seco, 2003: 91-93), professionals seem to prefer less regulation and institutional intervention.¹³⁰

Moreover, this disagreement about regulation appears to be just one of the causes of the loss of representation of journalists' corporations. For example,

¹²⁶ APM (2010: 49) and interview with two freelance journalists, by Marina Mantini, 13/10/2011.

¹²⁷ Spanish people classified their evaluation of the press as “average” (in a ranking from “very well” to “very bad”). The main causes of mistrust of journalists identified by audiences are: “yellow press” contents (*prensa de corazón*), the relationship between political parties and mass media, and the lack of objectivity in news reporting (APM, 2010: 107-108). Especially striking is the degree of politicisation detected in the Spanish media, a widespread impression which has increased every year since 2008 (APM, 2010: 108).

¹²⁸ Even though this is especially valid for the printed press, more affected by drops in sales and advertising, television journalists are also suffering the same problems, as a consequence of mergers between the private channels (see for example the sale of *Cuatro* to *Mediaset*, which gave rise to dismissals and strikes) or labour adjustment plans in local and national PSB, as already discussed in section 3.1.3.

¹²⁹ Interview with Dardo Gómez, General Secretary of FeSp, by Marina Mantini, 14/07/2011.

¹³⁰ See for example negative opinions about State aid for the printed press in ‘Asociaciones de editores y ayudas públicas: la contradicción liberal’, by Almiron, N. in 75, *Telos*, 2008.

journalists' associations denounce a decrease in the quality of democracy (FAPE, 2010) and recently they have protested against the current use of news packaged by press offices and press conferences where questions are not allowed (APM, 12/5/2011; FAPE, 3/05/2011).¹³¹ This situation has given rise to public debates about the urgency of looking for new models of the journalistic profession, asking for more regulation and possible state aids to the press (*El Confidencial*, 15/12/2010 and 01/12/2010; *La Vanguardia*, 09/01/2011; *El Mundo*, 11/05/2011). However, since journalists' associations are biased, i.e. supporters of one or another political party, actually they seem to work as spokesmen of some political powers (Reig, 2011: 264). This situation leads to the fact that professionals distrust the legitimate will of journalists' organisations to promote regulation.¹³² In any case, general elections on 20 November 2011 and the economic recession have removed the issue of journalistic regulation from discussions.¹³³

Also related to this issue is the fact that, in Spain, no specific title or qualification is required to gain access to the journalistic profession. In the BIR we have already explained the main educational path of journalists, who come mainly from Universities of Information Sciences (APM, 2010: 85) created in the Franco period (BIR, 2010: 391). In 2008-2010, the number of students in academic journalism courses increased, due both to the economic recession (in order to get a degree and therefore have better chances of finding a job) and to the Bologna Education Process, which has implied the introduction of many specialised courses (APM, 2010: 87). Contrary to this trend, journalists interviewed affirm that they would not study Journalism at University if they had to start again, because academia is not useful for work in the mass media system.¹³⁴ In spite of the opinion of these professionals, some academic voices demand a compulsory title as a prerequisite for accessing the profession and enrolment in a professional association, like lawyers or architects (Real Rodriguez, 1997; 2009).

In conclusion, the current troubles of journalism in Spain depend more on the mass media system and on the changes in course than on public policies. All the elements that have been discussed have slowly but decisively influenced the independence, neutrality, objectivity and freedom of the journalists. This state of affairs progressively jeopardises the quality of democracy, and creates distrust vis-à-vis the mass media. Questions pointed out several times throughout this section, such as routine productions, the loss of skills and experience of professionals, and the distortional abuse of new technologies, could lead to a progressive and uncontrollable process of commercialisation of information in the name of financial values, which have supplanted any other social and democratic value.

¹³¹ Academics usually relate these professional routines to the increasingly common practice of 'declarative journalism'.

¹³² Interview with Dardo Gómez, General Secretary of FeSp, by Marina Mantini, 14/07/2011.

¹³³ Moreover, the government recently planned to reduce the number of professional associations, *El País*, 17/01/2011, available at: http://www.elpais.com/articulo/espana/Gobierno/planea/suprimir/algunos/colegios/profesionales/elpepuesp/20110117elpepunac_13/Tes (last accessed 5 December 2011).

¹³⁴ In most cases they said that a good level of general knowledge was necessary, and that possibly a master's degree or post-graduate qualification was also useful. Interview with two freelance journalists, by Marina Mantini, 13/10/2011.

6. Media literacy and transparency requirements

Media freedom and independence are not only conditioned by a regulatory framework setting limits to media concentration or by the monitoring of self-regulation or regulation of contents, so that constitutional limits are not overstepped. Throughout the report we have explained how media policy shaping and implementation are driven by more complex and subtle dynamics, where various actors try to influence the process. If one actor is at all interested in the good functioning of the media, assuming that media freedom and independence are a requirement for their good functioning, that actor is civil society. Civil society can be organised in associations, NGOs or even lobbies structured as such,¹³⁵ but individuals should also be borne in mind. The media will fulfil their function as watchdogs better (more independently) if critical public opinion exists, and for this purpose media literacy is a necessary tool. Also, civil society can only control how free and independent the media are once it knows how they are composed. Transparency regarding media ownership and the interests linked to it is therefore crucial.

In the Background Information Report (BIR, 2010: 391) we noted the low institutional and regulatory activity for promoting media literacy in Spain, although we did record some changes, in particular thanks to ICT literacy promoted by civil society and academic studies and initiatives (mostly in teacher training). The main obstacle to actual, satisfactory progress is that in Spain, media literacy development seems to follow the instrumental and functionalist characteristics of social mass media policies, which are considered solely from the point of view of channels and technology.¹³⁶ Again, as with the advent of other techniques in the past, the use of new technologies in education has been seen as a panacea for remedying all problems (Cardenas Sánchez, 2010: 2). However, media literacy implementation has focused on merely providing information and knowledge on the importance of new technologies in teaching, by means of providing teaching materials and examples of activities to be developed at school. In fact, recent impulses have been centred on digital literacy, avoiding almost any initiative of traditional media, with the introduction of new technology tools at school and in the curricula (Consejo de Ministros 2010: 84; *Plan Escuela 2.0*;¹³⁷ Tubella, 2010: 165; UAB, 2007: 4). Actually almost all current programmes and debates focus on digital literacy, forgetting that new technologies involve both traditional and new media in a context of increasing convergence. Reducing media literacy to digital literacy alone implies a serious vacuum in the school curricula and could endanger democracy. Indeed, the active role of the population is necessary and possible only if the population is educated with regard to the media, their strategies and their tools, from childhood. As we pointed out in the section dedicated to journalism, the media, in turn, dodge regulation and want no outsider setting boundaries on the freedom of speech they wield. To teach viewers to understand and even watch media critically is thus the best way to get everyone involved, with moral maturity, and eventually to demand and achieve more decent media, coherent with the basic ethical principles and values that are

¹³⁵ Interview with lobby member, by Susana de la Sierra, 05/10/2011, where the interviewee argued that lobbies are a system for organising civil society and thus effectively influence the decision-making process. Lobbies would thus be “the fourth power”. He considered media to be the most important lobby in Spanish media policy.

¹³⁶ See, for example “Los ordenadores están en las aulas: y ahora qué?” [Personal Computers are in the schoolroom: and now what?] *El País*, 10/10/2011.

¹³⁷ <http://www.ite.educacion.es/es/inicio/ultimas-noticias/11-escuela-20> (last accessed 5 December 2011).

foundational to democracy (Camps, 2009: 140). Indeed, the central issue is not regulation, but teaching people to see, to analyse and develop critical skills.¹³⁸ There is scant institutional interest by public bodies in acting as “gatekeepers”: associations and NGOs which have been working for many years in Spain on childhood and the mass media denounce the absence of institutional intervention, for instance in verifying that elemental rules – such as those devoted to child protection – are complied with.¹³⁹ Notwithstanding this, it would appear that the public administration seldom gets round to boosting media literacy in relation to all types of media, because it is a relatively new element, and it is well-known how difficult it is to introduce innovations into administrative inertia (Camps, 2009: 191).

Public actors – for the most part central and regional governments – directly involved in media literacy seem to be aware of the importance and urgency of accelerating the penetration of digital literacy in Spanish society. Moreover, in official programmes and documents they accept that the development of digital competence is not achieved automatically by enabling the use of ICT tools, and that it is necessary to reach such tool-related skills and critical attitudes as the creation and use of content, privacy and security, and legal and ethical use of the information (Ministry of Education-ITE, 2011: 2). The main political parties, for instance, in their manifestos for the 2008 general elections, still linked media literacy with new technologies and the progress of the Information Society. They interpreted digital literacy as the introduction of new technologies into schools, forcing teachers to train themselves and actively involving parents in school, as well as advocating the acquisition of skills useful for future jobs by students.¹⁴⁰ The audiovisual mass media (especially television) build a common environment for children and young people. Media literacy policies are an important socialisation and education element, because they capacitate children to watch television critically, consume rationally (CAC, 2003: 66) and, more importantly, to ideally become active citizens controlling what the media do. It should be recalled that Article 9 of the LGCA recognises everybody’s right to control the contents of audiovisual communication services. If citizens are to acquire mature skills in order to choose contents and the media to provide contents in a free and independent way, media literacy and Article 9 of the LGCA form a perfect tandem.

Many activities related to audiovisual literacy are promoted by regional audiovisual authorities, and the CEMA, once – and if – it is created, should ensure the promotion of media literacy in the audiovisual field and report annually on the level of media literacy. Regional institutions are well positioned as mediators between the audiovisual media and society at large. At the same time, they are able to identify and support initiatives by schools. Regulatory authorities can act as mediators between all interested parties in the field of education and media literacy. Once citizens proceed to control media contents, they soon see how complex it is to monitor the audiovisual media, and regulatory authorities can help them to develop the instruments to achieve this (Camps, 2009: 191). As an example, we could mention Catalonia, whose Council (*Consell de l’Audiovisual de Catalunya/CAC*) has led a series of measures to run

¹³⁸ E. Pujadas, Intervention on *Child, screens and ethics Congress*, organised by OCTA - Audiovisual television contents observatory on 18 October 2011.

¹³⁹ Interview with Ángeles Pérez Chica, President of OCTA, by Marina Mantini, 19 July 2011.

¹⁴⁰ PP – Partido Popular (2008: 253); PSOE – Partido Socialista Obrero Español (2008: 145); IU-Izquierda Unida (2008: p. 78-85); ICV-Iniciativa per Catalunya Verds (2008: p. 118-124); UPD – Unión Progreso y Democracia (2008: p. 35).

research programmes and orientate instruction aimed at media literacy. Accordingly, the Catalan Council has signed a series of agreements with different local universities to motivate researchers along these lines, and it has arranged specific studies with consolidated research teams, and an annual contest targeting younger researchers, which makes special mention of media education as one top-priority line to be pursued.¹⁴¹ In addition the CAC publishes excellent material for schools (Consell del Audiovisual de Catalunya, 2003; Ferrés Prats, 2010). Regional audiovisual authorities also publish many documents on audiovisual contents, among them literature on media literacy (Naval, C., Lara, S., Ugarte, C., Sádaba, C., 2010). The Audiovisual Council of Andalusia is a member, together with the Catalan Council of the *Red de Instituciones Reguladoras Mediterráneas (RIRM)* [Mediterranean Network of Regulatory Institutions], which in 2009 decided to create a Mediterranean Alliance for Media Literacy, for parents, educators and children (Consejo Audiovisual de Andalucía, 2009: 61). At the same time, the Council's Director publishes a section on media literacy in the newspapers of the *Joly* group.¹⁴²

Finally, it should be noted that, as stated in the BIR (2010: 391-392), it is private actors, either academic or non-academic, who offer the most contributions and studies on media literacy in Spain. Yet these contributions are not clearly linked to media freedom and independence. So far they seem to be rather educational initiatives in general and the particular media input is somewhat absent. Indeed, even though Article 6.4 of the LGCA includes a mention of media literacy, this is due to circumstantial reasons. Art. 6 of the LGCA refers to the right to a transparent audiovisual communication, so the link between media literacy and transparency fits into the general discourse on how transparency contributes to free and independent media. Nevertheless, this reference to media literacy was included in the negotiation process to pass the Statute with absolutely no debate and only because a person sensitive to these issues insisted on the need to include such a clause.¹⁴³ The CEMA should safeguard the promotion of media literacy in the audiovisual sector, so as to increase the maximal media competence by citizenship (Article 47 o) LGCA). Only after the CEMA has been created, or its functions have been transferred to another independent authority, will media literacy policies become a reality. In the meantime, an agenda for those policies should be set. Therefore, the body competent for this should bear in mind what regional audiovisual authorities have done so far, focusing mainly on educational curricula, but also on initiatives such as contests and information campaigns addressing various society targets, such as teachers, parents and children.

For public opinion and citizens in general to verify that the media are indeed free and independent, transparency is required. Transparency can be understood in two ways in today's debates. On the one hand, transparency is linked to access of information. Some initiatives exist in Spain to promote transparency of public action and also to facilitate access of information to communication professionals and to the general public. Yet no specific regulation exists so far. The government 2008-2011 failed to push through a bill on transparency and access to information in time, but political parties declare their will to pass such a bill after the general elections of 20

¹⁴¹ For these initiatives, see <http://www.cac.cat/index.jsp>.

¹⁴² <http://www.consejoaudiovisualdeandalucia.es/actividad/actualidad/articulos/2011/05/alfabetizacion-mediatica-un-derecho-basico> (last accessed 5 December 2011).

¹⁴³ Interview with official working at the Ministry of the Presidency, competent on media issues, by Susana de la Sierra and Isaac Martín Delgado, 14/03/2011.

November 2011. On the other hand, transparency is also linked to the components of the media outlets, i.e. who is the owner, what are their funding sources, etc. When discussing measures concerning the media structure and, in particular, the attempts to pass a Statute on the guarantees of freedom of information, we stated that the draft includes a reference to transparency regarding the ownership and management of the media outlet (which was called a “journalistic enterprise”). The contents of the legal requirement were then further explained, but it should be noted here that the draft requires outlets to make these data public in their own media, at least once a year or whenever a substantial change takes place. A similar obligation exists for Internet service providers according to Article 10 of the Statute 34/2002, regulating the services of the information society and electronic business. Although the Internet is not as such a communication medium, it is a platform where various communications media converge. Therefore, transparency requirements are also applicable when media on the Internet are involved, so that users can build informed opinions regarding their freedom and independence on the basis of the data provided. Finally, similar provisions are contained in the LGCA. In particular, as stated above, Article 6 of the LGCA – following Article 5 of the AMSD – considers that everybody has the right to know the identity of the audiovisual communication service provider, as well as the enterprises that are part of its group and its shareholders. For these purposes, this information can be made public on its web page.

7. Conclusion

The media in Spain are definitely neither free nor independent. Freedom and independence are to be understood here together, as the Spanish media are not free precisely because they are built on dependencies, mainly in terms of financing and information sources. Dependencies can moreover be related either to political power or to private interests, and in neither of these areas could we solidly affirm that these values - media freedom and independence - are the ones that drive along the whole process of media policy framing and implementation.

The Spanish media have traditionally had a strong relationship with the political system. The media depend on public regulation and, to a certain extent, on cooperation with public bodies to obtain information. The media and the political system have long maintained close connections and, indeed, the Spanish media have usually been linked to either one or another political party. As a result of this, the Spanish media scene has for many years been polarised between the two main political parties. The proliferation of digital media, including blogs, has increased the possibilities of the media of becoming independent from political powers, as it has added more diversity. This has been helped by the fact that publishing or broadcasting on the Internet is not as expensive as it is in traditional media. Also, the wide variety of information channels that can be found on the Internet offer new terrain for theorising on the limits of the freedoms of expression and information when using new media. Spanish media policies have so far not dealt with this variety, and specific measures have therefore not been adopted. Media convergence is absent from public initiatives and, consequently, the audiovisual and the printed press are considered as separate from a legal and political point of view. As far as the Internet is concerned, regulation thus far has only addressed questions related to commercial services, even though some transparency requirements discussed in section 6, which derive from European law, need to be mentioned.

If dependencies linked to the political system are the ones that have traditionally existed in Spain, it remains to be analysed who, then, in the political system, formulates policies related to media freedom and information. Political parties are the obvious first answer to this question. They all have included references to the media in their political manifestos, some of them indeed related to media freedom and independence. Yet when the time comes for political parties to convert their proposals into policy initiatives - mainly regulation - it is not clear that these values play such an important role. Indeed, lobbying has proved to be a fairly successful technique for establishing the media agenda in Spain. To name just one example, the parliamentary debates that led up to the passing of the LGCA constantly included references to the influence UTECA, the major commercial televisions' association, had exerted on the draft and, ultimately, on the Statute. This has in fact been confirmed by interviews. One consequence of this could be the provisions concerning media concentration in Spain. In theory, the LGCA liberalises the market and welcomes more competition therein. It therefore sets limits to mergers, but interestingly those limits - in particular those on market shares - can be surpassed. If the theoretical reason for this could be that market success should not be penalised, the fact is that after the entry into force of the LGCA, relevant mergers have taken place and competition authorities, even though some doubts were raised regarding the operations under examination, were forced to admit that they complied with the law.

If media freedom and independence is enriched within a competitive market, then the optimal conditions for this have clearly not yet been established.

Competition authorities, amongst other independent authorities, are also – or should be – relevant actors. One of the major important discussions concerning independent authorities in Spain relates to the State Council on Audiovisual Media. This Council ought to be created according to Article 44 of the LGCA, as has been discussed above. Core arguments of the debate between the Socialist Party and the People’s Party are related to media freedom and independence. While some argue that such an authority would only censor media contents, others consider that it is necessary in democratic societies. Indeed, the AMSD requires Member States to have an independent authority monitoring whether its obligations are complied with. European Union law has constituted an element of the debate, although not as intensively as one might have expected. This is because the LGCA, although it implements the AMSD, responds very much to the particular Spanish situation.

One area where European Union law should have been brought into the debate but has not is that of regulatory techniques. As discussed in detail in section 4.2.2, self-regulation and co-regulation are timidly entering the media agenda in Spain. This is coherent with EU law, as various documents on the strategy of “Better regulation” and on media policy in Europe point to the need of choosing the best regulatory instrument in each case. The AMSD even includes references to the convenience of using self-regulation and co-regulation whenever possible for media issues, assuming also that the notions of self-regulation and co-regulation are vague; their contents vary from country to country and from sector to sector. Also, when public policy documents or regulations refer either to self-regulation or to co-regulation, they do not always use the correct wording. They also sometimes refer to the same reality under different names. Only a detailed analysis of each system will shed light on its real nature. Self-regulation and co-regulation have acquired relevance recently, as the legislator now invites the media to use these techniques. As discussed in various sections, this is so for the audiovisual segment, mainly Article 12 of the LGCA, which recognises the right of audiovisual communication service providers to self-regulation. As far as the press is concerned, self-regulation has always been an issue, since a common phrase amongst journalists is that the best regulation is no regulation. Yet there is a draft Statute now (which will probably not be passed in the end), where a system of co-regulation is designed, a system in which ideally all stakeholders would participate. The interest of mentioning self-regulation and co-regulation lies in the fact that the media are invited to use these techniques in order to regulate media contents, precisely because if public powers proceeded to regulate them, the dividing line between constitutionally regulating media contents and unconstitutional censorship could become too blurred. Therefore, in the Spanish framework, it is a question of media freedom and independence, as regulation may interfere in these values if it takes the form of a sort of censorship.

EU law, even when relevant, has been absent from the general debate, with the exception of some particular cases, such as the aforementioned need for Member States to have independent authorities to monitor compliance with the AMSD. As far as the ECHR is concerned, although Spain has been condemned several times for violation of Article 10 of the ECHR, mainly in the framework of the special political situation in the Basque Country and in cases related to the Monarchy, its real influence has so far been inexistent. No public discourse on the media has been constructed so far on the basis of the rights and freedoms recognised in the ECHR.

Even if the ECHR and the case law of the ECtHR based thereon cannot so far be considered relevant for Spanish media policy framing and implementation, the same cannot be said of the role of courts in general. Spanish courts from all four branches (civil, criminal, administrative and labour) are key actors in the process. Legislation and public policy documents are far too general and ambiguous. Independent authorities and - principally - courts are the bodies in charge of providing content for the general contents of these documents and of setting limits to media outlets. As far as media freedom and independence are concerned, it has been suggested that civil courts in practice frame the scope of freedom of information, as they balance this freedom against other rights and assets of constitutional value. In doing so, they are also implementing media policy, inasmuch as they design the path the media need to follow if they do not want their activities to be considered illegal or unconstitutional.

The dependencies of media outlets on public power have already been discussed. Now, even if this was the classical approach towards the analysis of media freedom and independence, the logic of the system is slightly different. The dependencies of media outlets are better explained through market lenses today. Funding is essential for the media to survive and it can come from different sources, national or international, linked to the media or linked to other economic sectors. Those who fund are basically those who set the agenda. These dependencies are more subtle, as the interests behind market operations are not always easy to identify. Together with funding, the evolution of technology and society has led to a situation where the thirst for new information is increasing. 24/7 journalism and the economic crisis are the major problems existing in the journalistic profession. The need for funding is even more intense under these circumstances.

No public policy initiatives exist yet to deal with this kind of dependencies. There are indeed transparency requirements, enabling one to find out exactly who is behind each media outlet. But no further measures have been deemed necessary in order to clarify the funding of the media and, to a certain extent, to control the chain that leads to the production of information. Advertising rules could, however, be considered a type of public policy initiative linked to funding. In this Spain follows EU law, with some particularities that have been discussed and which have brought this regulation to the Court of Justice of the European Union. Finally, in relation to the journalistic profession, a draft on the guarantees of freedom of information has been presented by some journalistic associations and supported by minority parties. Here, the definition of a professional journalist is the starting point. Deontology and transparency of the press outlet are also central elements of the regulation.

To conclude, we should ask ourselves what are the elements that build up the public policy agenda for media freedom and independence? According to some scholars, for instance Manfredi, audiovisual legislation changes rapidly and, indeed, changes every time there is a new government from a different political background. This could be considered a perfect example of non-governance. If we nevertheless had to mention the instruments that are particularly supportive of media freedom and independence or highlight best practices in Spain, the following could be listed: (1) Rights included in the LGCA as “rights of the public”, although their implementation still remains to be assessed; (2) Efforts to promote self-regulation and co-regulation, although the particular techniques that have been established should be better defined; (3) Attempts to promote transparency concerning media ownership and also in relation to access to information. And finally, if we had to name some of the many

still-obscure aspects of Spanish media policies, here are some examples: (1) The close relationship between the political system and the media, so that every (traditional) media outlet is linked to one party or another. No independence whatsoever can be found here; (2) Public policy instruments respond in many cases to specific private interests, which have reached political institutions in an unclear manner. Some norms, such as the LGCA, are an obvious result of this. This has consequences, for example on the regulation of media concentration or, allegedly, also in connection to advertising; (3) Media convergence is absent from Spanish media policies. The Internet is still a no-man's land, and there is still not much material available to judge whether or not classical norms on media regulation apply to the Internet. In this area independent authorities and the courts are relevant actors in the framing and implementation of media policies concerning media freedom and independence, as they will have to assess on a case-by-case basis whether these values are respected in practice. Indeed, a case-by-case analysis of the general situation of media freedom and independence in Spain shows that much is still to be done, actors are plural and challenges are numerous.

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8.2 Legislation

Statute 14/1966, 16 March, on Press and Printing [*Ley 14/1966, de Prensa e Imprenta*]

Decree 744/1967, 13 April, on the Statute of the Journalistic Profession [*Decreto 744/1967, de 13 de abril, por el que se aprueba el texto refundido del Estatuto de la Profesión Periodística*]

Organic Statute 115/1982, 5 May 1982, on the Civil Protection of the Right of Honour, Personal and Family Privacy and Personal Image [*Ley Orgánica 115/1982, de 5 de mayo, de Protección Civil del Derecho al Honor, a la Intimidad Personal y Familiar y a la Propia Imagen*]

Statute 5/1985, 19 July, on the General Electoral Regime [*Ley Orgánica 5/1985, de 19 de julio, de Régimen Electoral General del 19 de julio*]

Resolution of the Parliamentary Assembly of the Council of Europe on the ethics of journalism (resolution nº 1003 of 1993)

Legislative Decree 1/1996, 12 April, on Intellectual Property [*Real Decreto legislativo 1/1996, de 12 de abril, por el que se aprueba el Texto Refundido de la Ley de Propiedad Intelectual*]

Organic Statute 15/1999, on Personal Data Protection [*Ley Orgánica 15/1999 del 13 de Diciembre de Protección de Datos de Carácter Personal*]

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Statute 2/2006, 3 May, Organic Law of Education [*Ley Orgánica 2/2006, de 3 de Mayo, de Educación*]

Organic Statute 56/2007, on measures to promote the information society [*Ley Orgánica 56/2007 del 29 de Diciembre, de Medidas de Impulso de la Sociedad de la Información*]

Royal Decree, 22 May 2009, passing the User's Bill of Rights of electronic communications services [*Real Decreto 899/2009, de 22 de mayo, por el que se aprueba la carta de derechos del usuario de los servicios de comunicaciones electrónicas*]

General Statute 7/2010, 31 March, on Audiovisual Communications, [*Ley Orgánica 7/2010, de 31 de Marzo, General de la Comunicación Audiovisual*]

Statute 2/2011, 5 March, on Sustainable Economy [*Ley 2/2011, de 5 de Marzo, de Economía Sostenible*]

Organic Statute 2/2011, 28 January, that modifies the General Electoral Statute [*Ley Orgánica 2/2011, de 28 de enero, por la que se modifica la Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General*]

Organic Statute 4/2011, 11 March, additional to Statute 2/2011, on Sustainable Economy [*Ley Orgánica 4/2011, de 11 de marzo, complementaria de la Ley de Economía Sostenible, por la que se modifican las Leyes Orgánicas 5/2002, de 19 de junio, de las Cualificaciones y de la Formación Profesional, 2/2006, de 3 de mayo, de Educación, y 6/1985, de 1 de julio, del Poder Judicial*]

8.3 Cases

8.3.1 Spanish Constitutional Court

Judgment of the Constitutional Court no 12/1982, 31 March 1982

Judgment of the Constitutional Court no 88/1985, 19 July 1985

Judgment of the Constitutional Court no 31/1994, 31 January 1994

Judgment of the Constitutional Court no 31/2010, 28 June 2010

Judgment of the Constitutional Court no 150/2011, 29 September 2011

8.3.2 European Court of Human Rights

ECtHR, *Castells v. Spain*, application no 11798/85, 23 April 1992

ECtHR, *Casado Coca v. Spain*, application no 15450/89, 24 February 1994

ECtHR, *De Diego Nafria v. Spain*, application no 46833/99, 14 March 2002

ECtHR, *Etxeberria, Barrena Arza, Nafarroako, Autodeterminazio Bilgunea and Aiarako and others v. Spain*, application no 35579/03, 35613/03, 35626/03 and 35634/03, 30 June 2009

ECtHR, *Gutiérrez Suárez v. Spain*, application n° 16023/07, 1 June 2010

ECtHR, *Eusko Abertzale Ekintza Acción Nacionalista Vasca (EAE-ANV) v. Spain*, application n° 51762/07 and 51882/07, 7 December 2010

ECtHR, *Otegi Mondragón v. Spain*, application n° 2034/07, 15 March 2011

ECtHR, *Palomo Sánchez and others*, application n° 28955/06, 28957/06, 28959/06 et 28964/06, 12 September 2011

8.3.3 Court of Justice of the European Union

ECJ, C-281/09, 24 November 2011, *European Commission v. Spain*, not yet published

ECJ, C-222/07, 5 March 2009, *Unión de Televisiones Comerciales Asociadas (UTECA)*, [2009] ECR I-1407

8.3.4 Other national courts

Judgment no 531/09 of the criminal court nº 16 of Madrid, 18 December 2009

8.3.5 Decisions of the Competition Authority (*Comisión Nacional de la Competencia*)

Competition authority, Decision of 16 December 2009, case no C-0188/09, *RBA/EDIPRESSE*.

Competition authority, Decision of 10 November 2010, case no C-0231/10, *Prisa/Telefónica/Telecinco/Digital +*

Competition authority, Decision of 26 May 2010, case no C-232/10, *COPE/UNIÓN RADIO*

Competition authority, Decision of 20 January 2011, case no C-0312/10, *SER/Radio Lleida*

9. List of interviews

1. Interview with former official working at the Ministry of the Presidency, by Susana de la Sierra, 08/09/2010
2. Interview with journalist, president of a regional association of journalists, by Susana de la Sierra and María Martínez Carmena, 02/12/2010
3. Interview with official working at the Ministry of the Presidency, competent on media issues, by Susana de la Sierra and Isaac Martín Delgado, 14/03/2011
4. Interview with Enrique Bustamante Ramírez, Professor of Audiovisual Communication and Advertising at the Universidad Complutense de Madrid, member of a Wise Men Group on media policy organised by the Spanish Government
5. Interview with member of regional audiovisual council, by Susana de la Sierra, 20/06/2011
6. Interview with member of a consumers' association, by Susana de la Sierra, 20/06/2011
7. Interview with a representative of the advertising industry, by Susana de la Sierra, 20/06/2011
8. Interview with MP (MP1) of the People's Party (*Partido Popular*), by Susana de la Sierra, 09/06/2011
9. Interview with MP (MP2) of the People's Party (*Partido Popular*), by Susana de la Sierra, 22/06/2011
10. Interview with Dardo Gómez, General Secretary of *FeSP- Federación Española de Sindicatos de Periodistas* [Spanish Federation Journalists Trade Unions], by Marina Mantini, 14/07/2011
11. Interview with Ángeles Pérez Chica, President of *Asociación del Observatorio de Contenidos Televisivos Audiovisuales – OCTA* [Television Audiovisual Contents Observatory Association], by Marina Mantini, 19/07/2011
12. Interview with Javier de la Cueva, lawyer specialized in the relationship between law and technology, expert in copyright, by Marina Mantini, 20/07/2011
13. Interview with Judge at the Spanish Constitutional Court, by Susana de la Sierra, 20/09/2011
14. Interview with law clerk at the Spanish Constitutional Court, by Susana de la Sierra, 20/09/2011
15. Interview with Andrés Boix, Professor of Media Law and blogger specialised in political and legal issues, by Susana de la Sierra, 23/09/2011
16. Interview with public prosecutor specialized in cybercrimes, by Marina Mantini, 29/09/2011
17. Interview with two freelance journalists with accreditation for the main public institutions, by Marina Mantini, 13/10/2011
18. Interview with Judge at the Spanish Supreme Court, by Susana de la Sierra, 04/10/2011
19. Interview with MP (MP3) of the Socialist Party, Lourdes Muñoz, by Marina Mantini, 28/10/2011

20. Interview with lobby member, by Susana de la Sierra, 05/10/2011
21. Interview with a journalist of a regional television, by Marina Mantini, 13/11/2011
22. Interview with Federico Volpini, former director of *Radio 3*, by Susana de la Sierra and Marina Mantini, 01/12/2011

Our targets included minority groups in Parliament and e-mails were sent on 4 July 2011 (of which we keep a copy), but no answer was received. The authors consider that the vision of minority groups would have considerably enriched the analysis.

10. List of discussion groups

- Group discussion on 21/01/2011, at the Centre of Political and Constitutional Studies, in Madrid. Members of the MEDIADEM team (<http://www.mediadem.eliamep.gr/working-meeting-of-mediadem%E2%80%99s-spanish-research-team/>), last accessed 5 December 2011
- The Spanish MEDIADEM section co-organised, together with the Catalan Audiovisual Authority, a workshop on regulation, self-regulation, co-regulation and social responsibility of the audiovisual communication media, on 20/06/2011 (<http://www.mediadem.eliamep.gr/wp-content/uploads/2011/07/Programa-Jornada-es.pdf>), last accessed 5 December 2011
- The head of the Spanish team participated in a course on the future of the media, where she presented a paper on regulation and self-regulation of the media, getting feedback from the audience, mainly composed by journalists and journalism students, 27/07/2011 (<http://redsocial.uimp20.es/video/el-periodismo-prevalecer-el-trabalenguas-audiovisual-susana-de-la>), last accessed 5 December 2011