

Case study report

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

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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

In the rapid changes brought about by the transition to liberal democracy in Bulgaria in the 1990s, *media policy* as such was not among the priorities of the main political and other players. Rather, the developments in this sphere were a result of a general drive for liberalisation and less regulation, considered to be the proper way for the realisation of the values of freedom of expression and access to information, crucial for building democratic society. The account of the early developments of media regulation in Bulgaria suggests that it was pretty much at the centre of politics during the transition period, without ever becoming a dominant or an exclusive focus. Throughout the 1990s media regulation was a part of the struggle for domination of political actors: the ex-communists and the pro-reform democrats. At the start of the new millennium the political parties in Bulgaria went through a process of crisis, which led to a marked relaxation of the political pressure on the media. Open partisanship disappeared and was replaced by more subtle ways of political influence; the private media market was already quite developed, which took to the fore other concerns: the conflict between corporate interest and the quality of journalism. As a result of these processes, at present the Bulgarian media regulation is at a loss in terms of guiding principles. All agree on the importance of issues as freedom of speech and media independence, but there are strikingly different visions of what these abstract concepts mean. On the one hand, there is the pressure group of the commercial media, which press essentially either for less regulation, or for regulation which maximises their profits, especially in the advertising market. One top priority of this group is the reduction of the public support for the public media, be it in the form of a reduction of the subsidy that funds the public media, or in the elimination for the public broadcasters to attract commercial ads. On the other hand, still there is a public interest oriented group of journalists, professors and NGO actors, who defend the role of the state in the media market both through regulation, and through direct forms of support for the public media. Politicians and political parties still maintain close links with the media, yet the direction of the influence is changing: there is a growing trend of mediatisation of Bulgarian politics, with PR and media presentation having to a large extent replaced the need for extensive party membership or local structures for the parties.

Thus, after twenty years of transition from communism, the Bulgarian media environment is currently in a state of normative confusion. There are different competing visions and interpretations of common ground concepts such as media independence and freedom of speech. Therefore, civil society is gradually losing orientation in the complex battles between different special groups and purely commercial interests in this field. Unfortunately, European regulation does not provide the normative grounding necessary for this area – it is also torn apart among various priorities and normative goals. In the absence of clear normative standards, it is no surprise that the media is increasingly seen as an extension of either partisan or corporate strategies.

1. Introduction

In the rapid changes brought about by the transition to liberal democracy in Bulgaria in the 1990s, *media policy* as such was not among the priorities of the main political and other players. Rather, the developments in this sphere were a result of a general drive for liberalisation and less regulation, considered to be the proper way for the realisation of the values of freedom of expression and access to information, crucial for building democratic society.

In Bulgaria, the Round Table Talks in 1990 were formative for policy developments in a number of areas, therefore, by way of introduction, we start with a brief review of the developments during these early negotiations between the outgoing communist leaders and the fledgling democratic opposition. The right to freedom of opinion featured prominently in the Round Table Talks. Thus on March 30 1990, “An Agreement on the basic ideas and principles for the amendment of the Bulgarian Constitution” was signed, which aimed to guarantee the peaceful transition to democratic society. The Agreement stated: “A separate section in the Constitution shall be devoted to freedom of opinion and it shall be formulated in an extended way.” Indeed, in the 1991 Constitution a special section is devoted to freedom of opinion (freedom of expression, of the media, and of information). The constitutional protection of these “communication rights” [as they were called by the Bulgarian Constitutional Court (BCC) in its 1996 interpretative decision on them] served as the ground for the rapid, unregulated proliferation of press media outlets. Their only regulation was provided by the Commercial Code.

Another agreement signed during the Round Table Talks concerned the status of the state-owned Bulgarian national radio (BNR) and Bulgarian national television (BNT),¹ which during socialism were governed by the state Committee on television and the radio (dissolved in early 1990²). The agreement established political pluralism as the guiding principle of BNT and BNR. Thus, they were to be “all-encompassing national and non-partisan autonomous and independent institutions”, whose activities should follow the principle of an “equally balanced and law-bound presentation of the political parties and their positions in the mass media”. Further, it declared that “no administrative sanctions or moral pressures could be imposed on journalists for their reports on the political campaigns”. This provision was also extended in the new Constitution, where “the founding fathers” explicitly prohibited censorship. The drafters transposed in the text of the Constitution (especially in its chapter two, containing the ‘communication rights’) the provisions of the International Covenant on Social, Economic and Cultural rights and of the International Covenant on the Civil and Political rights of the UN (ratified at the time of the adoption of the Constitution), as well as those of the European Convention on Human Rights (ratified only in 1992).

Thus the 1991 Constitution guarantees the right to opinion as a fundamental human and civil right, present in all forms of political liberty. This right is guaranteed by three articles in the Constitution: freedom of expression (art. 39), freedom of the press and the other mass media (art. 40), and the right to information (art. 41). There are strictly enumerated limits to the freedom of the media – in cases of ‘public indecency, an incitement of a forcible change of the Constitutional order, perpetration of a crime or an incitement of violence against anyone’; only after a judicial act the mass media materials may be confiscated (art. 40(2)). The right to information is protected by Art. 41: “(1) Everyone shall

¹Agreement from May 14, 1990, available at: http://www.omda.bg/bulg/k_masa/dokumenti_round_table/agreement_television_radio.htm (date accessed 6 December 2011).

² *State Gazette* no 22/1990.

be entitled to seek, obtain and disseminate information.” The limits here are the rights and reputation of the others, the national security, public order, public health and morality, as well as the official and state secrets.

At the same time, however, the political parties aimed to retain their control over the national broadcast media (BM), viewed by them as an indispensable resource in the dramatic political struggles of the early transition period in the country. Thus, the Grand National Assembly, convened to adopt a new Constitution, decided on the “Main points of the temporary statute of the Bulgarian National TV and the National radio”³ where, along with the principle of political pluralism, the requirements of objectivity and impartiality of the national BM were also introduced. According to this temporary statute, the Grand Assembly retained full (albeit temporary) control over these institutions. The same trend of political control over the BM was entrenched in Paragraph 6 of the Transitory and Concluding Provisions of the Constitution, which envisaged that till the adoption of a special Law on the BNR, the BNT and the Bulgarian telegraph agency (BTA), the Parliament will take over the prerogatives of the Grand National Assembly and continue to govern these institutions through a special Parliamentary committee. Within the temporary prerogatives of Parliament were the appointment and the dismissal of the general directors of the BNT and the BNR. For the next 5 years the majority in Parliament did not adopt such a special law. It was only after a series of decisions of the BCC, which repealed some of the major decisions of this committee as well as challenged its privileged status as a “controller” of the BM, that such a law was adopted (yet was soon after successfully challenged in front of BCC). It was in 1998, that a successful legislation of the sphere of the BM was finally adopted.

The account of the early developments of media regulation in Bulgaria suggests that it was pretty much at the centre of politics during the transition period, without ever becoming a dominant or an exclusive focus. Throughout the 1990s media regulation was a part of the struggle for domination of political actors: the ex-communists and the pro-reform democrats. The media, and especially the public electronic media were a powerful instrument for voter mobilisation and all ruling parties during this period made consistent attempts to secure control over them. Since the beginning of the new century, however, another trend began to transpire. Political parties in Bulgaria went through a process of crisis: new political actors emerged, which replaced the 1990 opposition between ex-communists and democrats. This led to a marked relaxation of the political pressure on the media. Open partisanship disappeared and was replaced by more subtle ways of political influence. In addition, the private media market was already quite developed, which took to the fore other concerns: the conflict between corporate interest and the quality of journalism. As a result of these processes, at present the Bulgarian media regulation is at a loss in terms of guiding principles. All agree on the importance of issues as freedom of speech and media independence, but there are strikingly different visions of what these abstract concepts mean. On the one hand, there is the pressure group of the commercial media, which press essentially either for less regulation, or for regulation which maximises their profits, especially in the advertising market. One top priority of this group is the reduction of the public support for the public media, be it in the form of a reduction of the subsidy that funds the public media, or in the elimination for the public broadcasters to attract commercial ads. On the other hand, still there is a public interest oriented group of journalists, professors and NGO actors, who defend the role of the state in the media market both through regulation, and through direct forms of support for the public media. Apart from these two there is of course the interest of politicians and political parties of close links with the media. The mediatisation of Bulgarian

³ *State Gazette* no 3/1991.

politics over the last ten years is quite dramatic. It will be fair to say that PR and media presentation has to a large extent replaced the need for extensive party membership or local structures for the parties. There have been at least two examples during the last ten years in which political actors have won parliamentary elections (and the right to govern in Bulgaria) without any developed party structures in terms of loyal supporters, members or local organisations. Without the media-savvy nature of their leaders or without their personal charisma (which in the contemporary world probably amounts to the same), such political successes would have been hardly possible. Yet, in contrast to the 1990s when political actors did try to dominate the media, the close relationship between the two in the new century happens mostly through mutual luring, complex corporate-political enticement, and even sometimes open mergers between political actors and media outlets, as in the case of the party Ataka, which emerged from a TV programme.

The interplay of these three groups of actors is in the focus of the case study presented below.

2. Actors and values of media policy

The developments in media regulation in the early transition period reveal essentially two main actors in the field then – the major political parties and their parliamentary groups, on the one hand, and the Bulgarian Constitutional Court, on the other. Yet the map of the policy actors, involved in media policy formulation and implementation, is at present much denser. As pointed out in the introduction, and in our Background Information study⁴, there are at least two different periods of regulation in Bulgaria. Below we present a detailed account of all actors involved in the media regulation. In the analysis, we point out their relative weight and influence during the different stages of the Bulgarian transition period.

The major player in the field of media policy in the 1990s undoubtedly were the *political parties* and their representatives in Parliament. In all parliaments after the adoption of the new Constitution in 1991 there has been a standing committee, with a sphere of competence either exclusively on the media, or on the media, civil society and culture (as is the case of the 41st National Assembly (2009 -)).

In the pre-1998 period, however, the Standing committee on the BNT and the BNR directly controlled the public broadcast media (PBM) and the BTA, by directly appointing and dismissing⁵ their general directors, to name the most controversial of its prerogatives. It should come as no surprise, that the ruling party was constantly accused by the opposition of using the PBM for violating the autonomy of these institutions and for using them for its own propaganda purposes.

The direct involvement of Parliament in controlling the PBM was terminated only after a decision of the *Bulgarian Constitutional Court (BCC)*, the *second major player*, shaping media policy in the 1990s. The BCC issued 6 decisions directly connected to the regulation of the media in the 1990s. The BCC⁶ was addressed in 1995 by the General prosecutor with the request to declare unconstitutional those provisions of the “Main points of the temporary statutes of the BNR and BNT”, which granted the Grand National Assembly, and later – the Parliament - directly governing prerogatives vis-à-vis the PBM. The Court ruled that indeed the direct control by the Parliament of the PBM contradicted art. 40 (1), guaranteeing freedom of the media by prohibiting censorship. A further BCC decision⁷ from 1996 (upon a request from the President for an authoritative interpretation of art. 39, art. 40 and art. 41 of the Constitution, protecting the so-called ‘communication rights’) also declared unconstitutional the direct control of Parliament over the national TV and radio, and mandated the adoption of a specialised legislation on the broadcast media (BM). The same decision held that any specialised regulation of the press would constitute a violation of art. 40 (1). These decisions established the *strict independence of the press from the state* as constitutionally recognised. This strict independence *did not extend to the broadcast media* (henceforth BM), because of the sovereign right of the state over the radio frequencies and the special responsibilities of the state to protect the constitutional right of access to information. The different constitutional status was responsible for the considerable

⁴ Source: Smilova, Smilov and Ganev, 2010.

⁵ The practice of Parliament dismissing the general directors of the PBMs started immediately after the first post-1991-Constitution Parliament was convened. Thus on Nov. 6 1991 the UDF-dominated 36th National Assembly took a decision to dismiss the general director of BNT Ognyan Saparev. The decision was immediately challenged in front of the Bulgarian Constitutional Court (BCC) – thus one of the very first decisions of BCC (BCC decision no 3/30.12.1991) was devoted to public-media related problems, starting a long tradition of BCC involvement in media policy. Further dismissal/appointment decisions of the Parliament were challenged – the General director of BTA Ivo Indjev was dismissed in 1993, yet the BCC did not find this decision unconstitutional either (BCC decision no 15/ 28.09. 1993, *State gazette* no 88/ 15.10. 1993).

⁶ BCC decision no 16/19.09. 1995, *State Gazette* no 86/ 26.09. 1995.

⁷ BCC decisions no 7/ 4.06.1996, *State Gazette* no 55/28.06.1996.

differences in the regulatory regimes of the two types of media. Thus no special act regulates the press – rather, the general provisions of the Commercial Code⁸ apply to it. For the media-specific issues, the matter is entirely left to the *self-regulatory* codes of conduct of the journalists. For the BM, on the other hand, much stricter regulations are envisaged. The position of the Court on the strict independence from the state of the press was in agreement with the views of society in general, and those of the journalists and the media experts in the country, that the press should be left largely unregulated. To this point the prevailing position on the regulation of the press is that it should come in the form of self-regulation, otherwise it would be a form of unconstitutional censorship.

As a result of these decisions, as well as under pressure coming from civil society,⁹ the first Radio and Television Act (RTA)¹⁰ was passed in 1996 by the Bulgaria Socialist Party (BSP)-dominated parliament. According to it, the prerogatives of overseeing the work of both the PBM and the commercial BM were transferred from Parliament and its media committee to a “specialised *state* body” – the National Council for the Radio and the Television (NCRT). The new law was immediately challenged by the opposition, as violating article 40(1) and article 11(1) of the Constitution, prohibiting censorship and guaranteeing political pluralism. In its decision, the BCC¹¹ announced that labelling the NCRT a “state body” was unconstitutional, since it implied state-like, directing (governing) prerogatives going beyond the purely administrative and controlling (i.e. controlling for compliance with the requirements of the RTA) ones, compatible with the autonomous statute of the PBM. The political appointment of NCRT members [7 from Parliament (in proportion to the size of each parliamentary group), 2 from the President and 2 from the Prime Minister] was also held unconstitutional as contradicting both the anti-censorship art. 40 (1) but also art. 11 (1) protecting political pluralism. Thus the BCC judges held that: “An important constitutional guarantee for the normal functioning of the democratic discourse on the basis of political pluralism is the principle of political neutrality in the formation of independent bodies... It demands that the possibility of one or more political forces institutionalising their political advantage in the NCRT, and through it – in the governing bodies of the BNT and the BNR, is excluded.” Despite this decision of the BCC, in the following year the Parliament did not amend the RTA in line with the constitutional requirement for constituting a politically independent NCRT. Instead, it tried to again directly rule the PBM by introducing changes in their governing bodies. The BCC again intervened declaring these decisions of the Parliament unconstitutional.¹² It reasoned that after the enactment of the RTA in 1996, the Parliament had lost its temporary prerogatives vis-à-vis the PBM and thus could not anymore directly rule them, even though parts of the RTA were found unconstitutional. The constitutional way forward was either to amend the 1996 RTA, or to pass an entirely new one. Thus in 1998 a new RTA was passed by the UDF¹³-dominated parliament, to regulate the BM – both public and commercial. There the independence of the BM from political and economic pressure is guaranteed (Art. 8), they are granted the right to receive information from the State institutions (Art. 13), their freedom from censorship (Art. 9) is protected, etc. The RTA again gave wide prerogatives (to control the PBM and licence the commercial ones) to the NCRT,

⁸ *State Gazette* no 48/18.06.1991.

⁹ During this period several CSOs were particularly active in the sphere of protection of journalistic freedom and freedom of expression more generally. The Civic Forum “Free Speech”, the Bulgarian Media Coalition, the Program Access to Information were particularly active supporters of a legislation in this sphere, which would follow the standards, set by the Council of Europe and the European union.

¹⁰ *State Gazette* no 77/1996.

¹¹ BCC decision no 21/14.11.1996, *State Gazette* no 102/29.11.1996.

¹² BCC decision no 17/6.11.1997, *State Gazette* 109/21.11. 1997.

¹³ The Union of Democratic Forces, the major pro-reform, anti-communist party of the transition period.

which though not labelled “specialised state body” continued to be politically appointed (4 members by the President, 5 members by the majority in Parliament). This time the BCC did not announce these provisions of the new RTA unconstitutional¹⁴: the quotas of Parliament and the President in appointing the members of NCRT were not found to violate the principle of political neutrality, since both were directly elected by the citizens and represented “an emanation of the entire people, and not of separate social groups”.¹⁵

Thus, the third major player in the field of media regulation, the NCRT, was born with ‘an original sin’ – a political appointment of its members. The appointment procedure and the ensuing political dependence continue to delegitimize this body (and its successor after 2001 – the Council for Electronic Media (CEM)) in the eyes of both internal and external observers to this day. The prerogatives of this body are wide: they include firstly, the monitoring of compliance with the requirements of the RTA in general, but also the (content) licensing of the TV and radio operators and the appointment of the directors and the approval of the governing bodies of the PBM. With respect to these latter prerogatives, the NCRT (CEM since 2001) has been constantly accused of promoting the interests of their political “patrons” from the Parliament and the Presidential office. As a result, the PBM have been as a rule very pro-governmental.¹⁶ Yet even with regard to licensing of commercial BM, this body has been accused of promoting the interests of its political patrons. Thus in 2011 during the presidential elections campaign one of the candidates accused not the PBM, but the national commercial bTV of being politically partial and promoting the interests of the governing party, reminding how bTV got its TV licence (allegedly with political protection) and demanding from CEM to withdraw it.¹⁷ The situation is similar with respect to its other major prerogative – the appointment of the general directors of the PBM. Each campaign for changing them triggers speculations, and are often preceded by a change in the members of the CEM itself. The last such case was in 2010, when just before the end of the mandates of the directors of the BNT and the BNR, with an amendment to the RTA the number of CEM members was reduced from nine to five, and they had to satisfy some additional selection criteria. This brought changes in the members of the CEM, substituting favoured by the new government figures for the ones appointed by the previous government and the President (who vetoed the amendments with the argument that they are politically motivated). As a result, even though the “new” CEM organised the competition for the positions of general directors of the BNT and the BNR in an open and apparently transparent way (the hearings of the candidates’ “conceptions for the development of PBM” were broadcast live on one of the national TV channels, the rules and selection criteria were announced in advance, etc.), the choice of the head of the BNT was challenged in the Supreme administrative court¹⁸ for being non-transparent and for violating the competition procedures.¹⁹ The Bulgarian Helsinki

¹⁴ BCC decision no 10/25.06. 1999, *State Gazette* no 60/02.07.1999.

¹⁵ *Ibid.*

¹⁶ According to data quoted in BHC 1998, the critical coverage of the government was between 3 and 5% of all programs in the PBM, while in the print press it was in the range between 30 and 60 %.

¹⁷ See <http://www.dnes.bg/politika/2011/09/26/ataka-sybra-simpatizanti-pred-sgradata-na-btv.129670,5>.

¹⁸ As a rule, all CEM decisions for appointing general directors of PBM are challenged in front of the Supreme Administrative Court (SAC). There has, however, been only a few cases, when SAC overturned NCRT/CEM decisions. Thus a newly appointed general director of BNR was dismissed in 2001. During this process the journalists of BNR protested and some 20 of them were dismissed, yet were reinstated after SAC’s decision. In 2002 SAC also held CEM’s decision for the premature dismissal of the general director of BNT illegal and obliged CEM to pay a large compensation to the wrongly dismissed head of the national TV. In 2004 CEM again prematurely dismissed BNT director Kyril Gotzev, who challenged this decision and won in the three-judge panel, yet, surprisingly, the five judge panel at the end upheld CEM’s decision. Source: BHC 2004.

¹⁹ <http://www.vesti.bg/index.phtml?oid=3156311&tid=40> (date accessed 6 December 2011).

Committee is monitoring the court proceedings, because of the appearance of a manipulated choice.²⁰

A next important player is the *Communications Regulation Commission* (CRC), prior to 2001 called State Commission on Telecommunications (SCT). According to the 1998 RTA and the 1998 Telecommunications Act (TA),²¹ the SCT was responsible for granting individual technical licences for the use of the radio spectrum. The work of the SCT was accused of political bias (not announcing on time the free radio frequencies, thus blocking the process of issuing TV and radio licences). The BCC failed to prevent governmental interference with the work of the SCT. Among the most controversial provisions of the TA was the direct appointment of the SCT by the government. Since the SCT was authorised to participate in the licensing of electronic media, its ‘politicisation’ did not guarantee that its decisions would be impartial and free from political biases, alleged the MPs who challenged these provisions before the BCC. The Court dismissed the argument, noting that the control over the programmes of media operators was within the powers of the independent NCRT²², while the SCT was to grant only technical licences for the use of radio frequencies. For a period the CRC was overshadowed by the CEM as the leading media regulatory body, responsible for the licensing procedures. Yet under the rule of the BSP-NMSII-MRF²³ coalition government (2005-2009), the CRC assumed special responsibilities within the framework of the digital switch-over process. It organised the bids for selecting the multiplex operators, which produced numerous scandals. The decisions of the CRC were one of the grounds for the European Commission to start a penal procedure against Bulgaria.²⁴

A third state body with prerogatives in the sphere of the media is the state *Anti-trust Commission*. It has a major role in shaping the media market – it is the body which allows mergers between the media outlets and is meant to safeguard against establishing and/or strengthening dominant positions and abuse thereof. In a media market with growing horizontal and vertical integration, the role of this state body with regard to media freedom and independence could hardly be overestimated. However, in its work it does not follow special rules with respect to the media, going beyond the general provisions of the anti-trust legislation. Thus, the practice of this body in allowing mergers entirely follows the general tests for establishing dominant position, without applying media-specific rules such as a test for media pluralism. It is revealing that a leading representative of the anti-trust commission, speaking on behalf of this body, declined our invitation for an interview (we proposed to discuss the practice of the anti-trust commission with respect to media mergers). The argument given was that they could not benefit our study since they are a general anti-trust body and have little to say on media regulation, which is presumably covered in special media-related legislation. The inadequacy of this response should be obvious to a student of Bulgarian media legislation – since the latter refers to the general anti-trust legislation when media mergers are concerned, obviously the anti-trust commission is the relevant body, where the regulatory practice with regard to media concentrations is developed. The anti-trust commission also hears cases of unfair competition between media outlets. It thus plays a special role in shaping the media market, and thus has an effect on media freedom and independence.

²⁰ Source: BHC 2010.

²¹ *State Gazette* no. 93/1998. It was substituted in 2003 by an entirely new TA. In 2007 a new Electronic Communications Act (ECA) repealed the 2003 TA, transposing in the Bulgarian legislation the Framework Directive for electronic communications 2002/21/EC.

²² Decision 33/1998 *Constitutionality of the Law on Telecommunications*, *State Gazette* no 147/1998.

²³ Bulgarian Socialist Party, The National Movement Simeon the Second and the Movement for Rights and Freedoms (the Turkish ethnic minority party).

²⁴ For more details, see Smilova, Smilov and Ganev, 2010.

A special mention here deserves the Supreme Administrative Court (SAC),²⁵ where the decisions of the three preceding state bodies are appealed. It is probably difficult to provide a short overview of its practice vis-à-vis these bodies. Yet it should be pointed out that there is hardly an important decision of the CEM and the CRC,²⁶ with respect to the licensing process, which has not been appealed there. The CEM's decisions concerning the appointment/dismissal of the general directors of the BNT and the BNR are also always appealed (where in all but one of the cases they are upheld by the court²⁷).

The case law of the European Court of Human Rights (ECtHR) has had no direct impact to this point on the media policy in the country. Two recent decisions of the ECtHR²⁸ from April 2011 are an important new development in this field. They are the first cases in which the ECtHR convicts Bulgaria for violations of art.10 (freedom of expression) of the European Convention on Human Rights (ECHR) with respect to journalists. The cases were brought to the ECtHR by two Bulgarian journalists, convicted in 2000 for defamation. These ECtHR decisions may have a positive effect on the legal practice in libel and defamation cases against journalists in the country, which are one of the triggers of self-censorship in journalistic practices, to be further discussed below.

The next group of players with a stake in media policy are the organisations of the owners and all professionals involved in media business. These are: the Union of Publishers in Bulgaria²⁹ (established in 2000, uniting 23 publishing houses with almost 100 titles); the Association of the Bulgarian Radio and TV operators ABBRO³⁰ (established in 1997 with membership of 60 companies, representing 160 licenced TV and radio operators), the Association of the advertising agencies - Bulgaria (ARA),³¹ established in 1995, the Association of the Independent TV producers,³² established in 2009, the Bulgarian Association of PR agencies, founded in 2001,³³ the Bulgarian Association of the Cable Communications Operators (BACCO), formed at the end of 2010 to combine the Association of the Bulgarian Cable Operators (ABCO, the organisation of the bigger national and regional cable operators) and TV Club 2000, the organisation of the small and medium-sized cable operators, etc. All of these organisations are registered as not-for-profit public benefit civil society organisations (CSOs), declaring to work for improving the media environment and for better professional standards in the media. Some of these organisations have been very influential in the processes of shaping and implementing the media policy in the country, yet whether the public interest has indeed been promoted through their activity is a moot point. In the next section the concrete involvement of these organisations in media policy formulation will be traced in more detail. At this point it suffices to point out the negative (external and internal) evaluations of the current shape of the media market and of the quality of the media output. These negative evaluations, however, should not be attributed to the influence of these organisations alone.

²⁵ <http://www.sac.government.bg/home.nsf/vPagesLookup/home~bg> (date accessed 6 December 2011).

²⁶ According to report of CRC for 2006, some 120 of its decisions (not all of which media-related – CRC regulates all electronic communications market) were challenged, where in the majority of cases SAC struck them down.

²⁷ This is true for all of the appealed decisions of CEM: for 2008 SAC (3 judge panel) took 18 decisions on appeals against CEM, and in 17 it upheld them, the 5 judge panel took 26, of which in 21 it upheld the CEM decisions. In 2010, the trend was the same – of the 40 appeals of CEM decisions, only 5 were successful. Source: Source: CEM 2008 and CEM 2010.

²⁸ *Kasabova v. Bulgaria* and *Bozhkov v. Bulgaria*.

²⁹ <http://sib.bg/> (date accessed 6 December 2011).

³⁰ <http://www.abbro-bg.org/index.php> (date accessed 6 December 2011).

³¹ <http://www.arabulgaria.org> (date accessed 6 December 2011).

³² <http://www.atp.bg/> (date accessed 6 December 2011).

³³ <http://www.bapra.bg/> (date accessed 6 December 2011).

The associations of Bulgarian journalists also deserve a mention, though in the last decade they have become less visible and their influence has become weaker than that of the non-journalist media-related associations mentioned in the preceding paragraph.³⁴ The biggest is the Union of Bulgarian Journalists (UBJ), comprising more than half of the journalists in Bulgaria with its 4,400 members.³⁵ The UBJ was an active participant in the shaping of the media policy in the country in the 1990s, when it was constantly invited to submit opinions on draft laws, file briefs for cases before the BCC, etc. Yet recently it is much less active and visible – it is indicative that representatives of the UBJ were not invited to participate in the working group on the new media law, convened in 2010. The trade union “Podkrepa” has its own Union of Journalists in Bulgaria, yet its influence seems weak.³⁶

There are a few influential non-journalistic CSOs, active in the sphere of freedom of information and free expression: The Program Access to Information,³⁷ The Centre for Media Development,³⁸ The Centre for Independent Journalism,³⁹ The Bulgarian Helsinki Committee,⁴⁰ etc. The Bulgarian Media Coalition (uniting a diverse body of influential media-related organisations) was one of the most active participants in the formulation of media policy, filing several drafts of new media legislation in the late 1990s and early 2000s. It was the strongest force for modernising the media environment and for introducing European standards in the media. Yet its internal tensions (due to conflicting interests of the constituent organisations) brought about its dissolution in 2007.

Another influential CSO - the National Council for Journalistic Ethics⁴¹ was established in 2005, its main task being “to create a self-regulatory system for the press and the BM in Bulgaria through the interpretation and application of the 2004 Ethics code of the Bulgarian media and through dispute resolution among the media and their audience”.

³⁴ This conclusion was suggested by two of our interviewees – both of them media experts, one of them – a representative of the CEM. We find the same observation in Ognyanova, 2010.

³⁵ Source:UBJ 2010.

³⁶ In UJB’s activity report for 2008-2010 there is no information about its membership size (it is only mentioned that currently it has 21 sections), or any specifically trade-union activity. Its focus seems to be on the personal activity of its leaders - participation in round tables, press-conferences and diverse international for a.

³⁷ <http://www.aip-bg.org/> (date accessed 6 December 2011).

³⁸ <http://www.mediacenterbg.org/Default.aspx> (date accessed 6 December 2011).

³⁹ http://media-cij.net/Proekti_bg.html (date accessed 6 December 2011).

⁴⁰ <http://www.bghelsinki.org/bg/> (date accessed 6 December 2011).

⁴¹ <http://www.mediaethics-bg.org/index.php?lang=bg> (date accessed 6 December 2011).

3. The structure of the media market

3.1 The big licensing game

In the early years of the transition to free market and democracy, the private press and the commercial cable TV and radio underwent rapid growth under conditions of lack of special media regulation. As already discussed, the Constitution and its interpretation by the BCC granted freedom from censorship, understood as forbidding the introduction of media regulation for the press. The BM are state regulated, based on Article 18(3) of the Constitution, according to which the state has sovereign rights over the radiofrequency spectrum. Two laws currently determine the legal framework for the licensing and registration of the radio and TV operators: the Law on the Radio and TV and the Electronic Communications Act (ECA) (which repealed in 2007 the Telecommunications Act).

The BM market in the country was liberalised in the early 1990s, yet the licensing procedures were unclear, and proved contradictory even after the adoption in 1998 of the RTA, meant to introduce clear rules in this sphere.⁴² The BM market grew at an unprecedented rate (reaching 150 radio and 400 TV broadcasters in just five years), yet because of the inadequacy of the legislation and the contradictory administrative practices, by the end of 1997 2/3 (radio) and 3/4 (TV) broadcasters worked without valid licences and often in breach of copyright law. After this period of regulatory vacuum, the 1998 RTA was to put an end to this practice, by providing clear and enforceable rules for mandatory licensing of all radio and TV operators. However, the competition for the licences was run by a state commission – the SCT directly accountable to the Cabinet. As a whole, this licensing procedure was heavily criticised by both the operators and the civil society for being non-transparent and liable to political influence. Many of the important decisions of the regulatory bodies - the NCRT and the SCT - were taken to court. The amendments to RTA⁴³ in 2001 improved the licencing procedure, yet the licencing process itself was blocked in 2002 for more than 5 years. The issued in 1998 licences of the regional terrestrial operators (which were heavily contested already then, for being issued under political pressure by the two responsible media regulatory bodies) were prolonged under unclear terms, leaving operators hostage to the changing – often politically motivated - will of the body, responsible for prolonging the old licences - the CRC. The formal reason for this paralysis of the licensing process was that the amended in 2002 RTA⁴⁴ demanded the adoption by Parliament of a “Strategy for the Development of the Broadcasting Sector” prior to its re-launching. The strategy was developed by the CEM and the CRC and was filed with the Parliament in November 2002. As a result of the delay in its adoption (by the end of the mandate of the coalition government of NMSII and MRF in 2005 the strategy was not voted), by the beginning of 2006 some 147 broadcasters continued to use temporary licences. There were three categories of operators in this group: (1) those who won competitions for licences, yet the decisions of the CEM were appealed (with decisions of the courts pending) and in the meantime the operators were to continue using their contested licences, (2) those with licences issued without going through a competition, and (3) those who declared to have broadcast programs in the past without a licence, were allowed to continue broadcasting till

⁴² For a detailed account of the history of licensing and regulation of BM in early transition, see Smilova, Smilov and Ganey, 2010.

⁴³ *State Gazette no 96/2001.*

⁴⁴ *State Gazette no. 77/ 9.08.2002.*

new competition for analogue licences in the respective town were announced and valid new licences issued.⁴⁵

Yet this impasse in one of the main prerogatives of the CEM was only in part politically motivated – by the mistrust of the governing coalition to the members of the CEM. Another major part was the strong pressure from players such as ABBRO, the Bulgarian Media Coalition and other players on the media market, who successfully challenged a couple of new RTA bills.⁴⁶ The main objective of the bills, according to their critics, was the dissolution of the ‘inconvenient’ CEM and the appointment of a ‘friendlier’ to the coalition partners media regulator. Yet behind these critiques some analysts saw vested interests: the longer the CEM was deprived of its main prerogatives, the easier for the established players in the field to pursue their own interests in monopolising the BM market. As a report on the BM market in Bulgaria observes⁴⁷: “This has a negative effect on overall media development, as all those who do broadcast on the basis of permanent licences regard the former [i.e. those without valid licences] as illegitimate.” The ensuing uncertainty boosted the market value of the already licensed national TV operators, strengthening their dominant market position. It also strengthened the position of all those operators who continued to broadcast with temporary licences, without going through a competition procedure. This raised concerns of vested interests behind the blocked licencing process.

2005 saw a change in the governing coalition (the Bulgarian socialist party BSP joined the partners from the previous coalition). The new majority pledged to “normalise” the licensing of the BM and as a first step adopted⁴⁸ the long overdue Strategy for the Development of the Radio and Television Activities. This act, however, opened the licensing process only *de jure*, despite the enormous interest of the operators,⁴⁹ pressuring the CEM to re-launch the process. Yet this was resisted even from within the CEM: the chair of the CEM commented the situation as follows: “The grey market wants to launder its money by investing in radio and TV programs.”⁵⁰

De facto, however, no advance in openly distributing the remaining radio frequencies was achieved in the next two years: this period witnessed an intensification of the struggle between the pro and anti-status quo camps. The representative of the established commercial BM owners – ABBRO - continued to hinder (though not overtly) the process: it called for the introduction of a new, more adequate RTA or at least for serious amendments to the 1998 RTA, where criteria for selecting operators would be clearly spelled out. One of the objectives behind these demands was a further delay – adopting an entirely new RTA is a long and controversial process. In the meantime the domination of a few major players would be guaranteed. A new association of Bulgarian TV operators – ABTO (where influential cable TV operators with ambitions for air broadcasting were represented) - appeared on the media scene in April 2006,⁵¹ when it became clear that the serious interests of the established players would continue blocking the licensing process indefinitely. The new player ABTO pushed for immediate opening of the licencing procedure and a change in the status quo.

⁴⁵ Paragraph 9a of RTA, *State Gazette* no 99/ 2003.

⁴⁶ Two bills were prepared by the MP Ivan Pavlov and by the Chair of the Parliamentary Standing Committee on the Media Millena Millotinova.

⁴⁷ Source: OSI 2005.

⁴⁸ Decision of the National Assembly of the Republic of Bulgaria, 28th September 2005, *State Gazette* no 82/14.10. 2005.

⁴⁹ In just a couple of days in January 2006 CEM received 57 requests for opening procedures for regional licences (*Capital* (2006/01/07).

⁵⁰ Interview of Capital weekly with Raycho Raykov, chair of CEM, *Capital* (2006/01/07).

⁵¹ For details, see <http://forum.predavatel.com/viewtopic.php?f=28&t=1311> (date accessed 6 December 2011).

The struggle between the two camps was reflected in the opposing positions of the two media regulatory bodies: the CEM and the CRC. They held contradictory interpretations of the newly adopted Strategy for the development of the radio and TV activities: the CEM pressed for issuing more analogue licences, while the CRC resisted it, prioritising the digital licencing (for which the analogue frequencies were obviously needed). The digital licencing was within the CRC's own remit, and was to start once the Parliament adopted yet another Plan – for the digital switch-over process. Thus after the CEM re-launched in the beginning of 2006 the process of issuing TV and radio licences, the CRC withdrew in mid-2006 its permission for the use of the radio frequency spectrum for analogue licences, quoting as the reason for its decision the country's responsibilities in relation to the digital switch-over process. ABBRO supported the CRC's decision with several official statements, declaring that the CEM's decision to continue issuing analogue licences was in strong opposition to the EU priorities of the Bulgarian government, and the related duty to prepare the digital switch-over process. The operators applying for licences appealed the CRC's decision to withdraw the frequencies, sending also a statement to the European Commission and asking the Prosecutorial office to check the CRC's activities. Both media regulatory bodies wrote to the Prime Minister and the President of the Republic to support their positions. Yet there was stronger support for the CRC's position, which is institutionally much closer to the government, being part of the state administration. After pressure from different state bodies, including the Supreme Prosecutorial office (which sent a note to the CEM that their decisions to issue analogue licences would be void), the CEM in March 2008 decided to stop the process.⁵² TV7 (the leading member of ABTO) successfully appealed this last decision of the CEM to stop the licencing procedures in front of the Supreme Administrative Court (SAC).⁵³ Yet due to a restriction in the Electronic Communications Act (ECA),⁵⁴ and also as a result of the adoption by the Council of Ministers of the Plan for the introduction of DVB-T,⁵⁵ the CEM could only issue temporary licences (valid till the end of 2012, when the respective analogue frequencies were to be transferred for use by the digital multiplexes), where the dead-line for issuing them was the end of 2008.

In this stalemate of the two media regulatory bodies, shady practices to altogether bypass the CEM and the CRC developed. The RTA (art. 106) allows for transferring TV analogue broadcast licences from one operator to another, which was used by cable TV operators to reach air broadcasting. This was legally allowed only in case the programs had program licences, issued by the CEM, yet this requirement was often bypassed too. Thus, the company Technosteal, controlled by a controversial business group TIM, and close to the advertising mogul Krassimir Guergov, managed to consolidate a national TV program network through buying off licenced TV stations in 27 regional centres. Effectively, the resulting from this consolidation CTN became a national TV broadcaster in mid-2006, though officially the licencing process was not yet resumed. In this way by 2008 Guergov managed to put together, behind the backs of the CEM and the CRC, a fourth national TV operator – TV2, by combining the programme licence of TV2 (issued in 2000 by the predecessor of CEM - the NCRT) and the 27 regional broadcast licences of CTN. TV2 was sold in 2008 to the American company Central European Media Enterprises, Inc. (CME), which later also bought the biggest commercial national TV operator bTV. It was alleged that

⁵² Decision no26/13.03.2008 of the CEM.

⁵³ The three-member panel of SAC upheld CEM's decision to stop the licencing procedure called the quarrel between the two media regulatory bodies "notorious fact in the public sphere", see the SAC decision, available at <http://nellyo.files.wordpress.com/2008/08/2008-08-tv7.pdf> (date accessed 6 December 2011). The five-panel SAC repealed CEM's decision.

⁵⁴ Paragraph 5 of the Transitory and Concluding Provisions of ECA, *State Gazette* no. 41/ 2007.

⁵⁵ Decision of the Council of Ministers from January 31, 2008.

Krassimir Guergov was also behind two more TV programs – GTV and 7 days TV, which together with CTN for a time were the three TV stations, broadcasting temporarily for the region of Sofia, while the CRC were blocking the licensing process. Thus Guergov's TV programs directly benefitted from the status quo, since his TV programs could enjoy their monopoly till competitions for the frequencies were announced. His competitors⁵⁶ alleged that he is exerting strong influence on the CRC to block the procedures started by the CEM. This particular allegation of pressure on the CRC is impossible to prove, since in contrast to ABBRO, which till the end of 2007 published all their statements as well as regular reports on their activities (lobbying included) at the web-site of their organisation, the advertising boss had always worked behind the scene. One of the reasons for his secretive practices is the prohibition in the RTA for owners of advertising agencies to also be TV and radio operators, which ban named after him "the Guergov clause" will be further discussed below.

3.2 Getting digitalised: a saga with a local flavour

By mid-2008 it was clear that the analogue frequencies will not be distributed by the CEM, since they will be necessary for the digitalisation process. Quite unexpectedly, with an amendment to the ECA in early 2009⁵⁷ it was not the CEM, but the closer to government CRC that was given the remit to distribute the yet unused analogue frequencies. This seemingly strange U-turn of the state policy happened just before the parliamentary elections in mid-2009, which the governing coalition was expected to lose. Thus some 102 temporary (valid by end of 2012) permissions for use of the analogue frequencies were quickly distributed without a competition. Analysts commented that the hurry was prompted by government-related business circles, eager to capitalise on their political connections.

The CRC was given a central role to play both in the digital switch-over process and also in distributing the remaining analogue frequencies. The CRC thus determined the selection criteria for issuing the permissions for the use of analogue frequencies. These were purely technical: revenues from advertising, investment in the technical support of the programs, their technical quality, etc. No requirements for TV content or program profile were considered relevant. These requirements prompted speculations among the media circles that they are tailored to fit the profile of certain candidates: TV7 in particular (for details see the discussion below⁵⁸). The interest for the analogue permissions was enormous, the reason for it being another provision in the ECA, according to which TV operators covering more than 50% of the population would be automatically included in the 'must carry' quota of the digital multiplexes.

According to further, very important provisions of the ECA and the RTA, the CRC was to also issue the licences for multiplex operators. Yet from the bids for building multiplexes were excluded (1) the TV and radio operators (and TV and radio program producers), as well as (2) the owners of digital distribution networks. The reasons quoted for these exclusions were: to avoid vertical integration of media ownership. Two bids for multiplex operators were to be run in 2009 in the first phase of the digital switch-over process, in which just one company would be selected in each, to build two and three multiplexes, respectively. This last requirement for selecting just one company in each of the

⁵⁶ The journalist, former MP and executive director of the competitor TV7 Dilyana Grozdanova directly accused Krassimir Guergov of lobbying to stop the process and guarantee its own monopoly on the BM market, against the public interest, see her position at: <http://forum.predavatel.com/viewtopic.php?t=1673#p17206> (date accessed 6 December 2011).

⁵⁷ Paragraph 5 (3) of the Transitory and Concluding Provisions, *State Gazette* no 17/6.03.2009.

⁵⁸ *Capital* (2009/03/27).

two bids to build multiple multiplexes was attacked for strengthening the dominant position of the winners.

The media analysts were quick to discern economic interests behind this set of restrictions. Thus the restriction for owners of digital distribution networks to build also multiplexes seemed targeted at a particular foreign company. At the end of 2008 a major international investor, the Oesterreichische Rundfunksender (ORS), expressed an interest in the digital media market in Bulgaria, by declaring it would bid for the National Unit “Radio and TV systems” (NURTS, currently transmitting the signal of all air TVs and radios in Bulgaria). NURTS was to be sold by the formerly state-owned Bulgarian Telecommunications Company, itself privatised in 2004. ORS’s bid was viewed as unwelcome competition by some of the internal players. So ORS was effectively blocked from competing by introducing the new restrictions in the ECA and the RTA. Since ORS would have to make huge investment (estimated at 85 million Euro) in NURTS, to prepare it for the digital switch-over, the investment was reasonable only if ORS could also be a multiplex operator. Thus ORS was preparing to bid for becoming a digital multiplex operator as well. This last opportunity precisely was blocked by the new amendment, prohibiting owners of distribution networks to also become multiplex operators. It made it unreasonable for ORS to enter the digital media market. The second restriction – for TV operators to run for multiplex licences – also affected ORS - since ORS was also a TV operator (even if not operating in Bulgaria). Thus ORS could not compete for a licence for multiplex operator on this latter ground too. ORS pleaded with the President of the Republic, requesting that he vetoes the amendments, insisting they violate the EU legislation and contradict the Bulgarian Constitution, which both encourage free trade and fair competition.⁵⁹ The President signed the bill “with dissenting opinion” yet did not veto it. ORS then wrote to the EU Commissioner on information society and the media Viviane Reding, complaining that the digital switch-over process in Bulgaria is run in breach of EU law.

Another twist in the intriguing saga of the digital switchover process in Bulgaria involved the long-time player in shaping media policy in the country – the BCC. Some of the restrictions in the ECA and the RTA were partly successfully challenged before the BCC by opposition MPs. While the judges found that the prohibition for TV operators to be also multiplex operators was a measure aimed against the monopolisation of the media market, and thus did not violate the provisions in the Constitution on free economic initiative and fair competition, the ban for multiplex operators to own distribution networks did.⁶⁰ The entering into force of the decision (upon its publication in the State Gazette) was delayed. According to some analysts, this was done on purpose⁶¹ - it gave time to the CRC to finalise its decisions to distribute the analogue frequency permissions and the multiplex licences to government favourites. Since the BCC decisions have no retroactive force, though the bids were run under rules, found later partially unconstitutional, this did not constitute a ground for their cancellation. The ORS complaint to the European Commission over the non-transparent and discriminatory way the digital switchover bids were run in Bulgaria triggered investigation and ultimately an infringement procedure against Bulgaria, initiated in 2011.

⁵⁹ Capital (2009/04/06).

⁶⁰ BCC decision no 3/03.06. 2009, *State Gazette* no 45/16.06. 2009.

⁶¹ There were comments that judge Petkanov (ex-Minister of the Interior and of Justice in two coalition governments, proposed and supported by MRF; he left his ministerial position in 2007 to sit on the Constitutional court by the parliamentary quota), responsible for reporting the case, was delaying it under political pressure from the coalition partners in government. The media analysts speculated that the BCC decision will wait the end of government mandate. Yet the President of the Court Roumen Yankov (appointed by the judiciary) speeded up the decision, though did not manage to outrun the one of CRC. Source: Capital, 6 December 2009.

A good illustration of the involvement of politically connected business interests in shaping the media policy in the country is the change in the fortunes of the national cable TV7. Created in 2005 by the politician from UDF and ex-banker Lyubomir Pavlov, it did not manage to get broadcast licences in the 2006 - 2008 competitions started and then terminated by the CEM. It was sold in May 2009 to an Austrian fund “Bulgaria media holdings GMBH”, specially created for investing in the media in Bulgaria. The consultant of the Austrian holding was the owner of the New Bulgarian Media Group (NBMG) Mrs. Irena Krasteva. According to some analysts, NBMG also owns the fund and thus TV7. Mrs Krasteva’s son Delyan Peevski was an MP from the minor coalition partner MRF and a vice Minister in the coalition government from the MRF quota. Under its new owners in 2009 TV7 won enough regional temporary licences in the CRC-run bid (as mentioned above, media commentators viewed the selection criteria for the analogue frequencies permissions as tailored to fit the profile of TV7). Thus TV7 effectively became a national BM (i.e. it covered more than 50% of the population) and thus obtained the right to be included in the ‘must-carry’ quota for the multiplexes. The 2009 amendments to the ECA and the RTA, which made the above change of fortunes possible, were introduced on a suggestion by the MRF. Thus paragraph 5(3) of the ECA, transferring power from the CEM to the CRC in issuing permissions for the use of the analogue radio frequencies was passed on the initiative of an MP from MRF.⁶² The way this controversial amendment was adopted is indicative of the strategies of political players in pursuing their sectoral interests. While the public attention was directed towards a major controversy - the proposal to amend art. 251 of the ECA, easing the access of the Ministry of the Interior to electronic communications personal data for the purposes of persecuting serious crime (the text was to transpose yet another EU Directive – Directive 2006/24/EC) - the MRF’s amendments went almost unnoticed. These amendments to the ECA and the RTA and the ensuing controversial practices in distributing the analogue frequencies and the multiplex licences, are among the reasons for the infringement procedure against Bulgaria, started by the European Commission in early 2011.

In 2010 the new governing majority in Parliament restored the leading role of the CEM in granting licences, yet by reducing the number of members of the CEM from 9 to 5 it tries to keep its control over the media regulator.⁶³

As this brief overview of the licence-related practice of the BM regulators⁶⁴ shows, political interference and dependence on corporate interests have been major features of the Bulgarian media policy formulation and implementation. Concerned that the freedom of the media in the country is declining after the EU accession, the European Commission commissioned a report, monitoring the activities of the CEM. The preliminary conclusions are that the CEM is failing in its task to be an independent from the state media regulator.⁶⁵

⁶² Kamen Kostadinov (MP, MRF) on several occasions has been accused of introducing lobbyist amendments, often behind the backs of the rest of the MPs. For comments on his lobbyist amendment to ECA, see *Capital* (2009/03/27).

⁶³ For a fuller account of the BM licencing procedure in Bulgaria, see Smilova, Smilov and Ganev (2010).

⁶⁴ A (partial) chronology of this years-long analogue licensing saga is presented by Prof. Nelly Ognyanova, available at <http://nellyo.wordpress.com/2007/11/07>.

⁶⁵ This information is provided in the media (*164 hours* daily, 03/08/2011, (<http://www.168chasa.bg/Article.asp?ArticleId=800180>), yet the report itself is not public yet. Media experts have also critically analyzed this problem (Bozhilova 2011).

3.3 Who shaped the media market?

Media experts observe⁶⁶ that the role of the associations of press owners, of TV and radio operators, advertising agencies, the producers, etc., is growing at the expense of the role of civil society in shaping the media policy in the country. Thus the influence of the association of the commercial broadcast operators ABBRO, the association of TV producers ATP and the association of advertising agencies in Bulgaria ARA is growing – they have become major players in shaping the media policy in the country in the last 10 years. They have been among the invited civil society organisations (through their associations, all of them NGOs) to submit positions during the discussions in the Parliamentary committees on the media of the amendments to the RTA in late 2009. Their associations have gradually been becoming more influential in this process than the associations of journalists and other civil society organisations. In the late 1990s and early 2000s there was a strong pressure from the latter type of organisations to adopt legislation that would guarantee the independence of the media, protection of freedom of expression and free access to information.

The case of the Bulgarian media coalition, the most influential media NGO in the late 1990s- early 2000s, demonstrates this process well. It was established in 1998 with the aim of promoting the norms of freedom of expression and free access to information, and in general - the Europeanisation of the media policy in the country. It comprised 15 organisations of media professionals and was a major driving force behind several drafts for a new media law, to replace the 1998 RTA. It was invited by the Bulgarian Constitution Court to submit positions when some of the RTA provisions were challenged in the late 1990s. Its positions were taken into account by the Standing committees on media of three consecutive Parliaments. Yet during the licensing saga described above, the tensions between their members grew, leading to the Coalitions' dissolution in 2007.

Indicative for this trend is the prominent position of these special interest associations in the working group on a new media law, convened in mid-2010. The end result of the working group was just a conception of a new law, rather than a draft law (as it was expected). The reason was major disagreements within the group, among which the conflict between these players was prominent.

Yet the conflict between different corporate players has not always led to blocking of legislative initiatives. Rather, it has sometimes been instrumentalised by some of them to promote their corporate interests behind the backs of the rest. This is well demonstrated by the rather short process of transposing the Audiovisual Media Services Directive (AVMSD, 2007/65/EC) at the end of 2009. During the pre-accession period, the harmonisation of the Bulgarian legislation with the *acquis communautaire* was always hasty and performed under strong external pressure. However, in the post-accession 2007 some transposition procedures were already utilised for promoting openly lobbyist texts in the legislation. This was especially easy in the case of the AVMSD, since the process of transposition started late, was particularly hasty (the 19/12/2009 pan-European deadline was at the end not kept) and despite the participation of numerous NGOs in the drafting and the discussion process – at the end non-transparent. As in the case of all the EU law transposition legislation, the legislative initiative was with the Council of Ministers. They prepared the draft law, which was submitted for discussion to the Parliament only on 03/12/2009. The first reading in the

⁶⁶ Both the current chair of CEM Georgi Lozanov (in our interview and during the discussion of the bi-annual report on the activity of CEM in the Standing parliamentary committee on the culture, civil society and the media in early 2011), and the media law expert Nelly Ognyanova (Ognyanova, 2009) have been stressing this trend of gradual weakening of the public interest NGOs and the taking over of the media policy formation stage by private-interest associations of representatives of the commercial media services.

Standing committee on culture, civil society and the media (the leading committee) took place on 09/12/2009, hardly leaving much time to the MPs - members of this committee, as well as interested civil society organisations to acquaint themselves with the proposed amendments. This information was necessary since the amendments of the RTA were not limited to those required by the AVMSD - it contained suggested amendments of 61 articles in the RTA. The first reading at the plenary session of Parliament was on 18/12/2009. The main issue sparking heated debates both at the committee and the plenary session was the requirement for introducing quotas for including TV productions of independent EU producers.

The real news, however, was produced by an amendment, which was “smuggled in” at the last possible moment.⁶⁷ It was passed both in the Standing committee and in the Plenary session without being read (neither verbatim nor in summary), nor was it discussed or even noticed by anyone either in the committee or in the plenary hall. Personally responsible for this controversial amendment was the Chair of the Standing Parliamentary Committee on culture, civil society and the media Daniela Petrova, on whose suggestion it was included in the text. It removed a long suffering restriction for the owners of advertising agencies to own TV and radio program licences as well. The ban was introduced already in 1998 in the original version of the RTA (art. 105 (7)) and was known as the “Guergov clause” – after the name of Mr. Krassimir Guergov, the major player in the advertisement and media market in the last 15 years, a founder and president of the Association of the Bulgarian advertising agencies (ARA). In the mid-1990s Mr. Guergov’s advertising agency Kres had an exclusive contract with the then-monopolistic BNT for selling its advertising time. Partly as a result of this lucrative contract, the company became the major player in the field. According to Mr. Guergov, art. 105(7) of the RTA was introduced in 1998 by Ivan Kostov’s UDF government with the sole purpose of disqualifying him at the start of the competition for the first commercial national terrestrial TV in the late 1990s. In 2010 the chair of the standing committee on the media Mrs Petrova justified the amendment by claiming it was not serving any particular economic player in Bulgaria but was instead necessary at the start of the digitalisation process – to allow international media corporations to enter the Bulgarian digital media market. The international corporations, unwilling to play illegal games, were allegedly put off to enter it precisely because of the ban, while the “internal players” found easy ways to bypass it. The amendment produced a scandal, the main charge of its critics being that it was directly serving the interests of Mr. Guergov. He was long known to participate in the ownership of the first national commercial air TV in the country despite the ban and had long been the amendment’s main proponent. The foreign ownership of bTV by a respectable corporation (Balkan News Corp, part of Rupert Murdoch’s global media empire) did not in any way stop this practice. Moreover, though the participation of Mr. Guergov in bTV’s ownership was a public secret, no administrative measures were taken by the CEM - the body responsible for enforcing the RTA. The obvious reason was that formally, Mr. Guergov did not own shares of bTV – he was just a consultant to Balkan media news corporation, the official owner of bTV. It was a public secret that Mr. Guergov controlled this major TV operator through off-shore companies and a series of consultancy contracts. In 2010, after the restrictions were removed, Mr. Guergov publicly (in an interview for bTV,

⁶⁷ Several opposition members of the Standing committee complained already at the start of the discussions they were not given opportunity to consult the texts of the last amendments with experts and form an informed opinion about them , since they received the new texts just a few hours before the vote – in breach of all procedural rules of parliamentary legislative activity.

celebrating its 10th anniversary⁶⁸) admitted to have had ownership in bTV throughout all its existence, which he was forced by the then legislation to hide.

3.4 Media in the twilight zone

This and related stories allow us to point out the major structural problems of the media in Bulgaria: they concern the issues of media ownership, where its non-transparency and ensuing concentration are the most important ones.

Two legal acts deal with the issue of transparency in the activities of the media: the RTA and the Access to Public Information Act (APIA)⁶⁹. The first requires from the BM (both commercial and public) to disclose information about their activities in the required by the law cases (art. 13(3)). They have to record all their programs and keep the recordings for 3 months, and if requested by the CEM – submit the necessary information if a complaint is launched by a litigant (art.14). With the amendments in 2010, transposing the AVMSD, a public register of all BM operators in the country was introduced. It is administered by the CEM and contains information about the control and ownership over them of both physical and juridical persons.⁷⁰ The APIA also contains a section, devoted to access to public information on mass media, both BM and print. Such public information concerns the owners and the financial results of their media activities, the persons in the governing or controlling bodies of the media, those on the editorial boards, the journalists and on the principles and internal mechanisms used to guarantee the objectivity of the published/broadcasted information (art. 18 of APIA). However, it is stressed that in providing access to public information of this kind, the principle of transparency is to be balanced against that of economic freedom, of privacy, of non-disclosure of commercial secrets and of those sources, requesting to remain anonymous (art. 19).

Despite this legislation, the non-transparent media ownership remains a problem, and is particularly pressing with regard to the press. One major feature of the press market in Bulgaria is the lack of special ownership rules and of rules guaranteeing the transparency of the press market in general. This has long been perceived as a major problem, yet it was only in September 2009, that the Union of the Publishers in Bulgaria asked the government to take active steps towards regulating ownership in the print media, the origins of investment there, media concentration, etc. In November 2010 with an amendment to the Law on mandatory deposition of copies of all printed and other works,⁷¹ a provision requiring editors to publish the names of the persons owning the newspapers and magazines was finally introduced. However, even in this short period after their introduction, it is already clear they are not guaranteeing effectively transparent media ownership. A case in point is the scandal, involving the owners of Media Group Bulgaria Holding (i.e. the most popular Trud and 24 dailies), who bought it from the West Allgemeine Zeitung Group (WAZ) in late 2010, yet it turned out that two of the owners were just puppets, with unclear corporate interests lurking behind their backs and claiming their title just a couple of months after the deal. Despite the scandal, the state anti-trust commission (the Competition Commission) allowed the media market concentration ensuing from this deal.

⁶⁸http://www.btv.bg/shows/tazi-sutrin/razgovori-gosti/story/1522541007-Krasimir_Gergov_Balgarskite_medii_sa_veche_dostatachno_golemi_detsa.html (date accessed 6 December 2011).

⁶⁹ *State Gazette* no 55/04. 07. 2000.

⁷⁰ Art. 125k of RTA, *State Gazette* no 12/ 2010.

⁷¹ *State Gazette* no 87/2010.

The situation is somewhat different with respect to the BM: in this field ownership rules do exist (in the RTA), yet they leave much to be desired. There are restrictions with respect to ownership, yet some of them – for advertising agencies to not own BM, for example, proved to have been violated by major players in the field without any consequences and were removed. As discussed above, in May 2010 Krassimir Guergov admitted to have owned shares of BTV from the start of the activities of the first commercial national TV station in Bulgaria in 2000, which was then prohibited by the RTA. BTV currently holds 62% of the advertisement in the TV media market in the country,⁷² enjoying a dominant position there,⁷³ and according to its competitors – abusing it.⁷⁴ One of the most controversial amendments to the RTA in 2010 was precisely the removal of the restriction (as discussed in detail above). The amendment was justified as removing a ‘dead letter’ in the law,⁷⁵ while critics saw in this legislative move a clear case of protection of corporate interests, leading to a dangerous horizontal concentration and increasing vertical integration in the media market.⁷⁶ The remaining media-ownership-related provisions in the RTA in essence refer to the general Bulgarian anti-trust rules. Since the Bulgarian Anti-trust Law⁷⁷ does not prohibit monopoly,⁷⁸ concentration, or dominant market position per se - just *the abuse* of the latter, it is the independent *Anti-Trust Commission* which decides whether such an abuse is in place. The law also does not set strict ceilings above which a dominant position is deemed unacceptable, leaving it to the discretion of the state Competition Commission to decide (as the approval of the CME deal for bTV showed).

It is indicative of the strong position of the media owners vis-à-vis the governments in the post-2001 period, that no mono-media or cross-media ownership restrictions were introduced, despite the trend of building quasi-monopolies (WAZ bought in 1996 the two biggest dailies and the most popular weekly in the country) and rapidly emerging media empires (NBMG, for details see next section). The existing rules aim only at the prevention of the monopolisation of the market, and mono- and cross-media ownership are not interpreted as posing such a threat. There are no strict limits on market shares, circulation and audience shares, advertising revenue shares in the media market or on the capital shares in a media company. The unchecked concentration of non-transparent in terms of ownership media is a major threat to the transparency of the media.

⁷² There were speculations in the media that the major and monopolistic (until 2006) people-metric agency in the country TVplan/TNS is also linked to Krassimir Guergov (Source: *Capital* (2000/12/08). This agency allegedly boosted the results of bTV, according to its competitors NovaTV and BNT. This claim was disproved, however, after the entry in 2006 of the competitor GARB (GfK Audience Research Bulgaria), which produced similar data and confirmed the relative market leadership of bTV (<http://e-vestnik.bg/567>). Surprisingly, at the end of 2010 TVplan/TNS was sold by its owners to GARB, leaving the latter a monopolist in this field (Source: *Capital* (2011/01/07(b)).

⁷³ In April 2010 the anti-trust commission allowed the concentration, ensuing from the purchase of Balkan news corporation (the owner of BTV and two other TV channels, as well as the influential radio company CJ, owning the most popular music radio stations in the country) by Central European Media Enterprises (CME), despite the resulting increase in the dominant market position of the media group (CME already owned two TV programs – the national PRO.BG and Ring BG). The decision was supported by arguments that the dominant position of CME will be mitigated by its main competitor MTG (owning NovaTv and two other channels), as well by the digital switch-over process, which would open the TV market to newcomers and increased competition. (<http://www.manager.bg/news/kzk-razreshi-sdelkata-za-btv>.)

⁷⁴ In mid-2011 Nova TV complained to the anti-trust commission, urging it to fine BTV for its unfair competition and abuse of dominant position trading practices: at the end of 2010 bTV launched an aggressive campaign for increasing its ads market share, signing exclusive contracts with its advertisers and including in them “loyalty clauses” (see for details <http://prnew.info/nova-tv-s-jalba-v-kzk-sreshtu-btv/>).

⁷⁵ Source: *Dnevnik*, 28 January 2010.

⁷⁶ Source: Ognyanova, 2010.

⁷⁷ *State Gazette* no 102/2008.

⁷⁸ Monopolies are only allowed when determined by Law, pursuant to Article 18(4) of the Constitution.

The problems with the transparency of media ownership and with media concentration, as well the guarantees for fair competition in the media market, are among the major challenges to be resolved by the new Audio-Visual Media Services Act, to replace the current patchwork-of-a-law (to use prof. G. Lozanov's favourite metaphor for it) RTA, with its over 29 amendments. Yet though the working group, mandated by the GERB cabinet to propose a conception for this new law, has submitted its report to the Government already at the end of January 2011, by November 2011 it has not been discussed or introduced in Parliament. The scandals around 24 hours and Trud dailies new owners were mentioned above.

Another important demonstration of the inadequacy of the current regulation in this field is the ownership of the New Bulgaria Media Group (NBMG). In the span of just a few years starting from 2007 NBMG managed to obtain the daily with the highest currently circulation (Telegraph), some influential newspapers (Politika, Express, Monitor), tabloids (Shock, Kontra), e-news sites (blitz.com and vsekiden.com), the national TV channel BBT (and allegedly – TV7 as well), the major publishing house “Rodina”, as well as the biggest distribution network for the print media, allegedly monopolising the print media distribution in the country.⁷⁹ The physical owner is Irena Krasteva, the former director of the National Loto. Mrs Krasteva's son Mr. Delyan Peevski is an MP from the Turkish ethnic minority party MRF, a minor coalition partner in the 2005-2009 Bulgarian government. The credit for the purchases of these media outlets, however, was provided by the Corporate Commercial Bank (CCB), which prompted speculations as to who really owns the media group. Revealing of the connections between politicians and business interests is the fact that the same, relatively small bank CCB is where 1/2 of the money of the Bulgarian state companies are currently deposited.⁸⁰ The NBMG is criticised for always providing favourable coverage of the government – both the former and the current. It is indicative that after the elections in 2009, the media group changed its editorial line overnight – from a vocal critic of PM Boyko Borisov and his party GERB, its newspapers turned into his major proponent. As their competitors from Economedia group put it – “About Boyko Borisov – only good or nothing.”⁸¹ The owner of the CCB bank Tzvetan Vassilev also invests in media-related enterprises (the mentioned above NURTS being the most prominent example⁸²). These media-related investments of CCB are also not public - rather they are made through off-shore companies, registered for the sole purpose of acquiring new media outlets. The deals of NBMG and Mr. Vassilev are tolerated by the state anti-trust commission (which allows the requested mergers, despite the ensuing increased vertical and horizontal concentration), which has also often reached favourable decisions in other cases involving the media empire. Thus the commission fined the competitor media group Economedia for publishing materials, revealing the facts quoted above and allegedly damaging the good name and reputation of the former. The decision of the state anti-trust commission was criticised by human rights CSOs for setting a dangerous precedent “creating unhealthy environment and a threat for the media in the country.”⁸³ The case is appealed in the Supreme Administrative court. Despite the

⁷⁹ According to its competitors, who asked the PM to order an investigation over NBMG's alleged monopoly of the print market, the group controls some 80% of the printed press distribution in the country (in addition to owning some of the major media outlets – both print and BM).

⁸⁰ This information was revealed by the Finance minister on a request by the Union of publishers in Bulgaria (Source: *Dnevnik*, 7 June 2010).

⁸¹ Source: *Capital* 7 August 2009.

⁸² Source: *Dnevnik* 7 April 2010.

⁸³ This is the position of the influential human rights lawyer Alexander Kashumov (Source: *Capital*, 7 January 2011 (a)). Boyko Boev, human rights activist from the London-based freedom of expression organisation “Article19” expressed a similar position (Source: *Capital* 7 January 2011(c)).

public pressure to investigate the source of financing of the new media empire, as well as establish the abuse of its dominant position, the commission has been reluctant to do so. There has been some development on that front starting from mid-August. As a result of a meeting of publishers and editors of competing print media with the PM Boyko Borisov on 11 August 2011, the anti-trust commission immediately announced it will start an investigation over the possible breaches of the anti-trust legislation in the print market in the country - both in the ownership of print media outlets and in the print press distribution.⁸⁴ No results are announced yet.

This and other similar cases demonstrate that the current regulation of media ownership does little to introduce standards of transparency in this field. Thus it should come as no surprise that neither the print nor the commercial BM readily provide information on their internal staff, editorial policies and reporting practices. It is with great difficulties, that ownership of the media is traced with the help of the Commercial register, and from 2012 when the access to the register will become more restricted (under pressure from the business circles, who complain that personal data are often revealed in the Register documents) , the access to this vital information will be further inhibited. It was a rare victory in the field that in 2010 the Union of Publishers obtained information from the Ministry of Finance as to where the state companies held their deposits – as it turned out, 1/2 of the money of the state firms are deposited in the mentioned above investor in the NBMG - the Corporate Commercial Bank.⁸⁵ This fact may explain why there was a change in the editorial line of the editions of the group after the change in government.⁸⁶ Another well-kept secret of the media are the true circulation figures (in the press market) and the revenues in real terms⁸⁷ from advertising (in the case of both types of media).⁸⁸

⁸⁴ The press-release of the anti-trust commission from August 11, at noon, is available at: <http://www.cpc.bg/> (date accessed 6 December 2011). For details on the meeting with the PM, the ensuing decision of CPC and the press-conference of the complaining editors, see: <http://www.trud.bg/Article.asp?ArticleId=997937> (date accessed 6 December 2011). There is a sequel to this series. During the press-conferences on the nights of the first and the second round of the presidential and local election in October 2011, the PM and the president-elect were insistently asked by the owner (and journalist) of a radio station what will the government and the new president do to counter the monopoly in the press and to introduce clear rules for financing the media. The PM invited the journalist to discuss the problems of the press and after the meeting the journalist announced that the PM will invite journalists to discuss a special anti-monopoly legislation for the press. Interestingly, neither the questions of the journalist, nor her meeting with the PM were widely covered in the quality media, despite the topical issue - freedom of the media – discussed. See for details, <http://www.24chasa.bg/Article.asp?ArticleId=1099707> (date accessed 6 December 2011).

⁸⁵ Source: *Dnevnik* 7 June 2011.

⁸⁶ Source: *Capital* 7 August 2011.

⁸⁷ The often quoted ads revenues of the major media outlets are calculated on the basis of the official ads rates, yet very often these are the rates of the actual contracts with the advertising agencies – discounts are generously offered (often accompanied with restrictions on advertising in competing outlets, which raise anti-trust concerns) and these are not calculated in reporting the ads revenues figures.

⁸⁸ Source: *Capital* 4 February 2011.

4. Composition and diversification of media content

The media market in Bulgaria is characterised by a plethora of media organisations, yet despite this apparent multitude and diversity of media outlets, a striking feature of the media in the country is the lack of true diversity of media content. It was already discussed at length that there is a growing concentration of media ownership in the hands of a few major players in the field. The participation of some political parties and some related to them commercial banks in this process was pointed out as a major additional factor for reducing media diversity. The media themselves also play a role in this process – pressed by the falling circulations and the competition for market share, they started to produce tautological content, identical media formats, etc. The result of the combined forces of the market and political pressure is that though there is an apparent diversity of content, the differences are only apparent – and marginal: the content is of the same sort.⁸⁹ More specifically, the media content is not only lacking in true diversity, but is also characterised by a growing tabloidization and the substitution of serious political and analytical problems with infotainment. Coupled with the growing withdrawal of serious investigative journalism and the general pro-governmental positions of the main media outlets, this reduced diversity of media content signals a serious threat to media's freedom in the country.

Though the different media organisations on the whole represent the entire political spectrum, there is a clear trend in recent years towards certain media groups covering more favourably the government than the opposition. This has traditionally been true for the government-controlled PBM (through the politically appointed NCRT and CEM, who on their part appoint the PBM directors and boards), but recently has become more pronounced in the commercial media as well. This conformism of some major commercial media outlets is explained by the importance of state funding (through state-sponsored advertising) for the survival of the media in time of economic crisis, during which advertising revenues dropped significantly.⁹⁰ The different social interests and groups in society are in general represented in the media, yet the way they are represented leaves much to be desired. The minorities, especially the Roma ethnic minority, however, are not adequately represented. Though the group has its own local print and BM, the circulations, the visibility and the impact of the programs are low.⁹¹

The Constitution guarantees the right to opinion (art. 39. 40 and 41 cover the 'communication rights'), and the limits to the freedom of the media – in cases of 'public indecency, an incitement of a forcible change of the Constitutional order, perpetration of a crime or an incitement of violence against anyone' after a judicial act the mass media materials may be confiscated (art. 40(2)) – are strictly enumerated. The right to information is protected by (do you mention Art. art, Article or article in your main text? It is better to be consistent throughout the analysis) art. 41, and the limits are the rights and reputation of the others, the national security, public order, public health and morality, as well as the official and state secrets. As a result of strong advocacy campaign by CSOs,⁹² the Access to Public Information Act (APIA) was adopted in mid-2000.⁹³ Although not perfect, it provided a procedure to be followed by citizens (and journalists) to request public information. APIA

⁸⁹ Media experts interviewed for our report expressed the position, advanced in the above paragraph.

⁹⁰ Source: *Capital* 2 September 2011.

⁹¹ EC 2009 report notes that there are "Implementation problems" with the minority representation in the media in Bulgaria: "Minority representation in the media is very limited. In regard to portrayal of disabled people the problem is that currently the media demonstrates reactive (only related to specific events) rather than proactive".

⁹² The Bulgarian Helsinki Committee, the Program Access to Information (AIP), the Bulgarian media coalition, organizations of journalists, lawyers and others.

⁹³ *State Gazette no 55/ 7 July 2000.*

does not demand from citizens to prove they have lawful interest in obtaining public information. The access to public information can only be limited when the requested information is classified (itself regulated by the Law on the Protection of Classified Information from April 2002⁹⁴) or in case of a State or other official secret, as defined by law (Art. 7 (1)). A further strength of the law is that it also sets clear administrative and penal procedures to be taken against administrative bodies failing to provide access to public information. These provisions clearly help the media in providing adequate coverage of the news and in producing investigative journalism articles and programs, diversifying the content produced. As a result of the application of APIA and of the advocacy campaign of active in the field watchdog CSOs, more and more public information is available on the Internet (the parliament and the Cabinet now provide rich information on their activities in a timely manner). Yet some public institutions quickly learned how to engage in procedural manoeuvring to delay and obstruct attempts by the media and citizens to obtain public information. The differences in the law application by different institutions are striking. While access to public information is rarely openly denied, the access provided is often to inadequate information, while important information is withheld.⁹⁵ This effectively blocks access to significant public information. This, of course, obstructs the work of journalists, though generally there is no discrimination among different categories – both free-lancers and ones with press credentials have equal access to information.

With respect to editorial independence, amendments to the RTA in 2010⁹⁶ (art.11) gave additional guarantees to freedom of expression and independence of the journalists from external and internal pressures.⁹⁷ However, with the next amendment, the number of the CEM members was reduced to 5 (appointed by the President (2) and the Parliament (3)), allowing for increased political influence in BM regulation.

The press, by contrast to the BM, is not legally regulated - with respect to its content, or otherwise. Rather, the matter is entirely left to the self-regulatory 2004 Ethics Code of the Bulgarian Media (though a growing number of media outlets are not its signatories, and it is thus not obligatory for them). Thus a majority of the press in the country “enjoys” full freedom from regulation, which, however, does not protect or guarantee their editorial independence.

The journalists are allowed to withhold their sources of information. This is so in virtue of the constitutional provisions and art. 10 of the ECHR, part of the Bulgarian legislation, as well as the RTA (art. 15). A text in the APIA also protects the right of journalists not to disclose their sources, when the providers of the information have requested to remain anonymous.

With regard to content regulation in the media, the 1998 RTA and the 2004 Ethics Code of the Bulgarian Media contain a variety of legal provisions and self-regulatory rules, aimed to guarantee that the media content meets standards of responsibility, quality,

⁹⁴ *State Gazette no 45/30 April 2002.*

⁹⁵ This was the conclusion of the panellists for the MSI 2011 report.

⁹⁶ *State Gazette no 12/2010.*

⁹⁷ Thus the journalists may refuse to fulfill a given by the editors/media operators task if it goes against their convictions. Public critique by journalists against the media operators does not, according to these new provisions, constitute disloyalty to their employers. The creation of editorial statutes between the operators and the journalists is encouraged, where the freedom and personal responsibility of journalists is clearly defined, detailed professional–ethical codes for journalistic activity within the respective media negotiated and a body for intra-media conflict resolution - set. All these provisions concern only the BM.

objectivity and pluralism. All operators - public and commercial - have the obligation to include in their programmes EU-produced TV content.⁹⁸

The Audiovisual Media Services Directive (AVMSD, 2007/65/EC) was transposed in our legislation in the beginning of 2010. As in the case of all the EU law transposition legislation, the legislative initiative was with the Council of Ministers. The main issue discussed both at the standing committee on the media in Parliament and at the plenary session was the requirement for introducing quotas for including TV productions of independent EU producers, which in the AVMSD is set at a minimum of 10%. However, the draft law introduced a more ambitious requirement of 25%, adding that these should be produced by independent *Bulgarian* producers. Another point of contention was that in the draft the requirement of the 50% quota for European produced TV programs was conditional “whenever this is practically possible”. There were accusations that these were lobbyist texts, serving in the first case the interests of the independent producers, represented by the ATP and in the second – of the national commercial broadcasters, represented by ABBRO. These texts were striking a peculiar balance between their conflicting interests - ABBRO were against the 25% quota, viewing it as an attempt to limit their editorial freedom, lowering the quality of their product. In the redrafting between the first and the second reading in Parliament, the TV producers lost (the quota was set at 12%, and it included all independent EU producers, not just the Bulgarian ones).

It is a particular responsibility of the PBM operators to inform citizens about the events of public life. Following the transposition of the AVMSD in the Bulgarian legislation, the commercial BM too are duty bound to provide at least partial access to important public events to the general public⁹⁹: those with exclusive rights for significant for the Bulgarian public events are obliged to provide access to all BM operators to prepare short news reports on them. The NCRT (and later the CEM) already in 2000 were entrusted with the task to prepare a list of events with high national importance, as well as to ensure that information on these events reaches the Bulgarian public on free-to air radio and TV programs.¹⁰⁰ The CEM did prepare such list, yet since 2003 it has not been updated, despite the explicit requirement for its public discussion and annual up-dating. ABBRO has long complained¹⁰¹ that the list was prepared in a non-transparent way without clear criteria, making it in the eyes of the commercial BM operators illegitimate. Even after the AVMSD was transposed in the Bulgarian legislation in early 2010, it took a year and a half for the CEM to prepare it, publish it for public discussion on its web-site and submit it to the European Commission for approval. Interesting in this regard is a controversy from mid-2011, as to whether the BM operators with exclusive rights for covering important events may refuse to grant access to other BM operators, if these events are not included in the approved by the CEM list of important events. This was the position of the Bulgarian football federation, which sold the exclusive rights for covering the football championship, insisting that the CEM excludes it from the list of important events, and also that the BM operators do not have a right to short news coverage of it. The CEM conceded only the first point,¹⁰² while maintaining the independence of the short news coverage from the list of important events.¹⁰³

⁹⁸ Art. 19a (1,2). RTA, *State Gazette* 12/2010.

⁹⁹ Article 19B of the RTA, *State Gazette* no 12/2010.

¹⁰⁰ Art. 32 (3) of RTA, *State Gazette* no 79/2000.

¹⁰¹ *Klasa daily*, Nov. 25, 2008, available at http://bgmlog.blogspot.com/2008/11/blog-post_7829.html.

¹⁰² Source: *Capital* (2011/09/30).

¹⁰³ Decision of the CEM, transcript of the CEM meeting no 45/04.10.2011, available at: <http://cem.bg/cat.php?id=169> (date accessed 6 December 2011).

The content-related requirements placed on PBM operators are more extensive and stricter: they are obliged to provide political, economic, cultural, scientific, educational and other publicly important information, guarantee access to the national and world cultural values, popularise scientific achievements, promote the Bulgarian and European cultural heritage, guarantee pluralism of opinions, enhance tolerance and mutual understanding in society, etc.¹⁰⁴ The PBM are subject to stricter requirements in advertising as well. There are also strict rules, applying to all BM, concerning product placement, advertising in children programmes, advertising of alcohol and tobacco products and so on. The CEM monitors compliance with those rules.

One major opportunity for financing diverse BM content was wasted due to lack of political will. The RTA contains a special section devoted to “The Radio and TV Fund”,¹⁰⁵ to be financed by the TV licence fees for the consumers, by the fees for issuing licences to the BM operators, and other sources. It was to be a main source of funding for the PBM and the CEM itself, but also was to be used for financing commercial BM projects of public importance (cultural, educational, etc). This fund was never created, leaving state subsidy as the major source of funding for the PBM (plus revenues from selling advertising time, within strictly defined limits) and the only source for the CEM. It is not difficult to see why the fund was never created. By keeping the funding of both the PBM and the CEM directly dependent on the state subsidy the political elite guaranteed that these bodies remain politically dependent as well. The economic crisis brought down the state subsidy for PBM by 20%, prompting serious financial difficulties for them and affecting the quality of the product they can afford to produce. The governmental suggestion to lift some of the restrictions on advertising in BNT prime time in order to compensate for the subsidy cuts met serious resistance from ABBRO,¹⁰⁶ who have always argued that allowing the PBM to get revenue from advertising is a form of unfair competition. ABBRO have also always attacked the dual source of funding of the PBM: the PBM for them should either be solely state-sponsored or be left alone to compete with the commercial BM on general market terms. Their position is that the state subsidy-based part of PBM funding is an unacceptable by EU standards state aid, which is given without any clear criteria and without requirement for producing publicly-relevant TV and radio content. According to the commercial BM operators, the state aid for the PBM should be substituted by funding through the Fund, for which all BM should be allowed to compete on equal terms for financial support of their publicly-oriented TV and radio project, i.e. based solely on the *content* of their programs. An additional reason in support of this position is that funding from a state-independent Fund would also lower the dependence of the PBM on the changing will of the government, which would boost the independence of their editorial policies.

Currently there are no state subsidies or any other form of state support for publicly-oriented projects of the commercial BM. The only regulation with regard to the content of the commercial BM is that if their licence, issued by the CEM, is for a poly-thematic program (i.e. it must include cultural, publicist, political and educational programs) the CEM may impose fines for not complying with the terms of their licence, and in cases of repeated violations, the licence itself may be removed. The CEM’s activity of monitoring the compliance with the licence-related obligations of the BM has been a weakness in the work of the CEM, for which it has constantly been criticised. There is some improvement of the monitoring activity of the CEM recently, yet though some significant violations have been

¹⁰⁴ Article 6 (2) and (3) of the RTA.

¹⁰⁵ Chapter 5, section 2 of RTA.

¹⁰⁶ The official position of ABBRO is available at: http://abbro.bg/read_news.php?id=1726 (date accessed 6 December 2011).

found in the programs of the major national commercial BM (thus the biggest players BTV and NOVA have virtually no serious non-entertainment-based cultural and educational programs¹⁰⁷), no measures have yet been taken.

There is a further major source of content-related concern, directly relevant to the relation between the media and the quality of democracy – the regulation of political speech in the media. The role of the media for the quality of the political process is always paramount, yet is probably most pronounced during the election campaigns, when the task of the media is to inform the public, so that it can make an informed choice. As it was stressed several times already, the press is not legally regulated with respect to its content, because of the strict constitutional ban on censorship of the press, interpreted as forbidding any such regulation. Thus there are virtually no restrictions on political speech, either in or outside of political campaign, for the press.¹⁰⁸ Such regulation is left entirely to the self-regulatory Ethics Code of the Bulgarian Media discussed above as well as to the general laws in the country (the Penal Code for example). The situation is not radically different with respect to the commercial BM: though there are some content-related requirements for the programs of the BM in the RTA (art. 10 lists the guiding principles of all BM: like tolerance, ban on hate speech, protection of the morals, of the children and the health of the audience, the right to reply, etc.), they do not regulate political speech, which task again is left to the self-regulatory ethics code. There are some special rules only during the electoral campaigns (covered in section 5 of the Electoral Code), and they are the same as those for the press: the BM coverage of the campaigns, as well as the air time to the parties and the candidates is sold on equal terms according to rates, which are public and announced in advance. Most importantly, the concept of “political ads” is missing from the relevant regulations, leaving it open to interpretation whether the so-called “political agitation”, as the Electoral Code calls political communication, is part of commercial communication. If it is, it should be subject to the same restrictions (such as the limit of 12 minutes per hour ads time for the BM). This was the position during the last election campaign of the CEM. This interpretation was fiercely opposed by ABBRO, whose members saw in the paid coverage of the electoral campaign (unrestricted by the 12-minutes-per-hour-rule) a good opportunity to enhance their TV and radio programs’ financial-crisis-hit results.¹⁰⁹ The dispute was sent for arbitration to the Central Electoral Committee, then to the Parliamentary committee on legal issues, and finally - to the Central Audit Office, yet was not resolved during the campaign. Thus the CEM on two occasions took the initiative and tried to fill the gaps, left open by the legislators in regulating political speech. The first - the Pre-election memorandum,¹¹⁰ proposed by the CEM in early June 2011 to the most influential commercial BM, aimed to guarantee political pluralism in the pre-election period (since the legislator did not impose a requirement for political pluralism neither in the RTA nor in the Electoral code). The majority of the invited BM refused to sign it.¹¹¹ ABBRO opposed it,¹¹² claiming the issue should be left to the self-regulation: the commercial operators saw in it just a repetition of the provisions of the Ethics Code, to which ABBRO and all its members are signatories and are thus obliged to respect anyway. The second initiative of the CEM targeted political communication and political ads more concretely: the legislators did not introduce any clear rules in this regard neither in the

¹⁰⁷ Source: CEM 2011.

¹⁰⁸ There is just the restriction to charge all the parties and candidates the same prices for publishing political ads and other paid information on their campaigns. (art. 138 of the Electoral code).

¹⁰⁹ On the controversy between the CEM and the ABBRO, see *Capital*, 29 September 2011.

¹¹⁰ Source: *Dnevnik*, 16 May 2010.

¹¹¹ Source: *Dnevnik*, 9 June 2011.

¹¹² The position of ABBRO is available at: http://abbro.bg/read_news.php?id=1573 (date accessed 6 December 2011).

RTA nor in the recently adopted Electoral Code. The CEM developed a set of clear requirements, which the political ads in the BM need to meet during the campaigns, the most important being the clear demarcation of paid-for content and editorial content. The above-mentioned controversy with ABBRO on the 12-minute per hour restriction took place within that second initiative. One of the major problems with the fair media coverage of the campaign had to do precisely with the practice of representing paid-for-content for journalistic one. The CEM pledged to initiate a clear definition and clear rules for political advertising as distinct from journalistic content in the long-overdue new media law.¹¹³

The PBM in the country, on the other hand, are heavily regulated with respect to political speech – they have the obligation to guarantee political pluralism in each and every one of their political and news programs in non-electoral-time. The legislators, however, impose even stricter requirements during electoral campaigns, when the PBM are not allowed to cover political (partisan) issues at all. The journalists in the PBM are not allowed to discuss the party programs, the candidates, their positions, etc. outside of the strictly-defined formats of “election campaign chronicles, TV clips and disputes” and the allotted to them air time. The quoted reason for these restrictions is “covering the parties and the candidates objectively and equally”. Paradoxically, though the concept of political advertising is missing from the legislation, the Electoral Code sets clear rules as to how the above-mentioned forms of permitted ‘political agitation’ are to be paid for even in the PBM. The rates for covering the political campaign are equal to all participants (even though only the parliamentary represented parties receive a state subsidy) and are set by the Council of Ministers. These provisions of the Electoral Code were criticised for being discriminatory with respect to the parties, not receiving state subsidy, and in general – for not treating all parties and candidates equally.¹¹⁴ As a result of these restrictions, the PBM had a very limited coverage of the campaign – with smaller parties refusing to pay for their candidates to participate in the planned disputes, which at the end were not held. The restriction for the PBM to cover the campaign outside of these paid-for formats thus effectively deprived the public from an objective, impartial, politically plural and independent information on the political programs and the candidates. Thus the PBM failed to fulfill their central mission of providing plural, impartial and rich information on issues of vital importance (such as the political elections) to the public.

Court proceedings against journalists are a source of content-related pressure on them, since libel and insult remain criminal offences. As a result of PACE’s Resolution 1211/2000, amendments to the Penal Code removed imprisonment as sanction for libel and defamation (though these were not decriminalized) yet severe fines were introduced. No ceiling on the compensations, or a requirement for proportionality are introduced for damages in civil law libel cases against journalists. Thus the current legislation provides a relatively better protection to the good name of the person than to the right to freedom of expression.¹¹⁵

In April 2011 amendments to the Penal code¹¹⁶ introduced possible incarceration (one to four years) plus fines, instead of the previous fines for journalists and writers advocating hatred, discrimination (on racial, ethnic, religious, sexual, social, marital, disability and other

¹¹³ http://dariknews.bg/view_article.php?article_id=808968 (date accessed 6 December 2011).

¹¹⁴ The Organisation for Security and Cooperation in Europe send a mission to monitor the election, which in its reports (OSCE 2011) concluded that there were serious problems with the media coverage of the 2011 electoral campaign both in the PBM, the BM and the press.

¹¹⁵ This is the position of the human rights lawyer Boyko Boev, who commented on the proposal of the governing party to introduce a special libel law in *Capital*, 7 February 2011. This proposal produced a public outcry and was subsequently dropped.

¹¹⁶ Art. 162 *Amendments to the Penal Code*, *State Gazette* no 33/2011.

grounds) and violence. Media analysts and civil society watchdog organisations opposed this move as an attempt to impose control over the media and the Internet and to curtail freedom of expression (by defining discrimination too widely and by imposing disproportionate sanctions even for “advocating” rather than only for “instigating” hatred and violence based on discrimination). The first conviction for instigating race-related hatred and violence¹¹⁷ was ruled in October 2011, yet was not against a journalist.

ECtHR’s case law has had no direct impact to this point on the media policy in the country. The courts’ jurisprudence, however, has influenced the reasoning of most of the Bulgarian courts in defamation and libel cases against journalists.¹¹⁸ The jurisprudence of the Bulgarian courts in this sphere, however, is not coherent, and the request for an interpretative decision on the case-law in this field by the Supreme Court of Cassation has produced no result.¹¹⁹ Two recent decisions of the ECtHR¹²⁰ from April 2011 are an important new development in this field. They are the first cases in which the ECtHR convicts Bulgaria for violations of art.10 (freedom of expression) of the ECHR with respect to journalists. The cases were brought to the ECtHR by two Bulgarian journalists, convicted in 2000 for defamation to pay considerable fines. These ECtHR decisions may have a positive effect on the legal practice in libel and defamation cases against journalists in the country. This legal practice is blamed for putting additional pressure on journalists, contributing to self-censorship among them (journalists currently reluctantly investigate high-level corruption cases as well as other politically sensitive issues, partly because of concern with possible legal actions against them). The lawyer Alexander Kashumov (representing one of the Bulgarian journalists in the ECtHR) commented that these ECtHR decisions may set a positive precedent and have beneficial effect for the freedom of expression and of the press in the country,¹²¹ yet it is too early to evaluate their impact.

It is intriguing why there are relatively so few cases coming from Bulgaria in the ECtHR in the media field, while there is a profusion of cases concerning the rights to fair trial, or the freedom of assembly, for instance. There are two possible explanations to the phenomenon, as suggested by Jonko Grozev – a prominent Bulgarian human rights lawyer.¹²² First, as mentioned above, generally the jurisprudence of the Bulgarian courts on freedom of speech is coherent with ECHR standards. This has been admitted by the ECtHR itself in an important admissibility decision.¹²³ The case was about the attempt of Alexey Petrov – an influential figure close to the former Bulgarian Prosecutor General Filchev – to stifle through libel suits the journalistic investigation and the criticism of the activities of the prosecutorial office of the public intellectual Edvin Sugarev. Bulgarian courts did not allow this on public interest grounds, and the ECtHR confirmed their position. Secondly, the low number of cases before the ECtHR, according to Grozev, could be explained by the general reluctance of the

¹¹⁷ The sentence was 10 months imprisonment, suspended, by a first instance court. Source: *Dnevnik* (2011/10/13).

¹¹⁸ Astaridjiev, 2002 documents the significant influence of the ECtHR art. 10 jurisprudence on the jurisprudence of the Sofia district court.

¹¹⁹ Buchkov, 2009.

¹²⁰ The first case is *Kasabova v. Bulgaria*, and the second - *Bozhkov v. Bulgaria*.

¹²¹ For details, see <http://www.desant.net/show-news/22157/> (date accessed 6 December 2011).

¹²² Interview with him, November 2011.

¹²³ Fifth Section Decision as to the admissibility of application no. 27103/04 by Aleksey Iliev PETROV against Bulgaria.

journalistic community to resolve their disputes through the courts. What explains this lack of litigious spirit requires deeper investigation.

5. The journalistic profession

The journalistic profession in Bulgaria is in the focus of attention, when evaluating the media's freedom and independence in the country. As recent rankings of the Media sustainability index (MSI) show, the standards of integrity in Bulgarian media are low: this is the lowest scoring indicator in MSI 2010 and MSI 2011, and the trend is downward.¹²⁴ There are, of course, provisions both in the Constitution, the RTA and the Penal Code, aiming to legally ensure the integrity of media employees, according to which the right to freedom of expression and the freedom of opinion cannot be exercised to the detriment of the rights and the good name of the others. The defamation and libel clauses, as well as the provisions against discriminatory and hate speech in the Penal code also serve this purpose. The RTA (art. 10) also contains provisions to be observed by both the commercial and public BM and among them are media integrity requirements.

The 2004 Ethics Code of the Bulgarian Media also provides clear self-regulatory rules, aimed at strengthening the ethical standards of the media in the country. The signatories declared to respect the general principles of truthfulness, transparency, non-discrimination, and respect for individual privacy and dignity. Sections guaranteeing the independence of the media from political and economic pressure/influence and regulating the relations within and between the media outlets are included. One major advantage of this code is that it binds not only the journalists (to whom alone the pre-existent ethics code were mainly addressed), but also the producers, publishers and the owners of print and BM. This is particularly important, since the journalists are in contractual relations and have to conform to the requirements of their owners. This code is thus a guarantee that the ethical rules will be followed by all media-related professionals. The National Council for Journalistic Ethics, a media-related CSO, is the major self-regulatory body in the sphere of the media, with its two Commissions for journalistic ethics – in the press and in the electronic media. Yet not all media outlets are signatories to the Ethics Code and the number of those refusing to sign it is growing.¹²⁵ Thus the majority of the press in the country “enjoys” full freedom from regulation. Since the Code is voluntary, no form of judicial review of its decisions is envisaged in it. Accordingly, its decisions have not been challenged in court. However, with the 2010 amendments to the RTA (art. 76 (2))¹²⁶, an obligation for the BM operators was introduced to respect the norms of the Ethics Code of the Bulgarian Media (as well as the National Ethical Rules on Advertising and Business Communication, adopted and implemented by the National Council for Self-regulation in Advertising). Furthermore, the CEM should impose monetary sanctions¹²⁷ for not complying in time with the decisions of the National Council on Journalistic Ethics and the National Council for Self-regulation in Advertising in applying their respective ethics codes. This amendment scandalised some of the influential media law experts in the country,¹²⁸ since in effect amounts to “privatising” the CEM: the media regulator becomes an instrument into turning the decisions of the private operators, advertisers, owners (represented in the mentioned above self-regulatory Councils) into legally binding decisions. This instrumentalisation of the CEM is not coupled with any prerogatives of the CEM in deciding on the adequacy of the decisions of the self-regulatory bodies, nor are there any appeal procedures envisaged in cases of disputes between the

¹²⁴ Source: MSI 2010 and MSI 2011.

¹²⁵ The influential New Bulgaria Media Group (NBMG) refused to sign it (the same applies to a plethora of tabloids, the most popular print press in the country).

¹²⁶ *State Gazette* no 12/2010.

¹²⁷ Art. 126 (r) of RTA, *ibid.*, envisages 2000 to 5000lv. fine for not complying with these decisions.

¹²⁸ Prof. Nelly Ognyanova commented these amendments at http://nellyo.wordpress.com/2010/02/01/media_law/ (date accessed 6 December 2011).

Councils and the sanctioned BM operators. Despite the presence of these provisions in the RTA, the CEM has not to this point acted on these new prerogatives.

It should be noted that there are virtually no individual codes of ethics in the media – or if there are, they have no visibility and effectiveness, since they are not enforced (the media, apart from the PBM, have no internal ethics committees).

The journalists in Bulgaria have their associations, though in the last decade they have become less visible and their influence has become weaker than that of the non-journalist media-related associations. The most influential traditionally is the Union of Bulgarian Journalists (UBJ), comprising more than half of the journalists in Bulgaria with its 4,400 members. This union is the only organisation providing legal advice and protection of the professional rights of journalists, as well as financial support to its members.¹²⁹ Though it is not registered as a trade union,¹³⁰ it is a party to the collective labour contracts of the journalists in the PBM (the commercial BM and the press have denied the union participation in collective labour contracts, to the extent such contracts exist at all¹³¹). The trade union “Podkrepa” has its own Union of Journalists in Bulgaria, yet its influence seems weak.¹³² In 2010 a Bulgarian section of the Association of European Journalists (AEJ) was established.¹³³ All these organisations declare to work “for guaranteeing the freedom, independence and the autonomy of the media” (UBJ), “through their professionalism to fight for access to information and to defend freedom of speech” (UJB “Podkrepa”) and to “contribute to the development of independent, modern, adequately supported with resources, responsible civic journalism”(AEJ-B).

The low standards of journalistic and ethical integrity in the media in the country are most apparent in the case of the tabloids and some regional and local print media outlets, yet this is a general trend.¹³⁴ Tabloids (but not only) explicitly refuse to sign the Ethics Code of the Bulgarian Media and do not have internal editorial ethical codes, nor do they have ethics committees. Some tabloids observe ethical standards in their work, yet this is usually done under external pressure.¹³⁵

There are a number of explanations for the low ethical standards in the journalistic profession. The liberal entry into the profession is one: there are no strict regulations, nor are there any requirements for formal education or qualification. The entry is entirely open, which led to an increase in the number of journalists and to a tough competition among them. In 2007, the total number of journalists in Bulgaria was estimated to be around 7,200; and the total number of employees in the media business was 16,250 in 2006.¹³⁶ The huge number of journalists and outlets was repeatedly quoted as a major source of the low quality of journalism in the country by a series of interviewees. This may sound paradoxical, yet the

¹²⁹ In the crisis-stricken 2010, the union distributed among its members 73 000 lv (36 500 EUR) in social benefits – single, multiple or child benefits.

¹³⁰ The UBJ is registered in court as a public interest not-for-profit CSO.

¹³¹ Source: UBJ 2010.

¹³² In the activity report for 2008-2010 of UJB there is no information about its membership size (it is only mentioned that currently it has 21 sections), or any specifically trade-union activity. Its focus seems to be on the personal activity of its leaders - participation in round tables, press-conferences and diverse international for a.

¹³³ See <http://www.aej-bulgaria.org/> (date accessed 6 December 2011).

¹³⁴ Source: *Capital* 9 October 2009.

¹³⁵ Thus after a scandal, involving the late media critic Vassa Gancheva in May 2011 (she was revealed as accepting payment for favourably covering a particular TV program in her critical commentary in the most popular tabloid *Weekend*), the position of the tabloid was that they do not accept such practices and as a result – her contract with the tabloid was terminated. See for details, <http://paper.standartnews.com/bg/article.php?article=369152> (date accessed 6 December 2011).

¹³⁶ Source: Stetka 2011: 25.

strong competition has not raised the quality of the journalistic product, nor has it necessarily increased the plurality and diversity of the media, since there are wide-spread and increasing practices of self-censorship and trading in influence, to be further discussed in more detail below. Thus if a journalist is unwilling to follow the line of her media owners, she is easily substitutable – enough are waiting for her job and will willingly serve their new employer. Further explanations draw on the time pressure, the work overload and the inadequate financial resources of some media outlets, and in general, the financial crisis with the ensuing falling circulations, lower profits and closing down of media outlets, the lack of investment in media literacy education, etc. The different media outlets in the country operate in rather diverse financial circumstances. The local and regional print media as a rule enjoy less adequate financial resources, while the central newspapers and magazines are better financially provided for. It should be pointed out that the relationship between financial stability and independence of the media may in fact be reversed in the case of the Bulgarian media recently. The more financially marginal a media is, the more likely it is that it can allow itself to be independent.¹³⁷ The low standards affect not only the journalists, but the owners and editors of local and regional press outlets and BM.¹³⁸ they often submit to corporate pressures from business circles - both legitimate and illegitimate. Often the right to reply is not well-exercised in these media, leaving their publics exposed to one-sided, partial and manipulative information.

A source of pressure on the journalists is the unhealthy relationship between Bulgaria's print and BM, on the one hand, and the PR and advertising agencies, on the other. During the second half of 2005, the Bulgarian Helsinki Committee commissioned a study, which uncovered widespread corruption practices at several of the media outlets examined, including direct payments to journalists for articles written or stories broadcast (without clear indication of the paid content and its separation from the editorial content). It also revealed the direct but not explicit financial dependence of the editorial offices of some media outlets upon certain economic and political groups. Such practices, according to the conclusions drawn by the researchers, limit the scope of public debate quite severely, excluding from it those groups within Bulgarian society who have no access to power and money.¹³⁹

The time pressure, the work overload and the inadequate financial resources of some media outlets are among the reasons quoted by our interviewees for often not relying on multiple sources of reporting.¹⁴⁰ These, together with the corporate pressure (exerted by the owners, their political and business friends, as well as the advertisers) are among the main reasons for some journalists to often not report on both sides of an issue, or altogether shun some issues.¹⁴¹ As stressed by our interviewees, this practice is more common in the regional and local outlets, though is present in the central media as well. This is attributable to the trend towards tabloidisation of the mainstream media, which spreads such practices to parts of the so-called serious press as well.

¹³⁷ The case of Re:TV was pointed out by a couple of our interviewees as an example of commercial TV, which though financially very inadequately provided for (it went bankrupt in just a year after the start of its activities), managed to maintain a very independent editorial line.

¹³⁸ This is stressed by the panelists in 2010 and 2011 MSI reports.

¹³⁹ Source: BHR 2006.

¹⁴⁰ The same observation is present also in the 2010 and 2011 MSI reports.

¹⁴¹ Several examples of apparent pressure from advertisers on the media to avoid their negative coverage were quoted, the most blatant being not covering the crack-down of the IT system of a big telecommunication company (with the biggest advertising) budget, affecting millions of consumers, and removing from air of a TV program, which criticised the activities of the owner of a bank - the major advertiser in the channel.

It is difficult to determine how wide spread censorship is in the media in the country. On the one hand, it is constitutionally banned, and this provision seems generally observed.¹⁴² On the other hand, some sources¹⁴³ support the conclusion, that political pressure is still a major problem for the free media in the country. However, there are considerable doubts about the editorial independence of the BNT (and to a lesser extent – of the BNR). Yet it is more a result of self-censorship of the general directors and the members of the editorial boards of the PBM in the country. The reason is obvious – their dependence on the politically dependent CEM. There is also a growing concern for the editorial independence of the major commercial BM and the central press, heavily relying during the years of the economic crisis on state advertising money. Yet here at play may be self-censorship rather than censorship. Thus self-censorship is a major and further growing concern not only for the PBM (affecting both the governing bodies and the journalists there), but for the press and the commercial BM as well.¹⁴⁴ The reasons for self-censorship are often not political, but economic dependence. In an overpopulated media market with non-transparent ownership and sources of funding, in circumstances of financial crisis, falling circulations and strong competition on the advertisement market, it is usually the owners, who pressure the journalists to follow a favourable to the investors in the respective media editorial line.¹⁴⁵ Self-censorship is the response. Self-censorship is also the response of some media to the aggressive style of some of the contemporary Bulgarian politicians, who accuse the journalists of being ‘non-objective’ in covering the activities of the government when they ask an inconvenient question or criticise them.

¹⁴² Different views were expressed on this issue by our interviewees. A major TV presented at BNT claimed that “the classical model of direct political pressure in the last 10 years is passé”. According to the same source, currently there is a much more complicated model of informal pressures. While in the 90s there were two major players in the field – government and journalists, starting from the 2000s three major players contest the ground: the ambitious journalists, the media owners, and the informal networks (involving politicians, members of government, business circles, representatives of the judiciary, etc.) The fear of punishment has stepped down to clear the ground to urge for remuneration, benefits, etc. The pressure on free speech thus comes from this latter, rather “positive motivation.” The journalists are part of this equation and are partly responsible for the ensuing problems: “we, the journalists, have not learnt how to restrain ourselves... journalism is viewed by some as an official justification for their side business”, to use this source’s own words. Not censorship is identified as a major problem, but rather - easy susceptibility and ready submission to pressures. Thus neither in PBM nor in BM there is wide-spread censorship. Rather, the widespread talk among journalists of censorship is attributable to some journalists’ low ethical standards and their unwillingness to take responsibility for publishing ‘risky’, time-consuming materials. There is a way to avoid political pressures and yet be on the safe side, even in PBM – and the recipe, quoted by our source is: present the two sides on each politically controversial issue. Few, however, are ready to follow this recipe, since it is time-and-effort consuming.

¹⁴³ The Association of European Journalists in Bulgaria conducted an on-line survey, where journalists filled a questionnaire to determine the level of freedom of speech in Bulgaria. The overall score was 2,42 (on a scale 1 to 5), i.e. closer to ‘poor’ than ‘satisfactory’. For 58 of the 113 who participated, the main impediment to free speech was political pressure in their work (two were dismissed because of political interference), some 28 pointed out the economic pressures instead (available at: <http://www.aej-bulgaria.org/en/2011/10/journalists-give-poor-mark-to-press-freedom-in-bulgaria-according-to-an-aej-bulgaria-poll>, date accessed 6 December 2011). This survey, of course, is far from representative for the view of some 7 500 journalists in the country. It is also susceptible to the ‘self-selection’ problem – it is likely that those who decided to respond believed there is a problem with freedom of speech, while those who did not believe there is such a problem, might not have bothered to respond. However, similar conclusions are supported by the Bulgarian researcher Lada Price, who has conducted 31 interviews with ‘elite’ journalists – senior journalists and editor-in-chiefs in the central BM, PBM and the central press. Of them 19 claimed to have been either demoted or fired at least once in their career due to political or business pressures (Price, unpublished PhD thesis research). This researcher presents the condition of free speech in the country as “freedom with limitations.”

¹⁴⁴ As reported in Media sustainability index 2010 and 2011 reports.

¹⁴⁵ This was also the conclusion of the media expert Prof. Nelly Ognyanova and the journalist Alexey Lazarov, who discussed the practice of trading in influence and its impact on the quality of the media in Bulgaria. Source: BHR 2011.

The issues of self-censorship and the influence of political pressure on these practices are under-researched in the Bulgarian context. There are occasional analyses in the quality press in support of the conclusion above, though they are not conclusive. Indicative of the trend outlined above¹⁴⁶ is the response of the editors of *Dnevnik* daily and *Capital* weekly to the provocative question to the media of the Prime Minister Boyko Borisov. On 30/05/2010 in a press-release the PM asked the editors whether they are pressured by the government. All the editors denied. *Dnevnik* and *Capital*, owned by Economedia group, published editorials, in which, after denying a direct pressure on them by the Government, nevertheless stressed that pressures exist in the media market, due mainly to the failure of the state to properly regulate it. This failure is the main reason for the practices of self-censorship and also for the practices of more direct political and economic dependence of some of the media.¹⁴⁷ The fact that the Government is spending considerable amounts for advertising in the press and the BM may also be a source of pressure on editorial boards: currently the state is the second biggest advertiser in the print media, where in the regional media the share of state-funded advertising is between 30 and 50% of all revenues.¹⁴⁸ Thus, even though harassment and intimidation of journalists is not a common and wide-spread (if nevertheless present, especially in the local media) practice, journalists sometimes do fear to voice criticisms of government and of some businesses.¹⁴⁹ A very important issue concerns the pressure on the media, coming from political and business circles. While such pressure was always present during the entire transition period, it has grown in importance in the last 3 years of the economic crisis. The problem is that when there is no ‘fresh money’, no new investment in the media, the state and some powerful economic groups (using the media for trading in influence) become the major players in the media market. This particularly applies to the state, which through its EU structural funds-related information and publicity activities, is a major source of fresh money for the media. It was argued that each ministry - beneficiary of EU structural funds - distributes through private PR agencies between 3 and 4 million leva for such activities. These funds are discretionally distributed, and as a rule go to media outlets favouring the government on the condition of further favourable government coverage. These funds and the attending practices were identified by some of our interviewees as a major source of corruption practices and for influencing the media.¹⁵⁰

A major concern for the independence of the media in the country is the growing practice among Bulgarian journalists of trading in influence,¹⁵¹ also noted as major problem with the Bulgarian media by the US State Department.¹⁵² Up to 50% of the Bulgarian journalists accept payment ‘under the table’ for their publications and materials.¹⁵³ It is a practice among Bulgarian journalists to accept trips, covered by companies, on whose activities and products they report.¹⁵⁴ There is a lack of sensitivity among the majority of

¹⁴⁶ The case of the exchange between the PM and the editors of the major outlets in the country was quoted by one of our interviewees, a senior journalist at the BNT, as an example of the ‘soft’ pressures politicians exert on the media.

¹⁴⁷ For details on this ‘exchange’ between the PM and the media, see *Dnevnik*, 30 May 2010 and *Capital*, 31 May 2010.

¹⁴⁸ Source: *Capital*, 2 September 2011.

¹⁴⁹ MSI 2010 and MSI 2011.

¹⁵⁰ Source: *Capital* 2 September 2011.

¹⁵¹ Source: BHR 2011.

¹⁵² Source: USA State Dept 2010

¹⁵³ This observation belongs to one of our interviewees, an influential media expert. He quoted his and his colleague’s research on the topic. More on the same issue: BHC 2006.

¹⁵⁴ The journalist and economist Yordan Mateev is one of the recently growing number of journalists who openly speak on this topic (Source: Mateev 2011).

journalists and editors, that accepting such ‘gifts’ is an unacceptable form of trading in influence.¹⁵⁵

Though there have been no cases of violence against journalists in 2009 and 2010, in February 2011 a bomb was planted in front of the headquarters of the newspaper *Galeria* (specialised in leaking of sensitive information, including on members of government), bringing material damage in an alleged attempt to intimidate its editors and journalists.¹⁵⁶ Another case was the planting of a bomb in the car of one of the prominent investigative journalists during the pre-election campaign period in October 2011.¹⁵⁷ The official position of the authorities in both cases was that the bombs were planted with the intention of discrediting the country and its government, since the accidents coincided with high profile EU visits (in the former case – 4 EU commissioners, in the latter - the President of the European Commission Barosso himself), rather than targeting the journalists themselves. However, the authorities have done little to send the perpetrators to court. In general, one major problem in this field is the lenience of the respective authorities (police, prosecutorial office and courts) in prosecuting crimes against journalists. There is also a lack of sensitivity in society for the threats to their civil freedoms that intimidation and crimes against journalists present.¹⁵⁸

Against this general background of the state of the journalistic profession in Bulgaria, it should come as no surprise that investigative journalism is weak in the media’s work in the country.¹⁵⁹ There are, to be sure, some influential investigative journalists and programs, yet they often deal with minor issues, or do not go too deep into the problems, especially when there is a risk of affecting the interests of the media owners, or of their political and business friends. It is a characteristic feature of the investigative journalism programs of the PBM, but not only there – that they deal mainly with low-profile cases, having little public resonance. Thus the politicians from the governing majorities are rarely investigated, nor are their business circles. The major critiques are addressed to the previous governments, providing media comfort to those in power.¹⁶⁰ Politics, governance issues, and corruption in particular, are among the main topics in the media currently. Yet instead of raising the awareness of citizens and educating them to be vigilant and non-complacent towards such negative social practices, the over-representation of corruption, for example, breeds cynicism and complacency¹⁶¹ and is often capitalised on by populist political players. Politics is also ever-present in the morning programs of the major national TV channels, prompting media experts to describe this newly emerging relationship between media and politics as a “condition of permanent political campaign,” which has negative effects on the quality and the political

¹⁵⁵ This practice was quoted by several of our interviewees – journalists and representatives of journalist associations. Alexei Lazarov, vice-editor-in chief of *Capital* weekly and member of the Press ethics committee, provides the evidence: advertiser offered to advertise in *Economedia* newspapers on condition of positive coverage, and was surprised when the editors refused to accept this offer. Another advertiser withdrew their advertisements after negative coverage of one of its owners (Source: BHC 2011). A recent scandal with the removal from the screen of a TV program after the major advertiser of this media received negative coverage in it, is also indicative of the same trend (for an account of the events, see *Capital* 18 July 2011).

¹⁵⁶ <http://www.trud.bg/Article.asp?ArticleId=774596> (date accessed 6 December 2011).

¹⁵⁷ http://bnt.bg/bg/news/view/62108/vzrivaha_kolata_na_sasho_dikov (date accessed 6 December 2011).

¹⁵⁸ These have been the conclusions of MSI 2010 and 2011 reports.

¹⁵⁹ Two of our interviewees – media experts, expressed this opinion. Margarita Mihneva, a prominent Bulgarian investigative journalist, who has been sued and dismissed from work on a number of occasions, takes a stronger position. According to her, “In Bulgaria there is no investigative journalism”, an interview available at: <http://www.econ.bg/news/article174245.html> (date accessed 6 December 2011).

¹⁶⁰ An overview article on this negative trend was published by *Capital* weekly in 2009, under the telling title “The Betrayal of the Media” (Source: *Capital* 9 October 2009).

¹⁶¹ For a similar observation, see CLS 2006.

independence of the media.¹⁶² Thus TV programs and articles in the press are often turned into uncritical channels, in which politicians convey their messages to the public in conditions of “media comfort.”¹⁶³ There is also a trend of low quality reporting on the activities of Parliament, the Cabinet, and other high public offices,¹⁶⁴ in part due to the tabloidisation and the trend towards turning the media into “infotainment” - a hybrid between entertainment and a source of information.¹⁶⁵ The facts are often presented in vague terms, with no sufficient clarity on important details, with a focus on the shocking, eye catching topics. Widely spread is the so-called ‘niche reporting’, where journalists specialise in reporting on only one state institution or policy area. It is often advocated as a remedy for this negative trend of low quality politics coverage: the quality reporting requires special knowledge and experience. Yet this ‘niche reporting’ may be one of the routes for the media becoming ‘mouthpieces’ of the politicians, public officials and state institutions: in acquiring the required special knowledge, the ‘niche’ journalists develop strong personal ties with the objects of their reports, sometimes losing their own impartiality in the process.¹⁶⁶

To the extent investigative journalism is supported by media owners to target high profile corruption, conflict of interests cases, etc., it is often within the framework of “media wars” between media competitors.¹⁶⁷ In such cases investigative journalists receive all the necessary support – financial, administrative, legal, etc. - from the editorial boards. In other cases, the media employers turn a blind eye, and leave the journalists to defend themselves alone, even in legal battles, in which they are accused of defamation, libel, etc. In general, investigative journalism is viewed with suspicion among the profession. The journalists practicing it are considered “trouble makers” and are often pushed to the margins of the profession, enjoying low prestige and often no support.¹⁶⁸

¹⁶² Source: Spassov 2011.

¹⁶³ Ibid.

¹⁶⁴ Thus it is sometimes difficult to understand when a draft law is only being discussed by the Council of Ministers or by the respective Standing committee, whether it is being voted on its first reading in Plenary sessions in Parliament, or has been finally adopted.

¹⁶⁵ Source: Spassov 2011.

¹⁶⁶ This danger was pointed out by one of our interviewees.

¹⁶⁷ The case of the media war of Economedica group v. the New Bulgarian Media Group in 2009/2010 and the investigative journalism publications against the latter by the journalists of Capital weekly, may be pointed out in support of the above observation.

¹⁶⁸ As one of our interviewees, a media expert and a member of the regulator CEM, put it.

6. Media literacy and transparency requirements

In an era of increasing infotainment and tabloidisation of the media, adequate levels of media literacy are crucial for the survival of the quality media. Raising awareness on the diverse dependencies of the media is one of the major routes towards promoting media's freedom and independence. Yet despite the critical importance of media literacy for free and independent media (especially in situation, when the latter are under increasing pressure from diverse sources), there is virtually no media literacy policy or media literacy strategy in the country, and just a few EU-funded, on an ad hoc basis, media literacy projects with low visibility.¹⁶⁹

One such project, relevant for the developments in media literacy by the non-media public in Bulgaria, was financed through the EU structural funds and executed by the "National Council for Journalistic Ethics" Foundation under the title "Strengthening the civil society structures in the area of media policy". The project was centered on numerous lectures, presentations and discussions by two strategic target groups – civil society organisations and central and local government administration – with representatives and experts on media. A large portion of the discussions during this project were centered on media literacy for the two target groups, including both improvements on the part of government administrators and of civil society organisations in terms of understanding and navigating the ever more complex media landscape, as well as ability to communicate with and through the media for their own purposes. The discussions took place in various cities in Bulgaria, and the final report evaluates the information flow of the project in its two directions – from the experts and media representatives to the target groups in terms of improving their media literacy and understanding and in terms of providing them with tools for action in the media environment; and from the target groups to the experts and the media in terms of suggestions for both media policy solutions and participation of the target groups in the respective policy making.

An important aspect of this, as well as other similar projects, and also of the various higher education programs in journalism (such as the ones at New Bulgarian University or the Sofia University) is that the media literacy topic seems contained within a very limited segment of the general population – either the people studying journalism anyway, or civil activists and administrators. The different interviews with representatives of the Media Ethics Commission of the National Council for Journalistic Ethics showed that this is indeed a weakness of the overall education process, which does not envisage specific media literacy programs for the population at large. At the same time there is a consensus among the interviewees from the Commission that there is no discernible state policy aiming at media literacy of the general public.

This is believed to have at least two effects in the case of Bulgaria. First, citizens in general do not have a systematic knowledge of the media environment and its rules, regularities and specificities which decreases their capacity to both obtain and transmit useful and variable information through the media. Despite the fact that especially the representative of the younger generation are quite knowledgeable and active in using technological social media innovations for various kinds of information gathering and transmission, this environment is still not a well-developed forum for public discussion as would be valuable for a democratic political process.¹⁷⁰

¹⁶⁹ Some of the journalists and representatives of journalistic associations, interviewed for our case-study, had problems grasping even the concept of "media literacy" and were not aware of the existence of any related projects, even less of a policy or strategy.

¹⁷⁰ This was the observation of one of our interviewees, senior journalist at an influential newspaper (A.L.).

Second, the relationship between society and media becomes very fragmented. Different segments of the population interact with different types of media outlets, with the different segments having insignificant communication with each other. This, again, deconstructs rather than enhances the possibility for a useful, informed and rich in points of view public forum concerning general public issues.

With respect to the role of new media and technologies in this process, there is a divergence of opinion among the interviewees. It ranges between a very negative evaluation – “the new technologies eventually spoil the demand for good journalism”¹⁷¹, to a largely positive one – “I cannot see a negative effect, rather new media and technologies increase both the transparency, the availability and the speed of information and strictly improve the chances for a democratic dialogue”¹⁷². Evidently, in the case of Bulgaria, the penetration of new technologies and new types of media is a process which can have both types of consequences for the democratic process, and there is not enough evidence yet to know the balance between pluses and minuses.

It should be stressed that the media literacy initiatives, to the extent such exist at all, are in no way complemented by specific transparency requirements on media operators or publishers. To the extent transparency requirements exist at all, they are largely left to the self-regulatory initiatives of the media owners, as argued in more detail above in the structural regulation section of this case-study report.

¹⁷¹ This is the opinion of one of our interviewees, a chief lawyer of a major press group (R.C.).

¹⁷² This is the opinion of one of our interviewees, senior journalist at an influential newspaper (A.L.).

7. Conclusion

After twenty years of transition from communism, the Bulgarian media environment is currently in a state of normative confusion. There are different competing visions and interpretations of common ground concepts such as media independence and freedom of speech. Therefore, civil society is gradually losing orientation in the complex battles between different special groups and purely commercial interests in this field. Unfortunately, European regulation does not provide the normative grounding necessary for this area – it is also torn apart among various priorities and normative goals. In the absence of clear normative standards, it is no surprise that the media is increasingly seen as an extension of either partisan or corporate strategies.

In order to come to grips with the coexisting normative visions, we suggest to start with the outlining of at least four *ideal type* actors in the field of media regulation. These are the parties, the public and the private media, and the commercial companies. All they differ in their goals, ideology, relation to the state and the regulation by the state:

Table 1: Ideal Types of Actors Involved in Media Policy

	Party	Public Broadcast Media	Private Media	Commercial Company
Goal	Votes/Trust	Trust (through profit)	Profit through trust	Profit
Ideology	Generally, must have one	No	May have one	May have one
Competition	Monopolies possible	Monopolies possible (political ads for instance)	No monopolies	No monopolies
State Aid	Yes	Yes	No	No
Regulation	Separate law necessary; Special regime of establishment, operation, etc.	Special regulation necessary	Law of corporations	Law of corporations

The very constitutive features of these actors determine their stance vis-à-vis media policy. The Bulgarian case study largely confirms that in the area of media regulation most of these actors have pursued their interests and have tried to shape media regulation in their

favour. Thus, political parties have tried to instrumentalise the media, and to turn them into outlets for ideologies or for instruments of mobilisation of the voters. The public broadcasters have tried to resist (with various degrees of success) both partisan pressures and pressures for more competitive media markets without public subsidies. The commercial media, in their turn, have been trying to resist pressures from the political sector, from what they see as unfair competition from the public broadcasters, as well as the pressure for more profits from their owners (again with varying degrees of success). In order to be more systematic, in the table below we sum up the resulting different policy strategies in terms of media regulation:

Table 2: Policy strategies in media regulation by actors

	Actors	Instruments	Link with parties	Link with business	End result
Police the borders	Parties, NGO, Journalist, academics	Party laws, PBM councils, media laws	Bans on paid ads, free air time	Arm's length distance for PBS	Ideal types
Laissez faire	Business	No regulation	Market access to the media	Full contact	Full hybrids
Hybrid I	Parties	Overregulation	Privileges for the governing parties	Favouritism of specific businesses	Party-media
Hybrid II	Business	Lobbyist regulation	Privileges for the governing parties	Favouritism of firms; dominant position	Media-party

On the basis of our analysis we can outline at least four different strategies. Each of these has its supporters in the Bulgarian context. Some of these strategies are more prominent at one point or another, but none of them has been able to become dominant and to replace the others. This explains the general normative confusion which reigns in the field. Thus, there are two internally more coherent strategies. First, there is the policy of policing of the borders between the ideal types, which insists on the preservation of a strong public media sector, as well as clear borderlines between parties, companies and the media. Secondly, there is the laissez-faire politics of commercialisation of the field, which would dispense of the public sector at least, but possibly of the autonomous political parties as well (they should be turned into business interest groups). Finally, the Bulgarian case study illustrates the possibilities for at least two hybrid versions of media policy. In the first one, dominant parties

try to instrumentalise the media for their purposes. As argued in the case study, this was the situation in Bulgaria in the 1990s. The second hybrid model describes a different scenario: weak political parties compete for media attention and try to copy media strategies for voter attraction. In such a scenario, the business interests in the media sector tend to become quite influential and extract considerable favours from the politicians. This is arguably closer to the situation in Bulgaria since the beginning of the new century. All four strategies have their supporters in Bulgaria, however, and these supporters have managed to win important battles on different occasions. The result is a patchwork of regulation whose social utility and significance is increasingly difficult to assess.

8. References

A. Media-related political decisions

“An Agreement on the basic ideas and principles for the amendment of the Bulgarian constitution”, March 30 1990.

“An Agreement on the status of the state-owned Bulgarian national radio (BNR) and Bulgarian national television (BNT)”, May 14, 1990, available at: http://www.omda.bg/bulg/k_masa/dokumenti_round_table/agreement_television_radio.htm (date accessed 6 December 2011).

“Main points of the temporary statute of the Bulgarian national TV and the National radio”, *State Gazette* no 3/1991.

“Strategy for the development of the radio and TV activities”, Decision of the National Assembly of the Republic of Bulgaria, 28th September 2005, *State Gazette* no 82/14.10. 2005

“Plan for the introduction of DVB-T”, Decision of the Council of Ministers from January 31, 2008.

B. Media –related decisions of the Bulgarian Constitutional Court (BCC)

BCC decision no3/30.12.1991, *State Gazette* no 4/ 14.01. 1992

BCC decision no 15/ 28.09. 1993, *State gazette* no 88/ 15.10. 1993

BCC decision no 16/19.09. 1995, *State Gazette* no 86/ 26.09. 1995

BCC decision no 7/ 4.06.1996, *State Gazette* no 55/28.06.1996

BCC decision no 21/14.11.1996, *State Gazette* no 102/29.11.1996.

BCC decision no 17/6.11.1997, *State Gazette* 109/21.11. 1997.

BCC decision no 10/25.06. 1999, *State Gazette* no 60/02.07.1999

BCC Decision 33/1998,, *State Gazette* no 147/1998

BCC decision no 10/25.06. 1999, *State Gazette* no 60/02.07.1999

BCC decision no 3/03.06. 2009, *State Gazette* no 45/16.06. 2009

C. ECtHR jurisprudence

ECtHR case *Kasabova v. Bulgaria* (application no. 22385/03), available at: <http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/d4722af60f3c0fdb125787100343c72?OpenDocument> (date accessed 6 December 2011)

ECtHR case *Bozhkov v. Bulgaria* (application no. 3316/04), available at: <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/2422ec00f1ace923c1256681002b47f1/61aa3d6784d4da12c125787100334495?OpenDocument> (date accessed 6 December 2011)

D. Decisions and reports of the media regulators - CEM (The Council for Electronic Media) and CRC (Communications Regulation Commission)

CEM (2008a), “Activity report for 2008”, available at: www.cem.bg (date accessed 6 December 2011)

CEM (2008b), “CEM Decision no26/13.03.2008”

CEM (2010), “Activity reports for 2010”, available at: www.cem.bg (date accessed 6 December 2011)

CEM (2011), “A Report on the results of the one-month monitoring of the programs of BTV and NovaTV”, July 2011, available at: <http://cem.bg/cat.php?id=121> (date accessed 6 December 2011)

CRC activity report for 2006

E. Legislation

1991 Bulgarian Constitution, *State Gazette* no 56/13.07.1991.

1996 Radio and Television Act (RTA), *State Gazette* no 77/1996.

1998 Radio and Television Act (RTA), *State Gazette* no 138/24.11.1998.

1998 Telecommunications Act (TA), *State Gazette* no 93/1998.

2003 Telecommunications Act (TA) *State Gazette* no 88/2003.

2007 Electronic Communications Act, *State Gazette* no 41/22.05.2007

Access to Public Information Act (APIA) *State Gazette* no 55/04. 07. 2000.

Amendment to the “Mandatory Deposition of Copies of All Printed and Other Published Works Act”, *State Gazette* no 87/2010.

Classified Information Protection Act, *State Gazette* no 45, April 30, 2002

Commercial Code, *State Gazette* no 48/18.06.1991

Competition Protection Act, *State Gazette* no 102/2008.

Electoral code, *State Gazette* no 9/28.01. 2011

Framework Directive for electronic communications 2002/21/EC

F. Journalistic associations and self-regulatory ethical codes

The National Council for Journalistic Ethics, “Ethical code of the Bulgarian media”, available at: <http://www.mediaethics-bg.org/index.php?do=17&lang=bg> (date accessed 6 December 2011)

The National Council for Self-regulation in Advertising, “National ethical rules on advertising and business communication.”, available at: <http://www.nss-bg.org/kodeks.php> (date accessed 6 December 2011)

The Union of Bulgarian Journalists, “Activity report for 2010”, available at: <http://www.sbj-bg.eu/index.php?t=11492> (date accessed 6 December 2011)

The Union of Journalists in Bulgaria ‘Podkrepa’, “Activity report for 2008-2010”, available at: http://ujbp.org/index.php?option=com_content&view=article&id=7&Itemid=5 (date accessed 6 December 2011)

G. Media-related reports of Bulgarian and international organisations

Bulgarian Helsinki Committee 1998 (BHC 1998), “Human rights in Bulgaria”, available at: <http://old.bghelsinki.org/upload/resources/hr1998-bg.pdf> (date accessed 6 December 2011)

Bulgarian Helsinki Committee 2004 (BHC 2004), “Human rights in Bulgaria”, available at: <http://old.bghelsinki.org/index.php?module=resources&lg=bg&id=265> (date accessed 6 December 2011)

Bulgarian Helsinki Committee 2006 (BHC 2006), Report “*Re-formulating publicity: Study on the transparency of the relationship between the PR agencies and the media*”, available at: <http://old.bghelsinki.org/upload/resources/06PRandMedia%5B1%5D.pdf> (date accessed 6 December 2011)

Bulgarian Helsinki Committee 2010 (BHC 2010), “BHC activity report for 2010”, available at: <http://old.bghelsinki.org/activities/Activity-report-2010-bg.pdf> (date accessed 6 December 2011)

Bulgarian Helsinki Committee 2011 (BHC 2011), “The media between the trading in influence and the monopolies” [Медиите между търговията с влияние и монополите], available at: <http://www.bghelsinki.org/bg/publikacii/obektiv/klub-obektiv/2011-04/mediite-mezhdu-trgoviyata-s-vliyanie-i-monopolite/> (date accessed 6 December 2011)

Centre for Liberal Strategy (CLS 2006), Report “The judicial power in Bulgaria: Independent and responsible”, available at: http://cls-sofia.org/uploads/files/Projects%20files/1162302147__final_report_bg.pdf (date accessed 6 December 2011)

European Commission (EC 2009), “Independent study on indicators for media pluralism in the member States – Towards a risk-based approach. A country report on Bulgaria”, available at: http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/study/bulgaria.pdf (date accessed 6 December 2011)

Media Sustainability Index (2002-2011), “Bulgaria reports”, available at: <http://www.irex.org/resource/bulgaria-media-sustainability-index-msi> (date accessed 6 December 2011)

Open Society Institute (OSI 2005), EU monitoring and advocacy program, network media program. “Television across Europe: regulation, policy and independence. Monitoring Report 2005”, available at: http://www.soros.org/initiatives/media/articles_publications/publications/eurotv_20051011/summary_20051011.pdf (date accessed 6 December 2011)

Parliamentary Assembly of the Council of Europe, Resolution 1211 from 2000 (PACE 1211/2000), *Honouring of obligations and commitments by Bulgaria*, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/ERES1211.htm> (date accessed 6 December 2011)

The Organisation for Security and Cooperation in Europe (OSCE 2011) “Reports of the 2011 electoral campaign in Bulgaria”, available at: <http://www.osce.org/bg/odihr/84281> (date accessed 6 December 2011).

The US State Department. (USA State Dept 2010) “Human rights in Bulgaria. Report for 2010”, available at: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154417.htm> (date accessed 6 December 2011)

H. Articles and book chapters

Astardjiev, Vladimir (2002), “Application of the European Convention on Human Rights” [Прилагане на Европейската конвенция за защита правата на човека и основните свободи] in *Human Rights* [Правата на човека], no 1/2002.

Bozhilova, Svetlana (2011), “The Bulgarian model of media regulation” [Българският модел на медийна регулация], available at: <http://www.bghelsinki.org/bg/publikacii/obektiv/svetlana-bozhilova/2011-03/blgarskiyat-model-na-medijna-regulaciya/> (date accessed 6 December 2011)

Buchkov, Petar (2009), “The responsibility of the journalist is extraordinary” [Отговорността на журналиста е необикновена] in *Legal world* [Правен свят], no 9/2009, available at: <http://legalworld.bg/show.php?storyid=15652> (date accessed 6 December 2011)

Mateev, Yordan (2011), “Corruption and journalism”, *E-vestnik*, available at: <http://e-vestnik.bg/11214> (date accessed 6 December 2011)

Ognyanova, Nelly (2009), “Bulgarian media policy and law: How much Europeanization”, *Central European Journal of Communication* Volume 2(2)

Ognyanova, Nelly (2010), “On the Media Law Beyond the Eclectic” [За медийния закон отвъд еклектиката], *Kultura weekly* no 5. 10 February 2010, available at: <http://www.kultura.bg/bg/article/view/16613> (date accessed 6 December 2011)

Smilova, Smilov and Ganev (2010), “Background information report. Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Bulgaria”, available at: <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/Bulgaria.pdf> (date accessed 6 December 2011)

Spasov, Orlin (2011), “The Media and politics: the downfall of the fourth power?”, *The media and politics*, Foundation for Media Democracy 2011, available at: <http://www.fmd.bg/wp-content/uploads/2011/01/mediite-i-politikata.pdf> (date accessed 6 December 2011)

Štětka, Václav (2011), “Bulgaria. A country report for the ERC-funded project on media and democracy in central and eastern Europe”, available at: http://mde.politics.ox.ac.uk/images/stories/bulgaria_mdcee_rev2_2011.pdf (date accessed 6 December 2011)

I. Articles in newspapers

Capital (2000), “Krasimir Guergov reaches out to people metric surveys” [Красимир Гергов посяга и към изследванията за тв аудитория], 8 December 2008, available at: http://www.capital.bg/biznes/media_i_reklama/2000/12/08/206156_krasimir_gergov_posiaga_i_kum_izsledvaniyata_za_tv (date accessed 6 December 2011)

Capital (2006), “The licensing almost began: Will the media market change” [Лицензирането почти започна: Ще се промени ли медийният пазар], 1 July 2006, available at: http://www.capital.bg/biznes/media_i_reklama/2006/01/07/234568_ilicenziraneto_pochti_za_pochnai_shte_se_promeni_li/ (date accessed 6 December 2011)

Capital (2009a), “Digital doubts” [Цифрови съмнения], 27 March 2009, available at: http://www.capital.bg/biznes/media_i_reklama/2009/03/27/696386_cifrovi_sumneniia/ (date accessed 6 December 2011)

Capital (2009b), “Fifteen companies want to build digital TV networks” [Петнадесет компании искат да строят цифрови тв мрежи], 4 June 2009, available at: http://www.capital.bg/vestnikut/kapital_prim/2009/04/06/701260_petnadeset_kompanii_iskat_da_stroiat_cifrovi_tv_mreji/ (date accessed 6 December 2011)

Capital (2009c), “Decision without solution” [Решение без разрешение], 12 June 2009, available at: http://www.capital.bg/biznes/media_i_reklama/2009/06/12/734948_reshenie_bez_razresheni_e/ (date accessed 6 December 2011)

Capital (2009d), “On Boyko Borrisov – Either good or nothing” [За Бойко Борисов - само добро или нищо], 7 August 2009, available at: http://www.capital.bg/politika_i_ikonomika/sedmicata/mediina_sergiia/2009/08/07/767454_z_a_boiko_borisov_-_samo_dobro_ili_nishto/ (date accessed 6 December 2011)

Capital (2009e), “The betrayal of the media” [Предателството на медиите], 9 October 2009, available at: http://www.capital.bg/biznes/media_i_reklama/2009/10/09/797531_predatelstvoto_na_mediite/e/?sp=2#storystart (date accessed 6 December 2011)

Capital (2010), “Do the media depend on the political power” [Зависят ли медиите от властта], 31 May 2010, available at: http://www.capital.bg/blogove/za_medii/2010/05/31/909318_zavisiat_li_mediite_ot_vlastta/ (date accessed 6 December 2011)

Capital (2011a), “There are substantial gaps in the decision” [В решението има съществени пропуски], 7 January 2011, available at: http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/01/07/1021653_v_reshenieto_ima_sushtestveni_propuski/ (date accessed 6 December 2011)

Capital (2011b), “Two in one, in unclear combination” [Две в едно, неясно каква комбинация], 7 January 2011, available at: http://www.capital.bg/biznes/media_i_reklama/2011/01/07/1021417_dve_v_edno_neiasno_kakva_kombinaciia/ (date accessed 6 December 2011)

Capital (2011c), “The approach of the Commission was formalistic” [Комисията е подхождала формално], 7 January 2011, available at: http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/01/07/1021649_komisiyata_e_podhodila_formalno/ (date accessed 6 December 2011)

Capital (2011d), “Free fall” [Свободно падане], 4 February 2011, available at: http://www.capital.bg/biznes/media_i_reklama/2011/02/04/1037485_svobodno_padane/ (date accessed 6 December 2011)

Capital (2011e), “Between the reputation and the freedom of expression” [Между репутацията и свободата на изразяване], 4 February 2011, available at: http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/02/04/1036954_mejdu_reputaciiata_i_svobodata_na_izraziavane/ (date accessed 6 December 2011)

Capital (2011f), “Notes on a scandal” [Записки по един скандал], 18 July 2011, available at:

http://www.capital.bg/blogove/za_medii/2011/07/18/1125358_zapiski_po_edin_skandal/
(date accessed 6 December 2011)

Capital (2011g), “An elephant in a media shop” [Слон в медиен магазин], 2 September 2011, available at: http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/09/02/1149712_slon_v_medien_magazin/ (date accessed 6 December 2011)

Capital (2011h), “The televisions requested that political advertising does not count as commercial advertising” [Телевизиите поискаха политическата реклама да не се брои за търговска], 29 September 2011, available at: http://www.capital.bg/biznes/media_i_reklama/2011/09/29/1165463_televiziite_poiskaha_politicheskata_reklama_da_ne_se/ (date accessed 6 December 2011)

Capital (2011i), “Is the Bulgarian football championship important” [Важно ли е българското първенство], 30 September 2011, available at: http://www.capital.bg/politika_i_ikonomika/redakcionni_komentari/2011/09/30/1166796_vajno_li_e_bulgarskoto_purvenstvo/ (date accessed 6 December 2011)

Dnevnik (2010a), “”The anti-Guergov” clause in the RTA was dropped” [Отпадна текстът "анти-Гергов" в Закона за радио и телевизия], 28 January 2010, available at: http://www.dnevnik.bg/bulgaria/2010/01/28/849234_otpadna_tekstut_anti-gergov_v_zakona_za_radio_i/ (date accessed 6 December 2011)

Dnevnik (2010b), “A company close to the banker Tzvetan Vassilev Bought 50% of NURTS” [Близка до банкера Цветан Василев фирма купи 50% от НУРТС], 7 April 2010, available at: http://www.dnevnik.bg/pazari/2010/04/07/884058_blizka_do_bankera_cvetan_vasilev_firma_kupi_50_ot_nurts/ (date accessed 6 December 2011)

Dnevnik (2010c), “The CEM urged the private media to respect political pluralism” [СЕМ призова частните медии към политически плурализъм], 16 May 2010, available at: http://www.dnevnik.bg/bulgaria/2011/06/07/1102241_sem_prizova_chastnite_medii_kum_politicheski_pluralizum/ (date accessed 6 December 2011)

Dnevnik (2010d), “Editorial: Pressure and pressing” [Редакционен: Натиск и натискане], 30 May 2010, available at: http://www.dnevnik.bg/analizi/2010/05/30/908992_redakcionen_natisk_i_natiskane/ (date accessed 6 December 2011)

Dnevnik (2011a), “Half of the money of the state-owned Companies are held in corporate bank” [Половината от парите на държавните фирми са в Корпоративна банка], 7 June 2011, available at: http://www.dnevnik.bg/pazari/2010/05/16/901692_polovinata_ot_parite_na_durjavnite_firmi_sa_v/ (date accessed 6 December 2011)

Dnevnik (2011b), “The private media refused to sign the CEM memorandum on electoral campaign pluralism” [Частните медии отхвърлиха меморандума на СЕМ за предизборен плурализъм], 9 June 2011/06/09, available at: http://www.dnevnik.bg/bulgaria/2011/06/09/1103294_chastnite_medii_othvurliha_memoranduma_na_sem_za/ (date accessed 6 December 2011)

Dnevnik (2011c), “First conviction for instigating violence and hatred in Facebook” [Първа присъда за призив към насилие и насаждане на омраза във "Фейсбук"], 13 October 2011, available at:

http://www.dnevnik.bg/bulgaria/2011/10/13/1176394_purva_prisuda_za_priziv_kum_nasilie_i_nasajdane_na/ (date accessed 6 December 2011)

9. List of interviews (in alphabetic order)

- A. K. - lawyer, Program Director at foundation “Program Access to Information”, member of the National Council of Journalistic Ethics. Sofia, 6/07/2011
- A. L., journalist, vice editor-in-chief of *Capital* weekly, member of the Commission on Journalistic Ethics in the Press. Sofia, 12/10/2011
- B. V. - senior journalist at the BNT, member of the governing body of the BNT. Sofia, 08/10/2011
- C. H. – journalist, chair of the Bulgarian section of the Association of European Journalists. Sofia, 29/09/2011
- C. M. – journalist and politician from the BSP, an MP in the Grand National Assembly (1990-1991), 36 and 37 National Assembly (1991 – 1997), vice-chair and chair of the Standing Committee on the Radio and Television. Sofia, 10/09/ 2011
- D. G. – journalist and politician, MP in the 39 National Assembly, executive director of TV7 (2006-2009), e-communication, 26/07/ 2011
- D. P. - journalist at the BNT, vice-chair of the Union of Bulgarian Journalists (1993-1995), member of the NCRT (2000). Sofia, 15/09/2011
- G. L. – media expert, professor at the Faculty of Journalism and Mass Communication, member of the CEM (2009-), member of the NCRT (1997-2001) and the CEM (2001-2004). Sofia, 03/06/ 2011
- I. D. – professor of cultural anthropology at Sofia University, media expert. Sofia, 25/07/2011
- I. I. – journalist, director general of the BTA (1990- 1993), Vice president of the Association of European Journalists (1994- 1996), currently a free-lance journalist and blogger, Sofia, 07/10/2011
- I. P. - co-owner of a major press group, vice-chair and member of the board of the Union of Publishers in Bulgaria (2001-2010), chair of the confederation of the employers and industrialists of Bulgaria (2006- 2010), e-communication, 20/07/ 2011
- K. V. – lawyer and journalist at the national commercial Darik radio, member of the Committee on Journalistic Ethics in the Electronic Media. Sofia, 07/10/2011
- L. P. – co-owner of a major press group, MP in 36th National Assembly (1991 - 1994) from the UDF, member of the Standing Committee on the radio and television, e-communication, 25/07/ 2011
- N. K. - judge at the Sofia appellate court, former member of the Supreme Judicial Council and former chair of the Union of Judges in Bulgaria, ex-chair of the Sofia District Court. Sofia, 30/09/2011
- N. O. - expert on media law, professor at Sofia University, blogger. Sofia, 30/05/2011.
- O. S. - media expert, associate professor at Sofia University, Journalism and Mass communication Faculty. Sofia, 08/10/2011
- O. Z. - media expert, member of the governing board of the BNT, founder and chair of the Centre for Media Development, a leading CSO in the field. Sofia (Radisson, TI workshop), 19/07/2011
- P. M. - chair of the Ethics Committee of the Union of Bulgarian Journalists. Sofia, 28/09/2011
- R. B. - sociologist, chair of the political cabinet of the Prime Minister. Sofia, 20/09/2011.
- R.C. – chief lawyer of a major press Group, chief lawyer and executive director of the BNT, chair of the Commission on Journalistic Ethics in the Press at the National Council for Journalistic Ethics. Sofia, 23/09/2011
- S. T. – Editor-in-Chief of *Capital* weekly. Sofia, 13/09/2011

V. A. – Director General of the BNT. Sofia, 10/10/2011

V. V. – journalist, executive director of the Bulgarian Association of the Regional Media. Sofia, 3/10/2011

Y. G. - lawyer, human rights activist. Sofia, 11/07/2011

Z. A. - editor-in chief of the news agency BGNES, journalist and member of the governing board of the BNT (1999- 2002). Sofia, 10/10/2011