



## Case study report

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

Federica Casarosa and Elda Brogi

European University Institute (EUI)

December 2011

## **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.

Project title: European Media Policies Revisited: Valuing and Reclaiming Free and Independent Media in Contemporary Democratic Systems

Project duration: April 2010 - March 2013

EU funding: approx. 2.65 million Euro

Grant agreement: FP7-SSH-2009-A no. 244365

Copyright © 2011  
All rights reserved

### **Disclaimer**

The information expressed in this document is the sole responsibility of the authors and does not necessarily reflect the views of the European Commission.

## **Information about the authors**

**Federica Casarosa** is a research assistant at the European University Institute, Department of Law. She graduated in Private Comparative Law at the University of Pisa. She obtained a Master of Research in Law from the European University Institute (2003). In 2008, she successfully defended her PhD thesis on the role of information in online contracting, in particular analysing the protection provided to consumers in the pre-contractual phase. She has worked as a consultant for FAO and as a Jean Monnet Fellow at the Robert Schuman Centre for Advanced Studies. Her research interests focus on new media law and regulation, and on children protection in the media sector.

**Elda Brogi** is a research assistant at the European University Institute, Department of Law, and a Professor, on contract, on Communications Law at the University of Florence, Faculty of Literature. She is a graduate from the Law School of the University of Florence and a fellow at the postgraduate course on 'Studies and Parliamentary Researches – Silvano Tosi'. She has a PhD in Constitutional Law and General Public Law from La Sapienza University, Rome. She has worked as a European MP assistant and as a Research Fellow at the University of Florence and Perugia and as a consultant at the Italian House of Representatives. Her research interests focus on audiovisual and new media law and regulation.

## TABLE OF CONTENTS

Executive summary.....	5
1. Introduction.....	6
2. Actors and values of media policy.....	9
3. The structure of the media market .....	21
4. Composition and diversification of media content .....	32
5. The journalistic profession.....	46
6. Media literacy and transparency requirements .....	51
7. Conclusion .....	54
8. References.....	56
9. List of interviews .....	61
10. List of discussion groups .....	62

### **Executive summary**

Italian media policy has a long history of inter-relations between politics and private interests: from the parallelism between the party system and the allocation of broadcasting channels that characterised the public broadcaster in the seventies and eighties (the so-called 'lottizzazione') to the conflict of interest when Silvio Berlusconi was Head of the Government, and the owner of three broadcasting channels. Media policy has been shaped by this framework, where on the one hand politics can exert its influence over media companies, and media companies' lobbying can steer the strategic choices of political parties.

It should be emphasised, however, that since the end of the Second World War, several regulatory instruments were adopted in order to define the principles that should guide media regulation, namely freedom of expression and freedom of information. These principles were clearly expressed in the Constitution and have been the basis for the decisions of the Constitutional Court in order to steer the activity of the executive when the legislative interventions were clearly overturning the interpretation of the principles.

One of the main flaws of the Italian media policy is the following: after having set strong and shared principles that protect the media from external interference, the development of media legislation took place via many interventions, in order to solve specific and urgent problems or react (usually with a delay) to the indications of the Constitutional Court. Yet this approach obviously resulted in an incoherent and uncoordinated framework that only recently has been reorganised not only formally through codification in a single piece of legislation, but also in its substance.

The development of technology, and in particular the diffusion of new media, has been acknowledged and embraced in media policy discourse; however, the relationship between new media and the traditional media system has not been an easy one, nor free from conflict. The example of citizen journalism is telling: given that in Italy journalists must be enrolled in the national Register, they enjoy a set of limitations of liability when exercising their professional activity, but this cannot be extended to anyone providing the same activity online without being enrolled in the Register. Only through jurisprudential development has a basic level of protection also been provided to citizens in general.

## 1. Introduction<sup>1</sup>

As historical analysis clarifies (Casarosa, 2010; Hanretty, 2009; Hibberd, 2007), the development of the Italian media system started as a local instead of a national system characterised by a strong political influence over it. This was very clear in the press framework at the beginning of the 20th century, when several newspapers were born and developed as a form of party political expression (e.g. L'Unità for the Communist party, Il Popolo for the Christian Democrats, L'Avanti for Socialist party, etc.).<sup>2</sup> The Fascist period exacerbated the dependence of the press, and the media in general, on politics becoming the platform for political expression. However, in the aftermath of the Second World War the choices of the Italian legislature provided for more independence, at least in the realm of press and journalism activity (Zaccaria and Valastro, 2010; Caretti, 2010).

The development of the Italian media policy indirectly inherited this two-sided approach: on the one hand providing for strong principles but on the other hand lacking the operational rules that could put these principles into practice. This is clear in the case of broadcasting: Italy was the first European country to break the monopoly of the public broadcasting service allowing for the access of new (local) competitors in the broadcasting market, through a judgement of the Constitutional Court;<sup>3</sup> however, this strong position concerning the need to achieve a competitive market lacked legislative intervention, leaving the market completely unregulated. When in 1990, the Parliament tried to rule on the matter by providing a set of criteria for the assignment of radio and television frequencies and their distribution among public service broadcasting and private networks, again the connection between media and politics showed its strength. The executive – in particular the Head of the Government at that time, Bettino Craxi – favoured the position of the media company owner Silvio Berlusconi, so as to allow him to continue to use the television frequencies his companies had unlawfully occupied (Padovani, 2010: 294; Volcansek, 2000: 125; Mazzoleni and Vigevani, 2005: 876).

The situation has not improved in the last couple of decades as the level of concentration in the media market is one of the highest in Europe, both in vertical and horizontal terms (Richeri, 2005: ix). Recent research concerning the current ownership structure in the media market shows the inter-relationships among the companies that provide different services (Seghetti, 2010). The overall framework indicates three issues of highest relevance: first, the high level of horizontal concentration (the same shareholders control the biggest companies in the different market sectors of the press, broadcasting, advertising, and telecommunications); second, the level of vertical concentration in each of the market sectors (the same shareholders have relevant shareholdings in different companies in the same sector); finally, the network of interconnected interests (the media company owners also hold positions in the financial market). As an example of the shareholding structure, the figure below shows the data concerning the main commercial broadcaster, within the Fininvest group.

---

<sup>1</sup> Although this study is the result of collaborative effort, paragraphs 1, 2.1, 2.3, 3 and 6 are attributed to Federica Casarosa, while paragraphs 2.2, 4, 5, 7, are attributed to Elda Brogi.

<sup>2</sup> This political connotation still exists and it is also the basis upon which the subsidisation of newspapers works. See below.

<sup>3</sup> See Constitutional Court n. 202/1976.

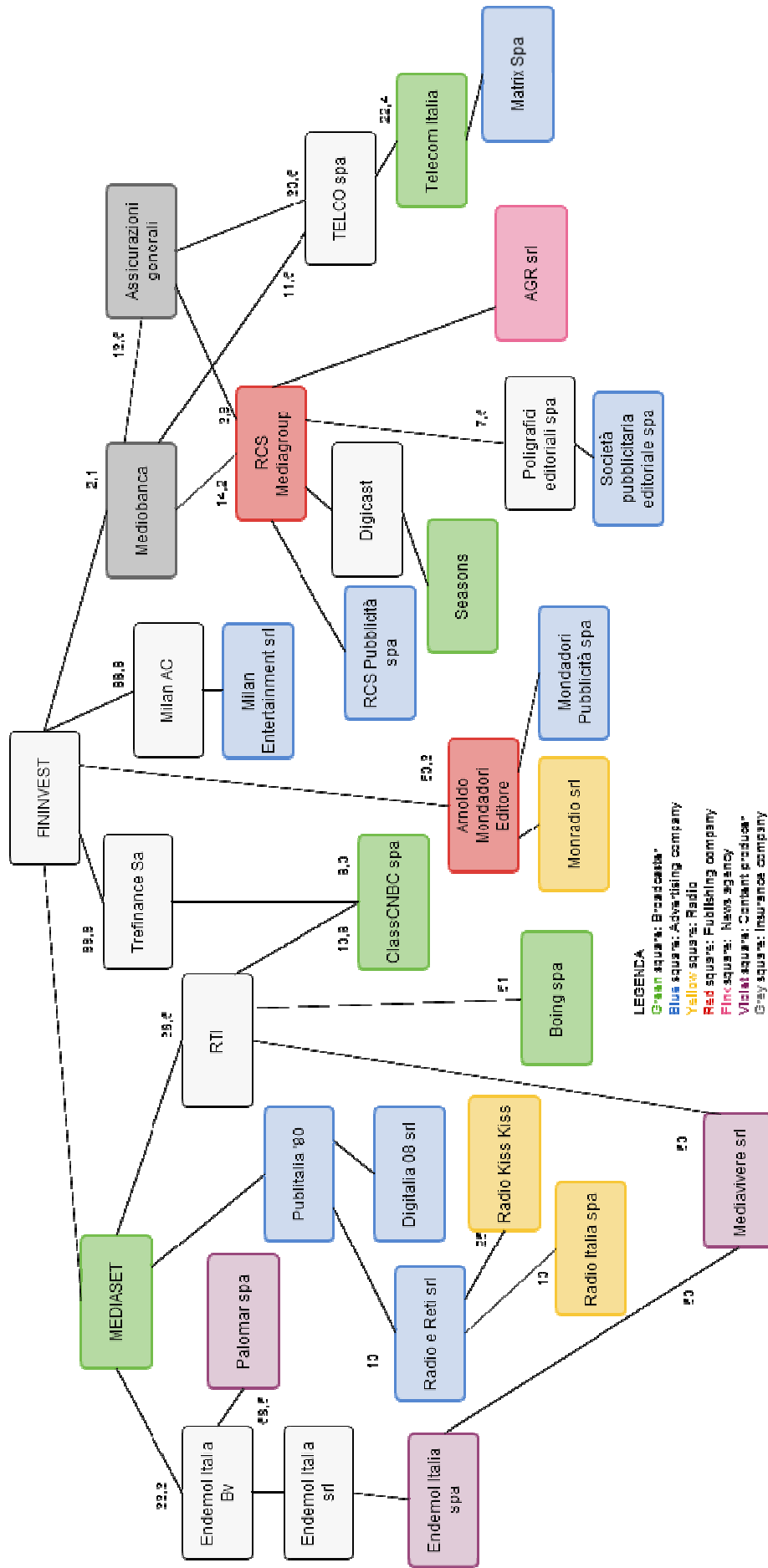


Figure 1. Fininvest group structure [Source: Author's elaboration on Seghetti, 2010]

Therefore, media policy in Italy has always been an example of the struggle of media companies to assert their independence from corporate and political powers. The following analysis will develop the most relevant regulatory and policy related issues that affected the level of freedom and independence of the media in the country. The following section will describe the role and importance of the actors that are involved both in media policy definition and implementation; then the paper will address the specificities of the regulatory framework with regards to structural (par. 3) and content (par. 4) regulation focusing on the rules that have enhanced or hindered the independence of the media. The following sections will be devoted to the journalism, taking also into account the development of citizen journalism, and media literacy. Conclusions will follow with a few recommendations for possible improvements of the overall level of freedom and independence of the media.

The report benefited from the interviews and study groups conducted with a wide range of professionals active in the media and media regulation, such as journalists, politicians, lawyers, representatives from civil society organisations and media regulators. It should be emphasised that the interviews have permitted the collection of qualitative information on several issues related to the professional, political and social aspects of media policy, although due to their limited number, they cannot be taken as statistical data, or a social survey.



## 2. Actors and values of media policy

### 2.1 Values

Media policy has its main principles expressed in the Italian Constitution which provides for a specific clause on the protection of freedom of expression. The interpretation provided by academic literature (Barile, 1974) and case-law<sup>4</sup> of this clause includes both the relationship between the holder of the right and the public authority legitimately able to limit the right, and the relationship between the holder of the right and the receiver of the content of the freedom of expression, where the public authority is in charge not only of providing the best conditions for the fulfilment of the freedom of expression, but also the best conditions for achieving complete and impartial information for the receivers (i.e. the citizens).<sup>5</sup>

This interpretation of Article 21 of the Italian Constitution has triggered an academic debate focused on the aforementioned relationship between the holder of the right and the receiver of the content of the freedom of expression (Lipari, 1978), defining the scope and legal consequences of the application of the so-called freedom of information principle. The debate focused on the possibility to impose on the information provider, in any legal form it may appear, specific obligations relating to the way in which the information should be given to the public, namely in terms of fairness, impartiality, completeness and objectivity of the information. Where public authorities are involved so as to provide information to citizens, no conflict arises, as they are subject to Articles 51 (1) and 97 of the Italian Constitution providing, respectively, for a wide access to public authorities' offices and for the application of the impartiality principle regarding the administration.<sup>6</sup> As a matter of fact, this constitutional basis was used in the two main legislative interventions defining the relationship between citizens and public authorities, namely Law 142/1990 and Law 241/1990, in which the process to access information held by public authorities is described in detail.<sup>7</sup>

The case is different when commercial media operators are involved, as the provision of Article 21 cannot justify obligations regarding the modes in which information should be provided (Pace, 2008; Barile, Cheli, Grassi, 2007: 416). This is due, on the one hand, to the impossibility to qualify in the same relationship freedom of expression and a corresponding freedom of information, as they would be contradict each other. On the other hand, particularly in the case of broadcasting, mass communication does not even allow the creation of a bilateral relationship between the provider of information and the undefined receiver of such information (Pace, 2008).

However, it should be underlined that the case-law of the Constitutional Court does acknowledge the principle of freedom of information in order to limit the overarching power of media companies (Zaccaria, 2010: 29), using it as a basis for the justification of the provision of a plurality of voices able to guarantee a 'free public

---

<sup>4</sup> See below par. 2.2. Also for a comprehensive analysis of the constitutional case law see Costanzo, (1993).

<sup>5</sup> The latter objective was introduced by par. 5 of the article, which was not readily implemented by the Italian government in the first reforms after the fall of Fascism.

<sup>6</sup> Imposing 'glass walls' in public authorities premises, as defined by Esposito, (1954: 257).

<sup>7</sup> In particular Law 241/1990, which does not allow a generic availability of information, but indicates as right holders only 'interested persons'.

opinion’.<sup>8</sup> In this sense, the decisions of the Constitutional Court progressively defined a distinction between internal and external pluralism, providing regarding the latter the possibility to access the market for any potential competitor; while the former applies, mainly but not exclusively,<sup>9</sup> to the public service broadcaster imposing not only impartiality in the provision of information but also the obligation to allow any political, cultural, social and religious opinions access to the media.

The development of information and communication technologies has also raised a debate concerning the scope of Article 21 of the Italian Constitution, and in particular the possibility to add an additional provision to this article, namely Article 21-bis to include access to Internet services as a fundamental right. The proposal was formulated as follows: ‘*Everyone has the right to access the Internet in an even condition, with adequate technology which could remove any economic and social obstacle.*’ It was originally presented as a provocative proposal,<sup>10</sup> as it expressed a set of underlying problems that new media has raised: first, the adoption of a clear position concerning the net neutrality debate; secondly, the existence of a positive obligation on the government regarding the provision of access resources; finally, the functional role of Internet access towards content, that should be interpreted as a public good.<sup>11</sup> Given that the position of the national government on net neutrality is not defined,<sup>12</sup> nor has the debate on the availability of content online yet reached a solution,<sup>13</sup> the proposal triggered a debate on the very sensitive issues. Whereas the existence of a positive obligation concerning the government regarding access to the Internet is already justifiable under the *combinato disposto* of Articles 21 and 3 (2) of the Italian Constitution<sup>14</sup>, access to the Internet can be interpreted as instrumental to the achievement of the full development of the human person and the effective participation of any citizen in the political, economic and social organisation of the country,<sup>15</sup> thus as a pre-condition to ‘digital citizenship’ (Scorza, 2010).

---

<sup>8</sup> See Constitutional Court, decision n. 826/1988, decision n. 112/1993.

<sup>9</sup> The legal privilege flowing from the attribution of a broadcasting licence was the justification for the extension of the obligations regarding the modes of information provision to commercial broadcasters, (Pace, 2008; Capotosti, 1993: 2118). For the jurisprudence on this point see Constitutional Court, decision n. 112/1993 and decision n. 155/2002. The same reasoning cannot be applied to a generic content providers, as in the case of digital terrestrial television, as such entities do not receive a similar licence.

<sup>10</sup> The proposal was initially presented by Prof. Rodotà during the Internet Governance Forum in Rome, November 2010, however, it was then adopted by several deputies as a legislative proposal for the revision of the Constitution, though it was never discussed in Parliament.

<sup>11</sup> Rodotà, Accesso alla rete, un diritto per tutti, Repubblica, 7 November 2011, available at: <http://www.medialaws.eu/accesso-alla-rete-un-diritto-per-tutti/>.

<sup>12</sup> See that the two legislative proposals that address net neutrality were presented in 2009 and only in March 2011 were discussed in the Parliament, with no decision on either of them (the two proposals are available at: <http://www.senato.it/leg/16/BGT/Schede/Ddliter/34038.htm> and <http://www.senato.it/leg/16/BGT/Schede/Ddliter/36466.htm>).

<sup>13</sup> See below the intervention of the Communication Authority concerning the availability of copyright content online, par. 3.4.2

<sup>14</sup> Art. 3 (2) of the Italian Constitution provides that ‘*It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.*’

<sup>15</sup> This interpretation has already been used in Law n. 4/2004 on provisions to enhance access to informatic tools for disabled people (Frosini, 2011; and Pisa, 2010).

## 2.2 Actors involved in media policy definition and implementation

There are several actors that participate in media policy making and implementation, and are also involved in different phases, from the definition of the underlying objectives of media policy to the sanctioning in the case of a breach of formal rules. The most important actors that should be analysed in detail are the following: the Ministry of Economic Development, where the Department of Communication is located; the *Commissione Parlamentare per Indirizzo e la Vigilanza* (CPIV); the national Communication Authority (AGCOM); the judiciary; the Regions; other stakeholders, and civil society associations. Each will be analysed individually.

*Government* – The Department of Communication is the main government actor in the implementation of national regulation related to the media. The Department comes under the umbrella of the Ministry for the Economic Development which inherited all the competences of the Ministry of Communications.

Traditionally the fulcrum in the governance system of the media in Italy, nowadays the Ministry has less competences in regulating the mass media and communication sectors, since AGCOM was established in 1997. Nonetheless the Ministry still holds key competences as granting licences to the broadcasters and therefore plays an important role in selecting the operators and in shaping the plurality of the market. In this regard, it should be noted that in recent years the government has been headed by the owner of the main commercial broadcasting operator in Italy and that some decisions of the Ministry were criticised as having been taken more in the interest of this operator than in the interest of a pluralistic market. In December 2011, after Berlusconi resigned from his position as Head of the Government, the Parliament voted a document asking the Government in charge (the Head of the Government now being Mario Monti) for the annulment of the so-called ‘beauty contest’ that was used by the previous government and allowed the free distribution of frequencies for digital terrestrial television among a few operators, including Mediaset (see below).<sup>16</sup>

The Head of the Government has some competences in media regulation as well, as he is asked to propose to the President of the Republic the name of the President of the Communication Authority (after having consulted the Minister). The nomination is then also voted by the competent parliamentary commissions. This could be of some interest in reconstructing the overall independence of AGCOM vis-à-vis the executive power. According to Article 49 of TUSMAR, the Ministry of Economy and Finances appoints two out of the nine members of the board of administration of RAI and, among them, the President (who must also be approved by the *Commissione Parlamentare per l’indirizzo e la vigilanza*). This procedure was defined by Law 112/2004 and criticised by some scholars and politicians who complained it was reintroducing governmental influence on the public service broadcaster, while in 1974 the Constitutional Court asked that this influence be excluded from RAI.<sup>17</sup>

---

<sup>16</sup> The Ministry is also the State representative for international negotiations on communications, has the initiative power for all the bills that are related to international conventions on communications, has rule making powers in some cases defined by the law, and signs the service contract with RAI.

<sup>17</sup> See Constitutional Court 225/1975. About the role of the Government in shaping the board of administration of RAI, see the case of Mr Petroni, nominated to the board by the Minister of a

This framework may be overly complicated, as too many bodies have competences in the media sector (Zaccaria and Valastro, 2010: 185). As already mentioned, this governance framework is strictly connected with the specific condition of the existing conflict of interest of an important politician and (former) Head of the Government, Silvio Berlusconi, who owns the main commercial broadcaster (Mediaset), thus retaining ownership of half of the television market and indirect control over the remaining half, posing the problems of a threat for the independence of the media undertakings and of pluralism.<sup>18</sup>

Law 215/2004 tried to solve the problem, but was not successful since it only declares the incompatibility between the management of a company and the role of public officer, not between the latter and media ownership. *‘The solution provided ... consists of a mix of a priori incompatibilities (primarily of an administrative nature) and the a posteriori examination of individual acts of government. It does not contain “preventive” measures for solving a potential conflict of interest. Instead, the Anti-trust and Broadcasting Authorities have to investigate abuses on a case-by-case basis when a government act is considered to be in violation of the law. This might entail the necessity of investigating a great number of individual acts, which would burden the relevant authority and weaken its action ... In all, the situations of conflict of interest defined in the law and to which the law attempts at finding a remedy do not appear relevant to the specific issue of the political control of RAI by the owner of Mediaset, for example. In the light of the above, the Commission is of the opinion that the Frattini law is unlikely to have any meaningful impact on the present situation in Italy’* (Venice Commission, 2005: 47).<sup>19</sup>

*Commissione Parlamentare per l’indirizzo generale e la vigilanza dei servizi radiotelevisivi* [Parliamentary Commission for general guidance and monitoring of radio and broadcasting services] (CPIV) – As its name suggests, the CPIV was created in the mid 1970s in order to have an experts’ group<sup>20</sup> within the Parliament to define and monitor compliance with public broadcasting principles in the public service broadcaster, RAI (Zaccaria, 2010: 164; Padovani, 2010: 292). The main principles endorsed by the CPIV in its activity are defined by law, namely pluralism, fairness, completeness and impartiality of information, and are mainly implemented through the resolutions adopted by this body and through the political pressure it can exert over the Parliament. Among its competences, the CPIV was in charge of the regulation of political communication; however, it almost lost this competence from 2000 as this was subjected to legislation (Casarosa, 2010).<sup>21</sup> Nonetheless, the CPIV retains partial power in this field as it can still define the allocation of broadcasting time to the different political parties during elections.

---

Berlusconi Government and then removed by the Minister of a Prodi government. After much recourse to administrative courts, the Constitutional Court found that the Minister could not remove his representative on RAI board of administration if the CPIV had not voted on the case.

<sup>18</sup> Interview with Beppe Giulietti; interview with Lorenzo Marsili.

<sup>19</sup> As cases of a potential conflict of interest, see some examples in this report: in Centro Europa 7 case, the breaches to l. 28/2000 (*par condicio*), the rules on the public financing of newspapers, the so-called “beauty contest” in distributing frequencies for digital terrestrial broadcasting, the raising of VAT for competing operators.

<sup>20</sup> The level of expertise is increasingly criticised in recent years given the widening of the activity of the public broadcaster not only on traditional but also on new media (see Ghiribelli, 2010).

<sup>21</sup> See Law 28/2000.

On this issue, it is possible to show the shortcomings of national legislation which has affected not only the praxis of the implementation of the law, but also its interpretation by the CPIV in its regulatory activity. It should initially be emphasised that the legislation on political communication has two major flaws: it does not provide a definition of information, impairing the possibility to distinguish between information and political TV shows; in addition, it does not include any reference to political communication using new media. These two elements are fundamental to understand the clash that emerged in one of the recent elections periods, namely the regional election in 2010. Given that in the praxis, the rules applicable to political communication – which were in theory interpreted as applicable only to TV shows focused on politics – were extended also to information TV shows, any format involving politicians should guarantee a balance in the selection of the participants. Then, the CPIV adopted its decision concerning the access of politicians to the media, requiring that, for the public service broadcaster, all the rules on political information should be formally applied to information TV shows, except for news programmes (CPIV, 2010). RAI, in order to exclude any possibility of the breach of such rules, instead of having a stricter level of monitoring decided to close down all the potentially infringing TV shows which included – but not exclusively – the debate over political issues for a month before the election. The effect of such a decision was then a decrease in the level of information provided to citizens over the position and programmes of politicians instead of granting equal access to any political party to the media. However, since the legislation did not provide a limitation of political communication online, the new media solved partially this ‘blackout’: a few TV shows were broadcast in streaming mode online, changing almost nothing in their approach, except the medium through which they reached the audience.

*Autorità per le garanzie nelle comunicazioni*, AGCOM (Communication Authority) – AGCOM is the independent body created by Law 249/1997, with the competence to monitor the press, broadcasting, electronic media and telecommunications. It is one of the most important bodies in the implementation of media policy since as well as introducing detailed regulation through delegated power, it can also enforce and eventually sanction any breaches. Its level of independence in exercising this activity, however, is partially limited due to the selection process of its members. AGCOM has nine members,<sup>22</sup> among whom the President is nominated by the President of the Republic upon the proposal of the Head of the Government, while the other members are selected half from the Chamber of Deputies, half from the Chamber of Senate,<sup>23</sup> so as to have an even distribution between members selected from the majority and the opposition in the Parliament. This choice received criticism on two levels as it could impair the functioning of the independent authority due to its indirect connection with political power: both through the reproduction of existing conflicts between the views of the political parties within the authority, and through the direct contact between the selected members and the political party that proposed them. Recent declarations by the current president of AGCOM move towards a revision of the rules of selection in line with those provided by the third Electronic

---

<sup>22</sup> The recent Legislative Decree n. 201/2011, at Art. 23 provides for a reduction in the number of members of the Authority, from eight to four, but this reform will apply at the end of the current appointment, namely in 2012.

<sup>23</sup> See Article 1, c. 3 Law 249/1997.

Communications package,<sup>24</sup> so as to exclude any (or further<sup>25</sup>) attempted interference by political power in the authority's activities.<sup>26</sup>

Within the activity of AGCOM, a different case is interesting in terms of the qualifying approach of the Authority regarding the implementation of media policy, in particular with regards to the current debate between the protection of copyright holders on the Internet and the freedom of expression (and also the freedom of information) of users. The issue is particularly sensitive as the decision of AGCOM could result in a wide limitation in the access to national and also foreign websites when allegedly violating copyright rules, in a revised version of the notice and take down procedure (AGCOM, 2011b). Without addressing in detail the content of the proposed intervention on these issues, it is interesting to analyse the process that AGCOM followed. Initially, in November 2008, AGCOM drafted a market study which involved over fifty market actors in order to understand their needs in terms of online content distribution. The result of this study was the publication of a White Paper (AGCOM, 2011a) that was then followed by another market study on the related issue of copyright in the online environment (AGCOM, 2010). Although these documents have been criticised regarding the approach adopted by AGCOM, one positive aspect that should be appreciated is that in both cases the involvement of market actors in a cooperative discourse was envisaged (Sarzana, 2010: 25), also in terms of possible collaborative activity with Internet service providers (ISPs) under the auspices of the Communication Authority (AGCOM, 2010: 60). However, the subsequent steps of AGCOM moved in a different direction: on point of substance the Authority moved toward a more authoritative intervention in this field (AGCOM, 2011b). Moreover, on point of procedure, it formally kept a participative approach, but this was contrasted in practice both by the fact that the public consultation had a timeline which did not enhance the participation of stakeholders,<sup>27</sup> and that it imposed strict criteria in terms of who could submit their observations on the document.<sup>28</sup> This resulted in limited access to the consultation by most of the civil society associations with an interest in the field, which could instead improve the debate including also the view of citizens/users at the round table among content producers, ISPs and the Communication Authority.<sup>29</sup>

*Judiciary* – Courts in Italy have an important role in defining the limits and the scope of the freedom of expression and information, the rights media independence is rooted

---

<sup>24</sup> See Directive 2009/140/EC, 25 November 2009.

<sup>25</sup> A specific event triggered this proposal, namely the scandal that involved the Head of the Government and one of the members of AGCOM who was called repeatedly by the former in order to intervene and eventually close down a TV show that was highly critical of the executive. See the decision of the Trani Tribunal not to continue the legal proceedings against the Head of the Government, the former RAI director and the former member of AGCOM, see “Pressioni Berlusconi contro Annozero, procura Roma chiede archiviazione». *Il Messaggero*, 27 ottobre 2011, available at: [http://www.ilmessaggero.it/articolo.php?id=167935&sez=HOME\\_INITALIA](http://www.ilmessaggero.it/articolo.php?id=167935&sez=HOME_INITALIA).

<sup>26</sup> See the full content of the speech of AGCOM's president, where a specific reference to independence is provided (at p. 27 ff.), available at: [www.agcom.it/Default.aspx?message=downloadpdf&DocID=125](http://www.agcom.it/Default.aspx?message=downloadpdf&DocID=125).

<sup>27</sup> The two consultations on the point were opened early December and early July respectively, with a deadline of 60 days.

<sup>28</sup> Interview with Marco Scialdone.

<sup>29</sup> It should be noted that this was the main concern of civil society organisations, as it was clearly expressed in the reaction promoted mainly through online events, see the case of *Notte della rete*.

in. First of all the Constitutional Court was able to stimulate the government in order to address the issue of pluralism within the national framework of freedom of expression and freedom of information, clarifying through its jurisprudence one of the important concepts that has been used throughout national media policy, namely the definition of pluralism within the national framework, even if its rulings were not so effective in determining a real change in the Italian broadcasting market.

Domestic courts (civil and criminal) had and have also an important role in defining the balance between freedom of speech and expression and other constitutional freedoms and rights<sup>30</sup>: they have played in several occasions a very proactive role in guaranteeing media freedom and independence as they interpreted the effective balance between freedom of expression and information and other constitutional rights (honour, privacy, public and private secrets) and are progressively building up, sometimes with difficulties and non homogeneous interpretations, a case law on Internet issues.

Administrative courts are also an important actor in shaping media policy in Italy as they are the bodies to appeal the decisions of AGCOM.

European courts could be playing an important role in defining the national rules on the allocation of terrestrial broadcasting and ownership. The Court of Justice of the European Union (CJEU) in case C-380/05 (31 January 2008) already interfered with the Italian legislative criteria to allocate frequencies, affirming in a preliminary ruling that European law *'must be interpreted as precluding, in television broadcasting matters, national legislation the application of which makes it impossible for an operator holding rights to broadcast in the absence of broadcasting radio frequencies granted on the basis of objective, transparent, non-discriminatory and proportionate criteria.'* The case was the one of Italian broadcasting operator Centro Europa 7 that in 1999 was granted by the Italian authorities an analogue terrestrial television broadcasting licence at the national level. A series of successive national laws prevented Centro Europa 7 from effectively making use of these frequencies and benefited incumbent operators who were instead broadcasting according to a "temporary" authorisation (Casarosa, 2010, Grandinetti, 2008). So Centro Europa 7 for a long time had been entitled to broadcast but the government did not let it use frequencies in practice. It should be emphasised that, though precisely asked by the preliminary ruling by the national court, the CJEU did not address the issue of whether the provisions of Article 10 of the ECHR preclude, in television broadcasting matters, national legislation, the application of which makes it impossible for an operator holding rights to broadcast without the grant of broadcasting radio frequencies.<sup>31</sup>

Thus, the case also appeared before the Strasbourg court, where the Italian State was accused of being unfair in the assignment of television frequencies: the applicants (Centro Europa 7) *'were precluded from entering the broadcasting market by barriers of a legislative nature, which enabled users of broadcasting frequencies that had not obtained a broadcasting concession to carry on their activity. Such conduct, which is at odds with the outcome of a public tender for the granting of broadcasting concessions held by the Italian Government in 1999, prevented the applicants from exercising their right to impart information and from contributing to media pluralism for over ten years'* (Mastroianni, 2011).

---

<sup>30</sup> The role of courts in fostering free media is detailed in par. 4.

<sup>31</sup> See C-380/05, par. 119-122.

*Regions* - A major constitutional reform in 2001 modified Article 117 of the Italian Constitution allocating more legislative powers to the Regions. The ‘order of communication’ (*ordinamento della comunicazione*) is a new concurrent competence shared between the State (which must formulate the fundamental principles) and the Regions (which must define more detailed regulation). The fundamental principles implemented by regions are defined by the general fundamental principles of TUSMAR and by Article 12 of TUSMAR itself (mostly related to local licensing). According to this new competence, the Regions approve laws that mostly give subsidies to local newspapers and broadcasters in order to foster local pluralism or finance education programmes for journalists (Zaccaria and Valastro, 2010: 609). Most of the competences on the ‘order of communication’ are delegated to the *Comitati regionali per le comunicazioni* (CoReCom, Regional Communication Committees). These are bodies that are established by regional laws (each Region has its own CoReCom) but are functional local organs of AGCOM. They have both their own competences and delegated competences by AGCOM (e.g. the responsibility of monitoring the programming of audiovisual media and updating the *Registro degli operatori della comunicazione* (ROC), the register of the communication operators covering both electronic communications and audiovisual communications operators).

*Media companies* - Media companies at the national level can have different interests depending on the type of services they provide, as they can be single, double or triple players. Their main concern is, however, common as they aim at achieving an even competition on the market, in particular with regard to new media. The challenges that media companies face is the different level of competition depending on the type of media: locally-based when looking at traditional media, global when looking at new media. This distinction has also affected their strategies. When looking at traditional media, competition is still high, in particular in the broadcasting market. When looking at new media, possible coordination in terms of objectives is possible.<sup>32</sup> This is also reflected in the lobbying strategies of media companies, addressing the supranational institutions in relation to new media, as the existing regulatory framework imposes full-fledged obligations on traditional media, and fewer obligations on the distributors of content online.

*Civil Society* – The participation of civil society in media policy has always been very limited, at least in the institutional setting. The role of associations is almost non-existent in the adoption of decisions related to the media. However, in recent times the mobilisations organised to put pressure on the government had the effect of stopping or at least reconsidering the adoption of regulations that could hamper the exercise of freedom of expression. The cases in which this has happened related to the proposed law on tapping, and the so-called ‘*comma ammazzablog*’ [blog-killer paragraph]. In the first case, the proposed legislation<sup>33</sup> addressed, on the one hand, the possibility for the judiciary to use evidence based on telephone tapping and, on the other hand,

---

<sup>32</sup> See for instance the project ‘Media creative nations’ promoted by the Association of Commercial Television in Europe (ACTE), which was implemented at the national level by Mediaset. See the project overview at: <http://www.italymediareactivation.org/documenti/home.php>.

<sup>33</sup> See the provisional text of the decree, Senato della Repubblica, Norme in materia di intercettazioni telefoniche, telematiche e ambientali [Rules concerning digital, environmental wiretapping], available at: <http://www.senato.it/leg/16/BGT/Schede/Ddliter/33809.htm>.



limitations on the quantity and timing of the publication of information gathered through telephone interception in addition to any data concerning existing investigations used in the course of court proceedings for journalists. This could result in a restriction in journalists' freedom of expression given that the heavy sanctions (including also detention) would be a matter of deterrence. The reaction of many non governmental organisations and civil society in general with the help and support of publishers and journalists' associations, showed a general negative appraisal of the legislation, gathering all media attention to the risks and threats that the adoption of the law would entail. Due to this widespread lack of critical reactions and, formally, the difficulties in producing a text that could be accepted by all the political parties, the proposal was withdrawn.<sup>34</sup>

A similar situation happened in a different case, where a single clause included in the Decree Law *Milleproroghe* of 2011 (annual decree extending the life of various government measures) could have had a strong effect on the liability of bloggers and non-professional journalists in case of false or mistaken information posted online. The proposed clause, as a matter of fact, was extending one of the main elements that characterise the traditional media to the online distribution of information, namely the right to ask for rectification.<sup>35</sup> The original wording of the clause implied applicability to '*any website, including newspapers and periodicals distributed online*'. It thus extended applicability to blogs and websites, indirectly having a chilling effect over blogging activity. This was due to the fact that, on the one hand, blogs are not always run by professional journalists, thus are run without the obligations to check and verify the truthfulness of information;<sup>36</sup> on the other hand, blogs are not always run full time, thus risking sanctions for a lack of reaction, given the short time to react provided by law in the case of a request of rectification.<sup>37</sup> The enactment of this clause was then contested not only by civil society but also by several members of the Parliament that proposed a different wording. Eventually, the clause was changed so that it clearly excludes the application to blogs and website that are not registered as online newspapers or periodicals.

The important point that emerges from these two cases is the increasing attention of civil society organisations to legislative interventions in the media sector. However, this increasing attention, in the absence of dialogue with the institutions, can only result in opposition to what was already been set by government. Instead, the possibility to be heard of and, eventually, to participate in the political debate with proposals is a fundamental need raised by civil society organisations. This situation, as a matter of fact, has triggered the move towards supranational institutions, in order to receive a higher level of attention and to have, indirectly, a say in the national

---

<sup>34</sup> The proposal was blocked in September 2010, but was then presented again in spring 2011.

<sup>35</sup> This right is applicable to the press, as required originally by Law 47/1948, then confirmed in Law 69/1963, and broadcasting, as required by Art. 32-quinques TUSMAR. Moreover, also the '*Carta dei doveri dei giornalisti*' also imposes an obligation of rectification on journalists regardless of any request by the interested subject as compliance with the right of the citizens to be correctly informed, in particular when errors could offend or damage individuals, associations, communities, etc. See Casarosa, 2010.

<sup>36</sup> See in particular the reaction of the Italian version of Wikipedia that saw it as a threat to its operation and for two days from 4 October 2011 it hid its Italian-language content and instead posted a Communication on the law and the adverse effects it may have on the service. Press release available at: [http://it.wikipedia.org/wiki/Wikipedia:Comunicato\\_4\\_ottobre\\_2011](http://it.wikipedia.org/wiki/Wikipedia:Comunicato_4_ottobre_2011).

<sup>37</sup> The rule applicable to the press imposes a reaction within 48 hours, with the possibility of sanctions up to €12,500.

media policy. In particular, the associations address their requests to the European institutions, both to the European Parliament (where the motion was not adopted)<sup>38</sup> and to the European Commission, using the new possibility of the citizens' initiative opened after the Lisbon Treaty.<sup>39</sup>

One final mention should be given to the so-called *Movimento cinque stelle* (Five Stars Movement) that was initiated by a stand-up comedian, Beppe Grillo, and is the result of an ongoing personal involvement of citizens in political discourse. The initial trigger of the comedian's blog subsequently moved to a virtual public sphere in which information on matters that are under-represented or misrepresented within the mainstream media are provided. The debate on political issues online fed the creation of civic lists that presented themselves as candidates in local elections in 2008, receiving about 2.8% of the votes in their constituencies,<sup>40</sup> which was quite a success for political outsiders that used Internet communication as a unique form of self-promotion (Navarria, 2010).

### 2.3 The role of private regulation in the media

Private regulation is generally deemed equivalent to complete autonomy of private actors in the definition, monitoring and enforcement of rules. In the media sector, such an assumption does not prove to be true in practice, as different regulatory strategies have been implemented in order to coordinate private and public actors, in particular by delegating regulatory power from public to private bodies. The level of autonomy in the rule-making activity depends on the sector, as self-regulation is preferred in the case of the press, while co-regulation is adopted both in broadcasting and in the Internet, yet, with different effectiveness levels.

The most prominent example of self-regulation is the case of journalism, which since the 1960s has been characterised by autonomous regulatory activity of the Journalists' Association (*Ordine dei Giornalisti*, ODG), in which any person engaging in this activity must be member of. It should be emphasised that the initiative for private regulation did not originate from journalists themselves, but from a delegation of regulatory power from public actors, in order to depart from the strong control exerted over journalism in the Fascism period. This delegation has been defined through primary legislation, namely Law 69/1963, which provided that journalists can elect their own representatives in the internal governance bodies of the ODG and eventually impose sanctions where there is non-compliance with the rules.<sup>41</sup> Although the use of private regulation to define the rules of the journalistic profession has never been contested as such, constitutional claims were raised as to whether

---

<sup>38</sup> See the Motions for resolution - Freedom of information in Italy and other Member States of the European Union, in the European Parliament, 8 October 2009, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2009-0090&language=EN>.

<sup>39</sup> <http://www.europarl.europa.eu/news/en/headlines/content/20101129STO02030/html/Citizens%27-initiative-takes-one-step-closer>.

<sup>40</sup> Data from the Italian Interior Minister website, available at: <http://amministrative.interno.it/amministrative/amm080413/G0700900.htm>.

<sup>41</sup> The role of the ODG has been questioned before the Constitutional Court, which did not define it as an institution that limits the freedom of the press because it regulates only the ways in which professional activity should be carried out. The ODG does not impose any limit on the freedom of expression of those who do not wish to become journalists. See Constitutional Court, decision no. 11/1968.

freedom of expression could be limited by the obligation to be member of the ODG.<sup>42</sup> In this case the Constitutional Court affirmed that the ODG would be an illegitimate limitation of freedom of expression if the enrolment was a *conditio sine qua non* in order to publish material through any type of media; instead, not only is this not provided by the law, but the ODG should be also interpreted as a guarantee for the exercise of the freedom of expression of journalists vis-à-vis the publishers which could limit their editorial freedom.<sup>43</sup>

It should be noted, however, that up to 1993 no internal regulatory act was adopted by the Register; the professional activity was mainly defined by the aforementioned Law 69/1963 and its related regulation. Only in 1993 in the aftermath of the scandal of *Mani Pulite* [Clean hands], which questioned the role and the side effects that unverified information about criminal proceedings could have on public opinion, the government proposed to regulate the sector. The threat of public regulation triggered a coordination between the ODG and the *Federazione Nazionale Stampa Italiana*, FNSI [Italian Press Trade Union] in order to reach an agreement over a set of rules applicable to journalists (Dell'Anna Misurale, 1993). The result was the adoption of the Ethical code where both the law 69/1963 and freedom of expression were referred to as the underlying framework.<sup>44</sup> The interesting aspect is the fact that the Ethical code provided for the creation of a *Comitato nazionale per la correttezza e la lealtà dell'informazione* [National committee for the correctness and loyalty of information] which should have been in charge of monitoring and informing the ODG about eventual breaches (signalled also by citizens); however, this committee met only once as the change in the presidency of the ODG and the FNSI changed the attitude towards the body (Zaccaria and Valastro, 2010: 525). The effect was then to reduce the real (and perceived) effectiveness of the self-regulatory body.

When press freedom was in conflict with other fundamental principles, such as privacy, the autonomy of private actors in rule-making was questioned and the intervention of the public actor was deemed necessary to achieve a fair balance between the principles involved. Indeed, the process to define the code of conduct applicable to journalists in this case was based on co-regulation,<sup>45</sup> with the intervention of the national Data Protection Authority in the standard-setting phase, in order to steer the drafting of the rules and monitor compliance with the data protection legislation. In this case not only did the legislator provide the data protection authority with guidelines for the content of the drafted code of conduct, but it also allowed a complete delegation of power to the Data Protection Authority to draft the code where no cooperation was to be given by the ODG. As foreseen, the debate concerning the drafting of the code was lively,<sup>46</sup> as the ODG did not want the code to be imposed by the Data Protection Authority, nor was the Data Protection Authority willing to

---

<sup>42</sup> See Constitutional court, decision 11/1968.

<sup>43</sup> This principle has been confirmed also in a later decision of the Constitutional court, n. 71/1991, where the claimants were publishers.

<sup>44</sup> See the *Journalists' Ethical Code*, available at: [http://www.fnsi.it/Pdf/Carte\\_deonto/Carta\\_Doveri.pdf](http://www.fnsi.it/Pdf/Carte_deonto/Carta_Doveri.pdf).

<sup>45</sup> Italian Data Protection Authority [Garante per la Protezione dei Dati Personali], *Deontology code regarding the treatment of personal data in journalistic activity [Codice di deontologia relativo al trattamento dei dati personali nell'esercizio dell'attività giornalistica]*, *Provvedimento del Garante*, 29/7/1998, G.U. n. 179 (1998), <http://www.garanteprivacy.it/garante/doc.jsp?ID=1556386>.

<sup>46</sup> See Data Protection Authority, *Relazione 1998*, available at: <http://www.garanteprivacy.it/garante/doc.jsp?ID=1341924>.

collaborate for the production of a text that was evasive in terms of protection of data subjects when the data treatment was in charge of journalists.<sup>47</sup>

The final result of this co-regulation process was the code's *ex post* acquisition of the status of primary legislation, as it was introduced as an annex to legislative decree 196/2003, the so-called Data Protection Code (Casarosa, 2002). The regulatory power of ODG is, thus, reduced in order to protect not only sector specific interests (journalists' freedom of expression) but also general interests (data protection of citizens), though both are based on fundamental principles (Cafaggi and Iamiceli, 2006).

Additional account should be given to a recent proposal: the so-called *Codice di autodisciplina a tutela della dignità della persona sulla rete Internet* [Self-Disciplinary Code to Protect the Dignity of Persons on the Internet]. Although the terminology refers to self-regulation, it cannot be included in this category as its content was drafted autonomously by the Interior Minister in collaboration with the Communication Department. The choice was rather to let the Internet Service Providers adhere to the code including a reference to the document in their terms of service. The draft text presented in May 2010 provided for a sort of quality certification represented by the logo 'Internet: mi fido' (I Trust the Internet). In the case of a breach of the code rules, the ISPs could remove the content uploaded by users, i.e. if it was deemed unlawful as potentially offending dignity (without waiting for the intervention of the judiciary). It should be emphasised that the proposal was presented in the aftermath of the online reactions to the assault to the Head of the Government in Milan,<sup>48</sup> as a quicker and softer alternative to legislative intervention. However, the proposal raised several criticism: first, the definition of what can potentially offend dignity is deliberately left in broad terms; thus, the implementation of the code would have had a disruptive effect on users' ability to freely express their opinions through online services, delegating to ISPs a wide and uncontrolled power to censor. Secondly, ISPs could still have incurred liability where, in a subsequent decision, a court affirmed that the content was unduly removed. The process regarding the adoption of this code stopped, due in part to the lack of participation of ISPs.

---

<sup>47</sup> See that the first version of the code drafted by the ODG was rejected by the Data Protection Authority due to the fact that it was only providing form ethical rules, which had merely disciplinary sanctions, whereas the approach adopted by the Data Protection Authority was to extend the scope of the code also to anyone providing information through media. See Paissan (2008: 12).

<sup>48</sup> After the assault to the Head of the Government several Facebook groups were created to praise the author of the assault, see Repubblica, 2010, 'Maroni: "Chiudere i siti più violenti" - La Procura indaga su due gruppi Facebook' available at: [http://www.repubblica.it/politica/2009/12/14/news/maroni\\_chiudere\\_i\\_siti\\_piu\\_violenti\\_la\\_procura\\_in\\_daga\\_su\\_due\\_gruppi\\_facebook-1822099/](http://www.repubblica.it/politica/2009/12/14/news/maroni_chiudere_i_siti_piu_violenti_la_procura_in_daga_su_due_gruppi_facebook-1822099/).

### 3. The structure of the media market

As the importance of media in political and social life increases exponentially and its commercial relevance at the national level contextually grows, the way in which the media market is organised requires equal attention, so as to understand who owns media companies and corporations that can exert such a strong influence, directly or indirectly, on the political and social life of citizens. In particular, media ownership becomes relevant not only because media owners can abuse their political power, but because political choices taken by media owners, usually vested as economic ones, may at the same time limit access to the media for unappealing or conflicting points of view (Doyle, 2002: 171).

Indeed, media ownership regulation was, and still is, used as a tool to ensure that such abuses do not take place and that essential rights prevail, namely protecting the principle of freedom of expression. The main practical objective that is pursued through this regulation is achieving a sufficient level of pluralism in the media, so as to allow everyone the possibility to express their own opinions through any medium. Pluralism is generally associated with diversity in the media, allowing the presence of a number of different and independent voices, and of differing political opinions and representations of culture. In Italy, pluralism is a paramount concept that overcomes all the other principles related to information provision, such as objectivity, fairness, and impartiality (Zaccaria and Valastro, 2010); and it has usually been interpreted as a way of implementing the principle of freedom of expression in practice, in particular in the political debate.<sup>49</sup> The Constitutional Court has also addressed the definition of pluralism, distinguishing between internal and external pluralism: external pluralism relates to the diversity of ownership within a specific market, and is achieved when there is a plurality of broadcasters and outlets in a sector; whereas internal pluralism refers to the diversity of output, and it is achieved when extensive coverage and diversity of programming are provided by media outlets.<sup>50</sup> While restrictions on media ownership can help preserve diversity of ownership, they are not sufficient to guarantee the diversity of output reflecting different political and social views. Other policy instruments should be used to encourage greater internal pluralism and among them competition law can provide additional help in achieving such a result (Doyle, 2002: 12; Venice Commission, 2005: 11).

This doctrinal and jurisprudential acknowledgment of media pluralism as a paramount concept is the reason why, in national media policy, pluralism is always recurring as a proxy for freedom of expression, though not covering exactly the same scope. However, as it will be described in the following paragraphs, regulatory intervention in the media sector, though referring repeatedly to this concept, has not always been implemented in practice.

---

<sup>49</sup> The genesis of the principle lies in the Communist Party's repeated objections to Christian Democrat control. Their complaint was not that journalists talked about the Party in a negative fashion, but rather that journalists did not talk about the party at all. Redressing this imbalance came to mean not that journalists should try harder in making syntheses that represent all sides equally, but that as many parties as reasonably possible should be shown when discussing a particular issue (Hanretty, 2007).

<sup>50</sup> Constitutional court, decision n. 826/1988.

### 3.1 Ownership regulation

As clarified above, the historical roots of the media in Italy affected its development up to the current situation, and in particular structural regulation, although adopted since the 1980s also paved the way for the current high level of concentration in the sector.

The Italian legislator enacted a set of legal caps on concentration in the press and the broadcasting markets so as to limit the influence of publishers and media companies over the process of public opinion formation (Ghionni, 2003). The justification for such an approach is also based on economic analysis which in the media sector includes in the definition of profit maximisation also the ‘persuasion advantage’. Media companies would accept a deviation from profit-maximising behaviour in order to affect public opinion if this could consequently promote approved legislative interventions, consumer behaviour or investment behaviour, or also political decision (FTC, 2003). In the Italian framework, where horizontal concentration is the case and both publishers and media companies have interests in other sectors, the potential for such companies to influence public opinion so as to have positive outcomes in other economic sectors where they are involved is more than tangible (AGCM, 2007).

In this direction, Law 249/1997 defined the case of ‘significant market power’, qualifying it as the position of any company that directly, or indirectly through controlled or parent companies, owns more than 20% of the broadcasting licences (at that time there were two broadcasting channels) and collects more than 30% of sector revenues.<sup>51</sup> The intervention of the legislator in 1997 was the reaction to the Constitutional court decision<sup>52</sup> that in December 1994 declared the Fininvest corporation (owner of Mediaset broadcasting channels) as dominant on the media market, holding three channels, i.e. 25% of the existing market share.<sup>53</sup> According to the Court, ‘*it is not sufficient that the whole media system is characterised by a plurality of initiatives, but it is needed that this principle should be achieved in each and every sector (press, analogue television, satellite television, etc.)*.’

Thus, the choice of the newly elected centre-left executive was to address the existing duopoly in the broadcasting sector, establishing the Communication Authority and assigning it with the task of ‘*adopting the necessary measurements to eliminate or impede [dominant] positions... [colliding with] pluralism*’ (Art. 2(7)). The mentioned caps mentioned were in fact providing specific criteria to the Communication Authority to evaluate the concentration of the broadcasting sector. In case of breach, the law imposed for the exceeding channels to be moved on alternative platforms (e.g. satellite or cable), but it did not provide for a deadline for the migration, assigning this task to the Communication Authority (Art. 3 (6)).

If the process to enact the law was highly debated,<sup>54</sup> the process of implementation of the law by AGCOM was neither quicker nor smoother (Hibberd,

---

<sup>51</sup> See art. 2, c. 6 and 8, Law 249/1997.

<sup>52</sup> Constitutional Court, decision n. 420/1994.

<sup>53</sup> The Court did not give its ruling immediate effect, but rather left untouched a minor transitory provision, which in practice gave Parliament a deadline to rewrite the media law.

<sup>54</sup> It should be emphasised that the law was perceived by the opposition as a form to penalise the position of the former Head of the Government, also overruling the results of the 1995 referendum, where Italians voted in favour of Mediaset owning three channels and in favour of the partial privatisation of RAI.

2006). As a matter of fact, AGCOM took one year to be set up and then, only in 2000, it finished its detailed investigation into the broadcasting market, verifying whether the legal cap was potentially breached. The consequent ruling proved to have a negligible effect: although both Rai and Mediaset controlled more than 30% of the market, they could take advantage of an escape clause in the law. According to this, the *ex ante* legal cap could not be applicable to those companies that were already over that percentage before the enactment of the law, where such company development was due to '*spontaneo sviluppo dell'impresa*' (natural growth of the company) and it did not undermine pluralism and competition. This exception, thus, allowed the persistence of the duopoly in the broadcasting market and did not put a stop on the increasing concentration in the other sectors.

The following intervention in the media field, namely Law 112/2004, was again a reaction to the intervention of the Constitutional Court,<sup>55</sup> and did not end in an improvement of the antitrust regulation so as to reduce barriers to market access for new competitors. The drafting process was difficult and cumbersome, as the centre-right executive faced strong opposition to the rules that were interpreted as a form of protecting the companies owned by the Head of the Government at that time, Silvio Berlusconi. In particular, the law that the Italian Parliament passed in 2003 did not receive the President of the Republic's assent, as the President at that time refused to sign the law, declaring that parts of it contravened the Constitutional Court's decision on external pluralism. Only after a reconsideration by the Parliament of the specific points raised by the President was the law officially signed.

The crucial point was in fact Article 15 of Law 112/2004, which formally increased the antitrust rules provided by Law 249/1997, lowering down to 20% the *ex ante* limit of the total financial resources flowing into the market that can be owned by a single market operator in the media sector; but at the same time the new law widened the *sistema integrato delle comunicazioni* [integrated communications system] (SIC), so as to include all media related sectors: radio and television activities, production and distribution of radio and television content, publishing in the form of the press, books and electronic media, and advertising intermediation. This choice, though justifiable in the light of the technological developments and the transition to the digital terrestrial television (Di Mauro and Li, 2009), had a negative side effect: given the wideness of the scope of the SIC, it was clear that such an intervention would not affect or hamper further concentration of existing media companies, with the consequence of having limited the possibility of access for new competitors in an already saturated market.<sup>56</sup>

---

<sup>55</sup> In 2002, the Constitutional Court declared Art. 3, Comma 7, of the Law 31 July 1997, unconstitutional for failing to '*provide a deadline, certain and unchangeable*' (Decision n. 466/2002), and confirmed the deadline set by the Authority. The court underlined that '*external pluralism... cannot be... achieved based [just] on the fact that there is competition between a public and a private pole, [and when] the private [competitor] is [in] a dominant position. This is because [in such a situation] access to the broadcasting sector on the part of the 'highest possible number of diverse voices' cannot be [fully] realized*' (decision n. 155/2002).

<sup>56</sup> The law was analysed, and in most cases heavily criticised, at the international level, for instance by the Venice Commission (Venice Commission, 2005), and by the International Federation of Journalists (EFJ, 2003: 4) and by OSCE (2005: 6). However, such critics did not influence the choice of the executive.

### 3.2 Cross-ownership regulation

Law 112/2004 also addressed the issue of cross-ownership, as it defined that after 1 January 2009 cross-ownership of media across different sectors of the press and broadcasting would be allowed nationwide. Although all actors have no objection to the principle of cross-ownership, Italian publishers fear that under the existing media system, it will be much easier for broadcasters to buy newspaper groups than vice versa (EFJ, 2003).<sup>57</sup> The subsequent codification in the TUSMAR shifted the prohibition for cross-ownership up to the end of 2010, extending the ban in the case of national broadcasting enterprises to access the press sector also via controlled or parent companies.<sup>58</sup>

As the deadline at the end of 2010 was approaching the Communication authority signalled that the safeguard provided by this regulation was needed in terms of pluralistic access to information, and asked the legislature not only to renew it but also to update it so that it covers not only traditional broadcasting television but also digital terrestrial television. A first postponement was then set for 31 March 2011. However, as the new deadline was again approaching, both the communication and the antitrust authorities intervened on the point, the former renewing its concerns about the outdatedness of the law in the evolved media framework, the latter on a more sensitive issue. In particular, the Antitrust authority intervened claiming that the decision concerning the further postponement could not be a decision of the actual Head of the Government.<sup>59</sup> As a matter of fact, the Antitrust authority contested the potential conflict of interest in the person of Silvio Berlusconi, given that he would indirectly benefit from the choice concerning the prorogation or not of the law through the media company he owned. Nonetheless, in reaction to these interventions, Law 34/2011 only postponed the deadline for the law to 31 December 2012. It should be emphasised that the executive did try to revise the criteria applicable for the prohibition of cross-media ownership, so as to include in the scope of application also digital and satellite broadcasters, limiting the possibility for cross-media ownership to media companies which do not surpass the maximum of 8% of the SIC. However, this intervention, included in the so-called Law *Milleproroghe* was contested by the opposition and refused by the Italian President (who should have undersigned the law before its enactment).

### 3.3 Public subsidies for the press

In the press sector, legislative interventions were also made in order to improve the level of freedom and independence of publishers. The subsidies for Italian newspapers was clearly established in the aftermath of the Second World War as a way to protect the freedom of expression of cultural or political minorities, and the subsequent interpretation allowed the extension of this protection also to political parties, of

---

<sup>57</sup> Newspaper publishers expressed their position against the legislation through a concerted campaign of the Italian Newspaper Publishers Association (FIEG) '*Accendiamo la tv, senza spegnere la stampa*' (Let's switch on the TV without switching off the press). In particular, publishers were concerned that the definition of the relevant market was so large, that already strong broadcasters could have an advantage in accumulating even more advertisement revenue.

<sup>58</sup> D. Lgs. 31 luglio 2005, n. 177.

<sup>59</sup> Law 10/2011 that provided for the first postponement, provided that the Head of the Government could decide on the further prorogation of the rule, coordinating with the Finance Ministry and after the mandatory but not binding opinion of the Parliament.



whichever leaning. The Italian legislator then used subsidies as a way of maintaining the plurality of views in the press and increasing opportunities for citizens to access these sources of information. In particular, in terms of direct and indirect measures subsidising the press, the Italian legislator tried to eliminate any economics-based obstacle to pluralism, safeguarding the existence and development of smaller publishing enterprises and cultural initiatives (Caretti, 2009: 76). The objective of subsidies was then to guarantee media independence, in particular from any financial constraint that could hamper the entry or preservation of less profitable operators in the market.

Since 1949, political parties have benefited from the direct and indirect measures provided by legislation for the publishing of their own newspapers. In particular with Law 67/1987 the requirement for a newspaper to be able to receive subsidies was related to a very widely defined requirement, allowing access to subsidies also for a political newspaper selected as reference only by a small group of members of the Parliament.<sup>60</sup> The system was then exploited by many newspapers in order to receive subsidies without an efficient and effective informative activity: the fact that subsidies were granted by counting only the number of published copies, allowed minor newspapers to simply declare the publication without addressing the problem of distribution and sale of the published copies (which could be sold for free or not even distributed). This situation was also criticised by the Antitrust authority (AGCM, 2007), which pushed for reform of the criteria upon which the provision of such subsidies could be approved.<sup>61</sup>

Only in 2008,<sup>62</sup> was there a revision of the system, which secured access to subsidies only for sold newspaper copies, and only in the case of a remunerated editorial office. However, this revision did not address the effect of increasing control over the distribution of subsidies as in 2011 a new proposal for revision was presented. The legislative intervention aimed at reducing the amount of subsidies without changing the criteria imposed to select the newspapers that could access them. This has been contested by the major political newspapers benefiting from subsidies, which do not deny the need for a better distribution of this funding, but propose reform and improvement of the selecting criteria.<sup>63</sup> On this point a step

---

<sup>60</sup> See the cases of *Libero* that is the expression of the Monarchical political movement and *Il Foglio* which is the expression of the *Movimento 'Convenzione per la Giustizia'* (Charter for Justice Movement), both only based on the participation of few members of the Parliament to a newly created internal movement, following the requirement provided by Article 3 Law 250/1990. The latter in order for a newspaper to be categorised as a political newspaper and therefore able to access the press subsidies required that the '*publishers of newspapers or periodicals, including those with explicit endorsement made in a newspaper or magazine, are found to be organs of political forces which have their own representative in at least one branch of the Parliament at the entry into force of this Act, and that the last election have achieved at least one seat in the European Parliament.*'

<sup>61</sup> An exception to this trend is available in the Italian press market, namely the case of *Il Fatto quotidiano*, which was founded in 2009 without being supported by any public funding, in order to ensure its independence. The choice was to rely on electronic and paper subscriptions. This independence was coupled with the internal governance structure, which is a stock company where up to 70 percent of the shares can be owned by entrepreneurs, but none of them can own more than 16 percent of the share capital, while the remaining is for the newspaper columnists: '*This means that a "70 percent + 1" majority is needed to make decisions about editorial policy*' (leaving the columnists much freedom regarding what they can write about).

<sup>62</sup> See Law 133/2008 at Article 44.

<sup>63</sup> See the content of the letter sent by a large group of press publishers to President Napolitano, available at: <http://mediacoop.culturaemedia.com/mediacoop/document/3060-lettera-al-presidente-napolitano>.

forward has recently been made by AGCOM: after having sanctioned a couple of newspapers illicitly benefiting from subsidies in the last 4 years,<sup>64</sup> the Communication Authority required that in order to benefit from subsidies all the newspapers should present their corporate structure and the existing cross-ownership cases.<sup>65</sup> Although this requirement could be cumbersome for many of the newspapers applying for subsidies, due to their cooperative legal form with several members, this could be seen as major improvement in terms of transparency, which could also have positive effects in terms of wider knowledge of the editorial control of newspapers.

### **3.4 Technological developments improving media freedom and independence**

#### **3.4.1 Digital terrestrial television**

The Italian implementation of Digital Terrestrial Television (DTTV) proves once more the interdependencies between the media and politics, and the Italian executive's difficulties in distinguishing between political objectives and converging economic interests.

Again, the point of reference is Law 112/2004 that was believed to be an 'avant-garde law' (OSCE, 2005: 29), as it enhanced the shift from analogue to digital television, adopting a convergent approach by introducing the aforementioned SIC that covers information, communication and media enterprises altogether. Already in Article 1, the law provides that it '*identifies the main principles which form the structure of the national, regional and local radio and television system, and upgrades it to the advent of digital technology and the convergence process between radio and television and other personal and mass communication fields such as telecommunications, the press, even electronic and Internet in all its applications.*' Therefore, the digital network was seen as the solution to remove any technical restrictions (i.e. spectrum scarcity), opening up the market to more players, inevitably encouraging media pluralism through the multiplication of broadcasting channels and the possibility for synergies among channels.<sup>66</sup>

However, the law did not achieve its objectives as in practice the shift proved not to be so quick as initially foreseen, and the deadline was shifted from 2005 to 2012. In the meantime, the regulatory framework provided by the law, and in particular the SIC, though introduced to remove definitional barriers between communication formats (Di Mauro and Li, 2009: 18), created several difficulties in regulating ownership of relevant market sectors, paving the way for increased concentration in the market (Ortoleva, 2005). This inconsistency in policy objectives and practical effects raises questions as to whether the transition from a monopolistic (or better a duopolistic in case of Italy) to pluralist television should have preceded the transition to the convergence market (OSCE, 2003: 41).

An additional point related to DTTV is the use of subsidies in order to foster the household's purchase of set-top-boxes, so as to enhance the diffusion of DTTV.

---

<sup>64</sup> See Delibera 63/2011/CONS available at: <http://www.agcom.it/default.aspx?DocID=5900>.

<sup>65</sup> See Delibera 283/11/CONS available at: <http://www.agcom.it/default.aspx?DocID=6542>.

<sup>66</sup> Technological development was also envisaged as a solution to the existing problems of limited external pluralism by market players: '*technical innovation in digital terrestrial [transmission] would allow an unlimited increase of available frequencies, with the consequence of increased pluralism of information*' (RAI's defence quoted in the Constitutional Court, decision n. 466/2002).

The Italian government decided to allocate a total of €130 million for these devices (D'Arma, 2010), justifying the measure as a way to foster the rapid and successful introduction of DTTV, which would increase the number of broadcasting channels available to the citizens, thus improving pluralism at the national level. However, this justification was spoiled by the fact that the subsidies were addressing only a specific type of devices, excluding those provided by the new competitor Sky Italia.<sup>67</sup> This preferential treatment towards specific broadcasters, triggered Sky Italia to make a complaint before the European Commission against Italy on the ground that the subsidy was violating the principle of technological neutrality and, thus, distorted competition in the television market. The result of the Commission investigation upheld the position of Sky Italia,<sup>68</sup> providing that the measure at issue constituted state aid, for the purposes of Article 107(1) TFEU, to digital terrestrial broadcasters offering pay-TV services, in particular pay-per-view services, and digital cable pay-TV operators. In particular, the Commission underlined that *'even though the transition from analogue to digital TV broadcasting was a common interest objective, the measure at issue was not proportionate to the pursuit of that objective and was not capable of preventing unnecessary distortions of competition. That finding was primarily based on the fact that the measure at issue was not technologically neutral, since it did not apply to digital satellite decoders.'*<sup>69</sup>

### **3.4.2 The reaction of traditional media towards new media services**

In the last decades, technological developments have changed the tools through which citizens can obtain information allowing them also to interact and participate to the process of news production. If on the side of citizens, this has been interpreted as new forms to implement in practice the freedom of expression principle, on the side of traditional news providers this new framework has triggered a general revision of the existing business models available. In particular, new media brought many new entrants into media market, creating new types of content, and providing a wider variety of ways to access news, information, and entertainment. They have broken monopolistic and oligopolistic control over distribution mechanisms, and empowered consumers to seek and share content in new ways and to become producers as well as consumers of content. Consequently, existing business models of established media are losing their effectiveness and need reconsideration (Picard, 2011).

The change in the way in which news are produced and distributed have challenged the old regulatory instruments used to protect content producers and content distributors, including among them not only journalists (see below par. 5), but also newspapers and broadcasters. As a matter of fact, the latter are struggling between two different positions: on the one hand, addressing new media as a platform to improve the quality of their content gathering reactions and participation from readers and viewers, and on the other hand, protecting their business model in a

---

<sup>67</sup> The provision of the pre-paid card system available on the type of set-top-boxes sold through subsidies was then provided only by Mediaset, followed by other broadcasters followed shortly after (e.g. Dahlia under the Telecom Italia Media, etc.)

<sup>68</sup> Decision 2007/374/EC on State aid C 52/2005.

<sup>69</sup> The decision of the European Commission was confirmed in the European General Court, Case T-177/07, 15 June 2010.

framework where new market players can easily exploit their investments in content, in particular search engines such as Google, Yahoo and the like.<sup>70</sup>

The battlefield in this case has been copyright protection of the content available through Internet service providers, where services focus on most recent news offered freely on website, but with revenues flowing from advertising. Given that such services use content generated through investments and activity of traditional content producers, the possibility to shift revenues from the latter to ISPs creates doubts over the current allocation of costs for production along the value chain.

In some cases, the solution has been a contractual one, where broadcasters decide to negotiate with the relevant search engines so as to share the advertising revenues with the latter, whenever a particular content is searched and viewed by users. However, this has been possible in particular in the case of public service broadcaster which can justify this choice under the perspective of the public service remit.<sup>71</sup> In the case of commercial broadcasters and newspapers the possibility for contractual agreements is less appealing, due to the strong difference between the contractual power of national media outlets vis-à-vis global ISPs.

In particular, traditional paper-based newspapers felt such competition unbearable, and lodged appeals with the Italian Antitrust Authority for remuneration of the use of content by third parties.<sup>72</sup> The *Federazione Italiana Editori Giornali*, FIEG [Italian Federation of Newspaper Publishers] claimed that Google News gathered news online from the main information websites. Google News posts the article, but enables the user to read it without having to access it via the homepage of the original website. Moreover, the FIEG claimed that those newspapers that did not consent to appear on Google's specialised services, would have suffered a negative treatment in the general search engine services, being lowered down in the results list or even excluded. Although the AGCM did not find the overall level of competition affected by Google, it accepted the obligations to improve competition proposed by Google which were mainly focused on the possibility for newspapers to exclude the retrieval of their news content on Google News without being penalised in searches on the general search engine. These proposals were deemed sufficient for the Antitrust authority to solve this specific case, giving the publishers the final decision over the strategies to solve the problem related to the decreased revenues of the traditional press (Caticcalà, 2011).

The case shows the two sides of the problems raised by new media: for content producers the need to adapt the existing business models to new forms of content provision, so as not to be limited in further production by financial constraints (for instance, due to reduced revenues); for policy makers, the need for a revision of the current ways in which content production can be protected, so as to strike a balance between citizens' freedom of information and producers' remuneration for their investments in production.

---

<sup>70</sup> Interview with Gina Nieri; interview with Claudio Giua.

<sup>71</sup> Interview with Gianluca Matteis Tortora.

<sup>72</sup> See the conclusion of the market analysis of the AGCM, available at: <http://www.agcm.it/concorrenza/intese-e-abusi/open/41256297003874BD/82463028EDFECAE0C125781C004E895E.html>.

### 3.5 The relationship between competition law and media ownership regulation

Competition law and ownership regulation has been used by national and European institutions in order to ensure a sufficient level of pluralism in the media field, addressing the same objective from different angles. There has been a debate about which approach could best achieve the purpose, and whether in case of concurring objectives (i.e. achieving a competitive market) how the balance should be struck. In order to address the possible coordination between competition and ownership, the development of broadcasting regulation will be analysed in detail, as it is the most clear case where the dialogue and conflict between the two have emerged.

After the abolition of the monopoly of the public service broadcaster, the broadcasting system became the subject of many legislative interventions so as to safeguard on the one hand pluralism and on the other hand competition among the market actors, imposing a legal ownership cap<sup>73</sup> and requiring the adoption of antitrust regulation.<sup>74</sup> However, the most relevant influence on the national framework has been exerted by European intervention, in particular with the 2002 Telecommunication Package. This was implemented in Italy through the adoption of a specific Electronic Communication Code (D.lgs. 259/2003), and endorsed the distinction between electronic communications in general and specific broadcasting regulation. The implementation of the Code reflects the problems of interpretation related to the original European framework, in particular regarding the position of “significant market power” which was difficult to frame it as equivalent to the older definition of abuse of dominant position (Art. 102 TFEU) as expressly declared by the European Commission<sup>75</sup> (De Streel, 2003) The different treatment emerges also from the Commission’s guidelines which in case of a communication company that holds a significant market power it could impose positive obligations whereas in case of abuse of dominant position it does not.<sup>76</sup>

The distinction between electronic communications in general and broadcasting in particular, which was endorsed at the national level, resulted in the use of different legal tools to address the two sectors, in particular including additional regulation to support the application of general competition rules in the broadcasting sector. In order to eliminate access barriers to the market so as to open it to the higher number of different voices, the national legislator provided for legal caps in terms of the market share of each competitor. Such anti-concentration limits, in fact, are not based on efficiency (such as competition rules) but on the need to limit the effect of political persuasion that potentially broadcasting power can have.<sup>77</sup>

A specific case where the dialogue between the national and European competition rules could be found is the decision concerning the merger in the Italian pay-TV sector that involved the Vivendi group in Italy and the then News Corporation at the European level. In this case, the application of ownership

---

<sup>73</sup> See Law 223/1990.

<sup>74</sup> See Constitutional Court decision 420/1994. The judgment, however, was criticised as it used competition law terminology without a correct competition background, see in particular, Frignani, (2006).

<sup>75</sup> Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communication networks and services, 2002/C 165/03, in *OJ* 11 July 2002, C 165, 6.

<sup>76</sup> See par. 19 and 70 of the Guidelines on market analysis and the assessment of significant market power, cit.

<sup>77</sup> See Art. 43 TUSMAR.

concentration rules ended in the creation of a quasi-monopoly situation in the segment of pay-TV: in 2002, the AGCM authorised the tentative merger between Groupe Canal +/Stream,<sup>78</sup> though it did not actually happen at that time.<sup>79</sup> The analysis of the AGCM emphasised that both companies were providers of pay-per-view services on satellite television, and their merger could result in the creation of a monopoly in this segment of the market. However, the AGCM approved the merger, requiring the application of a set of conditions in order to limit the market power of the media company resulting from the merger. The conditions moved mainly in two directions: fostering competition in satellite television, facilitating the access of new competitors, and developing the provision of premium content also on alternative platforms. In particular, the Antitrust authority would require Telepiù (the pay-TV channel owned by Canal +) to limit the duration of its contract on premium content rights broadcasted on satellite television, granting the availability of such content on other platforms. In other words, the AGCM tried to create the conditions to foster potential competition through the reduction of the exclusive rights of Telepiù on satellite television, obliging Telepiù not to compete on the other (at that time new) platform of digital television. These conditions, however, were too onerous for the Vivendi group, hampering the profitability of the merger.

A similar approach was taken by the Merger Task Force of the Commission with regards to the merger between News Corporation Limited (Newscorp),<sup>80</sup> which acquired from the Vivendi group the Telepiù broadcasting channel, and Stream. The analysis of the Commission was mostly based on access to content and to platform issues,<sup>81</sup> resulting in the definition of a set of obligations for Newscorp on both sides: on the content access side, the decision required a limitation in time for the exclusivity rights on premium content, whereas on the platform access side, it required Newscorp to waive its exclusivity rights, hold-back and other protection clauses, in case of broadcasting of content to any other platform different from satellite.

This case shows that both the Italian antitrust authority and the Commission addressed the merger with a similar approach. They preferred to accept the existence of a monopoly instead of leaving the satellite television market with two companies in serious financial problems. From the perspective of media freedom and independence, the decisions taken by the European and Italian authorities show that they prefer to help the companies involved in the merger to cope with the financial constraints they face by allowing the merger, instead of having such constraints steering the choices of the media outlets, imposing for instance a reduction of the quality of the content provided or a reduction in the broadcasting channels.

Moreover, the risk that both antitrust authorities tried to escape was to leave free the market, so allowing a *de facto* monopoly to form, possibly more aggressive and without constraints (Barzanti, 2007; Giannaccari, 2003). It should be emphasised that the decision taken did not (directly) safeguard either competition or pluralism in the general sense, as it paved the way to a monopolistic position in the pay-TV sector that not only could hamper the access of new competitors, but it could clearly

---

<sup>78</sup> Provvedimento n. 10716, 13 May 2002, in «Bollettino» 19/2002.

<sup>79</sup> The merger resulted only afterwards, see below.

<sup>80</sup> See European Commission, DG IV, Decision 2nd April 2003, case COMP/M. 2876; Newscorp/Stream.

<sup>81</sup> The Commission expressly mentioned AGCOM intervention on the previous tentative merger, par. I, n. 15 of the Decision COMP/M 2876, cit.

cancelled the external pluralism objective. In order to reduce this effect, the set of obligations imposed on Newscorp tried to reduce its market power imposing the obligation allowing premium content to be available to any other competitor where a different platform was used, thus providing the possibility for citizens to select among different operators available on the market.

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

The Italian Constitutional Court in many occasions has underlined that a democratic society is based on effective freedom of expression. Starting from decision 105/1972, then through decisions 826/1988, 348/1994 and 466/2002, the Court affirmed that freedom of expression and the right to be informed are two sides of the same coin and both aim to define and thrive a pluralistic environment. This means that the regulation of media service must be consistent with the parameter of plurality, and must foster diversity.

The plurality of sources and information has been achieved, to some extent, by the traditional press market even if the diversification of press operators was and is fostered and helped by, sometimes unreasonably significant, state aids for some kinds of newspapers (see par. 3.3) and with some negative remarks on how political power has been involved in this industry (see par. 5) in Italy. In the audiovisual media service sector, besides the liberalisation of the television market and the rules that should prevent dominant positions from forming in the market itself (Caretto, 2009; Casarosa 2010; Zaccaria and Valastro, 2010), audiovisual media services operators are asked to accept a certain number of obligations in order to cope with diversity and pluralism aims. The more the market is not pluralist, the more obligations are required. This is particularly true in relation to political broadcasting. The Constitutional Court itself underlined in 2002 (sentence n. 155) that external pluralism - especially in a steady situation that keeps a substantial limitation in the number of broadcasters - may be insufficient to ensure the free expression of political opinion, requiring the designing of *ad hoc* spaces to provide equal chances in direct access to television broadcasts of political parties, so as to enable citizens to see a genuine debate between the various political forces, especially (but not only) in the electoral period (Grandinetti, 2011).

Nowadays, most of the content obligations, but political programming, come from the European Union and from the implementation of the directives first on “television without frontiers” (89/552/CEE), then “on audio visual media services” (AVMS, 2007/65/CE). The implementation of the European content regulation is not a major debate issue for the Italian legislator and for television operators.<sup>82</sup>

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

##### **4.1.1 Obligations for the operators: special obligations for public service broadcasting**

The most important obligations are those related to programming. Article 3 of the TUSMAR states freedom and pluralism of media, freedom of expression, freedom of opinion and the rights to receive and communicate information or ideas with no limits, objectivity, completeness, loyalty and impartiality of information, the protection of rights, copyright and intellectual property, openness to different opinions and political, social, and cultural and religious tendencies, the preservation of ethnic diversity and cultural, artistic and environmental heritage, at the national and local level, in compliance with citizens’ freedom and rights, in particular dignity, the

---

<sup>82</sup> Just the implementation of the EU rules on commercial advertising has been critical and peculiar, since it was circumvented by the commercial broadcasting operators.



promotion and protection of welfare, health and the harmonious development of physical, mental and moral development of children as guaranteed by the Constitution, EU law, international standards and in the national and regional laws in Italy.

According to Article 7 of TUSMAR, radio and TV information is a service of general interest and it is deployed according to the principles set by the law. Paragraph 2 of this article thereof states that the law guarantees the daily broadcast of news or radio news by persons authorised to provide local and national content, the access of politicians in equality conditions as prescribed by the law, and the transmission of briefs by the constitutional institutions. Other limitations relate to the protection of copyright (Art. 32-bis), pay-TV rights with respect to events of major importance (Art. 32-ter) and short extracts reports (Art. 32-c). Other limits (Art. 7) impose general conditions to guarantee truthful presentation of facts and events, forbidding the use of methods and techniques to manipulate the content in a non-identifiable way, protection of minors (Art. 34), qualitative and quantitative limits to advertising, sponsorship (Art. 39) and teleshopping (Art. 40), limits to product placement (Art. 40 bis), quotas for national and European audiovisual works distribution and production and respect of the timing for distribution negotiated with the authors, and rights of reply.

The public service broadcasting operator is asked, according to the constitutional jurisprudence on internal pluralism and Article 45 of TUSMAR to offer a sufficient number of hours of television and radio broadcasts, in a right proportion in any moment of the day, dedicated to education, information, training, cultural promotion, with particular regard to plays, films, television, in the original language, and high-level artistic or innovative music (the number of hours is defined every three years by the Authority and in the computation of these hours entertainment programmes for children are excluded); to give access, according to the law, to parties and groups represented in parliament and regional assemblies and councils, organisations of local autonomy, the national unions, religious groups and movements, political institutions and political and cultural associations, the national associations of the cooperative movement that are legally recognised, the social promotion associations registered in regional and national registers, ethnic and linguistic groups and other groups of social significance that may make a request.

Public service broadcasting (PSB) has a main role of fostering its internal pluralism and diversity. RAI Radiotelevisione italiana is the public company, almost totally owned by the Minister of Economy and Finance (less of 1% is owned by SIAE, the Italian copyright collecting society) that was granted the licence by law (concessione) and has the mission to provide public service programmes. Among the duties defined by the TUSMAR, RAI must create a specific company for the production, distribution and transmission of radio and television programmes abroad for the purpose of spreading the Italian language, culture and business; must broadcast, as a safeguard of the minorities, in German and Ladin for the autonomous provinces of Bolzano and of Trento, in French for the autonomous region of Valle d'Aosta, and in Slovenian for the autonomous region of Friuli-Venezia Giulia. Moreover, the PSB is asked to broadcast messages of social or public interest which are required by the Presidency of the Council of the Ministers, traffic and driving on Italian roads and highways information; to provide, at appropriate times, content for children, taking into account the needs and sensitivity of early childhood and age of

evolution; and to take appropriate measures for the protection of persons who are visually and hearing impaired.

RAI must also promote and strengthen decentralised centres of production for the promotion of cultures and local language. Many other specific obligations are set every three years by a contract of service signed by RAI and the Minister of Economic Development.

As the rules provide a wide range of obligations to foster diversity and pluralism, the implementation of some of these rules is related to the effective independence of those who work and manage the broadcasting undertakings. For instance, it is a matter of fact that information and news are submitted to a 'continuous political interference in the television system. RAI appears to be subject to increasing political pressure and Mediaset unashamedly toes the political line of its majority shareholder' (OSF, 2011:89). "Political parallelism" is a structural feature of relations between media and political system... Developments in the last five years have further confirmed that the Italian news media even in the digital era have to confront sustained pressures emanating from political leaders and parties' (OSF, 2011: 90).

#### **4.1.2 Par condicio**

Among the rules on media content, those ones on political party broadcasting are probably the more controversial in Italy since, as already mentioned, one of the main political actors in Italy, Silvio Berlusconi, is also the owner of Mediaset, the main private television company. It is easy to understand that just the potential of a personal use of one's own facilities and for free is a threat to an equal treatment for political competitors. However, the limits on Mediaset (and on the other operators) to transmit free political and electoral messages are sometimes felt to be an unreasonable threat to freedom of expression.

The Italian Parliament has passed the current law on political and electoral campaigning in 2000, after long and harsh debate that lasted for many years (law 28/00). The law regulates the conditions for the access of parties and political actors to the media during electoral campaigns and referenda as well as the "political communication" outside these periods.

The law is based on the principles of equal treatment and fairness, and on the distinction between political communication, on the one hand, and "self-managed messages", on the other, which are actually a form of political advertising (Zaccaria and Valastro, 2011). The first category includes discursive and dialectical programmes where different political views are explained and motivated. The second category is a direct communication of the politician or of the party to illustrate a single platform or political opinion, according to the typical codes of advertising and propaganda (Zaccaria and Valastro, 2011). The law gives strict rules and conditions for the use and timing of these tools of electoral communications, establishing that the self-managed messages must be hosted for free by the national broadcasting operators.

Special limitations on political contents are due not only during the electoral or referendum campaigns, but also 'all year long'. In decision 155/02, the Constitutional Court has stated that the protection of the citizens' right to full and objective information is a priority especially vis-à-vis primary constitutional values,

such as those related to a fair political debate. A fair and continuous democratic debate, in any period, even beside the electoral campaign, is a pillar of the democratic system.

Law 28/2000 recognises AGCOM a regulatory power to implement its broad rules for commercial broadcasting operators and to CPIV for public service broadcasting. AGCOM monitors the respect of the law and regulations on 'par condicio' and sanctions the unlawful use of the media by politicians.

The strict limitations provided by law n. 28/2000 on political communication and self-managed messages do not apply to information programmes. That is why the resolution adopted by CPIV (see par. 2.2), immediately copied by AGCOM, just before the regional elections of 2010 was heavily criticised, since it asked all transmissions, including those of political information to comply with the more stringent regime of political communication preventing these programmes to go to air during the campaign (after a recourse to the administrative Court - *Tribunale amministrativo regionale del Lazio*, the deliberation was revoked).<sup>83</sup>

One of the most debated issues is the effective role of AGCOM in monitoring and sanctioning breaches of the *par condicio* law. The Authority is not so fast in collecting and distributing data on the presence of politicians on television and most of the data is published just in a long line of tables and in an electronic format that does not allow any treatment.<sup>84</sup> This lack of transparency did not prevent some parties and some politicians from creating their own observatories for monitoring political and electoral information in order to have a more direct knowledge of the data and apply to AGCOM in case of a suspected breach of the law. In the 2011 elections AGCOM decided many cases on the *par condicio* legal basis, fining some Rete4, Canale5, Rai 1, Rai 2 and Italia 1 news editions for having devoted too much time to the interview to the Head of the Government (at that time Berlusconi) who in the same day was interviewed with the same questions by all the main television networks just before the second round of vote. The 'photocopied interviews' were substantially an advertisement, AGCOM said. It is quite difficult to define the fair limits of the presence of a politician on TV, particularly in a news programme: the fined operators sought judicial review from the TAR of Lazio in order to ask the annulment of AGCOM decisions claiming a breach of freedom of expression and a wrong application of the rules on *par condicio* in news programmes.

AGCOM did not take action against the breaches of the 'par condicio' the two Mediaset channels did and that could be a case of conflict of interest, as defined by Article 7 of law n. 215 of 2004. This law, the so-called Legge Frattini, gives AGCOM the power to fine those media companies, directly or indirectly connected to a

---

<sup>83</sup> According on what was reported by Guido Scorza, (26 October 2011, guidoscorza.it) recently the TAR Lazio did not admit a class action against the decision of RAI of stopping all the information programs during an electoral campaign. This class action was presented on the ground of the duties RAI has according to the service contract. The decision of the TAR seems to underline that users are not entitled to claim for a breach of the terms of the RAI service contract, since only the Ministry is entitled, being the one who signs the service contract with RAI.

<sup>84</sup> Presentation of R. Zaccaria at a workshop on 'Il sistema dei media italiano', Florence, 23 March. 2011; Interview with Luca Nicotra.

member of the government, that offer the member a ‘privileged support’ violating, among other cases, law 28/2000<sup>85</sup>(Lanchester and Zaccaria, 2011).

#### 4.1.3 Measures to promote diversity

Italian legislation, at the national and the regional levels, promotes to some extent the production and diffusion of diverse and plural content mostly by providing incentives and subsidies for different commercial activities.

As already mentioned in par. 3.3, the subsidising of Italian newspapers is a strong tool the law provides to protect freedom of expression of cultural or political minorities, also including political parties. These measures are now highly controversial, since they are on the one hand, of course, welcomed by the editors and by the majority of politicians (the same President of the Republic recently expressed his support for the system of subsidies); on the other hand, these measures are opposed by most of the citizens, who can only see this form of financing as a surreptitious funding for political parties. Some of the associations and movements which are supporting the development of the Net for an effective and non-biased source of information, underline how the subsidising of newspapers is nowadays another expression of the conflict of interest as many politicians/publishers take advantage of it (Marco Marsili, press release 30.10.2011 [www.pirateparty.it/](http://www.pirateparty.it/)). Many indirect benefits are also provided for radio stations, “community radio stations”, television channels and radio stations of political parties.<sup>86</sup>

Another group of rules to promote diversity in the Italian audiovisual market and support the distribution of works of independent audiovisual producers are those that provide quotas for the distribution and production of European works. These are rules that originate from the European directives even if a first attempt to promote Italian cinema via distribution quotas was provided by law 1213/1965 (Art. 55) that asked RAI to transmit Italian films in a percentage agreed by the representatives of the interested categories or, if the agreement was not possible, according to the decision of an *ad hoc* government committee (Zaccaria-Valastro 2010: 374). Nowadays the rules on quotas are concentrated in the TUSMAR. Article 44, paragraph 1 binds the national linear and non-linear audiovisual media service providers to promote the development and dissemination of European audiovisual production extending to non linear services what was already an obligation for linear services in the previous legislation. Only broadcasters must reserve to the dissemination of European works the majority of broadcasting time. In specie they must reserve 10% of diffusion time each year to 5 years old European works and Italian works (this quota raises at 20% for PBS).

Article 44 par. 3 then sets specific obligations for broadcasters to invest 10% of their year net revenues in producing, financing and buying European works by independent producers. An adequate space must be reserved for recent productions (those transmitted within five years from production), including films of ‘Italian original expression’.

---

<sup>85</sup> To read the provisions of the law in English, see CDL(2004)093 Rules for the Resolution of Conflicts of Interest in Italy (The Frattini Law), [venice.coe.int](http://venice.coe.int) (the Broadcasting Authority is AGCOM), Section 7 (Responsibilities of the Broadcasting Authority in respect of conflicts of interest).

<sup>86</sup> For more details on the implementation, see the paragraph 3.3 on subsidiation.

The providers of audiovisual media services on demand, subjected to Italian jurisdiction (see par. 4), are submitted to lighter regulation, since they differ from linear audiovisual services. This is a case where new technologies and new ways of distribution have an impact on regulation. Non linear services must promote, gradually and taken in account market conditions, the production of and access to European works, according to the criteria to be defined by AGCOM Regulation.<sup>87</sup>

Public service broadcasting is committed to a broader protection of European and Italian works: RAI must devote 15% of the revenues to European works and independent production (Art. 44 (3) and 45 (2l)): in this quota a 20% must be devoted to Italian works and 5% to animated cartoons for childhood (Art. 44 (3)).<sup>88</sup>

Another way to support independence in the media is to promote local information undertakings. In Italy local televisions do not offer a strong alternative to national operators who still are the ones that produce and broadcast the most popular television programmes. In the light of decentralising political power and aiming to shape a sort of federalist state, the 2001 amendment of Article 117 of the Italian Constitution allocated more legislative powers to the Regions (see par. 2 above). Among the concurrent competences between the State and the Regions there is the 'order of communication'. The aim of this competence was probably to foster pluralism at a local level, and strengthen cooperation among the State and the Regions as already outlined by a decision of the Constitutional Court (n. 348/1990) that stated that information is a preliminary condition for a democratic state, so it is a principle that must be fostered at any institutional territorial level. Notwithstanding this aim, local broadcasters, who have played an important role historically in safeguarding freedom of information in Italy' (OSF, 2011:89) are losing visibility and importance. The multiplication of the national channels, especially RAI and Mediaset, has caused an important decrease in terms of audience and advertising income of local and regional broadcasters (OSF, 2011:89).

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

### **4.2.1 Scope of Article 21 of the Constitution**

According to the Italian Constitutional system, all limits on freedoms must be explicit (so explicitly provided in the Constitution) or implicit (as deduced from the systematic reading of the constitutional text and the balance with other guaranteed

---

<sup>87</sup> It is interesting from the regulatory point of view how the law provides that the Authority, using procedures of co-regulation, has to define specific norms for the promotion of European works by non linear audiovisual services. These rules will replace the existing ones and must be consistent with the principles and the requirements of Article 3-decies of Directive 89/552/EEC, where it states that "promotion" for non linear services means, among other things, the financial contribution of these services to the production of European works and the percentage or relevance European works have in their offer. AGCOM Resolution n. 476/10/CONS sets up a technical committee and then AGCOM resolution n. 188/11/CONS (April 19, 2011) states that on demand services have to distribute and produce European works reserving 20% of the catalogue time or alternatively investing 5% of their revenue.

<sup>88</sup> Other obligations are set in the 2010-2012 service contract between RAI and the Ministry of Economic Development. Art. 11 of the contract requires RAI to develop a multimedia offer on the Internet.

rights). Limits on a freedom cannot be increased at will: their identification could be made according to the Constitution and with the guarantee of the ‘rule of law’.

In the case of freedom of expression, the Constitutional Court has repeatedly stressed that limitations cannot only be established by law and must be based on constitutional principles and precepts.

The explicit limit on freedom of expression provided by Article 21, par. 6 of the Constitution is decency (*buon costume*). Many other limits are acknowledged when balancing freedom of expression with other rights: honour, privacy, public and private secrets (from secret of state to secret of certain acts of the criminal proceedings; from secrets related to a public office to professional secrets). These are limits that apply to freedom of expression in general and to journalism in specie and may restrict the scope of freedom of information.

The Constitutional Court had always interpreted freedom of expression as one of the fundamental principles, emphasizing that this freedom is the ‘cornerstone’ of the ‘democratic order’<sup>89</sup>, it is a right that is ‘co-essential’ to freedom system guaranteed by the Constitution and ‘*among those that better characterise the current State, condition of the way of living and of the development of country’s life in its cultural, political and social characteristics*’.<sup>90</sup> In a subsequent decision the Court expressly affirmed that ‘*freedom of expression is among the fundamental rights expressed and protected by our Constitution, [though] also fundamental rights (as the most important, maybe, defined in Art. 21 Const.) should be reconciled with the demands of tolerable coexistence*’.<sup>91</sup> Moreover, in several judgements the Court addressed the relationship between the principle of freedom of expression and democracy, from different perspectives: for instance addressing the case of boycotting and propaganda, the Court stressed that propaganda is also included in freedom of expression, though such protection is to be ensured up to the limit beyond which the propaganda adversely affects the democratic process.<sup>92</sup> Furthermore in relation to press offences, ‘*the Court has repeatedly held that freedom of expression is the foundation of democracy and that the press, seen as an essential tool of such freedom, must be safeguarded against any threat or coercion, whether direct and indirect*’.<sup>93</sup>

The Court has also addressed the boundaries of such freedom, clarifying that the terminology used in Article 21 (‘everybody’ has the right to express ‘by any means’) should not be understood as implying that everyone should have the material availability of all possible means of distribution. Rather it should be interpreted more realistically, ‘*that law should ensure to everybody the legal possibility to use and access them, in the manner and within the limits posed by the specific characteristics of each medium or by the needs to ensure a harmonious co-existence of equal rights or the protection of constitutionally granted interests*’.<sup>94</sup>

---

<sup>89</sup> Constitutional Court, decision n. 84/69.

<sup>90</sup> Constitutional Court, decision n. 9/1965.

<sup>91</sup> Constitutional Court, decision n. 138/1985.

<sup>92</sup> Constitutional Court, decision n. 84/1969. However, freedom of expression does not include anything that is not pure thought, i.e. incitement to action, such as inciting and condoning. In these cases, the legislator has the power to prohibit those forms deemed incompatible with the constitutional order (see Constitutional court, decision n. 120/1957, and decision n. 100/1966).

<sup>93</sup> Constitutional Court, decision n. 172/1972.

<sup>94</sup> Constitutional Court, decision n. 105/1972.

During the following years the Constitutional Court was more and more involved in the application of the principle of freedom of expression in the broadcasting sector, where also the concept of pluralism was first defined as a consequence of freedom of information. In particular the Court acknowledged the connection between control over media and public opinion, asserting that economic and information power in the hands of private investors would allow these groups to *'exercise, from a position of prominence, influence over the collectivity and that would be incompatible with the rules of a democratic system'*.<sup>95</sup> Thus, the Court supported the achievement of pluralistic media outlets, providing that *'pluralism manifests itself as the concrete possibility for all citizens to choose among a multiplicity of information sources, a choice that would not be realistic if the public targeted by audiovisual communication were not in the condition to access, in the public as well as in the private sector programmes that guarantee the expression of heterogeneous tendencies.'*<sup>96</sup>

In this sense, the involvement of the Constitutional Court served as a watchdog and trigger of legislative intervention in the field, addressing in its rulings the most important issues of the definition of pluralism, the relationship between pluralism and competition law, and the role of public service broadcasting (Casarosa, 2010; Zaccaria, 1996: 5).<sup>97</sup> However, the interventions did not result in a fruitful dialogue with the legislative power, as on many occasions the principles enshrined in the judgements were only used as a formal reference for the legislation adopted (Padovani, 2010: 295).

Domestic courts and the Constitutional Court have also referred to ECHR case law as an interpretation tool for internal rules, in particular for setting the limits of freedom of expression and balancing freedom of expression with other liberties.

Italian courts assume that both the European Court of Human Rights and the Court of Justice of the European Union have set a common ground of protection to freedom of expression. The Constitutional Court has used Article 10 ECHR itself to define the content of Article 21 of the Constitution, underlying the strict relationship between freedom of expression and democracy and that Article 21 implies freedom to receive information.

The ECtHR also faced freedom of expression in the media while reasoning on Article 6 of the Convention and in particular when deciding cases related to the right to a fair trial (Art. 6 ECHR) regarding to the application of national laws providing immunity (*insindacabilità*) for the members of the Parliament.<sup>98</sup> The European Court stroke a balance between the two fundamental rights: the freedom of expression and the guarantee of a fair trial, in many cases condemning Italy for the excessive protection of parliamentary privileges (Zaccaria, 2009)<sup>99</sup>.

---

<sup>95</sup> Constitutional court, decision n. 826/1988.

<sup>96</sup> Ibid.

<sup>97</sup> See par. 4.

<sup>98</sup> *Cofferati v Italy*, decision 24/2/2009, c. 46967/07; *Ielo v Italy*, decision 6/12/2005, c. 23053/02; *De Iorio v Italy*, decision 4/6/2003, c. 73936/01; *Cordova v Italy*, decision 30/1/2003, c. 40877/98 and 45649/99.

<sup>99</sup> For the ongoing case on Europa 7, see par. 2.2.

It should be acknowledged that, before 2007, the effects of the judgements of the Court of Strasbourg<sup>100</sup> did not have express influence on national jurisprudence, on the one hand due to the fact that no rule was included in the national legislation concerning the possibility to open again the proceedings so as to implement directly ECtHR case law, and on the other hand due to the fact that the reference to the ECHR was indirect and implicit. In fact, the influence of the ECtHR case law has been for a long time limited because of the general approach of the Italian constitutional order to regulations and rulings coming from international bodies (Zaccaria, 2009). First of all, some scholars (Barile, 1974: 80) assumed that Article 21 Const. allowed a wider protection of freedom of expression than Article 10 ECHR, since Article 21 acknowledges just one main explicit limit (morality, i.e. *'buon costume'*) in comparison to Article 10(2) ECHR that provides a long list of possible limitations to this freedom. Secondly, according to the constitutional interpretation of the strength of the Italian Constitution and the hierarchical system of the sources of law, an international treaty, such as the ECHR, could not prevail over constitutional laws and principles (Zaccaria, 2009), since it is executed with an ordinary law of the Parliament.

The situation changed in 2007, when the Italian Constitutional Court in two seminal cases (decisions n. 348/2007 and 349/2007) acknowledged the position of the ECHR as an interposed law (*norma interposta*) in the Italian constitutional adjudication (a sort of parameter of constitutionality, although the Constitutional Court stressed the need for the ECHR to be consistent with the Constitution). This entails a wider possibility for judges to apply directly or interpret Italian law in the light of ECtHR case law and Article 10 ECHR case law *in specie*. It should be acknowledged that a few months before the Constitutional Court issued its judgements, the Supreme Court had already endorsed the proposed approach towards the use of ECHR rules in a specific case involving the alleged defamation of a public prosecutor.<sup>101</sup> In this case the Supreme Court not only affirmed the coordination between Article 21 Const. and Article 10 ECHR so as to protect the freedom to seek, impart, and receive information without interference from public authorities,<sup>102</sup> but it also acknowledged in relation to the press and media in general the role of privileged *fora* to disseminate information about public interest issues (such as fairness and impartiality of judiciary, in the specific case). The Court stated that *'the fundamental role played by press in the democratic debate does not allow to exclude that it could criticise the judiciary, being newspapers "watchdogs" of democracy and institutions, including judiciary, as already affirmed by ECtHR.'* The Court founded its judgement on the jurisprudence of the Strasbourg court, emphasising that the press is the most important means to guarantee appropriate control over the judges' activity.

---

<sup>100</sup> For cases involving journalists against Italy, see *Riolo v Italy* (c. 42211/07, decision 17/10/2008), *Perna v Italy* (c. 48898/99, decision 25/7/2001), *Ormanni v Italy* (c. 30278/04, decision 17/7/04).

<sup>101</sup> Corte Cassazione, Criminal sect., decision n. 25138/2007.

<sup>102</sup> In a few cases the Supreme Court mentioned the connection between the two provisions, but such a reference was only formal (usually replicating the same terminology). See Cass. civ. sez III, 1975, n. 2129 as a limit to privacy; Cass. Civile, Sez. III, 17 luglio 2007, n. 15887 *freedom of the news and critics*.



#### **4.2.2 Civil and criminal courts: balance of freedom of speech and expression with other constitutional freedoms**

As mentioned in par. 2, domestic courts play a crucial role in the balance between freedom of speech and expression and other constitutional freedoms and rights, determining the effective scope of freedom of expression in interpreting laws that define limits to freedom of expression.

Limits on freedom of expression are traditionally classified as explicitly provided by article 21 Const. itself as morality (*buon costume*) and those related to the existence of other constitutionally protected rights (implicit limits).

According to the Constitutional Court, substantial limitations to the freedom can be placed only by law and must be based on constitutional principles and precepts. So, morality<sup>103</sup> is not the only limit to freedom of expression, since there are other constitutional values and interests that must be balanced with it.

These limits are related both to private individuals or social groups and to the protection of interests of a public nature: from the so called ‘rights of personality’, such as rights of privacy and honour or intellectual property rights, to the interest of state security, the prestige of government and Public Administration, the administration of justice.

The protection of honour and reputation of the person, although not expressly provided for in the Constitution, is considered a limit to freedom of expression based on art. 2 of the Constitution, which is an article that is interpreted as including all the fundamental human rights and on article 3 Const. on equality.

So, among all the issues related to limits on freedom of expression and information in Italy, some of the most relevant are the provision of defamation as a criminal offence (Art. 595 of the Criminal Code) and the huge damages asked by the plaintiffs who claim to be defamed, the attempt to contain journalists’ publication of trial proceedings, and the uncertainty in the definition of the limits on freedom of expression as the rules on new media liability are still uncertain.

Defamation is a crime defined in Article 595 of the Criminal Code and aiming to punish with a fine or by imprisonment those who, by communicating with some people, offend the honor or dignity of a person that is not present. These are, therefore, the necessary elements to configure the crime in question: the insult to the honor or dignity, the communication with at least two people and, finally, the absence of the victim. Journalists, of course, can be heavily affected by the application of this article. Italian case law, with a long work of interpretation, elaborated in detail the limits of freedom of the press and, according to the jurisprudence of the Supreme Court,<sup>104</sup> set the conditions for defining when a journalist is shielded by freedom of the press. The Court summarised the previous case law and affirmed that when there is a public interest in the news, the narrated facts are true, and the statement of facts is correct and serene, the journalist must be exempted from responsibility.

---

<sup>103</sup> It is not easy to define what ‘morality’ is in the sense of art. 21 Cost. The prevailing interpretation links this notion to the criminal meaning of common decency and public decency and related primarily to the sphere of sexual morality: only such an interpretation would allow, in fact, to make a reasonable balance between conflicting interests, in accordance with the principles of legal certainty (Zaccaria-Valastro: 2010, 106). See also Constitutional Court 9/65 and 368/92) where morality is linked to social co-existence.

<sup>104</sup> Corte cass. Sez. I civ., decision n. 5259/1984.

Beyond the 'simple' freedom of the press, the courts defined a right to criticise as the freedom to make judgments and opinions and the right of satire. Scholars and jurisprudence use the same arguments adapting them to the peculiarities of the case. In particular, the requirement of truth and continence must be interpreted more broadly.

As underlined by journalists' associations and organisations (see: Article19.org) and according to the jurisprudence of the European Court of Human Rights, imprisonment for defamation is a disproportionate restriction on journalists' right to freedom of expression because it has a chilling effect on them.

As part of the implicit limitations to freedom of expression that originate from personality rights, freedom of expression is balanced with the right to privacy, defined as the interest of a person to keep private the sphere of personal and intimate life. As well as honour, this right has been based on article 2 of the Constitution. Most of the decisions of the Courts on the balance between freedom of the press and privacy rights have concentrated on the criterion of the reputation of the person involved.<sup>105</sup> The protection of personal rights may be subject to limits, but the courts stated that a well-known person has a right to privacy that can be claimed on the sphere of personal interests and activities that have nothing to do with the facts and the reasons for his popularity.<sup>106</sup>

Journalists, according to the Code of ethics of 1998 (see par. 2.3), are exempt to ask consent for processing of sensitive data: the reporter must comply with the limits of freedom of the press, in particular must deal with facts of public interest and publish essential information.

Another limit to freedom of expression that has some influence on a free flow of information in a democratic society and has been debated in Italy at least for the last two years, is the interest to the administration of justice. In this case, the need to ensure correct information to the public must be balanced with the need to ensure that criminal investigations are not undermined by leaking information. The Constitutional Court stated that freedom of expression meets the limits of pursuing justice and that the legislator must regulate the balance between justice and information.<sup>107</sup> The Legislator, once drafting the reform of the Code of Criminal Procedure, in 1989, took in consideration the need to protect the free flow of information and distinguished between the secret of investigation, that implies prohibition of disclosure of the acts of preliminary investigations made by the prosecutor and the possibility of publication of certain acts and procedural documents, modulated with different intensities depending on the various stages of criminal proceedings (Zaccaria-Valastro, 2010: 148).

One of the main policy issues of the last few years has been how to balance the limits to freedom of the press in relation to the interest to the administration of justice and to privacy in the case of publication of wiretapped private conversations.

It is a matter of fact that the use journalists make of wiretapping has increased in the last years. Most of them are acts relating to investigations in criminal procedures. The Data protection Authority has repeatedly called the journalists to

---

<sup>105</sup> Supreme Court n. 2129/1975.

<sup>106</sup> In recent years a harsh debate occurred among journalists and some politicians on the scope of the freedom of the press and the right of privacy. The world famous case is the one related to the publication of pictures and articles on Silvio Berlusconi's private and sexual life.

<sup>107</sup> Constitutional Court n. 25/1965; n. 18/1966; n. 18/1991.

publish an ‘essential’ information and avoid to indiscriminately make available to the public a vast amount of telephone conversations, notwithstanding the popularity of the person wiretapped.<sup>108</sup>

The issue of publication of criminal proceedings acts and of wiretapping has been one of the hot topics and priorities during the last two years: Berlusconi's government proposed a bill aiming to restrict the possibility of journalists' publication of tapped phone conversations and of the contents of the criminal trial proceedings. Nowadays the draft legislation is no longer a priority of the government, but, according to the bill on wiretapping, that has been presented twice in 2010 and 2011 to the Italian Parliament, the media would have not been able to publish any content of acts related to a penal process, until the pre-trial hearing. The bill would also allow any individuals who claimed to have been defamed by the content of a website, whatever editorial form it had, to demand the publication of a correction and reply within 48 hours, as in the traditional press. A heavy fine was set for the website manager who did not comply in time.

Many journalists and bloggers demonstrated against the bill on 5 October in Rome. As a protest against the so-called ‘blog-killer paragraph’ (*comma ammazzablog*), Wikipedia Italia on the same day blocked access to all 800,000 entries in its Italian language version. Anyone trying to access a Wikipedia article found this statement: ‘*The obligation to publish on our site corrections required by the law, without even the right to discuss and verify the claim, is an unacceptable restriction of the freedom and independence of Wikipedia*’ (Reporters Without Borders: <http://en.rsf.org>).

### 4.2.3 New media

Civil courts, on the other hand, intervened in media policy in a more practical perspective, addressing the problem of interpreting the existing regulatory framework with regard to the new media. One of the important issues is the possibility to extend the guarantees applicable to the press, and in particular to professional journalists, to blogs and similar services. In these cases, the courts were required to apply the principle of freedom of expression in practice, balancing the protection provided for the press (e.g. the prohibition of seizures of published materials) with the obligations that are descending from such an equivalence (e.g. liability for the information published, requirement of registration of blogs, etc.) (Nisticò, 2009).<sup>109</sup> Instead, in those cases involving the distinction between journalists and bloggers, the High Court had a proactive role, emphasising that press freedom should be also extended to those who are not professionals, as this right is related to anyone *uti civis*.<sup>110</sup>

New media regulation was also addressed by the courts in relation to the protection of content producers' property rights vis-à-vis Internet service providers (see par. 3.4.2). Although the current case-law focuses only on entertainment content,<sup>111</sup> it could affect the protection accorded to information content over new

---

<sup>108</sup> See also EctHR, 17 July 2003.

<sup>109</sup> Corte di Cassazione, sez. V penale, decision n. 35511/2010 and Cassazione Penale, Sez. III, decision n. 10535/2009, where the distinction between online newspaper and blog (or forum) still holds.

<sup>110</sup> Cassazione penale, decision n. 31392/2008.

<sup>111</sup> See the caselaw involving the biggest commercial broadcaster RTI/Mediaset versus several Internet service providers, such as IOL, Yahoo, Google.

media (Patterson, 2011; Castro and Renda, 2011). As a matter of fact the most recent judgement distinguishes between a passive and an active hosting provider,<sup>112</sup> imposing on the latter the obligation to take down all the videos breaching the copyright of the content producer. This would result in a wider monitoring obligation for Internet service providers and increasing limitation over any type of content uploaded by users.

#### 4.2.3.1 New media and liability

As blogging and social networking are becoming a critically important instrument of freedom of expression, one of the main issues raised by the literature and now by the case law is the reconstruction of the limits on freedom of expression on the web vis-à-vis other personal rights (i.e. honour and privacy) and the liability of the bloggers for illegal content posted in their blog. There is a big debate in Italy on the applicability of the rules of the printed press and of professional journalism to publications online and of the applicability of the rules that define the responsibility of the editor in chief of a printed periodical publication to a web administrator or blogger.

Law 62/2001 on ‘electronic editorial product’ extended the applicability of the provisions of Article 2 of Law 47/1948 (Press Act) to all the ‘editorial products’, including in this definition ‘electronic editorial products’.

There are websites that are perfectly comparable to a printed newspaper, as human resources and the financing structure that support them are almost equal to those in traditional newspapers except for the medium of distribution (the web instead of paper). In these circumstances websites and the printed press can be compared and legally treated in the same way.

Since most of the websites are run by a single private administrator, who usually does not have any economic interest and does not administrate the website professionally, it is not possible to derive a general applicability of the rules of the press to websites. As clearly stated by the *Corte di Cassazione* n. 10535/2008, the law must adapt to new technologies, but from this assumption it cannot be derived that new media (newsletters, blogs, forums, newsgroups, mailing lists, chat, messages instant, and so on) can be included in the definition of the ‘press’ regardless of the specific characteristics of each type. The *Corte di Cassazione* stated also that a web/blog administrator cannot be treated as the chief editor of a newspaper. Due to the differences between the traditional press and the Internet, a blogger does not have the same duties as the editor in chief of a newspaper, who has a legal obligation to control the contents of the publications before they are printed.

For the Italian Criminal Code (Art. 57) the editor in chief is liable if he omits to control the defamatory contents of his newspaper. The same obligation would not be reasonable for a web/blog administrator.

However, the blogger will be responsible of the contents posted if s/he intervenes in the selection and filtering of messages that the users enters. In the case, for instance, of a defamatory post, the blogger will be liable for complicity in defamation, not for failure to control, as s/he reads the messages and ‘approves’ the content.

---

<sup>112</sup> See RTI/Mediaset v. Yahoo, Tribunale di Milano, 2010.

The blogger, as well as the moderator or administrator of forums or chat, is responsible only when there is evidence that he collaborated with the author in the dissemination of criminal communications.<sup>113</sup>

Another issue is to define the nature of blogging. As already mentioned, the *Corte di Cassazione* - in a recent decision (n. 31392/2008) - has clearly indicated that the freedom of the press and the freedom to criticise descends directly and ‘without any mediation’ from Article 21 of the Constitution and are not therefore reserved to journalists or to those who provide information professionally, but to the individual ‘uti civis’. Anyone, then, and ‘by any means’ (also through the Internet), can report facts and express opinions and everyone - in the limits of the exercise of these rights and according to the respect of some limits (developed by case law) – may ‘produce’ opinions and critical opinions.

The development of electronic communications and of digital media requires an intervention of the judiciary in order to verify, case by case as specific rules are missing, if Article 21 and the rules on the printed press could be applicable also to electronic content (Casarosa, 2010 and *infra* par. 5). The judges sometimes have decided similar cases using different reasoning. That led journalists and common bloggers or website administrators to deal with a high uncertainty on their duties and rights.

The *Corte di Cassazione* now is trying to set some pillars: the rules on the printed press could provide advantages but at the same time they could impose ‘*excessive burdens on the managers or owners of the platforms, which should as a consequence register as a publisher and be subject to tort and civil liability in the role of editor-in-chief*’ (Casarosa, 2010). ‘*This could indirectly impair the fulfilment of freedom of expression, as it would restrain the provision of online forums by making overly burdensome for an individual to comply with the standards imposed on the press*’ (Casarosa, 2010).

---

<sup>113</sup> See more, par. 4.2 and the debate on the so-called ‘blog-killer paragraph’.

## 5. The journalistic profession

### 5.1 Freedom of expression and the influence of economic and political powers

As mentioned above, freedom of the press is protected by the Italian Constitution. The text of Article 21 Const. affirms that the press cannot be submitted to authorisation and censorship and that the seizure of the press can be possible just on the ground of an act with the force of law and by a decision of a judge. This particular protection assigned to the press can be easily referred to as a reaction to the lack of freedom that the Italian press experienced during Fascism: the Constitution wanted to reaffirm first that freedom of the press was a 'liberal' right safeguarded by avoiding public powers to interfere with it (Gardini, 2009; Zaccaria and Valastro, 2010; Caretti, 2009; Casarosa, 2010). One of the first laws produced by the Constitutional Legislative Assembly was, accordingly, the law on the press, which is the Italian milestone of protection and regulation of the printed media. Nowadays, given Fascism is no longer a threat, the freedom of the press (regardless of the means of diffusion) is measured in relationship to the influence of economic and political powers. The Constitution mentions at Article 21, par. 5 that the legislator can set rules for the publicity of the means of financing the periodical press. This envisaged a regulatory approach allowing the transparency of the proprietary assets for the protection/awareness of citizens/readers (Casarosa, 2010). Being aware of the proprietary assets of a media company, in fact, is a way to alert readers as to possible economic influences or as to the political orientation of the media undertaking and the scope of the freedom of the journalists.

The Italian information market is, nowadays, characterised by a publishing industry which is not 'pure', in the sense that the major investors in the media industry are mostly entrepreneurs in other production fields and even entrepreneurs and members of a political party or of the government. As reported in the charts of AGCOM 2011 annual report to the Italian Parliament (AGCOM 2011c: 136), according to their revenues, the main five press publishers in Italy are RCS Mediagroup (various investors, from entrepreneurs active in different sectors to many banking groups), Gruppo L'Espresso (CIR-De Benedetti), Arnoldo Mondadori (Fininvest-Berlusconi), Il Sole 24 Ore (Confindustria) and Caltagirone editore (Francesco Gaetano Caltagirone - construction industry). The main broadcasting operators, according with their annual revenues (AGCOM, 2011c: 121), are Mediaset (Fininvest), Sky Italia (News Corp.) and RAI, (the public service broadcaster).

This means that the relationship between economic and political powers and information and the media can be sometimes very strict<sup>114</sup>: in this environment the independence of the journalists can be jeopardised. There are two main consequences of this situation. The first is the transfer of the political debate from a politically weak

---

<sup>114</sup> That is what was stated by the Report of the Parliamentary Assembly of the Council of Europe in 2010, Respect for media freedom (McIntosh rapporteur): *In Italy, Head of the Government Silvio Berlusconi, whose business empire includes several of the most popular television channels and a number of news publications, has used that position to bolster his political image in ways which have been sharply criticised in Italy and abroad. Critics say his excessive media influence distorts the way his government's difficulties and personal scandals affecting him are reported to Italians through the media. ... The OSCE Representative on Freedom of the Media has called on Mr Berlusconi to drop the civil libel actions. He said the lawsuits were an abuse of media freedom because the persistent posing of questions is an important part of the media's 'corrective function'.*

Parliament to the media and then between different part of the media: to counterbalance the political power of the Head of the Government as owner of a large part of the media players in Italy, some newspapers are acting now effectively as kinds of political parties.<sup>115</sup> The second consequence is the potential lack of independence of the journalists, especially the ones of the public service broadcasting, since the government indirectly influences the governance of RAI and constraints the pluralistic editorial line of the public broadcaster.<sup>116</sup>

Another threat for freedom of information in Italy about which journalist themselves complain is the pressure from criminal associations. This issue was stressed also by the Parliamentary Assembly of the Council of Europe in the report of 2010 Respect for media freedom (McIntosh rapporteur).<sup>117</sup> The FNSI and the *Ordine dei giornalisti*, in association with *Libera Informazione*, *Unione Nazionale Cronisti Italiani* and *Articolo21* Association, set in 2008 an observatory for freedom of expression, named '*Ossigeno per l'informazione*' that monitors and documents 'all the Italian cases of violent or abusive limitation of freedom of expression against journalists, writers, intellectuals, politicians, trade unionists, public officials and other citizens, with special attention to information and to what happens in journalism in the areas where strong and deeply rooted is the influence of organised crime'.<sup>118</sup>

---

<sup>115</sup> In the press market, *La Repubblica*, for instance, is a very popular newspaper of the CIR-De Benedetti group which has been conducting for years a very strict watchdogging of political and personal activities of the Italian Head of the Government. De Benedetti and Berlusconi have been struggling for years before the courts for the property of the Mondadori company. On the other hand Berlusconi's family owns broadcasting undertakings and newspapers that are heavily campaigning in favour of the political party of the Head of the Government: above all Rete 4 and the newspaper *Il Giornale*, which in many cases was accused of writing and publishing defamatory articles as a tool for ruining the reputation of the political opponents or of just critics of Berlusconi.

<sup>116</sup> The unsolved issue of the conflict of interest in Italy and so the important role of politics in the scheduling of the PSB programs are the reasons of the steady trickle of journalists from RAI. The lack of competition in the broadcasting market (a journalist who was fired from PBS has few job alternatives, since the broadcasting market is an oligopoly and the main 'competitor' operator is owned by the Head of the Government) is then the spark for new initiatives. For instance, a famous Italian PSB journalist, Michele Santoro, who has been harshly criticising in his programs Berlusconi for years, is not anymore a RAI journalist and is trying a new "broadcasting" experience, completely alternative. On the same day and at the same hour of his usual show in RAI, he broadcasts an information program using the networks of some local operators and streaming it through the web. On Thursday, 3 november 2011, the first experience of this multiplatform broadcasting got an audience of 3,000,000 people. The initiative and the show was nominated '*Serviziopubblico*', to stress the mission it should accomplish, namely to cover the lack of pluralistic information of RAI. It is funded by advertising and by small donations by the users.

<sup>117</sup> Murder threats and physical assaults are commonly being used by criminal elements including the Mafia, to force Italian journalists to stay silent about organised crime. Writer and journalist Roberto Saviano, the author of the book entitled *Gomorra*, has been forced to live under police protection since October 2006 after receiving threats because of his investigations into the Neapolitan Mafia, the Camorra. RWB estimates that 10 other journalists have also had to seek police protection because of personal threats. On 2 September 2007 two men were discovered trying to place a home-made bomb under the car of Lirio Abbate, a correspondent in Palermo for the national news agency ANSA. This followed the publication of his book *Complici* [The Accomplices], dealing with connivance between the political world and the Mafia.

<sup>118</sup> See the Report 2010, 'Protecting threatened journalists in Italy: challenges and suggestions' available at: [www.ossigenoinformazione.it](http://www.ossigenoinformazione.it).

## 5.2 Threats for independent information: co- and self regulation for journalists as a tool for ethics

In the above described framework, the journalists' professional credibility and independence are challenged. The journalists' associations (such as the FNSI - *Federazione Nazionale della Stampa*, for instance, or the USIGRai - *Unione sindacale giornalisti Rai* for public service broadcasting) try to play an important role in supporting freedom of the press and assessing standards for qualified and reliable journalism.<sup>119</sup>

Co- and self-regulatory mechanisms are used in enforcing existing norms and rules regarding journalistic standards and practices (Casarosa, 2010: 144). However, they are not so effective since in some cases political and economic pressures are stronger and prevail over controls and sanctions.

The *Ordine dei Giornalisti* had to undertake frequent controls on the respect of ethics of the profession to re-gain dignity and prestige to the professional category and to assess and foster freedom of expression vis-à-vis political powers. Some of the most interesting and famous recent cases on journalist ethics that the *Consiglio dell'Ordine* has decided in the last years are the ones related to the strict connection between the press and political powers.

To illustrate, the cases of the director of *Il Giornale*, Vittorio Feltri, in 2010, the case of Claudio Brachino, journalist of Canale 5, and the case of Renato Farina (*Libero Newspaper*) in 2006 are probably three of the most interesting.

In the first case Vittorio Feltri was sanctioned by the *Consiglio nazionale dell'Ordine dei giornalisti* and was suspended for three months from the professional register for the so-called 'Boffo affair'. Dino Boffo was the chief editor of the newspaper 'Avvenire', the journal of the Italian Catholics Bishops (CEI - *Conferenza episcopale italiana*). In one of his editorials he criticised Silvio Berlusconi because of some excessive behaviour of the Head of the Government. In return, Vittorio Feltri wrote and published an article 'accusing' Boffo of being homosexual. The *Ordine dei Giornalisti* of Lombardia sanctioned Feltri because he falsely certified, without due diligence, the presence of secret services information in the case file relating to criminal proceedings for harassment against Dino Boffo, by publishing a reconstruction of the story that turned out - for Feltri's own admission - not to correspond to the truth of the case.<sup>120</sup>

Another case is that of Claudio Brachino (Mediaset Canale 5 TV journalist, editor in chief of Videonews), who, just after a judgement that condemned Mondadori (one of Silvio Berlusconi's editorial enterprises) to pay a very large fine, broadcast a video where the judge who pronounced the ruling was spied during a normal walk: the normal behaviour of the judge was commented on in an unusual gossiping and sarcastic way in order to discredit his reputation and de-legitimise the ruling that the judge decided. The *Ordine* sanctioned Brachino of two months of suspension from the register.

---

<sup>119</sup> USIGRai journalists are currently (November 2011) campaigning for a better use of the public services' human and economic resources ('Riprendiamoci la RAI!' campaign). The journalists are complaining with the board of administration that, in their opinion, is badly governing the company, substantially dismissing and firing many of the most successful journalists and showmen who, besides their political opinions, were anyhow a resource for the company itself, firstly an economic resource.

<sup>120</sup> <http://www.odg.mi.it/node/32282>.



The third case is the one of Renato Farina, a journalist of the newspaper *Libero* (owned by Gruppo Angelucci) and now member of the Parliament for the Popolo della Libertà (the party of Berlusconi) who was expelled from the *Ordine* because he had a strict relationship with some members of the SISMI (former Italian military intelligence). In particular, in June 2006 Renato Farina was asked to write an article against Romano Prodi, to accuse him of having supported the practice of extraordinary rendition when he was president of the European Commission. On 2 October 2006, the *Ordine dei Giornalisti* of Lombardia suspended him for one year on charges of publishing false information and receiving for money for it from the secret services.<sup>121</sup> In 2007 he was expelled. The Supreme Court annulled the expulsion, since Farina had already resigned before the sanction was decided.

### 5.3 New media journalism

Mostly related to traditional media undertakings and professional journalism, the diffusion of Internet access and the use of blogs and social media are changing the economics and the nature of journalism in Italy.

The easy and cheap possibility of access to the Internet and the availability of blogging and social networking applications have increasingly favoured the circulation of user generated content on the web. So the web has undoubtedly contributed to a more effective fulfilment of Article 21 of the Constitution where it says that “all” have freedom of speech and with ‘any’ diffusion device. The referendum campaign in 2011 is probably one of the clearest examples of how Web 2.0 affected the participation to the vote and the final result of the democratic consultation that highly benefited from these new forms of information diffusion and sharing. Since 1995 no referendum had obtained the requisite quorum for its validity: the participation to the vote of the 50% + 1 of the electorate.

Besides the problems of digital literacy referred to below in this report, from a legal point of view the great expansion of the use of the web among Italians, has caused some new problems related to liability (see above par. 4.3.3.1), and the applicability of the rules on the printed press and on professional journalism to the new digital environment.

### 5.4 New media and journalism

New media have challenged the journalistic profession since the web is now a competing source of information. The profession is changing dramatically to cope with technology transformations. New models of journalism are forming, like data journalism and citizen journalism (Rea, 2011; Carotenuto, 2011; Natale, 2011; Giua, 2011).

The Italian editorial industry has not yet realised the potential of the new media and has not yet developed structured strategies for the use of the new communication tools (Rea: interview). One of the main problems is how to protect the value of content production in a digital environment and therefore the protection of copyright (see AGCM case FIEG vs Google). Publishers should invest more in the

---

<sup>121</sup> The third section of the Civil Cassation annulled the radiation, since Farina had already resigned from the Order when the Order of Journalists himself decided the radiation.

online information market and once they recognise the important value of online information in the supply chain of the editorial industry, they should better reward online journalists (Macrì: workshop). The digitalisation of the information market in fact mostly worsened the working conditions of young and freelance journalists. In Germany, a freelance journalist receives an average of €147 per month (data from the association of journalists in Germany) and €27 per day for a report, in United Kingdom about £170 a piece, in Switzerland for a normal piece of reporting about €78. In Italy there are newspapers that remunerate their staff from €4.30 gross per piece to €25.00 for two months of work (Fioretti: it.ejo.ch). This painful situation led the Ordine<sup>122</sup> to call for better working conditions for freelance journalists and to promote a self regulatory document (so called *Carta di Firenze*, 2011) to encourage better treatment and to monitor journalists' working conditions.

---

<sup>122</sup> See <http://precariato.odg.it>.

## 6. Media literacy and transparency requirements

Though media literacy is a polisemic word that can address different issues when used by different subjects (Potter, 2010), for the purpose of this study media literacy is to be interpreted as the *'the ability to access, analyze, evaluate and create messages across a variety of contexts'* (Christ & Potter, 1998: 7). In this sense, media literacy has been singled out by the European institutions as a shorthand way of pointing to the array of policies and initiatives designed to bridge the gap between what people know about the changing media environment and what they need to know in order to meet certain policy goals (Livingstone and Van der Graaf, 2010; McGonagle, 2011).

In order to evaluate whether and how media literacy interventions are (and should be) included in media education policy, a preliminary description of the level of media consumption at national level is useful. Then, a detailed description of the current framework for media literacy will be presented.

The Italian level of media consumption is very high, both from the point of view of the diffusion of media as household use, and from the point of view of increased use of information gathering. The most recent statistics<sup>123</sup> on this point show that television is still the most important source of information (97,4%) for citizens, though the internal distinction among free, pay-per-view, satellite, web and mobile television shows an increase in the consumption of web-TV which reaches almost one fifth of the population. An interesting point is related to the choices of younger people in terms of information sources. Although digital and analogue television is still viewed on a regular basis, much advantage is taken of the availability of alternative sources: 40,7% use also web television, 39,6% satellite television, 2,8% iptv, and 1,7% also mobile television.

The main result of the recent research shows that there has been a shift from a digital divide to a so-called press divide, i.e. the distinction between those who include among the sources of information press publications and those who do not yet. On the one hand, 54,4% of the Italian population still obtains information through the press, with a reduction of 6,3%; on the other hand, 45,6% of the population does not use any paper format to inform themselves, taking into account the proportion of younger people in this case increases the final percentage.

An additional result to be emphasised is the type of specific information sources selected by the audience. The importance of news programmes is indisputable (80,9%), but looking at younger people the percentage lowers to 69,2% in clear competition with search engines and social networking websites (65,7% and 61,5% respectively). In general, in the second position are the radio news programmes, then the press and finally search engines and online news provision systems.

One final element that is important is the perception of citizens with regards to journalism activity, in particular with regard to journalists which are acknowledged as having a high level of competence in their activity, but are nevertheless not sufficiently free and independent, thus not trustworthy for almost half of the population. In a scale between 1 (minimum) to 10 (maximum) the least trustworthy medium is television (5,74), followed by the press (5,95). A sufficient level is instead achieved by radio (6,28) and the Internet (6,55) which is perceived as free and impartial.

---

<sup>123</sup> Censis, 9th Report on Media, 2010.

What emerges from the previous description is the fact that in Italy the media are an important and influencing source of information, but most people do not have a positive opinion over the level of freedom and independence of the media from political and economic power. Therefore, media literacy interventions within the media policy could improve the level of awareness of citizens, providing tools and instruments to critically evaluate each of the features of the current media market, without basing only on general perceptions.

The main reference point for the inclusion of a media literacy objective in the national media policy should be the Education Ministry, which can address such objectives within the school organisation programmes from the lowest to the highest level of the education system. On this point, however, the current approach does not explicitly address media literacy, though it should be said that indirectly general education curricula address some of the media literacy interventions. The shortcoming of the current regulatory framework is the fact that the relationship between media and education is only perceived under the lens of instrumental use. In other words, the media is the tool to achieve the objectives of other school subjects, thus lacking awareness of the fact that media can be analysed independently and not only as carrier of content. Moreover, there is a strong preference for new media and technologies, which are obviously the most relevant source of information of younger people but they cannot completely substitute for at least the educational programming role of traditional media. On the one hand, traditional media is still an important source of obtaining information, as the previous statistics showed; on the other hand, the understanding of the whole media system can only be profitable, provided that there is an understanding of the level of neutrality of each of its components.

The current regulatory framework, moreover, leaves wide autonomy to schools regarding their education programmes paving the way for the development of the media studies at a lower or higher level of education. However, this potentiality remains discretionary as it depends on the will and interests of schools and teachers, without a coherent framework at the national level.

If, on the one hand, school education does not overcome the problems of fragmentation and discontinuity in media literacy measures, on the other hand, some positive effects of coordination and coherence are to be attributed to civil society and research centres. In practice, there are many associations that devote their activity to providing educational programmes both to young people and to teachers and educators, usually in collaboration with schools, as in the cases of *Teleduchiamoci*<sup>124</sup> or *Nuovi occhi per la TV*,<sup>125</sup> or developing critical analysis to be made available to the public, as in the case of the research carried out by the *Osservatorio Mediamonitor Politica*.<sup>126</sup>

It should be noted that, instead, media literacy is clearly expressed as one of the principles that should shape the activity of the public service broadcaster. Namely, the most recent contract assigning RAI the broadcasting service (2010-2012)<sup>127</sup> provides that *'The licensee shall make a comprehensive offer of quality, respectful of*

---

<sup>124</sup> <http://istruzione.umbria.it/id.asp?id=877>.

<sup>125</sup> [http://www.ilcorpodelledonne.net/?page\\_id=6692](http://www.ilcorpodelledonne.net/?page_id=6692).

<sup>126</sup> <http://www.mediamonitor-politica.it/>.

<sup>127</sup> See that the broadcasting service is assigned to RAI by means of a renewable national contract lasting three years between the company and the Department of Communication, according to the guidelines adopted by the Department and the Italian Communication Authority (Casarosa, 2010).

*national identity and common values and ideals in the country and the European Union, (...). To achieve these objectives, Rai, in accordance with the provisions of Art. 45 TUSMAR, is required to orientate their offer, among others, to the following principles and general criteria: (...)*

*e) to ensure a balanced and varied range of programmes that can provide information and learning, to develop the critical sense of national community and civil ethics, maintain a listening level suitable for the discharge of its functions and to respond to the democratic, social and cultural needs of society as a whole;*

*f) to stimulate interest in culture and creativity, education and mental attitude to learning and assessment and develop the critical sense of the viewers.'*

The monitoring activity regarding the achievement of this objective is delegated to the Communication Authority, which annually provides the results of its evaluation. However, the analysis provided does not address specifically each single objective; instead it includes them in a general evaluation of the overall quality of the programmes available.<sup>128</sup>

The objective of media literacy could be also addressed from a different perspective, namely the level of transparency required by general media regulation and its availability to the public due to the monitoring and publication activity of the Communication Authority. Although this obligation is not interpreted within the realm of media literacy initiatives, it does have a positive effect on its underlying objective, as it could enable citizens to make informed choices about the media services they choose and the weight to ascribe to the information they receive given the ownership and financing structure of the media companies providing the information. All the companies that are included in the Registro degli Operatori di comunicazione (Registry for Communication providers), which include press industries, media companies and also advertising companies, are subject to a transparency requirement, namely they are obliged to reveal their annual balance in which advertising revenues and the financing bodies or relevant shareholders should be disclosed (Casarosa, 2010). Here again the monitoring function is on the national communication authority which not only is in charge of publishing annually a detailed analysis of the media market, freely available online, but it also has the power to intervene where the legal caps defined are breached, for instance in case of mergers or a concentration process.<sup>129</sup>

---

<sup>128</sup> See that the analysis provided by the Communication Authority defines a set of criteria to distinguish among the type of broadcasting programmes available, however, among them a specific category under media literacy (or similar media studies) is not included, possibly embedding such category in the information investigation programmes.

<sup>129</sup> See the more detailed analysis above, par. 3.

## 7. Conclusion

The communication and information industry in Italy has been steadily accelerating the convergence process that, according to the forecasts of AGCOM (AGCOM report 2011) will help determining a new competitive equilibrium and a new structure of the media and communication environment. The increased diffusion and economic power of Internet-based companies like Yahoo, Google, YouTube, eBay, Skype, Facebook and their use by consumers and citizens are shaping a new environment where digital information is expanding. Users benefit from new tools of communication and of the availability of information through different means, consuming a variety of services and changing habits. Young people and “digital natives” are used to new technologies, take them for granted and are gradually substituting old with new media services. The use of new media is becoming an instrument of the promotion of diversity and of empowerment for citizens: one example is the importance social networks had during the last referendum campaign in 2011. ‘As has occurred in several other national contexts, the large diffusion of the Internet (especially of Web 2.0) has created unprecedented room for new media and new contents, triggering a production and circulation of information that substantively expands and enhances the public sphere, revitalises democracy and citizenship, and may eventually represent a significant alternative to information provided by the traditional news media’ (OSF, 2011:90).

Despite the technological evolution, some issues may be regarded as critical and must be resolved in order to define better policy and regulation that encourage independence in media in Italy.

The media market in Italy is still characterised by the major importance of the broadcasting sector that is nowadays the fundamental way Italians receive information and news. Italy does not have a tradition of strong independence of the news media (OSF, 2011: 90): as commonly acknowledged, the press industry has reached a sort of pluralistic equilibrium,<sup>130</sup> but so far the broadcasting market is still blocked by legislation that seems to reward the incumbent operators (see *Centro Europa 7* case and the beauty contest for digital terrestrial broadcasting) that are also related to important political actors.

A policy to encourage media freedom and independence in Italy could probably provide:

- a) a stricter legislation on conflict of interest (and maybe on ownership for mass media undertakings) is needed both for avoiding market competition bias and to assure an effective *par condicio* in the electoral campaign and in the political debate. In this regard civil society and scholars are calling for a broad European initiative;
- b) a new legislation on the appointment of the Authority for Communications to foster its independence from political and economic powers;
- c) a new legislation on the appointment of the Board of administration of RAI, in order, as well as d), to increase the independence of the governance of PBS from politics.

On the side of new technologies:

---

<sup>130</sup> Already in the the message to the Italian Parliament on pluralism and impartiality of information, Carlo Azeglio Ciampi, president of the Italian Republic, 23 luglio 2002 assumed that printed press was a pluralistic market.

a1) a clear set of rules to define the rights and the liability of online users that could allow a safe and responsible use of the web and a responsible management of contents online;

b1) linked to point a1), Italy needs more defined rules on the definition of the journalistic profession vis-à-vis the common use of the web as a means for the diffusion of user generated content. This clarification is needed both for liability and rights issues and for economic purposes: *'Professional journalism is confronting a significant challenge from the web. The social media are going to be the main channels of information for ever-larger audiences, bypassing the mediation of traditional journalism. There will of course be concomitant new opportunities for the practice of online journalism. But the passage to a new world of news-making is characterized by hesitancy and reluctance to let go of traditional print- and analogue-centered thinking; this perpetuates the failure to monetize online news and thereby offset revenue decline in the print sector'* (OSF, 2011: 91);

c1) what is also needed is a clear set of rules to define the liability of Internet service providers. This issue may require Europe to define a common policy.

## 8. References

- Aa.Vv. (2003), *Diritti, nuove tecnologie, trasformazioni sociali, Scritti in memoria di Paolo Barile* (Padova: Cedam)
- AGCM (2007), 'IC35 – Editoria quotidiana, periodica e multimediale, (prima parte: le sovvenzioni pubbliche e i limiti alla concentrazione per i quotidiani)', available at: <http://www.agcm.it/component/domino/download/C12564CE0049D161/EB59DE14947F6753C125731C00581B99.html%3Fa%3DIC35%2Bprima%2Bparte.pdf> (date accessed 20 December 2011)
- AGCOM (2010), 'Indagine conoscitiva - Il diritto d'autore sulle reti di comunicazione elettronica', 12 February 2010, available at: <http://www.agcom.it/default.aspx?DocID=3790> (date accessed 20 December 2011)
- AGCOM (2011a), 'Libro Bianco sui contenuti', 21 January 2011, available at: <http://www.agcom.it/default.aspx?DocID=5558> (date accessed 20 December 2011)
- AGCOM (2011b), 'Delibera n. 398 /11/CONS, Consultazione pubblica sullo schema di regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica', available at: [www.agcom.it/default.aspx?DocID=6693](http://www.agcom.it/default.aspx?DocID=6693) (date accessed 20 December 2011)
- AGCOM (2011c), Relazione annuale 2011 sull'attività svolta e sui programmi di lavoro, available at: <http://www.agcom.it/Default.aspx?message=viewrelazioneannuale&idRelazione=27> (date accessed 1 January 2012)
- Ainis, M. (ed.) (2005), *Informazione, potere, libertà* (Torino: Giappichelli)
- Atelli, A. (2002), 'Riforma federalista e "ordinamento della comunicazione" come materia devoluta alla potestà concorrente: quid iuris?', available at: [www.astrid-online.it](http://www.astrid-online.it) (date accessed 20 December 2011)
- Barile, P. (1974), voce 'Libertà di manifestazione del pensiero', in *Enc. dir.*, vol. XXIV (Giuffrè: Milano), p. 437
- Barzanti, F. (2007), 'Il diritto di accesso ai contenuti nel mercato radiotelevisivo digitale e multiplatforma', *Dir. Informatica*, 01, 37
- Broggi, E. (2008), 'Alcune note sui recenti sviluppi della disciplina della televisione digitale terrestre fra diritto interno e comunitario', in A. Pace, R. Zaccaria, G. De Minico (eds), *Mezzi di comunicazione e riservatezza: ordinamento comunitario e ordinamento interno* (Napoli: Jovene), p. 111
- Bruno, F. and G. Nava (2006), *Il nuovo ordinamento delle comunicazioni. Radiotelevisione, comunicazioni elettroniche, editoria* (Milano: Giuffrè)
- Cafaggi, F. and P. Iamiceli (2006), 'Le dimensioni costituzionali della regolazione privata' in N. Lipari (ed.), *Giurisprudenza costituzionale e fonti del diritto* (Napoli: Edizioni scientifiche italiane), p. 315
- Capotosti, P.A. (1993), 'L'emittenza radiotelevisiva privata tra concessione e autorizzazione', *Giur. cost.*, p. 2118
- Caretti, P. (2009), *Diritto dell'informazione e della comunicazione: stampa, radiotelevisione, telecomunicazioni, teatro e cinema* (Bologna, Il Mulino)



- Carloni, E. (2002), 'L'ordinamento della comunicazione dopo la (ed alla luce della) riforma del Titolo V della Parte II della Costituzione', *Dir. pubbl.*, p. 1001
- Carloni, E. (2005), 'L'ordinamento della comunicazione alla luce della legislazione regionale (2011-2005)', *Le Regioni*, 5, 798
- Casarosa, F. (2002), 'Innovazione e continuità nei codici deontologici e/o di buona condotta ex art. 20 del dlgs. 467/01: il caso del marketing diretto', *Diritto dell'informazione e dell'informatica*, 4-5, 849
- Casarosa, F. (2010), 'The case of Italy', in *Background information report - Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe*, Mediadem project
- Castro R. and A. Renda (2011), 'Pluralism and copyright', Presentation at Mediadem conference 'Pluralism and competition in the regulation of new media' Florence 10 November 2011
- Catticalà, A. (2011), 'Google in Italy ...', *Journal of European Competition Law & Practice*, 4, 293
- Christ, W. G., and W. J. Potter (1998) 'Special issue on media literacy', *Journal of Communication*
- Costanzo P., G. De Minico and R. Zaccaria R. (eds) (2006), *I "tre codici" della società dell'informazione: amministrazione digitale, comunicazioni elettroniche e contenuti audiovisivi* (Torino: Giappichelli)
- Costanzo, P. (1993), voce 'Informazione nel diritto costituzionale', in *Dig. disc. pubbl.*, vol. VIII (Utet: Torino), p. 330
- Costanzo, P. (2004), *L'informazione* (Roma-Bari: Laterza)
- CPIV (2010), 'Regolamento recante le disposizioni di attuazione in materia di comunicazione politica, messaggi autogestiti e informazione della concessionaria pubblica nonché tribune elettorali per le elezioni regionali, comunali e provinciali fissate per i giorni 28-29 marzo 2010', available at: <http://www.parlamento.it/documenti/repository/commissioni/bicamerale/vigilanzaRAI/XVI/Regolamento%20Elezioni%20Regionali%202010.pdf> (date accessed 20 December 2011)
- D'Arma, A. (2010), 'Shaping tomorrow's television: Policies on digital television in Italy 1996-2006', in M. Ardizzoni and C. Ferrari (eds), *Beyond monopoly – Globalization and contemporary italian media* (Rowman& Littlefield)
- De Strel, A. (2003), 'The new concept of a significant market power in electronic communications: the hybridization of the sectoral regulation by competition law', *European Competition Law Review*, 535
- Dell'Anna Misurale, F. (1993), 'Per un codice deontologico nazionale dei giornalisti', *Contr.impr.*, 391
- Di Felicianantonio, L. (2005), 'Competizione tra piattaforme nel mercato televisivo digitale', *Mercato Concorrenza Regole*, 3, 551
- Di Mauro, L. and G. Li (2009), 'Regulating cross-media ownership: A comparative study between Australia and Italy', *Media and Arts Law Review*, 14, 1

- Donati, F. (2003), 'Pluralismo informativo', in G. Morbidelli and F. Donati (eds), *Comunicazioni: verso il diritto della convergenza?* (Torino: Giappichelli), p. 71
- Doyle, G. (2002), *Media ownership* (London: Sage)
- Esposito, C. (1954), 'Riforma dell'Amministrazione e diritti costituzionali dei cittadini', in C. Esposito, *La Costituzione italiana. Saggi* (Cedam: Padova)
- European Commission for Democracy through Law (Venice Commission) (2005), 'Opinion on the compatibility of the laws "Gasparri" and "Frattoni" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media', opinion 309/2004, Strasbourg, 13 June 2005, CDL-AD(2005)017, [www.venice.coe.int](http://www.venice.coe.int) (last visited 20 December 2011)
- European Federation of Journalists (EFJ) (2003), 'Crisis in Italian media: how poor politics and flawed legislation put journalism under pressure', Report of the IFJ/ EFJ mission to Italy, 6–8 November 2003, available at: <http://www.ifj-europe.org/pdfs/Italy%20Mission%20Final.pdf> (date accessed 20 December 2011)
- Federal Trade Commission (2003), *Media mergers and the ideological content of programming*, Bureau of Economics
- Frosini, T.E. (2010), 'Il diritto costituzionale di accesso a Internet', in M. Pietrangelo (ed), *Il diritto di accesso ad Internet. Atti della tavola rotonda svolta nell'ambito dell'IGF Italia 2010*, (Roma, 30 novembre 2010), ESI, p. 23
- Gardini, G. (2009), *Le regole dell'informazione: principi giuridici, strumenti, casi*, (Paravia: Roma)
- Ghionni, V. (2003), 'Le imprese che operano nel settore dell'informazione: tra normativa di settore e normativa di diritto comune', *Diritto ed economia dei mezzi di comunicazione*, 1, 23
- Ghiribelli, A. (2009), 'La Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi dopo il "caso Villari" alla luce della sentenza della Corte Costituzionale n. 69/2009', available at: [http://www.forumcostituzionale.it/site/images/stories/pdf/documenti\\_forum/paper/0125\\_ghiribelli.pdf](http://www.forumcostituzionale.it/site/images/stories/pdf/documenti_forum/paper/0125_ghiribelli.pdf) (date accessed 20 December 2011).
- Giannaccari, A. (2003), 'Il caso Stream-Telepiù', *Mercato Concorrenza e Regole*, 3, 557
- Giua, C. and M. Tedeschini Lalli (2010), 'Nuovi giornalismo: il tempo dei cervelli. Vecchie o nuove, separate o integrate, le redazioni devono sviluppare una cultura digitale', *Problemi dell'informazione*, 4, 317
- Grandinetti, O. (2008), 'Disciplina televisiva italiana e diritto europeo: gli sviluppi recenti', *Giorn. dir. Amm.*, 7, 808
- Grandinetti, O. (2011) 'Forme e tecniche di tutela del pluralismo informativo, con particolare riferimento alla televisione (una prima ricognizione del tema)', *Scritti in onore di Alessandro Pace* (Napoli: Jovene), forthcoming
- Hanretty, C. (2007), 'The gospel truths of Italian media bias', *Comunicazione politica*, 1, 31
- Hanretty, C. (2010), 'The Italian media between market and politics', in A. Mammone and G.A. Veltri (eds), *Italy today: The sick man of Europe* (Routledge, London)

- Hibberd, M. (2006) 'Silvio Berlusconi and the media in Italy: Conflicts of interest', Paper presented at the RIPE public service broadcasting conference, available at: <http://www.yle.fi/ripe/Papers/Hibberd.pdf> (date accessed 20 December 2011)
- Lanchester, F., R. Zaccaria (eds) (2011), 'La "par condicio" in Italia. Un bilancio dopo le votazioni amministrative e referendarie', available at: <http://www.federalismi.it/ApplMostraDoc.cfm?Artid=19099> (date accessed 20 December 2011)
- Lipari, N. (1978), 'Libertà di informare o diritto ad essere informati?', *Dir. radiodiff. e telecom*, 4
- Livingstone, S., and S. van der Graaf (2010), 'Media literacy', in *International Encyclopedia of Communication* (Oxford: Blackwell).
- Mastroianni, R. (2011), 'Freedom of expression in ECJ and ECHR case law', Presentation at Mediadem conference 'Pluralism and competition in the regulation of new media' Florence 10 November 2011
- McGonagle, T. (2011), 'Media literacy: No longer the shrinking violet of European audiovisual media regulation?', *IRIS plus* 2011-3
- Navarria, G. (2010), 'Politics vs. antipolitics in Italy in the age of monitory democracy: the complex case of *beppegrillo.it*', in E. Amnå (ed.) *New forms of citizen participation: normative implications*, European Civil Society Series (3), Nomos, p. 175.
- Open Society Foundation (2011), 'Mapping digital media', 10 August 2011, available at: <http://www.soros.org/> (date accessed 20 December 2011)
- Ortoleva, P. (2005), 'Il declino industriale del sistema dei media italiano', *Problemi dell'informazione*, 3, 265
- OSCE, (2005), 'Visit to Italy: The Gasparri Law, observations and recommendations', OECD Report, 7 June 2005, available at: [http://www.osce.org/documents/rfm/2005/06/15459\\_en.pdf](http://www.osce.org/documents/rfm/2005/06/15459_en.pdf) (date accessed 20 December 2011)
- Pace, A. (2004), 'L'ordinamento della comunicazione', *Dir. pubbl.*, p. 943
- Pace, A., M. Manetti (2006), 'Articolo 21', in G. Branca and A. Pizzorusso (eds), *Commentario della Costituzione* (Bologna: Zanichelli)
- Pace, A., R. Zaccaria, G. De Minico (eds) (2008), *Mezzi di comunicazione e riservatezza: ordinamento comunitario e ordinamento interno* (Napoli: Jovene)
- Padovani, C. (2009), 'Pluralism of information in the television sector in Italy: History and contemporary conditions', in A. Czepek, M. Hellwig, and E. Nowak (eds), *Press freedom and pluralism in Europe concepts and conditions* (Bristol, UK: Intellect), p. 289
- Paissan, M. (ed) (2008), *Privacy e giornalismo*, 3rd ed. available at: [www.garanteprivacy.it/garante/document?ID=1498794](http://www.garanteprivacy.it/garante/document?ID=1498794) (date accessed 20 December 2011)
- Patterson, M. (2011), 'Market power and intermediaries', Presentation at Mediadem conference 'Pluralism and competition in the regulation of new media' Florence 10 November 2011

- Picard, R. (2011), 'Digitization and media business models', available at: [http://www.soros.org/initiatives/media/articles\\_publications/publications/mapping-digital-media-digitization-media-business-models-20110721/OSF-Media-Report-Handbook%20Digitization%20and%20Media%20Business%20Models-final-07-18-2011-WEB.pdf](http://www.soros.org/initiatives/media/articles_publications/publications/mapping-digital-media-digitization-media-business-models-20110721/OSF-Media-Report-Handbook%20Digitization%20and%20Media%20Business%20Models-final-07-18-2011-WEB.pdf) (date accessed 20 December 2011)
- Pisa, R. (2010), L'accesso a Internet: un nuovo diritto fondamentale? nel sito web: [www.treccani.it/Portale/sito/diritto/approfondimenti/2\\_Pisa\\_internet.html](http://www.treccani.it/Portale/sito/diritto/approfondimenti/2_Pisa_internet.html) (date accessed 20 December 2011)
- Potter, W. (2010), 'The state of media literacy', *Journal of Broadcasting & Electronic Media*, 4, 675
- Richeri, G. (2005), 'Foreword', in C. Padovani, *A fatal attraction, public television and politics in Italy* (Boulder, Rowman & Littlefield), p. ix
- Scorza, G. (2010), 'Internet come diritto costituzionale', available at: <http://www.guidoscorza.it/?p=2310> (date accessed 20 December 2011)
- Tedeschini Lalli, M. (2011), Intervention in Mediadem conference 'Pluralism and competition in the regulation of new media' Florence 10 November 2011
- Valastro, A. (2003), 'Il futuro dei diritti fondamentali in materia di comunicazione dopo la riforma del Titolo V', in A.A.V.V., *Diritti, nuove tecnologie, trasformazioni sociali: scritti in memoria di Paolo Barile* (Padova: Cedam)
- Volcansek, M. L. (2000), *Constitutional politics in Italy: the constitutional court* (Hampshire: Macmillan Press)
- Zaccaria R. (1996), 'Radiotelevisione', in G. Santaniello (ed.), *Trattato di diritto amministrativo*, XV (Padova: Cedam)
- Zaccaria R. (2009), 'La libertà d'espressione e giurisprudenza della Corte Europea dei Diritti dell'Uomo', speech at Università di Camerino 25-26 september 2009, available at: [robertozaccaria.it](http://robertozaccaria.it) (date accessed 21 December 2011)
- Zaccaria R. et al. (2004), 'L'"ordinamento della comunicazione" fra Stato e Regioni', in V. Cerulli Irelli and C. Pinelli (eds), *Verso il federalismo: normazione e amministrazione nella riforma del Titolo V della Costituzione* (Bologna: Il Mulino), p. 267
- Zaccaria, R., A. Valastro (2010), *Il diritto dell'informazione e della comunicazione* (Padova: Cedam)

## 9. List of interviews

Interview with Pietro Catello, Head of B2C and Mobile Payments and Bianca Del Genio, Head of Legal, Buongiorno S.p.A, by Federica Casarosa, Florence, 5/10/2011 (through Skype)

Interview with Carlotta Cazorzi, Director Regulatory affairs, Telecom Italia media, by Fabrizio Cafaggi, Rome, 13/12/2011

Interview with Gianluca De Matteis Tortora, Institutional and International relations, *RAI - Radio televisione italiana*, by Federica Casarosa, Rome, 28/09/2011

Interview with Roberto Giannatelli, President of Association MED, by Federica Casarosa, Florence, 19/10/2011 [email interview]

Interview with Beppe Giuliotti, Member of the Italian Parliament and Spokeperson, Association *Articolo 21*, by Elda Brogi, Rome, 28/09/2011

Interview with Claudio Giua, Director of innovation and development, *Gruppo editoriale L'Espresso*, by Elda Brogi, Florence, 31/3/2011

Interview with Andrea Fabiano, Head of Marketing, *RAI - Radio televisione italiana*, by Federica Casarosa, Rome, 28/09/2011

Interview with Carolina Lorenzon, Director of International Affairs, Mediaset, by Federica Casarosa and Elda Brogi, Milan, 07/10/2011

Interview with Lorenzo Marsili, Director of Association European Alternatives, by Federica Casarosa, Rome, 28/09/2011

Interview with Luca Nicotra, Secretary of *Agorà digitale*, by Federica Casarosa and Elda Brogi, Rome, 28/09/2011

Interview with Gina Neri, Board member, Mediaset, by Federica Casarosa and Elda Brogi, Milan, 07/10/2011

Interview with Pino Rea, Member of the *Ordine dei giornalisti*, by Federica Casarosa and Elda Brogi, Florence, 22/02/2011

Interview with Giorgio Russo, Manager, *RAI - Radio televisione italiana*, by Federica Casarosa, Rome, 28/09/2011

Interview with Marco Scialdone, Representative of Association *sitononraggiungibile.it*, by Federica Casarosa and Elda Brogi, Rome, 28/09/2011

Interview with Giuseppe Vaciago, Lecturer, University of Milan Bicocca, by Federica Casarosa and Elda Brogi, Milan, 07/10/2011

## 10. List of discussion groups

*4 November 2010 – Workshop on ‘European Policy for Free and Democratic Media Systems - Current Issues for Regulation’*

Antonio Manganelli, Coordinator Communications & Media, Florence School of Regulation – *EUI Robert Schuman Centre*

Antonio Nicita, Professor of Economic Policy, University of Siena

Vincenzo Zeno Zencovich, University of Rome 3

*9 March 2011 – Workshop on ‘Government and the Internet: participation and control’*

Andrea Cairola, Freelance journalist and Research Fellow at Nexa Center - University of Turin

Matteo Pancini, European Policy Counsel, Google

*23 March 2011 – Workshop on ‘Il sistema dei media italiano’*

Valeria Amendola, Head of Research department, *Autorità Garante della Concorrenza e del Mercato*

Gennaro Carotenuto, blogger and Professor of Contemporary History, University of Macerata

Ottavio Grandinetti, Lawyer, *Studio legale Grandinetti*

Pietro Macrì, Freelance journalist and member of the European Journalism Observatory

Roberto Mastroianni, Professor of European Law, *University of Naples*

Roberto Natale, President, *Federazione Nazionale Stampa*

Camilla Sebastiani, Assistant to the Commissioner, *Autorità Garante delle Comunicazioni*

Roberto Zaccaria, Member of the Parliament, *Camera dei Deputati*

*10-11 November 2011 – Conference on Pluralism and competition in the regulation of new media*

Carolina Lorenzon, Director of International Affairs, Mediaset

Francesco Nonno, V.P. Antitrust & Consumer Issues, Telecom Italia

Giampaolo Tagliavia, CEO, Mtv Italia

Mario Tedeschini Lalli, Multimedia editor, *Gruppo editoriale L'Espresso*