EUROPEAN MODEL OF REGULATING THE MEDIA

Andon MAJHOSEV
Associate Professor, "GoceDelchev" University-Shtip, Faculty of Law
E-mail: andon.majhosev@ugd.edu.mk

Suzana DZAMTOSKA-ZDRAVKOVSKA
Assistant Professor, American University of Ras Al Kaimah, UAE
E-mail: suzana.dzamtoska@hotmail.com

Darko MAJHOSEV
E-mail: darko-majhosev@hotmail.com

Abstract

In this paper, we will focus on defining the notion of public interest in the media sphere, the basic prerequisites and the attitude of the media towards the government, in order to achieve transparency and accountability in governance and social and cultural development.
In this paper, we will also cover the basic standards of the Council of Europe regarding issues such as: gender equality, minority rights and the media, intolerance, violence in the media content, protection of children and youth, media independence, and democratic processes and their role during electoral processes.

Keywords: *public interest, media, Council of Europe.*

1. Public interest in the media sphere

The concept of public interest was most often mentioned in the context of the broadcasting policy in the European media space. There are many views and definitions regarding what public interest in the media policy is. Thus, Frank Stanton, director of the Canadian Network CBS, says in a statement that "*The program much of the public (the audience)is interested in... is a program of public interest" (Frendly 1967:291).*

Public interest in the media sphere implies that in the context of conflicting interests in society, in the formulation and implementation of laws and in the creation of the regulatory environment of the media, the interest of the public as a whole is placed in the foreground (*Buckley et al., 2008:7*).

Gareth Greninger's definition, who was a member of the Australian regulatory body, is more accurate and, according to him "*Public interest is the interest that the government, parliament and administration in a democratically governed state must accept and express in laws, politics, decisions and activities in order to ensure peace, order, stability, people's security, ownership, the*

environment and human rights because of the overall well-being of society and the state, which ,through the Constitution and elections enable citizens to renew and express their consent for someone to rule and manage them." (Trpevska 2010: 35).

From these definitions, we can conclude that it is not easy to provide social conditions in which the media will serve the public interest. The state, through its legislation, should provide social conditions in which the media will serve the public interest.

In the recent history of democratic societies there have been practices of "occupying" the media space by different centers of power that have been hidden behind the guise of public interest. In democratic societies, the media are the subject of interest of politics, business community and civil society. In the media they see a means for articulating their interests, but also a threat to the set goals.

Although every political authority generally advocates the realization of the public interest in the media sphere, yet it is the greatest enemy of the media that it has frequently tried to instrumentalize for different purposes.

The aim of politics of realizing public interest in the media sphere is to find a model in which the media will remain outside the influence of political and economic power centers while at the same time they will serve the interests of the public and the civil society. The basic model and criterion for defining public interest is **effective citizen participation**, which basically means participation of informed and educated citizens in social processes, which implies the need for the existence of a multitude of different attitudes that will be available to as many people as possible, based on which a wider public opinion in the society will be formed.

There is a number of important segments of the influence of the media, but three segments are constantly important: influence on governance, on social development, and on culture.

2. The media and the governance

Good governance is an important precondition for overall social development. The most important goal of any government is good governance in favor of overall social development. The term governance is used with different meanings, but it covers not only the activities of the executive power, but also of many other public institutions, and the concept of active (participatory) citizenship.

The United Nations Development Program (UNDP) provides a concept of good governance, according to which "*Governance is the system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector… It comprises the mechanisms and processes for citizens and groups to articulate their interests, mediate their differences and exercise their legal rights*

and obligations"(Buckley, 2008:10). Good governance, according to UNDP, is about processes as well as outcomes; processes that are participatory, transparent, accountable, and efficient, and that involve the private sector and civil society as well as the state.

In a democratic society, the role of the free media is to promote and advance good governance. Nobel Prize winner Amartya Sen in 1980 stated "...No famine has ever taken place in the history of the world in a functioning democracy" (Sen, 1981).Sen was firmly convinced that political freedoms influence economic performance. According to him, free media enable the voice of poor people to be heard and contribute to a broad and democratic debate on the economic and social needs of citizens (Sen, 2000).

According to Pippa Norris, former director of the UNDP Democratic Governance Group, the media have three important roles in the process of democratization and good governance:

- (watchdog), promoting transparency, accountability and public scrutiny;
- civic forum for political debate, allowing citizens during elections to make decisions based on relevant information and
- agenda-setter for policymakers, strengthening government responsiveness to social problems (Norris, 2006).

The media can realize these roles with direct or indirect influence on certain factors that are crucial to good governance: detecting corruption and improving accountability and transparency, deepening participation in political processes and encouraging impartial and inclusive policies and activities.

Prevention of corruption is among the most important preconditions for ensuring good governance and social development, and the role of the media in their detection is of utmost importance.For example, in 2000, the media in Peru released video footage of Alberto Fujimori (then President of the state), with which they proved his connection with the narco-mafia, and after that Fujimori resigned.

An important precondition for good governance is accountability. The media can increase accountability of a government and other state institutions by publishing information about operations, decisions, manner of decision making, undertaken activities, etc.

Transparency also has great significance ingood governance. It depends on legislation that allows freedom of information, free access to public information, and independence of the media.With this role of "the observer of the powerful" the media incite transparency and accountability of state institutions, controlling their wrong actions, scandals, and corruption in public institutions.

With their social power, the media can also significantly influence political subjects-decision-makers in order to detect corruptive actions, improve transparency and accountability, and incite their more active participation of the media in political processes. The media enable citizens to speak and participate in a

political debate giving them the opportunity to promote wider social attitudes, which is especially important for the poor and marginalized groups. The media have the potential to strengthen the civic forum. Because of this power of the media, the famous German philosopher and sociologist Jürgen Habermas calls this a *public sphere*, that is, " *a network for the transmission of information and views*," *which then become public opinion (Habermas, 1996).* Accordingly, the media can influence the government's agenda, but they can also strengthen the overall capacity of society to participate in political debate and increase citizen participation in the governance process.

3. Basic prerequisites for realizing the public interest

In general, media policy in Europe is built on the concept of public interest and strengthening of the media's contribution to good governance, transparency, accountability, cultural pluralism, and social activism. The basic prerequisites good media policy is based on are: 1) freedom of expression, 2) free access to public information, 3) independent media, 4) media pluralism and diversity of media content, 5) media access to a wider audience and 6) sustainable sources of media financing (Buckley 2008: 20).

1) Freedom of expression and free media are the pillars of democracy and good governance in a society. Preventing media and media workers from exploring and informing on issues of public interest can seriously disrupt their role in a democratic society. Freedom of expression is not absolute, but it can be restricted in accordance with the law. It is inadmissible to spread lies about somebody through the media, and in particular it is not allowed to spread hate speech, discrimination on any basis, and similar.

2) Free access to public information is also an important prerequisite for successful realization of the role of the media. Control over the work of institutions and their accountability is highly dependent on the availability of information, especially in the decision-making process. Governance of each government is more effective when the decision-making process is transparent and when citizens participate in it; then responsibility is shared as well.

3) The third prerequisite is the independence of the media; they should be independent in the editorial policy towards all centers of power (economic, financial, political). When the media is controlled by the government and the political parties, then we have a serious violation of their democratic function of a "controller of power". When the media is controlled by the executive power, the consequences are great. It is similar when they are controlled by the business elites. Some owners do not interfere with the editorial policy of their medium, but this always involves a certain degree of control of the medium and can be a major obstacle to pluralism and diversity.

4) Through the content published by the media, the diversity of views in a society must also be reflected and enriched. Media diversity means a wide variety of different genre content that meets the needs of different segments of the public (audience). The media should broadcast program content for the entire audience: children, adults, different ethnic and minority groups, for marginalized, for men and women. In other words, media content should also reflect cultural differences, value systems and interests of social groups.

5) The fifth prerequisite requires the media to cover as wide an audience as possible and to be accessible to all social and cultural groups in the society.Media diversity implies a wide range of various genre content that meets the interests of different audiences. The media should publish programs designed for young people and adults, for different ethnic communities, for various marginalized groups, for different social strata etc.A variety of media should be accessible to citizens from the margins of society, in social, cultural, economic and geographical terms.

6) The sixth precondition is the provision of stable and independent financial sources for the media. The more media are financed, the more they can invest in investigative journalism about government work, in educating journalists, and in creating new quality and content programs. Funding from the budget allows the government to influence editorial policy, so it is recommended that funding be from the state treasury. The same is true for commercial (private) media that are mostly financed by advertising, so that some advertisers can press the media to inform positively about their company's activities.

4. The Council of Europe and the media

The Council of Europe was established in 1949 with the aim of promoting democracy, the rule of law and respect for human rights. In all the most important documents of the Council of Europe, it is emphasized that freedom of expression is fundamental to the achievement of the Council's objectives, since genuine democracy exists only when citizens are free to say what they think, and receive and transmit information.

Following these principles, the Council of Europe at the beginning shaped the European media policy and media regulation, adopting over sixty conventions, declarations and recommendations that contain the basic European standards in the media sphere.

The European Convention on Human Rights was adopted in 1950. In 1976, the Council decided to treat media policy as a separate sphere of action, and in the same year, a decision was made to set up a Committee of Experts on the Mass Media, which in 1981 became a Steering Committee on the Mass Media. One of the most important documents in the Council of Europe's media policy is the

European Convention on Transfrontier Television,[1] which developed in parallel with the European Commission's "Television without Borders" Directive. The development of satellite and cable television in the late 1980s imposed the question of achieving freedom of expression in the context of cross-border broadcasting of television services. The Convention on trans-frontier cooperation binds only the member states of the Council of Europe that have ratified it. The Convention guarantees free circulation of television programs among Member States, provided television broadcasters comply with the minimum programming standards set forth in the Convention.[2]

4.1 Important aspects of the Council of Europe's media policy

The most important aspects of the Council of Europe's media policy are the democratic values that the Council advocates, contained in the provisions of Art. 10 of the European Convention on Human Rights. Here we will only briefly outline the most important aspects and issues of the Council of Europe's media policy, and in separate chapters we will elaborate on the content of certain documents that set the basic standards that every member state of the Council of Europe should implement in its own national legislation.

4.1.1 Gender equality

Gender equality implies equality of men and women in all segments of social life. Women still face violence from men, marginalization in political life and dominance of men, and they also face being less paid for the same work. The media can greatly help the positive change in the social position of women. In its documents, the Council of Europe highlights the importance of media promotion of gender equality, in particular in the Recommendation (84) 17 on gender equality between men and women in the media.

In the early 1990s, the development of new communication technologies prompted the Council of Europe to create opportunities for greater media coverage of women.The 3rd European Ministerial Conference on Equality between Women and Men was held in Rome in 1993 on "Strategies for the elimination of violence against women in society: the media and other means". In its future activities, the

---

[1]The Council of Europe's Convention on Transfrontier Co-operation was adopted by the Committee of Ministers on 15.03.1989 and entered into force on 01.05.1993

[2]Minimum programming standards refer to the protection of juveniles, advertising and sponsorship, the right of reply and correction and promotion of European production and distribution of programs.

Council of Europe adopted several proposals for the improvement of the media image of women and for the adoption of self-regulation and professional standards. In 2002, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1555 (2002) on the representation of women in the media, which insists that the media should promote non-stereotypical representation of women and men and avoid scenes with violence and sexual scenes.

4.1.2 Minority rights and the media

The Council of Europe pays great attention to minority rights because they are an important link in the value system of Europe. The Council has adopted several acts on minority rights, among which the most famous are the Framework Convention for the Protection of National Minorities in 1995 and the European Charter for Regional or Minority Languages in 1992.

The Framework Convention for the Protection of National Minorities devotes significant attention to media issues in achieving two goals: allowing access to minorities to the media and promoting tolerance and cultural pluralism in the media. These measures include financial support to broadcasters that broadcast programs in minority languages; financing programs dealing with minority topics or with dialogue between different ethnic groups and encouraging editors and broadcasters to provide access to national minorities and their programs. The implementation of this Convention is followed by an advisory committee consisting of 18 experts, which regularly publishes opinions on the rights of minorities in the media sphere of the member States of the Council of Europe. The Advisory Committee has adopted several opinions concerning the introduction of additional media training and recommendations and other appropriate measures to prevent reports that encourage negative stereotypes for Roma or other national minorities.

The European Charter for Regional or Minority Languages of the Council of Europe aims to preserve and develop linguistic diversity and cultural traditions and heritage in Europe, as well as to ensure respect for the inalienable right to use regional and minority languages in private and public life, including the media. Art. 11 of the Charter emphasizes that the promotion of regional or minority languages through the media is of great importance for their preservation. The Committee of Experts of the Council of Europe, which periodically analyzes the reports of the signatory states, also monitors the Charter's implementation.

4.1.3 Intolerance

The fight against intolerance, racism, xenophobia and anti-Semitism is among the most important spheres of action of the Council of Europe. At the first Council of Europe Summit held in Vienna in 1993, the leaders of member states expressed

great concern about the frequency of all kinds of intolerance in the media, adopting a separate declaration and action plan to fight against intolerance. They emphasized the role of the media stating that they can be a factor fueling intolerance and hatred on racial, national, ethnic or religious grounds, but they can also be a significant factor in promoting dialogue and understanding, mutual respect and tolerance. This led to the adoption of two very important recommendations of the Committee of Ministers in 1997: Recommendation R (97) 20 on Hate Speech and Recommendation R (97) 21 on Media and Promoting a Culture of Tolerance. Based on the conclusions of the Vienna Summit, a decision was made to establish a European Commission against Racism and Intolerance. This Commission is an independent body of the Council of Europe that monitors the process of the realization of human rights, specializing in the fight against racism, racial discrimination, xenophobia, anti-Semitism and intolerance. The Commission also has the task to analyze legislation, policy and other measures of member states; it proposes initiatives at local, national and European level and formulates general policies and recommendations to member states for addressing specific problems related to the occurrence of racism and intolerance.

In 2008, the Council of Europe published a report by the Group of Specialists on public service media in the information society (MC-S-PSM) with the title "The Contribution of Public Media Services in Promoting Social Cohesion and Integrating All Communities and Generations".[3]It analyzes the application of Recommendation R (97)21 on media and the promotion of a culture of tolerance, with the main focus on the role of public media services in promoting the goals of the recommendation.

In relation to the protection from statements and content that incite intolerance we mention Recommendation 1805 (2007) of the Parliamentary Assembly concerning blasphemy, insults to religious feelings and hate speech towards individuals based on their religion.[4]

4.1.4 Violence in media content

In 1983, the Parliamentary Assembly of the Council of Europe, taking into account the increasing presence of violence in media content, primarily in the visual media (television, video, film, comics and photography), adopted a recommendation condemning the increased amount of violence in media content. It foresees that the long-term exposure of content with violence can have direct consequences for children and some adults and that it will gradually jeopardize the accepted values

---

[3]Available athttp://www.coe.int./t/dghl/standardsetting/media/Doc/CM_en.asp

[4]Трпевска, С. (2010), *Слобода на изразување, јавен интерес и медиумска регулација*, ExLibris, Скопје, p. 47.

in society.In 1990, the Committee of Ministers adopted Recommendation R (89)7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content. In 1992, the Committee of Ministers took the stand that video games with racist content convey messages of aggressive nationalism, ethnocentrism, xenophobia, anti-Semitism or intolerance, and urged member states to revise their legislation in order to ensure adequate protection for young people.

The issue of protecting juveniles from violent content is particularly highlighted in the European Convention on Transfrontier Television, where it has been established that television programs must not unreasonably expose violence. In 1997, Recommendation R (97) 19 on the portrayal of violence in the electronic media, and its provisions indicate that the media must not broadcast excessive violence in their programs. The audience has the right to know about different aspects of violence in everyday life, and care should also be taken of the manner in which the victims of violence and accidents are presented and of the sensitivity of the audience. Furthermore, in movies or entertainment scenes of excessive and brutal violence cannot be justified.

4.1.5 Protection of children and youth

The Council of Europe has undertaken a series of measures to protect children and young people from program contents that are detrimental to their development. It is not just about protecting them from contents with violence, but also from other aspects of media content. Having in mind the harmful influence of the media on the youth, the Committee of Ministers of this organization adopted Resolution Res (67)13 on the press and the protection of youth in 1967, which points out the harmful influence of the press on youth and adolescents.

In 1984, the Committee of Ministers adopted a recommendation on television advertising that emphasizes that advertisements intended for children must not harm or impair their physical, mental or moral integrity. The European Convention on Transfrontier Television contains identical provisions for the protection of children and young people. Thus, Art. 7 states that programs must not be broadcast at a time when children are expected to watch them, which can harm physical, mental or moral development of children.

In February 2008, Declaration Decl-20.02.2008/1 of the Committee of Ministers on protecting the dignity, security and privacy of children on the Internet was adopted, while in July 2009 Recommendation (2009) 5 on the protection of children from harmful content and behavior was adopted, as well as promotion of their active participation in the new communication environment.

The Council of Europe, bearing in mind the negative impact of media content on children and of the use of the Internet, paid great attention to media education and to empowering children and young people how to use new communication technologies and develop a critical attitude towards the use of

media content. In that context, several documents were adopted: Recommendation R 1466 (2000) of the Parliamentary Assembly for Media Education, Recommendation R (2006) 12 of the Committee of Ministers for empowering children in the new information and communication environment and Recommendation 1836 (2008) on the realization of the full potential of e-learning, education and training. The Council of Europe has a separate web site titled "The Internet and Children - Media Education", where an Internet Literacy Handbook, for parents, teachers and youth has also been published.

4.1.6 Freedom of expression and freedom of the media

The Parliamentary Assembly and the Committee of Ministers of the Council of Europe have adopted a number of documents relating to the freedom of expression, freedom and independence of the media, the standards of the journalistic profession, etc. In addition, we will mention the most important declarations and recommendations concerning freedom of expression and of the media: Declaration on Freedom of Expression and Information of the Committee of Ministers (1982), Recommendation 1506 (2001) on Freedom of Expression and Information in the Media and Recommendation 1589 (2003)on Freedom of Expression in the Media in Europe, Declaration of the Committee of Ministers on Freedom of Communication through the Internet and the Declaration on Political Debate in the Media (both adopted in April 2004).

Later on, the Council of Europe adopted several other important documents, such as: Recommendation R (81) on access to information held by public authorities, Recommendation R (2002) 2 on access to official documents, Declaration on Providing Information on Criminal Proceedings and Recommendation R (2003) 13 on the provision of information through the media in relation to criminal proceedings. This group includes documents relating to insults and defamation published in the media. These are Recommendation 1814 (2007) and Resolution 1577 (2007) of the Parliamentary Assembly on the Decriminalization of Defamation in the Legislation of the Member States. In addition to the above mentioned, we also mention other documents related to the professional standards of the journalistic profession: Recommendation 1215 (1993) and Resolution 1003 (1993) of the Parliamentary Assembly on Ethics in Journalism; Recommendation R (2007) 7 on the rights of journalists not to disclose their sources of information, Resolution 1535 (2007) and Recommendation 1783 (2007) of the Parliamentary Assembly on Professional education and training of journalists..

4.1.7 The media and democratic processes

The Council of Europe has also adopted several documents that deal with the role of the media during electoral processes, and the role of the media in a democratic society. The standards for election coverage are set out in Recommendation R (99) 15 and SM / Res (2007) 15 on measures related to media coverage of election campaigns.

In 2008, the Parliamentary Assembly of the Council of Europe adopted Resolution 1636 and Recommendation 1848 on the indicators for media in a democracy. The Resolution outlines 27 principles that serve as a basis for analyzing the state of the media in certain member states of the Council of Europe. Many of these principles apply to the safeguard mechanisms for the effective pursuit of the journalistic profession, such as: protecting journalists from physical threats and attacks, absence of any registration requirements or other conditions set by the state for the work of journalists, respecting confidential sources of journalists, freedom of association and organization in trade unions and collective negotiation, appropriate working conditions for journalists including social security; respect for the right to privacy, respect for freedom of expression, right to exclusive reporting, etc.

The Resolution stresses the need to prevent political and financial forms of pressure on the editorial policy of the media, especially on the public broadcasting service.

The media should establish their own self-regulatory bodies, such as grievance commissions or ombudsmen, and implement their decisions. Journalists should establish their own professional codes that they will respect.

5. Conclusion

Based on the previous elaboration of the key aspects of the Council of Europe's media policy in building a European model for regulating the media, we can conclude the following:

1) The most important goal of the Council of Europe is to promote democracy, the rule of law and human rights;

2) The concept of public interest in the media field is implemented in the context of the broadcasting policy in the European media system and it implies that, in the context of conflicting interests in society, in the formulation and implementation of laws and in the creation of the regulatory environment of the media, the public interest as a whole is placed in the foreground;

3) The key concept for defining the public interest is the effective citizen participation, that is, the participation of informed citizens in the social processes, which implies the need to circulate a multitude of different views available to as many people as possible;

4)   All adopted documents in the media field reflect the key democratic values that the Council of Europe advocates and are in the spirit of Article 10 of the European Convention on Human Rights (freedom of expression), since genuine democracy exists only when individuals are free to give their opinion, and receive and transmit information;

5)   The basic prerequisites for achieving the public interest in the media sphere are: respect for the freedom of expression in a society, timely access to public information, independence of the media, ensuring media diversity of the program contents, the media to be accessible to the wider audience and existence of stable and independent financial sources for the functioning of the media;

6)   The key issues in the Council of Europe's media policy are the efforts aimed at improving standards relating to: gender equality, minority rights and the media, fight against intolerance, racism, xenophobia and anti-Semitism, hate speech, violence in media content, protection of children and youth, freedom of expression and freedom of the media, and media and democratic processes

References

Buckley, S., Duer, M.K., Mendel, T. & O Siochru, S. (2008), Broadcasting, Voice and Accauntability: A Public Interest Approach to Policy, Law and Regulation, Washington: University of Michigan Press;

Declaration on the Protection of the Dignity, Safety and Privacy of Children on the Internet (2008), Council of Europe;

Directive "Television without Borders", European Commission of the EU;

European Charter for Regional and Minority Languages (1992), Council of Europe;

European Convention on Human Rights (1950), Council of Europe;

European Convention on Transfrontier Television, 1989, Committee of Ministers of the Council of Europe;

Frendly, F.W. (1967), Due to Circumstances Beyond Our Control, New York: Random Haus;

Habermas, J. (1996), Between Facts and Norms, Cambridge, MA: MIT Press;

Norris, P. (2006), The Role of the Free Press in Promoting Democratization, Good Governance and Human Development (paper delivered at UNESCO World Press Freedom Day conference in Colombo, Sri Lanka, May 1-2, 2006.

Recommendation R (84) 17 on equality between men and women in the media;

Recommendation 1848 on the indicators for the media in the democracy, Parliamentary Assembly of the Council of Europe;

Recommendation (97)21 on media and promoting a culture of tolerance, Committee of Ministers of the Council of Europe;

Recommendation 1805 (2007) on blasphemy, insults to religious feelings and hate speech to individuals based on their religion, the Parliamentary Assembly.

Recommendation 1466 (2000) on media education, the Parliamentary Assembly of the Council of Europe;

Recommendation (2006)12 on the empowerment of children in the new information and communication environment, The Committee of Ministers;

Recommendation R (99)15 и CM/Рец (2007)15, Council of Europe;

Recommendation R(97)19 on the display of violence in electronic media;

Recommendation R (97)20 on hate speech, Committee of Ministers of the Council of Europe;

Recommendation (2009) 5 on protection of children from harmful content and behavior, and promotion of their active participation in the new communication environment;

Resolution 1636 (2008), Parliamentary Assembly of the Council of Europe;

Sen, A. (2000), Development as Freedom, New York: Anchor Books;

The Framework Convention for the Protection of National Minorities (1995), Council of Europe;

Trpevska, S. (2010), Freedom of Expression, Public Interest and Media Regulation, High School of Journalism and Public Relations, ExLibris, Skopje;