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Regulation of pluralism in France. Context, analysis and interpretation

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Abstract: This article offers a historical and up-to-date study of the media regulation in France with regards to the protection of pluralism. To this end, the article presents a study on the French legal framework for the media, which is complemented with the opinions of scholars, journalists, trade union representatives, members of public organizations regulating the media, and relevant figures with expertise in the media sector in France. The views of these actors were obtained through a series of in-depth interviews conducted in Paris in July 2008 and December 2009. The study reveals that the legal framework, which uses multiple mechanisms and instruments to guarantee pluralism, both external (mainly, corporate concentration) and internal (media contents), is highly complex, vast, difficult, and almost impossible to apply. The study suggests that the French legal framework is a top example of inefficient hyper-regulation, which the author sees as a result of the ferocious battle between the two strongest modern forces in France: the egalitarian democratic values, based on solidarity and deeply rooted in the historical tradition of the French Republic; and the neoliberal capitalism based on the ideas of material accumulation and individualism.

Key Words: France; media policies; regulation; pluralism; concentration; power struggle

Summary: 1. Introduction: presentation, objectives and methodology. 2. The national context: brief historical outline. 3. The French legal framework. 4. Control and sanction mechanisms. 5. Public Debate. 6. Conclusion and discussions. 7. Bibliography. 8. Notes.

Translation by **Cruz Alberto Martínez-Arcos** (University of London)

1. Introduction: presentation, objectives and methodology

France, due to its cultural, linguistic, and geographical proximity and its historical tradition, which is the cradle of the values taught together with England, is always closely observed by neighbouring countries with less consolidated democratic traditions (as it is the case of Spain and other southern European countries), also logically by the countries that were its former colonies, and generally by a good part of the liberal Western world, which regards the French Republic as the modern meeting point for the shared roots. The fact that France significantly moved away from the principles that encouraged the creation of the Republic -although they are still maintained in its slogan- has not prevented this country from continuing to exert a relevant influence in the collective imagination of these countries. History always exerts a considerable weight in the evolution of actors and certain phenomena. This certainty is probably the reason for the interest that continues to be placed on this country, which certain political non-French class –representing the whole ideological spectrum- takes into account when making decisions. This is also the case with regards to the regulation of the media sector and the protection of pluralism, which is especially linked to the democratic values inspired by the *Liberté, Egalité, Fraternité* chanted by the revolutionaries.

However, the study of the French case, from the point of view of communications policies, has been little addressed by communication scholars outside the francophone community. In Spain there are only few outstanding studies on the French communications sector from the point of view of public policies: for example Vizcaíno's (2005) doctoral work on the independent media regulator in France; Llorens's (2006) analysis of the Lancelot Report; Guerrero's (2008) analysis of the reorganization of the sector in recent years; and Redondo's (2009) investigation on the communication policies of the international organization of the Francophonie.

Naturally, there are more comparative studies including the French case, like Pérez Gómez's (2001) doctoral thesis on the concentration and the legislation applied in different countries; McKenzie's (2005) work; translations of some international studies such as the well-known work of Hallin and Mancini (2008); comparative studies on the press, like the work of Aguado, Sanmartí and Magallón (2009b), *Telos*'s 2008 report on aids to the press, and the analysis made by Almiron, Capurro and Santcovsky (2010) of the control policies for internal pluralism. Apart from this brief review, logically, there are private studies conducted by research centres or communication institutes.

In France the academic studies on the communication policies in the country are prolific, starting with the works of the Higher Audiovisual Council (hence CSA) and ending with an indeterminate list of academic and professional

organizations -or a combination of both- that regularly monitor the legislative framework, especially from the perspective of law, which in France is the perspective that dominantly addresses the analysis of communication policies (see for instance, the *Centre d'Etudes et de Recherches* in *Droit de l'Immatériel-CERDI* of the Paris XI University, or the *Association Française de Droit des Médias et de la Culture-AFDMC*) [1]. Needless to say, the vast majority of this academic production is written in French, which probably diminishes its visibility in a world dominated by the English language.

This article has four objectives: 1) to offer non-French speaking researchers an up-to-date and contextualised description of the French communication policies, 2) with special attention to the protection of internal and external pluralism, 3) with a focus on the press and the audiovisual media, and 4) with the aim of finding an explanation for the abovementioned situation.

This research has been conducted in four phases: 1) The first stage involved the collection of the legal documentation and a review of French bibliography on the subject, which required the consultation of official sources, scholars and experts in the field; 2) the second stage focused on the reading, transcription, and exploitation of the collected information; 3) the third stage included in-depth interviews with experts to clarify doubts and confirm the correct interpretation of the data, and to obtain their personal views on the legal framework [2]; 4) the final stage focused on writing the results and conclusions.

It should be noted that the research also took in to account, from a methodological point of view, previous works that were generic or focused in other countries and examined the protection of pluralism from the point of view of communications policies, such as the work of Llorens Maluquer (2001), Rodríguez Pardo (2005), Romero Domínguez (2009) and Sanmartín and Reguero (2009).

Finally, the study of the French legal framework for the media is logically concerned about the concentration in the media sector in European countries. This concern is evident in the research conducted by the Council of Europe (Bruck, 2004 and Ward, 2006) and the European Commission (2007 and 2009) in the last decade, as well as in the data presented by independent studies that have defined the French media market as highly concentrated (Ward, 2004).

2. The national context: brief historical outline

It is not recommended to describe any legislative framework without briefly outlining the historical context in which it is inscribed, especially when, as in the case of France, we are dealing with an interventionist context like no other. Thus, since the end of the State monopoly on audiovisual communication (between 1981 and 1982) [3], the legislative activity has been frenetic: more than a dozen laws were approved to regulate the media sector between 1981 and 2009; up to 30 decrees were promulgated towards the sector during the same period; and up to 50 amendments were made to the 1986 framework law [4]. This legislative hyperactivity is part not only of the legal tradition of the country, characterized by an extraordinary legislative vitality, but also of a special concern of the legislative power about the media and the freedom of expression, whose motivation feeds essentially from two sources.

The first direct source, especially for the printed press sector, is the Declaration of Human Rights which was approved by the French Constituent Assembly on 26 August 1789, and is considered one of the theoretical foundations of the French Revolution. Articles 10 and 11 of this Declaration state the need to protect the freedom of opinion, press, and awareness. It can be said that the French legislative power has historically strived to protect the right to freedom of information through regulatory measures, which started with the 1881 law of freedom of expression, but has also experienced periods in which these rights are reduced, especially during the two great wars of the 20th century (Aguado, Sanmartí and Magallón, 2009a).

This spirit is reflected in the decrees and ordinances promulgated at the end of WW2 for the press [5], after the censorship established by Vichy's government, where the journalistic enterprise was considered as the producer of a value that could not be treated as mere commodity, and therefore should be protected and required to be as transparent as possible (Aguado, Sanmartí and Magallón, 2009b). This spirit also inspired the so-called Hersant Law [6], which was enacted when the Socialists took power in the 1980s to counteract the effects of corporate concentration in the press sector at a time when the public media monopoly was being dismantled. The Hersant Group controlled at the time 30% of newspapers circulating in Paris and 20% of the regional newspapers. The law did not have retroactive effects -finally Hersant could preserve its assets- and was followed by less stringent standards promulgated by conservative governments, which nonetheless never stopped emphasizing the need for transparency in the press industry.

The second source that explains the interventionist trend is, paradoxically, the departure from the spirit of the 1789 Declaration in the state monopoly of television. After the successful use of the radio made by General De Gaulle during the process of liberation, at the end of WW2, radio became, in its successive presidential mandates a public audiovisual system at the service of the Government and the State. The close link established between the public media and the Governments transcended the Gaullist stage and was also maintained in the legislatures of subsequent Presidents that were not-Gaullists (Giscard d'Estaing) or were even socialists (François Mitterrand), albeit with greater subtlety. In all cases, however, the vision of the media as a central instrument of governmental policies was common. And this is the reason why the Communication Minister controlled for many years the contents of all the news

programmes before their broadcasting and President Georges Pompidou (1969-1974) called the public media “La voix de la France” (The voice of France).

This extreme governmentalisation of the public media did not occur without the cost of the public opinion. In this context, the process of media liberalisation in France, which started between 1981 and 1982, was justified publicly as an attempt to overcome this historical political interference (Lecomte 1998). This was in consonance with what happened in most of the Mediterranean countries, but with one difference: the governmentalisation of the public media in France was not carried out under a totalitarian regime, but under a democracy (which did not prevent Hallin and Mancini from locating this country in the Mediterranean model of their classification, which is correct in our view) (2008). However, the French efforts to depoliticise the media sector were mainly an overwhelming and relentless attack to the public service, which was inserted in far greater neo-liberalisation plan of the French economy which was launched full-scale by the conservative President Jacques Chirac since its first mandate -although this work had been already started by the Socialist François Mitterrand.

Indeed, Mitterrand started dismantling the monopoly of public television in France when he allowed the emergence of *Canal Plus* in 1984, *Cinq* in 1985 and *TV6* in 1986. While Canal Plus was born under the direction of a former top member of President Mitterrand’s Cabinet, *Cinq* and *TV6*, which have already disappeared, were created by businessmen that were very close to Mitterrand’s government (Chauveau, 2004). But Mitterrand was also the driving force behind a democratic innovation of great relevance, by creating in 1982 the first independent agency to monitor the media in Europe, with the mission of protecting pluralism in both the private and public sectors. As Chauveau says:

> “Indépendante, elle reçoit une large part de la tutelle du service public (notamment la nomination des Présidents des sociétés de programme), et gère les nouveaux espaces de liberté (par la délivrance des autorisations aux radios locales privées). Malgré les polémiques entourant son mode de désignation et quelques affaires qui mettent en doute la réalité de son indépendance vis-à-vis du gouvernement, la nouvelle institution acquiert un statut politique. Le magistère moral qu’elle exerce sur le service public permet à celui-ci de s’émanciper d’une tutelle politique jusqu’alors pesante. La régulation autonome devient une pièce maîtresse du système audiovisuel et l’objet d’un nouveau consensus à peine troublé par quelques crises” (Chauveau, 2004).

This organism consecutively received three different denominations: d’Haute Autorité de la Communication Audiovisuelle (1982-1986), Comission Nationale de la Communication et des Libertés (1986-1989) and, since 1989, Conseil Supérieur de l’Audiovisuel (CSA). Later, it lost powers (like the ability to appoint the President of France’s public media consortium in 2009, for example) but, in spite of its flaws and not being exempted from politicisation, this organism gained respect, as suggested by Chauveau, even from its critics.

When Chirac succeeded Mitterrand at the Elysée in 1986 the privatization process reached its peak, starting by alienating the following year the first public television network, the most-watched in France, TF1, and selling it to one of France’s greatest construction entrepreneurs -Francis Bouygues, whose industrial Empire had and has French State as its main client. This was a unique case in the history of Western television, which many have been explained by the fact that TF1 was considered by the conservatives as the most left-wing public broadcaster.

Since the start of this convoluted process of neoliberal expansion in the media sector until today, the creation of laws to regulate the French media occurred very quickly and this shaped one of most complex and Baroque legal scenarios in Europe.

3. The French legal framework

The main objective of the French legislation for the media is clearly the protection of the diversity and the freedom of expression in the press (historically), and radio and television (most recently). In the field of Internet, on the other hand, the French policies reflect at the moment, rather than a concern for pluralism, and the battle that the freedom of expression is fighting with the so-called intellectual ownership.

The instruments designed to protect pluralism in the media are very diverse and are located in three areas: Community law, the French common law and specific legislation introduced for this field in France.

Firstly, media owners in France are, just like the rest of private corporations, subjected to the European Common law in matters of concentration, regarding operations of a communitarian dimension. This control is exercised by the European Commission (General Directorate for Competition).

Secondly, like the rest of French private corporations, media owners are subject to the French common law for concentration operations of a national dimension. This control is exercised by the Ministry of Economy and Finance, which can exercise the control autonomously or at the request of the Competition Authority (*Autorité de la Concurrence*, until 2007 *Conseil de la Concurrence*). In this case, when a concentration operation exceeds the maximum of 150 million Euros in the total value of the companies (article L.430-2 of the code of commerce), the parties involved must notify the operation to the competition authority. This authority subsequently consults the CSA. Then, based on the information received from the CSA and the parties and its own analysis, the competition authority decides whether to approve or not the operation. The operation can also be approved under certain conditions, to which the parties must commit.

Thirdly, information companies are subjected to the specific legislation in the field of communications, whose control is exercised, in the case of the audiovisual sector, by the CSA.

3.1. Specific legislation for the press

France's current legislation for the press companies combines policies regulating distribution, anti-concentration measures for the ownership of companies and the market, and a system of subsidies.

The law of 2 April 1947 (Loi n°47- 585 du 2 avril 1947 relative au statut des entreprises de groupage et de distribution des journaux et publications périodiques), concerning the status of the press distribution companies and groups is based on the principle that there is no freedom of expression without freedom of distribution. Although with several subsequent amendments, the law continues in force today. As Aguado, Sanmartín and Magallón affirm:

> "The regulations in the system of distribution attempt to guarantee each publisher the possibility of choosing the most beneficial system of distribution, whether it is a system based on the publisher's own resources or a system of grouping. This is based on the principle that all editors must be equal before the system of distribution. There cannot be any discrimination in acquiring the newspaper a reader chooses because of the system of commercializing publications. The government is responsible for correcting certain market mechanisms to ensure news plurality." (Aguado, Sanmartín y Magallón: 2009a: 800).

The 1986 law of the legal regime of the press (*Loi n 86-897 du 1 août 1986. Portant réforme du régime juridique de la presse*) establishes various guidelines to ensure the transparency of information and the legal regime of print press companies. The most defining feature of this law, completed in November of the same year, is the limit established for the diffusion of informative publications considered of general and political information: a single owner cannot accumulate more than 30% of the circulation of this type of publication throughout the country.

As it will be shown in the following section, the 1986 freedom of communication law, which is specific for the audiovisual sector, set limits on crossed ownership between communication companies that also affected the owners of the printed press.

France was, on the other hand, the first country in Western Europe in introducing a system of subsidies to the press after WW2. The country is currently regulated by a decree promulgated in 2004 (No. 2004-1310, from 26 November) that distributes subsidies between national daily newspapers focused on political and general information based on three criteria: the publications have to be written in French, they have to be published at least five days a week and must be registered. Subsidies are divided based on the copy sales (Fernández and Blasco, 2008; Humphreys, 2008).

While other countries in southern Europe currently have similar regulations in force in the various areas, abovementioned, it is unique the control exercised by the French government on the distribution and dissemination systems of the press, as well as on the conditions of remuneration of the actors involved in the process of commercialization, with the aim of ensuring the neutrality of the distribution and to protect the principle of equal treatment between publishers (Aguado, Sanmartí and Magallón, 2009b). The French system of subsidies still remains one of the most generous in Europe (Fernández and Blasco, 2008) and its interventionist tradition was the one that started the earliest and was justified, for the legislator, by the defence of informational pluralism and citizens' access to information, which was claimed in the Declaration of 1789.

3.2. Specific legislation for the audiovisual media

The current media legislation in France combines measures protecting pluralism, both external (limits on ownership concentration, market and audience shares, and the reached population) and internal (coverage of political information).

The framework norm that directly or indirectly regulates all the previous is the 1986 freedom of communication law, which was amended many times, the latest at the time of writing this article in 2009 (*Loi n°86- 1067 du 30 septembre 1986 relative à la liberté de communication modifiée et complétée*).

This law establishes, on the one hand, the creation of the Conseil Supérieur de l'Audiovisuel (the Higher Audiovisual Council, hence, CSA) with explicit obligations for the control of internal pluralism, and also a number of mechanisms to avoid concentration in the audiovisual sector. These mechanisms are the limitation on the number of broadcasting licenses that can be granted to a natural or legal person and the limitation on the percentage of capital that the same natural or legal person can possess simultaneously in companies that provide television services.

The law was subsequently amended on several occasions. The amendment made in August 2000 is very important for this study because it added new mechanisms to avoid concentration. In particular, it added independent network shares for the providers of cable and satellite services (articles 34 and 34-2) and a threshold based on the audience to limit the ownership applicable to terrestrial networks (art. 39).

As the CSA itself explained in a report on concentration and pluralism in 2005, as it was conceived in 1986, before being modified, this law presented a series of flaws that were accentuated very quickly over time. On the one hand, it

was a law conceived in an analogue environment in which no more than three private networks existed, and on the other hand, it was based on the implicit conception that pluralism could be guaranteed "internally", through the expression of different ideologies and values in a same network, and therefore gave more priority to the limitations on the ownership of companies than to the limitations on the number of licenses that could be granted per legal person.

The CSA further confirmed that the regulations quickly became obsolete (such as the anti-concentration mechanism for broadcasting via satellite) or were hardly applicable in view of the process of liberalisation of the financial markets in the EU (as it is the case of limits on capital ownership when it comes to publicly-traded companies).

But the CSA's main criticism to the legal framework refers to the analysis of the sector reflected in the 1986 law, because it did not take into consideration the importance of the positions occupied by the actors in the market or the characteristics of the affected media, according to the authority of the audiovisual media. According to the CSA, all the previous flaws made the French anti-concentration regulation a mechanism that was complex, little flexible and little adaptable to the specific situations of the operators and the evolution of the market. For this reason, the French legislation introduced the mechanism relative to audiences as way to clarify and supplement the limitations and flaws of the anti-concentration law, which was based only on the ownership (capital) of companies and the number of licences. In regards to this particular, the CSA stated:

> "En effet, le renforcement, dans la loi, des dispositions formulées en termes de parts d'audience, potentielle ou effective, ou de parts de chiffres d'affaires sur les différents marchés présenterait l'avantage de rapprocher le système français de celui mis en œuvre par nos différents partenaires européens et, surtout, de se révéler plus adapté aux évolutions du marché" (CSA, 2005).

In particular, the specific mechanisms to control the internal and external pluralism in the media are the following, with implications for the press sector in the case of the latter type of pluralism:

3.2.1. Protection of political pluralism (internal pluralism)

The 1986 Law made the CSA responsible of ensuring pluralism in the daily news programmes and the special informative programming in public and private French television and radio networks -Internet is also part of its responsibility although at the time it was not clarified the extent or form of the monitoring: the CSA has authority over television via Internet or mobile technology and video on-demand services (the French call them SMADE), but there is no specific regulation in this regard.

In concrete terms the law compels the CSA to regularly provide the Parliament and the political parties with information on the number (and length) of appearances of political actors in the information programming. To fulfil this mandate and ensure pluralism in politics and trade unions in open-to-air television, the CSA decided to establish distribution mechanisms for the times of coverage of political actors both during election and non-election periods.

While in election periods the regulation is based on criteria of equality during the presidential campaigns and on equity (equality weighted according to parliamentary representation) during the parliamentary campaigns, the rest of the annual and non-electoral coverage is ruled by the norms of time distribution that constitute a unique singularity.

For nearly four decades this time distribution was based on the so-called three thirds rule, clarified with the so-called principle of reference in 2000 (one-third of coverage is guaranteed to the Government, one-third to the parliamentary majority, and a third for the opposition, with the possibility of updating this distribution based on the exiting situation). In July 2009, however, this rule was replaced by the so-called Principle of political pluralism in radio and television. Since this date the radio and television news programmes must take into consideration the President's statements which, depending on content and context, may be considered or not relevant for the political debate. Specifically, any statement made by the President in the context of the obligations conferred to him as head of the State by the Constitution should not be counted by the CSA. The aim has been to simplify the accounting methods so that the time is distributed as follows: the coverage of the parliamentary opposition at any time should be less than the coverage accumulated by the block of the parliamentary majority (which includes members of the Government, the parliamentary majority and the President's collaborators) and the President of the Republic (in his relevant statements for the national political debate) (Almiron, Capurro and Santcovsky, 2010).

The CSA requests the public and private radio and television networks reports to corroborate their compliance with the distribution of political news coverage according to these requirements, whose scope and complexity is easy to imagine.

In addition, in 2009, the CSA inaugurated the Barometer of Diversity in Television, to quantitatively measure twice a year the representation of the French social diversity in public and private television (according to the actors who were given space).

3.2.2. Anti-concentration measures (external pluralism)

The 1986 freedom of communication law and its subsequent amendments have also generated a highly complex legislative framework based on limits on the capital ownership of media companies and the number of licenses,

calculated based on cumulative audiences shares, and limits based on the population and complemented by a series of anti-cross-concentration measures (known in France as plurimedia or diagonal).

Given that since 1986 the law has undergone about 50 amendments, it should be noted that the current legal text, due to its length and multiple additions, is susceptible to multiple interpretations, as it is complex and contradictory. The following table summarises the situation at the end of 2010 based on the consulted sources:

Limits on Media ownership	
Nationwide terrestrial television analogue or digital	If >8% audience, <49% ownership
Nationwide analogue terrestrial television	If >15% of one, <15% of a second If >5% of two, <5% of others
Satellite television	< 50% If >1/3 of one, <1/3 of others If >5% of two, <5% of others
Nationwide analogue terrestrial television	If >8% audience, <33% ownership of a non-nationwide service
Limits on the number of broadcasting licenses	
Nationwide terrestrial television	1 analogue license Up to 7 digital TV licences 0 regional or local licenses
Satellite television	2 licenses
Terrestrial analogue or digital local or regional television	<12 million inhabitants
Terrestrial analogue or digital local or regional television	1 license per area
Analogue terrestrial Radio broadcasting	<150 million inhabitants
Limits *plurimedia* (two on three situations scheme)	
Nationwide broadcasting	
Terrestrial Analogue television	>4 million inhabitants
Radio Broadcasting	>30 million inhabitants
Political and general information newspapers	>20% dissemination
Regional and local broadcasting	
Terrestrial analogue TV in the area	Yes
Radio Broadcasting	>10% of the area's audience
Political and general information newspapers in the area	Yes
Source: Summary provided by Professor Emmanuel Derieux (Université Pantheon-Assas, Paris II) and contrasted with the Conseil Supérieur de l'Audiovisuel.	

The previous summarising attempt does not hide the high degree of complexity of the French regulation, which is detailed a little more below:

a) Limitations on the ownership of media companies

Terrestrial television: A shareholder cannot own, directly or indirectly, more than 49% of the capital or the voting rights of a society holding a license to broadcast a terrestrial television signal nationwide [7] and whose average annual audience both in analogue and digital exceeds 8% of the total television audience.

A shareholder who owns, directly or indirectly, more than 15% of the capital or the voting rights of a society holding a license to broadcast an analogue terrestrial television signal nationwide cannot own, directly or indirectly, more than 15% of the capital or the voting rights of a second license of the same type.

A shareholder who owns, directly or indirectly, more than 5% of the capital or the voting rights of two societies owning licenses to broadcast analogue terrestrial television nationwide, cannot own, directly or indirectly, more than 5% of the capital or the voting rights of a third license of the same type.

The holder of license for national terrestrial television whose audience exceeds the top limit of 8% cannot own, directly or indirectly, more than 33% of the capital or the voting rights of a society that holds a non-nationwide license.

Analogue television via satellite: A shareholder cannot own, directly or indirectly, more than half the capital or the voting rights of a society holding one licence for analogue satellite television.

A shareholder who owns, directly or indirectly, more than a third of the capital or the voting rights of a society holding a license for a television of this type cannot own, directly or indirectly, more than a third of the capital or the voting rights of a second society with this type of license.

A shareholder who owns, directly or indirectly, more than 5% of the capital or the voting rights of two societies holding a license for this type of television cannot own, directly or indirectly, more than 5% of the capital or the voting rights of a third society with this type of license.

Foreign Capital: Additionally, no natural or legal person of foreign nationality can hold more than 20% of the social capital or the voting rights of a society holding a license to broadcast a terrestrial radio or television signal in French language.

b) Limitations on the number of licenses (*autorisations*):

Analogue terrestrial radio: A natural or legal person holding one or more licenses to broadcast terrestrial analogue radio cannot accumulate, directly or indirectly (through other operators), access to more than 150 million inhabitants.

The same natural or legal person cannot be the holder of one or more licenses whose accumulated potential audience exceeds 20% of the potential audience accumulated by the total of public or private operators of radio of this type.

Analogue terrestrial television: A single natural or legal person cannot be the holder of two licenses to broadcast analogue terrestrial television nationwide (this provision does not affect mobile TV).

A single natural or legal person cannot be simultaneously the holder of a license to broadcast nationwide analogue terrestrial television, whose audience exceeds the threshold mentioned in article 39 (8%) and at the same time hold a license to broadcast the same type of television at a non-nationwide level.

However, the same natural or legal person can possess a license to broadcast nationwide and at the same time hold licenses to broadcast overseas.

A single natural or legal person holding one or more licenses to broadcast analogue terrestrial television at a non-nationwide level cannot obtain a new non-nationwide license if with this addition the coverage exceeds 12 million inhabitants.

When the license is non-nationwide, the same natural or legal person cannot hold more than one license of this type within the same geographic area.

Digital television (*voie hertzienne terrestre en mode numérique*): One natural or legal person can be the holder of up to seven licences to broadcast digital television nationwide (this provision does not affect mobile TV).

In the case of non-nationwide digital television signals, a natural or legal person holding one or more of these licences cannot obtain a new non-nationwide license if with this addition the coverage exceeds 12 million inhabitants.

When the license is not nationwide, the same natural or legal person cannot hold more than one license of this type within the same geographic area.

Analogue satellite television: One natural or legal person cannot hold more than two licenses to broadcast analogue satellite television.

Personal mobile television: One natural or legal person cannot hold one or more licenses whose accumulated potential audience exceeds 20% of the potential audience accumulated by public or private operators of this type of television.

c) Limits on concentration (plurimedia):

A license to broadcast analogue or digital terrestrial radio or television signals cannot be granted to a natural or legal person found under these three circumstances (the license can be granted only when the natural or legal person is found under two or one of these circumstances):

1. Being the holder of one or more licenses to broadcast television of the same type requested (analogue or digital) and already having access to up to four million people.

2. Being the holder of one or more licenses to broadcast radio of the same type requested (analogue or digital) and already having access to up to 30 million inhabitants.

3. Being a publishing company or to control one or more newspapers of political and general information representing more than 20% of the total nationwide circulation of all printed daily publications of this type (to be calculated based on the 12 months prior to the date of the request for the license).

It is possible, however, to grant a licence to broadcast analogue terrestrial radio or television to a natural or legal person that does not meet the aforementioned provisions (i.e. is found under the three previous circumstances) if the person promises to meet the requirements within a period determined by the CSA, which cannot be longer than six months.

There are similar measures for the protection of pluralism in analogue and digital regional and local broadcasting. A natural or legal person cannot be granted a license to broadcast analogue or digital terrestrial radio or television regionally or locally if found under these three circumstances (the license can be granted only when the natural or legal person is found under two or one of these circumstances):

1. Being the holder of one or more licenses to broadcast the type of television signal requested (analogue or digital), nationwide or not, in the area in question.

2. Being the holder of one or more licenses to broadcast the type of radio signal requested (analogue or digital), nationwide or not, and having an accumulated potential audience, in the area in question, that exceeds 10% of potential audiences accumulated by the total of public or private operators of the same type of radio.

3. Being a publishing company or to control one or more daily publications of political and general information, nationwide or not, circulated in that area.

It is possible, however, to grant a licence to broadcast analogue terrestrial radio or television regionally or locally to a natural or legal person that does not meet the aforementioned provisions (i.e. found under the three previous circumstances) if the natural or legal person promises to meet the requirements within a period determined by the CSA, which cannot be longer than six months.

4. Control and sanction mechanisms

4.1. Control mechanisms

The authorities in charge of controlling the implementation of the legislation in the audiovisual sector are the Ministry of economy and finance, through the Competition Authority, and the Conseil Supérieur de l'Audiovisuel, aka CSA (Higher Audiovisual Council).

The control of the Competition Authority is exercised mainly in two ways. The first is through the obligatory examination that the Council must perform on all operations of corporate concentration. The second is through the informational exchanges that this authority performs with the CSA to inform about anti-competition practices that the latter might have detected in the audiovisual sector (radio, television and on-demand audiovisual media services). The concern of this authority in no way is pluralism, but only the corporate competition.

In the case of the CSA, the control is performed through the granting of licenses to broadcast analogue and digital terrestrial radio and television, which can only be performed based on a series of criteria, which include the abovementioned anti-concentration measures and a special mention to the protection of pluralism. Thus, in the legal framework established for the granting of licenses to broadcast DTT, among the selection criteria the CSA is legally obliged (as stated in articles 28 and 29, Law 86-1067 of 1986) to respond to:

- The need of guaranteeing real competition and diversity among operators.
- The protection of pluralism in the sociocultural expressions.

Additionally, besides the mission of controlling content, the tasks of the CSA include being always attentive to possible concentration practices and making recommendations to the Government to improve competition in radio and television activities, as well as reporting anti-competition practices (article 17).

4.2. Sanctioning power

The Competition Authority can order the media to advertise its decisions, and mainly does so through the press, and

has the power to establish sanctions that reach, depending on the type of infraction, up to 10% of the global turnover of the infringing company, as established by article L.464-2 of the French Commerce Code.

Article 42 of the 1986 Law specifies the following legal powers for the CSA:

1. In case publishers or distributors of audiovisual communication services do not obey the obligations legally imposed on them, the CSA may demand them publicly to respect them (it can do so directly or at the request of the professional organisations and trade unions representing the audiovisual communication sector, the National Council of regional cultural languages, family associations, and associations whose purpose is the defence of the viewers).

2. I case the publishers or distributors that have been warned do not agree to comply with the law, the CSA can apply any of the following sanctions:

- Suspension of the publishing, broadcasting, distribution licenses, or the services of a category of programming, a part of programming, or one or more advertising sequences during a month or longer;
- Reducing of the duration of the license or agreement for a maximum of one year;
    - Monetary penalty which can be accompanied by a suspension of the publication or distribution of the service(s) or a portion of the programming;
    - Withdrawal of the license or cancellation of the agreement.

In the case of fines, article 42 (2) establishes that:

- The amount should be calculated based on the gravity of the infringements committed in relation to the benefits generated by such breach, without it exceeding 3% of the turnover (before taxes and including advertising revenue) of the last financial year (calculated on a 12 month period). In case the infringement is repeated this limit can increase to 5%.
- If the infraction is a criminal offence, the amount of the fine must comply with provisions of the criminal fine.
- In the event that the CSA has decided to apply a pecuniary sanction before a criminal court definitely judges the same events, the latter can order the pecuniary sanction applied by the CSA to be taken into account in the fine imposed by the Court

In case the license is withdrawn, article 42-3 establishes that this can occur without prior warning when:

- There is a substantial modification to the conditions under which the licence had been granted (particularly, changes in the composition of the social capital or the management bodies and the forms of financing).

In addition, the CSA has the power to oblige operators to advertise press releases that the CSA wants to make public when a network commits an infringement. The refusal to present the press releases can lead to a financial penalty.

However, the CSA has not authority to sanction infractions that happened more than three years ago, as long as these events have not been investigated, sanctioned or verified during that period.

A personal interview with the CSA confirmed, however, that:

1. The CSA has never withdrawn a license.

2. Before the public warning that precedes the sanction, the CSA tends to confidentially question the operators to give them the option to rectify the infraction without the need of making the public warning.

3. The CSA acknowledges that the maximum monetary fine that it can apply is very small and easily manageable by the operators.

5. Public debate

The arguments expressed by the main French actors in the public debate on the regulation of the media are of great relevance to produce an interpretation of it. Below we present those arguments that have

been obtained from documented sources:

5.1. Position of the CSA

The CSA has clearly expressed its position in favour of legal mechanisms to avoid concentration in the audiovisual sector (CSA, 2005). It is constantly monitoring pluralism in the French media in general. However, the personal interviews suggest that there is no explicit concern for concentration in the audiovisual sector. In fact, it was affirmed that the concentration or external pluralism is not considered a problem because there is enough plural offer. The major concern of the CSA is internal pluralism (see the perception of the CSA in Almiron *et al*, 2010).

5.2. Position of the President

The President of the French Republic, Nicolas Sarkozy, has expressed on several occasions his criticism towards the French legislative framework, which he has qualified as the culprit of creating obstacles to the creation of large media groups in France (*Tele Satellite*, 2008). He is not critical towards the situation of pluralism in the French media. So for the president the problem is not corporate concentration, but quite the contrary, it is the excessive corporate weakness of the French media groups.

5.3. Lancelot Report

In 2005, the then Prime Minister, the conservative Jean Pierre Rafarin, established by Decree (nº 2005-217, 8 March) the creation of a commission in charge of studying the problems of corporate concentration in the media. The commission should establish a diagnosis and critically comment on the effectiveness of the legislation and make proposals aimed to its improvement. The final report indicated that the media concentration existing in France did not threaten pluralism and thus promoted greater liberalization measures for the media sector (Lancelot Report, 2005).

5.4. Positions of the industry

It is of public knowledge the good relationship between the major French broadcasting operators and the President of the Republic, Nicolas Sarkozy, who has among his main friends the most powerful media magnates [8]. These media magnates have been, on more than one occasion, the authors of the reports that are used by the Government and the President of the Republic to learn and make decisions. This sector shares, and in fact is one of the greatest promoters of, the idea that the problem of the media sector is not corporate concentration but the absence of strong French companies in the international media sector.

5.5. Positions of the political opposition

In November 2009 the French Socialist Party (PSF) issued a report on the media sector (Bloche Report, 2009), which offered an analysis of the concentration in the sector and accordingly proposed a legal reform. The report aimed to foster a legislative initiative but it failed to be considered in Parliament. The report emphasised the links between the large media owners in France and the major industrials, including those more closely related to the government (such as public works contractors). The conclusion was that such links inevitable influence the media, to the detriment of media independence. The PSF proposed to add more limitations to the legislation currently in force, aimed at making incompatible the possession of licenses to broadcast radio or television or publish printed press when the person requesting the license maintained important economic links with the government. This bill aimed to establish a separation of interests that would have affected the large French media groups owned by magnates such as Bouygues and Bolloré, who are important industrial contractors of the State and maintain good personal relations with the President of the Republic.

5.6. Positions of social organizations

The biggest concern of the organised French public opinion seems to be, effectively, the one addressed by the Bloche report. Consulted academics, journalists and trade unionists, as well as the press most critical towards the Government (*Libération, Marianne*, etc.) are concerned with:

- The links between media and the State, and the resulting impossibility to exercise the journalistic work independently;
- The corporate concentration, especially in the press;
- he absolute inefficiency of the legislation (excessively complex, when not inapplicable) and the CSA (without real capacity to exercise the control it supposedly has, if such control is possible).

6. Conclusion and discussions

The French regulation on media is probably one of the most extensive and complex of the contemporary liberal democracies, covering all the traditional media and all sorts of mechanisms. However, the French paradox lies in the permanent inapplicability of good part of this legislative framework which is a product not only of the reluctance of the private sector to comply with the spirit of the norms to the detriment of their market interests, but also of the impossibility of the clear and univocal interpretation of the norms and the inability of the public authorities to monitor their implementation. While these three traits are shared to a greater or lesser extent by other countries, they reach one of their maximum expressions in the French hyper-regulation scenario. By way of conclusion, we can establish the following points:

a) The protection of pluralism has traditionally justified a high degree of regulation in the media sector. The press is widely regulated with mechanisms protecting external pluralism (regulation of distribution, limits on cross ownership, limits on market share, and subsidies). The same happens with radio and television (there are limits on ownership concentration, market and audience shares, and the reached population). Moreover, political content is also regulated (principle of political pluralism). The regulatory tradition, which is one of the earliest, and the volume of the same, which is one of the most prolific, have configured a legal framework that is as complex as inapplicable in its totality, and cannot be monitored. This view has been shared by all the people interviewed during the research.

b) The majority of social, political and economic actors believe that the legal framework is inadequate. It is seen as either excessive or inappropriate, and in all cases is considered ineffective:

- The people interviewed from the CSA, the Presidency of the Republic, and large media companies share the same opinion with regards to the sector: the problem is not the lack of pluralism but the lack of strong media groups. The Lancelot Report would be their most representative text.

- The union of professional journalists, critical media and consulted academics share the views expressed by the Bloche Report (French Socialist Party), which denounces the links between the large media owners in France and the main industrial sectors, including those closely related to the government.

The following ideas are proposed for the debate:

The French legal framework for the media, in its sophistication and complexity, has failed to provide real guarantees for pluralism to a media system that is closer to the models used in southern Europe than to the models used in northern Europe. Moreover, the politicisation of the institutions, the lack of autonomy of its content and the links between the business and political class remain to be, as Hallin and Mancini (2008) and most people interviewed point out, the dominant tone rather than the exception in the French legal framework.

The difficulty of combating a culture deeply rooted in all social levels is evident in the low effectiveness of agencies like the CSA, which is the authority of reference in Europe but has not achieved substantial results even in its area of specialisation: internal pluralism. In this respect, the self-criticism made by this body in a 2006 report ("Réflexions sur les modalités de pluralisme") is in our opinion the best synthesis of its real work: at the same time excessively complex and limited. There are characteristics that are applicable to the entire French legal framework aimed to protect pluralism, which are probably one of the best reflections of the fierce and unequal fight of interests experienced in modern democracies between the democratic principles and the neoliberal capitalism. France, one of the main enclaves of the Western democratic egalitarian tradition, has become one of the largest scenarios for the major clash between these two forces.

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8. Notes

[1] http://www.cerdi.u-psud.fr and http://www.droit-medias-culture.com.

[2] In addition to several members of the CSA, we interviewed university professors; journalists from the print media, agencies and television; representatives of the main syndicate of professional journalists

(Syndicat National des Journalistes); a sociology professor; and a lawyer from the Association pour les droit des médias. Each interview lasted between one and two-and-a-half hours, and were made throughout two stays in Paris, the first during July 2008 and the second during December 2009.

[3] Loi n°81-994 du 9 novembre 1981 portant dérogatio n au monopole d'État de la radiodiffusion y Loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle

[4] Apart from the 1981 and 1982 laws, the following norms are also applicable to the sector:

- Loi n 86-897 du 1 août 1986. Portant réforme du régime juridique de la presse.
- Loi no 89-25 du 17 janvier 1989 modifiant la loi no 86-1067 du 30 septembre 1986 relative à la liberté de communication (creación del Conseil Supérieur de l'Audiovisuel).
- Loi nº 94-665 du 4 août 1994 relative à l'emploi de la langue française.
- Loi n°2004-669 du 9 juillet 2004 relative aux comm unications électroniques et aux services de communication audiovisuelle.
- Loi nº 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées.
- Loi n°2007-309 du 5 mars 2007 relative à la moderni sation de la diffusion audiovisuelle et à la télévision du futur.
- Loi organique n°2009-257 du 5 mars 2009 relative à la nomination des présidents des sociétés France Télévisions et Radio France et de la société en charge de l'audiovisuel extérieur de la France.
- Loi n°2009-258 du 5 mars 2009 relative à la commun ication audiovisuelle et au nouveau service public de la televisión.
- Loi n°2009-669 du 12 juin 2009 favorisant la diffu sion et la protection de la création sur Internet.
- Loi n°2009-1311 du 28 octobre 2009 relative à la p rotection pénale de la propriété littéraire et artistique sur Internet.
- Loi n°2009-1572 du 17 décembre 2009 relative à la lutte contre la fracture numérique.

The decrees and amendments to the 1986 freedom of communication law can be found in the section of legal texts of the CSA (http://www.csa.fr) or, more extensively, in the legislative public broadcasting service (http://www.legifrance.gouv.fr).

[5] Ordonnance du 26 août 1944 sur l'organisation de la presse française; Ordonnance du 2 novembre 1945 portant réglementation provisoire des agences de presse; Loi du 2 avril 1947 sur le statut des entreprises de groupage et de distribution des journaux et publications périodiques; Loi du 16 juillet 1949 sur les publications destinées à la jeunessedistribution des journaux et périodiques; publications Loi du 16 juillet 1949 sur les publications destinées à la jeunesse

[6] Loi n°84-937 du 23 octobre 1984 visant à limiter l a concentration et à assurer la transparence financière et le pluralisme des entreprises de presse.

[7] Art. 41-3: any TV broadcasting service in a geographic area whose population is more than 10 million inhabitants is considered of nationwide level.

[8] See for example: Revel, R. (2008): "Bouygues, 'c'est un frère'" in *L'Exprès*,26 June. Retrieved on 12 October 2010 from: http://www.lexpress.fr/actualite/media-people/media/bouygues-c-est-un-frere_516457.html; Lalande, J. (2007): "Arnaud Lagardère: 'Mon amitié avec Sarkozy me coûte plus qu'elle ne me rapporte'" in *Ozap*, 13 September. Retrieved on 12 October 2010 from: http://www.ozap.com/actu/arnaud-lagardere-amitie-sarkozy-coute-rapporte/120714; or "Sarkozy: quels patrons lui sont proches?" published online by *Le Journal du Net*. Retrieved on 12 October 2010 from: http://www.journaldunet.com/economie/dirigeants/patrons-sarkozy/index.shtml.

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