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The audiovisual communication policy of the socialist Government (2004-2009): A neoliberal turn

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Abstract: The first legislature of Jose Luis Rodriguez Zapatero's government (2004-08) generated important initiatives for some progressive changes in the public communicative system. However, all of these initiatives have been dissolving in the second legislature to give way to a non-regulated and privatizing model that is detrimental to the public service. Three phases can be distinguished, even temporarily: the first one is characterized by interesting reforms; followed by contradictory reforms and, in the second legislature, an accumulation of counter reforms, that lead the system towards a communicative system model completely different from the one devised in the first legislature.

This indicates that there has been not one but two different audiovisual policies running the cyclical route of the audiovisual policy from one end to the other. The emphasis has changed from the public service to private concentration; from decentralization to centralization; from the diffusion of knowledge to the accumulation and appropriation of the cognitive capital; from the Keynesian model - combined with the Schumpeterian model and a preference for social access - to a delayed return to the neoliberal model, after having distorted the market through public decisions in the benefit of the most important audiovisual services providers. All this seems to crystallize the impressive process of concentration occurring between audiovisual services providers in two large groups that would be integrated by *Mediaset* and *Sogecable* and - in negotiations - between *Antena 3* and *Imagina*. A combination of neo-statist restructuring of the market and neo-liberalism.

Keywords: audiovisual policy; general law of audiovisual communication; RTVE (Radio Televisión Española); cognitive capital, concentration, pluralism.

Summary: 1. Hypothesis and analysis. 2. General outline of the socialist audiovisual policy. 3. Interesting reforms. 4. Contradictory Reforms. 5. Accumulation of counter-reforms. 6. Conclusion. 7. Bibliography. 8. Notes.

Traducción de **Cruz Alberto Martínez Arcos**

1. Hypothesis and Analysis

The cultural and communications public policies can be orientated more towards one direction than another (e.g. prioritizing the social sphere, the economic field, or the political arena) and within them emphasizing different aspects (the integrating element, the public service, the political affinities, the economic viability of privatization, the concentration...) and with preferred scales (the regional or local decentralization and the treatment of the third sector versus the centralization of the media system with preference towards the diffusion of state affairs...)

This paper endeavours to describe and to locate where the emphases of the communications policy of the Partido Socialista Obrero Español (hence PSOE) have been put in the last years, and to consider whether it is even possible to talk about two different policies in its last two terms of the PSOE government. At the time, it was positively surprising the solid governmental commitment to the Public Service and the locomotive function that *RTVE* (Spanish Radio and Television Corporation) was going to have on the general radio-television system. Both of these policies were formulated in the National Radio and Television Law of 5 June of 2006 (*Ley de la Radio y la Televisión Estatal*, a.k.a. Law 17/2006), which also gave way to the Lisboa Agreement philosophy: the "Society of the information for all". RTVE's increasing strength and prestige, as well as the sustained bonds between the major private television

services providers and Rodríguez Zapatero's Government throughout the last years –in a context of audience fragmentation, of new players in the saturated open-TV and pay-TV markets and the fall of advertising revenue– prompted new rules, in which the mystery was who would be the beneficiaries: was it RTVE, the private operators or both simultaneously? The adoption or resignation of that perspective was about to be tested in the context of the European Union's growing conservative dominance and growing reorganization of media capital. The new technologies, including the TDT, have an immense capacity of decentralization, segmentation, personal customization, and horizontalization of communications and contents. But are these new technologies accompanied by the economic forces and the social commitment or, on the contrary, are those potentialities domesticated to the benefit of the accumulation processes, reason of existence of the economic system in which the communicative processes are inserted?

The Keynesian model of the 1940-70s which insisted on the social regulation (labour rights, cooperation, social security...) and demanded generation capacity (including countercyclical policies) as the base for increased production was replaced by the neoliberal model in the 1980s and 1990s, with a resulting disregard for sustainable demand, the depletion of important state functions in welfare policy, the financial pressures neglecting the real economy and the triumph of the erroneous assumption that the capitalist economic crisis was a thing of the past.

In some countries these neoliberal policies are balanced with public policies of *Research and Development* (hence, R&D) that have been gaining more weight and consist of public funding for their transference to private capital towards encouraging a policy of supply and exchange of the technology-based production model, as advocated at the expense of the redistributive logics of economics by a classic economist, Schumpeter. This is what is now called a neo-Schumpeterian policy [1] that emphasizes innovative capital as well as the assets and imaginative "captains of industry" rather than social reality.

There are two questions: whether there are one or two lines (the neoliberal and neo-Schumpeterian) present within the socialist communication policy of Zapatero's second term government, and whether there is an increasing neglect of the Keynesian or welfare state philosophy, which was focused on the socialization of information and education and was parallel to the emergence of RTVE's Public Services across Europe and its democratizing and formative function for the nation's public opinion.

And a more global consideration. This is the era of knowledge that entails a new dominant capital –the intangible, cognitive or informational capital [2]–, that manages the knowledge from parameters of economic value. Today intangible or cognitive capital –understood not as the stock of knowledge that is possessed by a community or area but as that appropriated by a capital that values it– wants to be the motor and beneficiary of the society of Post-Fordism, of information, of knowledge and learning, which emphasizes the added value of the intangible. That capital is central to the cultural, communications, and R&D capitals, but is also decisive in the management of financial, organizational, informative, energetic, and telecommunications capital.

Cognitive capitalism seeks to appropriate and accumulate added values linked to individual and collective knowledge or human capital (wetware and network, respectively) that are increasingly crucial and locomotive for advanced societies, insofar as they already have advantages in the merely repetitive Fordist industrial production. The added values preferred by post-Fordism are knowledge, patents, R&D, applications, business know-how, human resources, innovative capabilities... and also intellectual property, information, communication, and advertising. Using the term "capital" in very different ways, one could say that the cognitive capital seeks to appropriate in particular the added value of human and social capitals, and within them seeks to appropriate the intellectual and cultural capital. Cognitive capitalism is, above all, ownership of individual and social knowledge.

The first corollary is the deterioration of the social statute of most creators and skilled staff of any area, their accelerated devaluation because the value of their labour force or their autonomous services have been brutally distanced, with *mileurismo* (the growing number of low-paid people who earns around 1,000 Euros a month) and the precariousness, from the value of human capital accumulated by people in the knowledge society. The intangible or cognitive capital is increasingly demanding more knowledge; and obtains its surplus from that foreign knowledge which it remunerates poorly, except when dealing with hyper-qualified talent or talent of extraordinary economic returns. The second corollary is whether to make society the beneficiary of the socialization of knowledge that technologies and networks make possible, or to transfer it from free access to its increasing commodification and appropriation.

The question here is whether the PSOE policy in the field of communications and authorial management is in favour of society and access or rather in favour of the enhancement of private cognitive capital and

its accumulation through concentration, for example.

2. General outline of the socialist audiovisual policy

The first term of Jose Luis Rodriguez Zapatero's government (2004-08) generated important initiatives for some progressive changes in the public communications system. However, all of these initiatives have been dissolving in the second term to give way to a non-regulated and privatizing model that is detrimental to the public service.

The current adrift reflects the disturbing fragility of the government before the UTECA, the union of employers of the television industry, –whether sided or not with the government itself– that through pressure is managing the dismantling of the conceptual model of the first term and the system that has resulted, which is embodied in the 2005 report on the reform of the media of public ownership, commissioned by Rodriguez Zapatero's government itself.

Spain, before the opening of the EU to eastern countries, was already one of the most liberal states in relation to the concentration of dominant firms in culture and communications in Western Europe. Practically, the possibility to regulate territorial monopolies in press is vetoed; the opportunity to decentralize radio was lost in the day with the recorded permission of the *Unión Radio*; and the only thing left was the systematically breached banning on chain broadcasting with shared programming of over 24%. At a time when the concentration of operators advances on all platforms (TV, cable, internet, mobile, VOD...) and with processes of horizontal and vertical integration within the framework of convergences which suffice to talk about cross media [3], the project of the impending Audiovisual Communication Law (Ley General de Comunicación Audiovisual, hence LGCAV) condemns that logic to the detriment of pluralism and citizenship.

Indeed, during the governments of Jose Maria Aznar (1996-2003), since the Popular Party's neoliberal and patrimonial conception of the media, there had been a gigantic democratic and qualitative regression in the media system. Some examples of this recession are the attempt to ruin and demolish RTVE, the tendency towards the privatization of regional television networks (known in Spain as Canales Autonómicos), the blockade of local television, the allocation of license just to friends, including the amazing stunt of *Quiero TV*, [4]

the cancellation of license contests for the first radio frequencies in the regional sphere, the rejection of a Broadcasting Council. And, of course, today, with a Popular Party government everything would have been much worse, but that does not console or justify the severe errors we are witnessing with the PSOE administration; errors particularly intense in the first phase of the second governmental term.

The scenario towards which the system is heading to –few groups present in all media areas and spaces– would claim exactly the opposite: a second democratization around a renewed and adapted conception of what the term “Public Service” meant from the 1950s to the 1970s in different European latitudes. We must keep open the debate about the implementation in the media anti-concentration regulation that can effectively limit the abuses of dominant players and the excesses of market power, either as a multimedia or monomedia, at national, regional and local spheres.

The shift of the PSOE audiovisual policy in just five years is as sinuous as a cycle: firstly a series of progressive reforms; then a series of necessary reforms but of dubious formulation; and at the end a series of genuine counter-reforms that only benefit the large private operators. It is like a journey that started northwards and ended southwards.

3. Interesting Reforms

The first socialist term addressed the urgent reform of RTVE. Given its debt, it faced bankruptcy risk and the threat of total ruin and disappearance. [5] In general terms, the crisis of social place, politicization and the administration of RTVE (then an entity and today a Corporation) were resolved positively.

Previously, the “Consejo de sabios” (Advisory Council) was rightfully created and most of its recommendations –the 2005 report on the reform of the media of public ownership– were pivotal for the new National Radio and Television Law of 5 June of 2006. As a whole, it was a good law that founded new institutional forms: the Directorate's parliamentary election; the *Mandato-marco* (which establishes the objectives of RTVE's public service) and the *Contrato-programa* (another new regulation figure); the Independent Administration and Decision-making Board; the six-year mandate; the Advisory Council with 15 representative members; the Informants Council; the Mixed-funding System (subsidy and advertising, without utilizing public debt), etc. [6]

The law also applied a hard recovery plan with staff adjustments according to the State Society of Industrial Holdings led at the time by the then Minister Solbes, while the state dealt with 3,180 million Euros debt accumulated by RTVE in the 2007 General Budget. These measures overcome an unresolved task pending since more than a decade ago. RTVE's balance from 2006 to 2009 can be considered very satisfactory.

RTVE had found its place, until the *Financing of the RTVE Corporation Law* of 28 August 2009 (Law 8/2009), a government proposal, made it abandon the advertising market since January 2010, putting a successful public model at risk of dismantling, as it is analyzed later.

The drafts of the then progressive General Law on Audiovisual Communication and the Law of the State-owned Media Council were also made public - although postponed for the second term. These laws followed the philosophy promoted by the report of the Advisory Council.

The 2007 Law for the Promotion of the Society of Information (Ley de Impulso de la Sociedad de la Información, a.k.a. Ley 56 de 28/12/2007, hence LISI) sought to reduce barriers and obstacles, establish some civil rights, amend some laws, establish certain obligations for large media services providers like Internet and e-procurement, etc. However, some Internet users rejected some aspects of the law because in some areas they could allow censure without judicial warrant.

The regulations on the use of the public radio-electric spectrum (Royal Decree 863/2008 of May 23) also had ordering character, which nonetheless did not affect radio television and mobile-phone communications. Similarly, the debate on the possibility of regional involvement for the distribution of the fourth mobile operator is open. [7]

Another important effort was to make DTT (Digital Terrestrial Television) of general and free access and a means of social access to the benefits of the information society. [8] The support culminated in the *Plan Avanza* (75 million euros in 2009), the *DTT Impulse Plan*, together with operators and agents, including Abertis, and the *National Plan for transition to DTT* in 2007. [9]

In terms of audience, in July 2009, the share of DTT was 40.2% of total consumption, while analogue television fell to 38.9%. The remaining 20.9% comes mainly from multi-channel payment platform.

However, few months before the digital switchover (on the 3rd of April 2010), by the end of summer 2009, nearly a quarter of Spanish households still did not receive DTT, due to the lack of either antenna or digital tuner. Moreover, it is important to add that the lack of some foresights has made the performance profile of the home equipment very low, which prevents interactivity [10] and the development of decoders' standards.

4. Contradictory Reforms

By the Royal Decree 439/2004, of 12 March, subsequently amended by Royal Decree 2268/2004, of 3 December, the National Technical Plan for Local Digital Television was approved, which allowed the reactivation, ten years later, of the frozen *Law of Local Terrestrial TV* of 22 Diciembre of 1995 (*Ley 41/1995 de Televisión Local por Ondas Terrestres*). This could initiate broadcasting and the granting of licenses in the Autonomous Communities, hitherto impossible to reach without a preliminary technical plan.

However, there were important errors like the norm to grant the local licensing just on the basis of technical aspects –J. Marzal and A. Casero (2009) speak of "dominance of a techno-economic vision"– and the lack of a preceding formulation of a more general model that placed the local into an integral frame of macro, meso and micro communication. [11]

It is already becoming clear that the vast majority of both local and regional private concessions awarded in the license contests will not be profitable, after having been prioritized with posterity over those of state-ownership. [12]

All indications are that the sale and passing of licenses will be a huge souk in the coming months, contributing to a great process of local concentration, which will be accompanied by a major pressure to relax or disappear the limitations for chain broadcasting, with a consequent loss of local identity.

Some measures of interest, especially the establishment of very lax limits to the concentration in radio, were taken by the law on Urgent Measures for the Promotion of DTT, the Liberation of Cable TV and Promotion of founding of Pluralism (a.k.a. Ley 10/2005, which appeared in the Spanish Official Gazette

[BOE] on 15-06-05), which legally concretized the homonymous plan in December 2004. Thus, in radio, nobody can control over 50% of administrative concessions or manage more than 5 concessions in the same area of coverage, or more than one third of all national concessions. Likewise, it is allowed to reserve, exceptionally, up to two public channels in the local digital television and the concessions for the provision of private local TV stations service is raised to 10 years. The law also planned additional authorizations for the provision of cable TV and radio broadcasting services and abolished the limit of three concessionaries for private TV stations of national coverage, preparing the ground for the emergence of Cuatro and La Sexta networks.

The Royal Decree 944/2005 (of 29 July) of the National Technical Plan for Digital Terrestrial Television (DTT), provided the conditions for the digital switchover and the distribution of multiplexes (broadcast frequencies that contain multiple compressed channels) to the various networks –both before and after the digital switchover of 2010– as well as for the incorporation of a new analogue channel to the existing catalogue of channels.^[13] It also authorized the provincial disconnections in the regional TV networks.

By 2010, RTVE shall have two multiplexes (of up to 8 channels each), while private operators –Antena 3 de Television, Sogecable, Gestevisión Telecinco, La Sexta, Veo Television (Editorial Unit) and Net TV (Vocento)– would each have a multiplex with capacity for four channels.

In the definitive map of 2010 National TV stations (32 channels) are prioritized to the detriment of the regional (up to 8, except Catalonia with 12) and (4) local TV stations. Unlike France, there was no provision for High Definition (HD) channels.

But this politically-decided proliferation of channels could not result sustainable. Indeed, the end result is an impossible profitability and the pressure to allow concentration processes in the whole system. Almost every space and area in the spectrum was distributed (national, regional and local), without regards to economic viability. Favouring the technical side, the policies gave each company what it wanted without taking into account the economic aspect, which now comes to claim its space.

Moreover, as advertising revenue in the media declined by 11% last year, some large players (A-3 and Sogecable) have already had serious economic difficulties, while the new analogue channels are not being profitable (Sexta) for the moment, and almost none of the national, regional or local DTT operators are cost-effective.

The pay-TV business monopolized by Digital+ has become stagnated due to the offers on ADSL (Imagenio), cable (Ono, and Euskaltel, with their 3 or 4 in 1 offers of mobile and fixed telephony, internet and TV) and Internet.

The beneficiaries of this oligopoly are those who demand the dismantling of the public and the authorization of strong processes of concentration.

Another questionable decision in the previous term was the inclusion of new actors on the communications map, in a mixture seeking plurality within the spectrum and the fostering of partisan interest. In other words, that was pluralism aimed as a rebuttal to the control that Aznar applied over the agents of the spectrum when including *El Mundo* and *Vocento* in the map of national TV operators (*Veo* and *Net*, with the precedent of *Quiero TV*).

Aznar's strategy managed to make some companies allies of the Popular Party at the regional, local, and private levels (Tele 5, Antena 3, La Razón-Planeta, Vocento) and even some of them were installed in the mere destabilization of the democratic system (e.g. COPE, El Mundo), so Zapatero's government sought to counterbalance this by giving more space to its political allies, and even by forcing legal principles beyond decorum. For instance, it assigned Sogecable (which only operated pay-TV) and the Cuatro networks to broadcast analogue and digital TV (the Council of Ministers' 29.7.2005 amended the obligations of the concession contract arising from the Law 10/1988), whereas La Sexta, which was linked to Media Pro and Globomedia, emerged thanks to the made-to-order legal change of the previously discussed Law 10/2005.

These moves certainly benefitted pluralism and avoided a pure right-wing RTV system but made evident, to the blushing of the media system, the partisanship of the media and the power relationships between operators. There were not obligations from the public service towards the system and neither an audiovisual council to require so.

There have also been problems in the area of pay-TV. The reasonable decision to stop Digital+ from having a monopoly on soccer broadcasting rights –and which resulted in the authorization of Gol TV (from Media Pro-Sexta, which already had broadcasting rights)– damaged Sogecable, which was

already in crisis. This, however, was not done in the best possible way. The government passed the bill on August 13, 2009 and it was validated in Parliament a month later.

In December 2007 the government finalized some modifications to the Copyright Act in relation to the so-called digital canon whose rates were approved six months later (BOE 19-6-08).

5. Accumulation of counter-reforms

Beyond the legislation and in spite some sanctions, the lack of control in advertising saturation has been the characteristic behaviour of private operators in recent years, so they have found it profitable to consistently exceed the legal limits to make open TV stations unprofitable.

The first announcement of counter-reform affecting pluralism was the Royal Decree-Law 1/2009 (of 23 February), which was approved by the Parliament as Law 7/2009 (on the 3 July) of urgent measures in telecommunications. As virtually all of its content was included in the bill for the Audiovisual Communication Act (*Ley General de Comunicación Audiovisual*, hence LGCAV), the government gave notice of its determination to put it into practice before the discussion and amendments of the future law.

The law only has two titles. The first approves questions of social interest, and signals to the satellite platform as a solution for the provision of universal service in areas without coverage or for operators to put their channels available to a single satellite services provider/operator as a public service obligation.

On the other hand, the second title is a compendium of liberalization rules, namely of deregulation of the television sector, and a series of counter-reform elements "to ensure financial sustainability of TV service providers". This tardy concern seems rather like a euphemism for invitation to media concentration.

The law contains three important respects. Firstly it allows cross-shareholdings in terrestrial TV companies. It also introduces criteria for television audience markets when authorizing or prohibiting any integration transactions between traders. What Josep Piqué, Minister of the Popular Party, did not dare to do was approved by the Zapatero Government.

Moreover, a person or entity may have significant cross-shareholdings (greater than 5%) in more than one company, provided that the cumulative audience share of operators in which it is present does not exceed 27% of the total audience. It also allows the fusion of two operators in the television industry when they do not exceed the 27% cumulative audience limit, and provided it ensures the existence of at least three private operators with different editorial direction at the national level (5 operators were considered previously). In other words, the legislature's thesis is that there would be no risk to pluralism if there were only 3 providers sharing the national market, contrary to the aperture to more operators in the Law 10/2005.

This liberalization is included in the bill for the Audiovisual Communication Act with the aggravation that, in the current draft, if the 27% limit is crossed after the buying of foreign stock nothing would happen. This is a highway for a high concentration with only three dominant groups, or two dominant and other smaller groups, on the horizon at the end of the race.

Secondly, the same company or individual could have rights of use over the radio-electric spectrum of public domain, either through ownership or through significant shareholdings, if they are not superior to the technical capacity of two multiplexes of national coverage and one of regional coverage. If 8 national channels suffice to talk about great influence, the possibility to add four more in some Autonomous Communities (half of the 8-channel spectrum) the position would be of dominance over open-to-air audiovisual services.

Thirdly, the bill establishes a voluntary restraint on TV operators of public ownership. At the national level, the State may not award public operators more than 25% of the airwaves. At least 75% with no maximum is reserved for private operators. In the Autonomous Communities, the limit for public local and regional television channels is 50%, although this extreme measure no longer appears in the bill for the Audiovisual Communication Act with the aggravation that, in the current draft allegedly due to incompatibility with the existing Catalan model.

The *Financing of the RTVE Corporation Law* of 28 August 2009 (Law 8/2009) states that from 1 January 2010, TVE will not include advertising in their broadcasts. The corporation was already limited to just 1% each year according to the 12-minute advertising limit, which allowed a gradual adaptation in tune with the locomotive-operator spirit encouraged by Law 17/2006.

RTVE's operation budget (currently 1,100 million euros, and with records of its advertising revenue at almost 600 million euros in 2008, a quarter of the market, and 512 million euros predicted for 2009) will be assigned from 2010, from public subsidy and royalty for the use of airwaves, and the other half from the sum of 3% of revenue from private operators of open-to-air TV, 1.5% of annual revenues of pay-TV operators, and 0.9% of the revenues of telecom operators, although the latter in no case will provide more than 25% of RTVE's budget. Certainly, telecom operators are reluctant to contribute but, of course, they benefiting from the measure since they are already on TV, exploiting premium services, multichannel platforms and will have frequencies freed by the digital TV switchover.

If the incomes were reduced, RTVE would be financed with funds from the public budget.

Article 9's additional obligations for the public service are tough and costly, and rather typical of development by decree: it offers encrypted limitations to the premiere of international films, that is from the US; increases by 20% the legal duty of financial investment in European productions; limits to 10% the annual purchase of broadcasting rights of official sports events listed by the National Council of Audiovisual Media as of great public and social interest, thus making RTVE unable to compete in sporting events with private networks (excluding the Olympic and Paralympic Games); Guarantees broadcasting time for political and social groups and work unions; selectively addresses parliamentary debates; and deals with children's programming and representations of minorities...

There are some clear advantages. RTVE will be advertising-free. The concept of Public Service strengthens... but only for RTVE. Article 3.3 of the Constitution further states that, through a channel devoted to cultural and artistic production, will be acquired and broadcast – if budget allows it - audiovisual content produced in the Autonomous Communities and, when the content is spoken in co-official languages a dual system with Spanish will be offered. Regional broadcasting shall be conducted in the language of each community to reflect the linguistic reality of each of them.

Yet, the uncertainties and threats in the law are much more numerous.

Firstly, it mostly benefits the private networks, whose excessive number was allowed by the Government's granting of licenses, and to whom the entire advertising, cinema, and sports markets have been handed in.

Secondly, it weakens the RTVE Corporation and makes it dependant on foreign business, just three years after they agreed on a fair funding system that had paid off.

Thirdly, there is a high risk of turning RTVE, current leader of ratings due to its quality, into a Television of minority profile, focused on news, documentary, national series, and fiction for minorities.

Fourthly, the law is vulnerable. This or any other government could reduce the shares of contribution by pressure of the private broadcasters [14], which will want to accommodate RTVE into minority programmes that do not affect their GRPs.

Finally, it puts public regional TV stations in misery.

And all this without mentioning that it is also bad for advertisers. As the CMT explained to the Government in its report about the Financing Law, [15] the reduction of the number of channels with high advertising support makes the price of GRPs more expensive for private broadcasters, which will not capture all the advertising investment lost by RTVE.

This commitment is so strong that article 42 of the LGCAV bill confirms the exclusion of advertising in the RTVE Corporation. A more logical model would had been one of "three thirds": [16] one third of public subsidy that would generate public responsibility, demand, defence of public services and programming; a second third generated in the advertising market which would force RTVE to reach high audience shares with attractive programming, which consequently would put RTVE in tune with the market; and the final third obtained from a levy on global advertising spending, or as it is now considered, from a percentage contribution from private operators. [17]

The Audiovisual Communications bill, [18] which was presented to the Cabinet on 16-10-2009 and with the parliamentary processing already started, has some undeniable strengths regarding the current situation, but also represents, if it is not modified, a point of no return in the process of departure from the citizenship of the socialist communication policy and its adaptation to the interests of communications business groups.

Indeed this is a deregulatory [19] and liberal project, and animator of uncontrollable concentration

processes between companies, but at the same time, does little to guarantee citizens' right to quality communication. It is belated and halved. In fact, the bill in its current form represents a departure from the basic criteria of the progressive tradition, such as the concept and practice of public service, pluralism with limits to concentration, and the minimum obligations for all operators required to ensure the preferential social role of communication without damaging its marketing side.

This bill, which is more technical than the earlier one that was very focused on concessions of licenses, contains, of course, interesting questions undertaken with corrections such as: the homogenization of the dispersed set of rules (repeals the laws of the Third Channel, of private TV, of Promotion of DTT, etc), the inclusion of an independent yet competently-weak National Council of Audiovisual Media (with 9 advisers elected in parliament by a majority of 3/5), and an Advisory Committee; the transposition of the 2007 community legislation on audiovisual services which before the end of the year –prorogable to early 2010– should be part of Spanish law; the addressing of new phenomena such as mobile TV (art. 33), high definition and interactivity, the establishment of a registry for TV service providers; the inclusion of programming catalogues of service providers as contributors of funds for audiovisual production; and inclusion, even partial, of some "audience rights" (art. 4) regarding to "the right to cultural and linguistic diversity".

But alongside these right decisions, there is a plethora of worrying mistakes.

- There has been a notable lack of transparency and participation of social players at the time of drafting the bill, with the only exception of UTECA. Similarly, the lack of consultation to the Autonomous Communities may in fact result in the diminishment of regional powers forcing the modification of previous progressive policies, like the Catalanian.

- It leaves the broadcasting language to the criteria of the service providers and without any specific rule, which will severely hurt the co-official languages in a situation of diglossia, leaving them floating in a market in which everyone knows the national language.

- In addition to contravening the spirit of the 2005 report on the reform of the media of public ownership, commissioned by Rodríguez Zapatero's government, the bill is part of a questionable procedural style. In the months before the bill submission there had been a proliferation of laws and decrees made in many cases with unexplained emergency procedures, conditioned within a policy of *fait accompli*: the ominous new model of financing for RTVE, the liberal deregulation of the number of operators allowed to do cross-shareholding, and the unannounced and consensus-less introduction of the pay-TV services in the DTT.

- The law conceives the RTV system as a commercial area - "audiovisual market" is the new legal term - that limits the concept of "essential public service" of the 1980 Statute of RTV, to only a public operator and not as the whole RTV system, as the United Left parliamentary group *Esquerra Republicana de Catalunya* criticizes (in its Initiative for Catalonia Verts). [20] On the one hand, the law is a doctrinal regression of first magnitude, undertaken through State Basic Law. On the other hand, it excludes private operators of public service obligations to categorizes in the ambiguous term of "public interest". [21]

- The law reduces pluralism and encourages concentration on several levels: Article 35 authorized a same owner to have shareholding weight in up to 8 private national channels (2 multiplexes) without surpassing 27% of the market, and in up to other 4 private channels within the same regional area; it establishes the minimum number of national private TV providers at three (previously established in 5); it reaches incoherence in the rule itself since (as it stands in the current draft) exceeding the 27% limit after the acquisition of a new holding would not have any effect; it ditches the previous restrictions to chain broadcast (set before at 25% of programming), which may disappear the authentic local communication, as has happened in commercial radio.

This law is thus an invitation to build over the years an oligopoly of three national television providers, after having had the need to expand the number of networks vendors of programming.

- The law recognizes more rights to service providers (all of the bill's chapter 2 and its three sections are devoted to the subject) than to the user (only 6 articles). Among those are included some privileges. For example, the period of license (which so far had been 10 years) has been extended to 15 years, and there is successive automatic license renewal for the same period of time if certain conditions are met. That is, almost a perpetuity.

Likewise, those who win in the competition for licenses will remain able to lease or transfer them to other

companies, which is an invitation to audiovisual lawlessness. On the one hand, the bill encourages rentier speculation about a low share of the audience. On the other hand, soon the media scenario will have nothing to do with official concessions, affecting the "general interest" in a short time.

- The bill drastically reduces the obligations of providers. It does not mention informative programming or the obligation to fulfil the commitments made in the winning bid in the competition. This involves committing to many services to earn points and then just breaking that promise, which would be a consented fraud. It neither poses obligations of internal national production, and being limited to European obligations and drastically reducing those contained in the 2007 Cinema Law, since the law now includes the series for the calculation of the famous 5% and to which up to 40% may be dedicated. Of the other 60%, only half would be for independent production. That is, only 1.5% of total revenue would be devoted to what so far is understood as audiovisual creation (movies, documentaries, shorts, pilots of animated series, etc.). [22]

A PSOE transactional amendment increases the obligations of public operators up to 6% and of the destiny of films up to 75%.

- The law further liberalizes advertising (in Articles 12 and 13), with an improper reading of the European Directorate that may be contested by Brussels. It allows operators to broadcast the maximum of advertising minutes per hour that allows the EU Directorate: 12 minutes (excluding sponsorship and product placement), but being possible to add 5 minutes per hour of self-promotion and 12 minutes of telepromotions, advertising could reach half of every hour (29 minutes). It neither contemplates to respect the integrity of audiovisual products like films or made-for-TV films (e.g. editing out credits).

- Contrary to the spirit of DTT as open-to-air system, the open-TV licensees may encode the broadcasting two of the four operating signals (50% of the multiplex) for the payment system.

- There is a real step backwards in the treatment of community RTVs in comparison with the earlier bill, which distinguished two figures in two articles: community and proximity broadcasting. It also ignores the European Parliament's 2008 resolution, which highlighted the social role of "third sector" of communication but is not referred as such by this law. Now with the article 23, the third sector television will be part of the licenses market as any other type of television, without reservations or preferences, but only more charges. If the license is granted the station would be burdened to survive by the condition of not having access to "any form of commercial audiovisual communication" (or sponsorship) and by the development constraint of not exceeding its operating expenses over 100,000 euros per year. If there were community radio operators, they would suffer the insulting suspicion not applied to other operators: to justify the precedence of its funds. In Latin America - Argentina, Uruguay, etc –there is a much more progressive treatment. [23]

- The radio is also liberalized with limits of property that are extremely low and are aimed to protect the current oligopoly. This bill maintains the 10/2005 law's criteria of allowing one owner to manage up to 1/3 of TV licenses of national coverage. It also allows one operator to control of up to 50% of the licenses of the same scope of coverage with a limit of 5 licenses. But another limit, or rather a no-limit, is that at the same Autonomous Community up to 40% of the licenses for coverage in that regional area can be accumulated in a single license (small local radio stations). The radio that was created for social communication has become a legalized oligopoly.

- As currently drafted, the National Council of Audiovisual Media will be born weak and with virtually no skills, with clear deficit in its capacity in comparison to the previous bill. [24]

This is a real disappointment. The council was diluted by not giving it powers to call license contests and grant licenses (except for automatic renewals every two years), while its capacity to regulate and sanction was limited. The bill neither gives the council power to impose penalties in case of breach of advertising rules, for which it has to go to court allowing then the risk of temporary impunity and continuance of the violation.

- The bill does not contemplates the figure of co-regulation –codes of conduct supported by regulatory agencies, which are inclusive of administrative intervention and place public and private bodies before their respective responsibilities– and only considers voluntary self-regulation, which may only be demanded when a broadcasting group adopts its own code and reports it to the Council.

In summary, the recent decisions of the Government in audiovisual matters are going in the opposite direction to pluralism; they publicly announce support for a process of concentration of a few operators with limited diversity of content and few interactive services, condemn the local and community communication, minimizes the role of the National Council of Audiovisual Media, and abandon all the

philosophy based on users and citizens to turn the area of communications into a mere market.

Hence it seems more reasonable the proposal contained in the declaration of Spain's section in the *Latin Union of Political Economy of Information, Communication and Culture* (ULEPICC according to its initials in Spanish) in November 2009:

"Let's withdraw the bill until there is a social debate worthy of the name, and let's only contemplate a law which includes three topics: the transposition of the latest European Directive, a Title relative to the public's rights to avoid an analogue blackout without obligations of operators and the National Council of Audiovisual Media, albeit with full regulatory and sanctioning powers".

6. Conclusion

The new legal rules established in 2009 and awaiting ratification in the bill for the Audiovisual Communications Law have been singularly beneficial for media groups, at ensuring them a significant share of the market at the cost of equity agreements between competitors, with the consequent loss of autonomy.

This attitude that sacrifices RTVE has been taken by the legislator, already since Law 7/2009 (of 3 July) of urgent measures in telecommunications, which liberalized significant cross-shareholdings (provided that operators' cumulative average share audience does not exceed 27% of the total audience), and the *Financing of the RTVE Corporation Law* of 28 August 2009 (Law 8/2009)

The groups perceived a prolonged crisis of the television business and assumed that they were bound to processes of concentration. The only things missing were few rules, which have turned out to be of a surprising generosity - and to contrast the orientation of the agreements.

When this article was about to be delivered it was officially announced (in *El País*, 19-12-09) the merger between *Mediaset* and *Sogecable* –the first takes control of open TV and the second a participation in pay-TV– while the conversations between groups A-3 and *Imagine* were still ongoing. None of the two alleged new groups would reach the limit of 27% of the audience.

A possible merger failed (negotiations of *Imagine* and *Sogecable*) between *Cuatro Digital Channel* and *La Sexta-Gol*, between companies with ideological affinity, but also with a clash of interests (both in PPV channels, both new entrants in open TV and with limited Audience share); and *La Sexta's* inability to compensate for the large deficit of *Sogecable*).

The only companies that seem to prevail are those that adopted compatible or synergistic cultures with contributions completely different (different sizes and audiences in cases of *Mediaset* and *Sogecable*, and the looming fusion of *Antena 3* and *Imagine*) and leadership in open and pay TV in the case of the merger-takeover by *Mediaset* of *Sogecable*. It remains to be seen whether certain cultural proximity will have an effect (*Planeta* and *Media Pro* are leading Catalan companies) on the groups A-3 and *Imagine*, or whether it is simply that there are no more candidates to courtship.

All this confirms that it is not society that is in the spotlight as the beneficiary of the socialization of knowledge (on demand and uses), and not even the SMEs (in politics offer), but instead few groups, which have been granted a place of honour in the extravagant media capital of Spain... and Italy (Berlusconi). The potential of DTT is sacrificed in the process of natural accumulation in cognitive capitalism.

In this era of *neos* (since we still do not even have our own expressions to refer to the known) in the communications field, the neo-Schumpeterian line focused on improving the offer and innovation –and promoter of a flexible and adapted specialization of the audiences– merged in a given moment with a flash of Keynesian logic focused on users with a public service television of mass and certain quality that emerged from the regeneration of RTVE in 2006. Moreover, the idea was to turn RTVE into a locomotive institution of the quality of the whole system after decades of degeneration of the entire broadcasting system in which the private sector was spreading banality to a public television lost in its own labyrinths. It was a success with good results.

The regulations that we have grouped under the name of "interesting reforms" were also in a neo-Schumpeterian direction and are part of the "reforms with contradictions" but favouring some great players and neglecting contents. [25] This gave the opportunity for the emergence of lean enterprises (through the Japanese production model) [26] that operate in networks and on many platforms and with

different actors, as it already happens in some industry sectors.

But the second term witnessed the rebirth of a purely neoliberal political logic through the neo-statist intervention to ensure national champion players -although not global players. The market will decide... but only after the restructuring intervention by State which redefines the rules partially eliminating the initial competition in that market. Political momentum encourages the occupation of the system by only two groups emerging from fusion-absorption (Mediaset-Sogecable, and Antena3-Imagina which are in negotiations) and the destabilization of the leading position of RTVE. These processes are not guided by competition between service providers, but by the political impetus that facilitates, condemns, and dictates them. By abandoning flexible models we return to the classic oligopoly or duopoly model to which the market is politically guaranteed. Neo-statism and neoliberalism are compatible, and both to the detriment of pluralism and competition.

Typically, the market should have been disputed fairly by all operators who once fought to win concessions. It is not understandable why in addition to including these large operators, through the exclusion of others, these groups are even protected from their own choices at the expense of public service and pluralism. The public interventions of 2009 distort and go against the market and against pluralism.

In the dilemmas of whether expanding or limiting the Public Service, and between extension or limitation of the benefits of the *knowledge society* to the population, at the end the Government favoured corporate interests, not only through the abandonment of the tractor role of RTVE on the system. The Government also preferred to give way to the pressures of the SGAE (General Society of Authors and Editors), first with digital canon, and then with the penalty attempt from administrative bodies to users exchanging content subject to copyright, rather than a judicial review and, if anything, about providers.

It is difficult to explain such a radical change in communications policy in a neo-liberal sense in a government led by the same president. Time will tell. Here we can only speculate with a provisional interpretation. [27]

The result is that there have been, in fact, two very different socialist policies. In the first term we had a stimulating and creative policy of social interest, and in the second term there is unfortunately a policy that is disappointing, retrograde, and opportunistic on many issues, including in the audiovisual media.

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8. Notas

[1] The workfare State would replace the welfare state. See Jessop B. "The Transition to Post-Fordism and the Schumpeterian Workfare State" in Ritu Vij "Globalization and Welfare. A critical reader". Macmillan Publishers Ltd., 2003.

[2] André Gorz addresses it in "L'immatériel. Connaissance, valeur et capital" ("The immaterial. Knowledge, Value and Capital"). Éditions Galilée, Paris, 2003. Andrea Fumagalli and Ignacio Ayestarán analyze cognitive capitalism, and Manuel Castells continues considering informational in his last work, *Communication and Power*. Alianza editorial. Madrid 2009.

[3] Enric Saperas (2007): "La televisión digital y la configuración del espacio público" ("Digital television and the configuration of public space") in Marzal J. and Casero A. (eds) "El desarrollo de la televisión digital en España" ("The development of digital television in Spain"), Netbiblos. A Coruña, pp. 185-195.

[4] See Maite Ribés "El origen de la televisión Digital Terrestre en España: Quiero Televisión" ("The origin of Digital Terrestrial Television in Spain: Quiero TV"). *Sphera Pública* No 9. UCAM Publications Service. Murcia 2009, pp. 79-93.

[5] See E. Bustamante (2006): *Radio y Televisión en España. Historia de una asignatura pendiente de la democracia* ("Radio and Television in Spain. History of an unresolved democracy"). Gedisa. Barcelona.

[6] Some of these formulations had been recommended by Miquel de Moragas and Emili Prado for the case of Corporation of Radio and Television of Catalonia in the late 1990s. See "La televisió pública à l'era digital" ("Public Television in the digital age"). Portico. Barcelona 2000.

[7] See Isabel Fernández Alonso "Les Telecomunicacions" ("Telecommunications"), in Report of the Comunicació a Catalunya 2007-2008, Incom - UAB. Bellaterra, July 2009, pp. 197-198.

[8] For a varied and full analysis of "Research in Spain on DTT" by 24 researchers, see the annual publication of *Sphera Pública* No 9, 2009. Murcia.

[9] See Isabel Fernández Alonso "Principales ejes de las políticas de televisión en España (2004-2008)" ("Main lines of television policy in Spain...") in Medina, Mercedes and Faustino, Paulo (org.) *The changing media business environment. Media XXI*. Lisbon 2008.

[10] See E. Prado and D. Fernández "Servicios de televisión interactiva en España: Una historia de claroscuros" ("Interactive television services in Spain: A History of chiaroscuro"). In Marzal J. and Casero A. (eds) op. cit. pp. 155 ff.

[11] For some general considerations on implementation models in Spain see:

- Marzal J. and Casero A. "Las políticas de comunicación ante la implantación de la TDT en España: balance crítico y retos pendientes" ("Communication policies in the implementation of DTT in Spain: a critical review and remaining challenges"). *Sphera Publica* No. 9. UCAM. Murcia 2009, pp. 95 to 113.

- For an analysis of the meso-communicative level, see E. Bustamante "El audiovisual digital: la televisión regional ante el reto de futuro" ("The digital audiovisual: regional television before the challenge of the future") (pp. 23-46) and R. Zallo "El audiovisual descentralizado: las indispensables políticas públicas" ("Decentralized audiovisual: the essential public policy") (págs.155-185) both in E. Bustamante "El audiovisual digital. Políticas y estrategias desde las Comunidades Autónomas" ("The audiovisual digital. Policies and strategies from the Autonomous Communities"). Ideco-Cabildo de Tenerife. La Laguna 2009.

- For the micro level, see Ortega Felix "La televisión de proximidad en España. Procesos concesionales,

análisis de la población y PIB" ("Proximity television in Spain. Concessional processes, analysis of population and GDP"). *Revista Latina de Comunicación Social*, 64, Page 385 to 601. University of La Laguna. Online: http://www.revistalatinacs.org/09/art/48_847_ULEPICC_10/41Ortega.html [query: the 15-9-09].

- For an analysis of the third community sector, see Sanmartin Julian and Reguero I, Núria "La regulación de los medios audiovisuales de proximidad ante la digitalización en España. Antecedentes y perspectivas" ("Regulation of proximity audiovisual media before the digitalization in Spain". Background and Prospects"). *Revista Latina de Comunicación Social*, 64. pp. 437 to 443. University of La Laguna, retrieved 7-10-09 from:

http://www.revistalatinacs.org/09/art/36_835_45_ULEPICC_18/Sanmartin_y_Reguero.html

[12] The long-standing strategy of the large companies entering the local arena (Localia, Vocento...) in the hope of synergistically linking business projects has been ruined and useless from the moment of the new national concessions. See Corominas María et. al. "La televisión digital terrestre local en España: los concesionarios privados" ("Local digital terrestrial television in Spain: private concessionaires"). *Zer*. Vol 12, No 22. May 2007.

[13] In the interim to the already temporarily assigned licenses in the decree (5 to TVE, and 1 each of the three consolidated private operators and *Veo* and *Net*) it was expected to add and adjudicate in the sharing the outcome of the fiasco of *Quiero TV* and its 10 channels. Of them two would be put up for competition – Sexta was granted license to simultaneously operate analog and digital TV- and the other 8 would be distributed among the operators. The Council of Ministers of 25.11.2005, distributed the 10 channels of *Quiero TV* between different private operators, and as a result RTVE would have 5 channels up to 2010; *Antena 3*, *Telecinco* and *Cuatro* 3 channels; and *Veo*, *Net*, and *La Sexta* 2 channels each. See García Leiva María Trinidad (2006): "La introducción de la TDT en España en el contexto de la política europea para la transición digital en televisión" ("The introduction of DTT in Spain in the context of European policy for the digital transition in television"). *Rev. de Econ. Política de las TIC*. EPTIC. Vol VIII, nº 1 January-April 2006.

[14] In fact, Uteco [has already asked the government](#) for a reduction in the contribution of 3% to TVE.

[15] Expansion 28-5-09. "The CMT rejects bill to finance TVE" Online: [www.expansion.com / business / index.html](http://www.expansion.com/business/index.html). [Visited on June 2009]. In the allegations of the Telecommunications Market Commission to the bill for the Financing of the RTVE Corporation (p. 20) the commission pointed out that the overall income of audiovisual and telecommunications services in 2008 were of 44,000 million euros, representing 4% of GDP and added value of 23,000 million euros. See "The commission did not agree with the taxing method to the telecoms and considered that if doing so it should only be done over the income derived from its audiovisual services. [The EU is reviewing the legality of that formula](#)".

[16] I already defended it in 1990 as a result of discussions on the public service and is contained in the book R. Zallo "El mercado de la cultura" ("The culture market"). *Gakoa* 1992, pp. 157-178.

[17] The latter would be quite reasonable within this balanced picture of three thirds. Since part of the advertising market had been ceded, it should have been required that the private RTV system had at least one quality public programming in a system where the RTV is an essential service. Since private operators would be already benefiting from increases in the market, they would contribute to stop the public system from staying behind and from becoming too dependent on subsidies for programming and costs, which given the rapid technological evolution are usually more accelerated than the vegetative increases of the subsidies.

[18] This part would have served as working material for Spain's Declaration in the *Latin Union of Political Economy of Information, Communication and Culture* (ULEPICC) of November 2009. To follow up on amendments to the law see <http://legal.medioscomunitarios.net/archives/132>.

[19] See CCOO's criticism for the bill for the Audiovisual Communication Law" at: www.fsc.ccoo.es/comunes/temp/recursos/17554/23249.pdf

[20] See Amendment to the totality of that group in the Congress with opening to the General Secretary on 24 November 2009. "With this law, the role of public audiovisual communication is reduced to the minimum expression", they argued after criticizing the adherence to the idea that public audiovisual communication only in relation to publicly owned entities while applying the vaporous concept of "service of interest general" to those engaged in free competition.

[21] The proposed amendments promoted by FES-UGT is particularly concerned with the risks of outsourcing and subcontracting tasks and focused on the public services of direct management and not on the entire system.

[22] However, the very requirement of 5% was challenged by UTECA at the Supreme Court, which in turn raised the question of the constitutionality of the Law on Cinema, due to which the challenge was referred to the Constitutional Court (El País, 23-12-09).

[23] See the allegations of 11 August 2009 to the bill for the Community Media Network (ReMC according to its initials in Spanish), through its legal representative, Mirian Meda, at: www.legal.medioscomunitarios.net/archives/132

[24] Neither fully responds to the needed model. View Zallo R. "Dos modelos opuestos: Consejos del Audiovisual en las Comunidades Autónomas" ("Two opposing models: Councils of Audiovisuals in the Autonomous Communities") in AAVV "Las autoridades independientes del audiovisual" ("independent audiovisual authorities). Telos No. 68, July-September 2006.

[25] See Marzal and Casero 2009, pp. 100 ff.

[26] See Boltanski L. and Chiapello E. "El nuevo espíritu del capitalismo" ("The new spirit of capitalism"). Akal. Madrid, 2002.

[27] On the one hand, surely there is no single explanation for this turn in several matters. There seems to be contextual factors (the process of decline of both the left and right projects in the EU and the accommodation of the PSOE governments to liberal and demo-Christian ideas, and the lines of the Popular European Party); changes of reference (from class referents to abstract citizenship referents; or the temptations of the third vias); dynamics in the government cycles (the doctrinal seal and the government's promises and attempts to change in its first term are replaced by efforts to retain power without experiments and through alliances of interest in the second term; the mutual influence and help between public and private powers intertwined in the exercise of power); and in the case of the area of communications it was clear that the PSOE assumed the thesis of its adversary, the PP, on the management of the radio-electric spectrum, perhaps seeking a better informative deal in the face of the next election in exchange for a media system, which is largely hostile to the PSOE policy. It remains to be seen whether this is the case or is it just a foolish attitude to give private media leaders an even stronger position. It is also conceivable that it relies on a discursive smoothing provided from within the new groups by squads of *Prisa* and *Imagine*.

Finally, this shift towards different policies has not been unique to the communications field. The first term 2004-2008 was brilliant in some respects (withdrawal of the troops from Iraq, backing of the Catalan statutory process, commitment to the peace process in the Basque country, legalization of gay marriage) unlike the second one, which the previous progressive ideology in civil liberties was contradicted by the abortion law, the maintenance of a certain syndical harmony in a time of hard crisis for the working class, and a u-turn in policy towards Catalonia and the Basque Country, as well as a belated and timid embrace of anti-crisis policy, with a major redistribution of public capital into the financial capital.

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