

MEDIA PLURALISM

1. Introduction

Media pluralism may roughly be divided into structural and content pluralism.

The importance of structural pluralism is emphasized by the Declaration by the Council of Ministers' Committee of the Council of Europe on freedom of speech and information, adopted in 1982. It points out that freedom of expression is conditional on the existence of a „wide range of independent and autonomous media which reflect the diversity of ideas and opinions”.

This shows that pluralism of content is to some extent dependent on structural pluralism in that the concentration of media ownership may hamper the reflection of the diversity of ideas and opinions.

The draft “Strategy of the Polish State for Electronic Media 2005-2020,” developed by the National Broadcasting Council and soon to be considered by the Council of Ministers, formulates, i.a., the following strategic goals of the promotion of structural and content pluralism in media:

- 1) The state is to protect freedom of expression and information and freedom of media as well as their role in a democratic system.
- 2) In the interest of, i.a., Polish culture, the state is to take a good care of the development of the Polish electronic media, program production and electronic media contents, including the Internet.
- 3) The state is to see to the plurality of the program offer, by ensuring, i.a., structural pluralism in the media market and among the Polish providers of the Internet contents; the licensing policy on the nationwide market as well as regional and local markets, protect the local media.
- 4) The state protects competition and prevents excessive media concentration.
- 5) The state is to see to the development and proper operation of public media, is free to identify the sources and level of public broadcaster financing made available, i.a., in the form of public aid coming from a variety of sources and used in ways that will not distort free competition.

Poland recognizes media pluralism as one of the main goals of the state's media policy. This is why the NBC welcomed with interest the „Issues Paper” on media pluralism. It was clearly conceived as an element of the discussion not so much on the amendments to the „Television Without Frontiers” Directive, but rather on a general audiovisual policy of the European Union. Such approach is reasonable as the problem goes beyond the Directive's scope of regulation and pertains to basic systemic rules and goals of the audiovisual policy – both at the Community and national level.

2. Background

The „Issues Paper” lists many forms of activities pursued by the European Union which promote pluralism of content. What is missing, however, are measures conducive to structural pluralism, other than policies regarding public service broadcasting, constituting an important structural element of the electronic media.

The „Issues Paper” points out that Article 21 Par. 4 of the Council’s Regulation (EC) No. 139/2004 of January 20, 2004 on the control of concentrations between undertakings allows Member States to apply additional controls in order to protect pluralism in the media and that Recital 44 of the TWF Directive also allows the Member States to take steps to that end.

Recital 44 states, i.a., that:

Member States remain free to apply to broadcasters under their jurisdiction more detailed or stricter rules in the fields (...), including, inter alia, (...) the need to safeguard pluralism in the information industry¹ and the media, and the protection of competition with a view to avoiding the abuse of dominant positions and/or the establishment or strengthening of dominant positions by mergers, agreements, acquisitions or similar initiatives

The foregoing clearly shows that measures to protect media pluralism are separate from the steps taken to protect competition in the media. They serve different purposes and are implemented by different methods. This is why it necessary to second a proposal included in a study commissioned by the European Parliament “The information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen’s right to be fully and objectively informed” that “to protect media pluralism the regulations on the protection of competition will not suffice; it is necessary to introduce separate limitations of media ownership especially devised for the media sector”. As was rightly pointed out in the „Issues Paper”, promotion of media pluralism cannot be only confined to the limitation of their ownership concentration.

The debate on the protection of media pluralism, which continues in the European Union since at least 1992, has been inconclusive. In recent years the European Parliament raised that issue on many occasions and called for a broader program of action in favor of media pluralism both at the national and Community level. The Charter of Fundamental Rights in its Article 11 also requires respect for media pluralism.

But parallel to that, as pointed out by the „Issues Paper” and many other EU documents, the policy of media market and electronic communications liberalization is pursued with a view to enhancing the competitiveness of European media and telecommunications companies on the global market. This policy may result in support for media concentration, because – again as pointed out by the „Issues Paper” – the European media companies do not equal their American counterparts in terms of range and sales. Acceptance of this situation would be tantamount to acceptance of a decline in structural media pluralism.

In recent years numerous consultations were conducted (including the one on the *Green Paper on Services of General Interest*) which showed that there was no agreement between the Member States about possible actions taken at the Community level to ensure media pluralism.

Clearly, then, the European Union continues to be faced with a dilemma which path to follow in this regard. At the same time the everyday policy promoting the liberalization and

¹ The „Issues Paper” misquotes the directive by referring here to the „information society”.

global competitiveness of the European media may in fact expose structural and content pluralism to risk.

In these circumstances one cannot reply to the question posed by the „Issues Paper” about the added value of the activities taken at the Community level to ensure media pluralism as long as one cannot be certain if there is real willingness to engage on such a course of action.

3. Recommendations

In April 2004, the European Parliament adopted the „Report on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights (A5-0230/2004), in which it called upon the Member States and the European Commission to ensure media freedom, independence and pluralism.

Many recommendations included in that report continue to be topical and deserve to be implemented. They include, i.a., the following:

1. The European Commission should establish a monitoring system of media concentration in the Member States and of its impact on the diversity of media contents, and prepare annual reports on this subject;
2. Since media pluralism is so important to the exercise of the freedom of speech and information which is viewed as one of the fundamental human rights, the activities pursued by the European Union in the area of fundamental rights should recognize pluralism as an important priority;
3. The European Commission should submit a communication on the status of media pluralism in the Member States, including proposals of actions to be taken at the national and Community level with a view to protecting and enhancing media pluralism, except that as regards the Community level it may begin by developing recommendations and pass on to the adoption of binding regulations as the following stage;
4. It is necessary to adopt an action plan covering, i.a., the following areas:
 - a. Adopt regulations whereby politicians will not be allowed to hold major interest in media and governments will not be allowed to use media for their political purposes;
 - b. Lay down the protection rules of public broadcaster independence, especially against any interference by public authorities;
 - c. Adopt regulations committing regulatory agencies to monitor media ownership, ensuring the transparency of media ownership, especially at the international level;
 - d. Initiate analytical work on the future harmonization of national regulations limiting both horizontal and vertical media concentration;
 - e. Carry analysis of needs and prospects for supplementing the Council Regulation (EC) no. 139/2004 of January 20, 2004 on the control of concentration between undertakings with the criteria of pluralism tests of media mergers;
 - f. Initiate analytical work on impact of the advertising market on the competition on the media market to find out if regulations ensuring equal market access are necessary;
 - g. Carry analysis of the impact of new communication technologies on media concentration and pluralism.