

Private Television in Poland & Slovakia

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CONCLUSION AND RECOMMENDATIONS

The present policy paper and recommendations result from the policy research done in the framework of the International Policy Fellowships program of the Open Society Institute and Central European University. This policy paper has been preceded by a research paper on Media Policies in Poland & Slovakia that can be downloaded from www.policy.hu/minarik.

Background

Democracy in post-communist Poland and Slovakia brought pluralism and diversity to the mass media after years of forced uniformity. Changes were introduced with understanding that free media are a precondition of functioning democracy based on decisions made by informed citizens.

In the field of television broadcasting, both countries opted for dual system of television broadcasting consisting of public benefit television and private television broadcasters operating on the basis of licences awarded by independent oversight bodies accountable in both cases to the Parliament.

Key Issues

There has been a number of concerns related to media freedom in private television broadcasting both in Poland and Slovakia. The nature of these problems has differed in both countries. However, this appears to be rather incidental and not a result of systemic media policies.

Most of the concerns in Slovakia were raised due to alleged political ambitions of owner of the biggest Slovak television station and perceived use of the private television to foster own political agenda. In Poland, the key issue in the field of the private television has been an ongoing effort of the Government to introduce strict ownership rules limiting both cross-ownership of the media and horizontal ownership of more than one television station.¹

Legislation in both countries created supervisory broadcasting councils responsible for licences and regulation of private television stations. In Slovakia, the Council is formed by the Parliament, while in Poland the responsibility for formation of the Council is shared by the Lower and Upper Chambers of the Parliament (Sejm and Senate) and the President.

The fact that manipulation of the media by its owner for own political purposes appeared in Slovakia and not in Poland seems to be purely incidental. It appears that the personality of the station's director/owner have been of utmost importance. Owners of Polish private television stations could have used influence of their television stations in the same way for setting own

¹ Horizontal concentration stands for concentration processes within one and the same industry sector (television, radio, newspapers, magazines). Cross-media concentration stands for a situation whereby one media enterprise controls through cross-ownership different media products or outlets in different media markets and industries.

political agenda and launching own political parties, if they decided to enter the politics in Berlusconi style. In a way, this has already happened during the struggle of the Polish private media with the Government over the amendment of the Broadcasting Act. News bulletins of private television station gave large space to protests of station's owners against the amendment. Involvement of Polish private media in campaign, where they are one side of the conflict can evolve into direct involvement of media owners in politics and/or backing of 'friendly' political formations, shall the conflict further continue or even escalate.

Efforts by the Polish Government to introduce strict media ownership rules seems to have been directed against potential takeover of Poland's largest private television Polsat by country's largest media group Agora (publisher of the largest daily newspaper Gazeta Wyborcza). Instead, the anti-concentration proposals should have been preceded by a clearly set policy on how to promote plurality and diversity of mass media. Also, proposed ownership rules should have focused on preventing monopolist position in mass media. Considering the strength of the public television in Poland, it is virtually impossible to form private television monopoly. After intensive domestic and international protests, the Government changed the ownership restrictions from total restrictions of cross-media ownership in case of national television stations and newspapers to limitations depending on market shares of given media enterprises.

Media regulations in Slovakia forbid cross-ownership of mass media at national level. Media concentration issues have not appeared on the agenda of political discourse, although some strong media groups have been formed (cross-media group around TV Markíza involving also radio station (Okay), daily newspaper (Národná Obroda), weekly magazine (Markíza). The enterprises of the media group around TV Markíza formally operate as separate companies and are not linked by ownership.

Objectives

Objectives of the policy recommendations included in this proposal are:

- to ensure independence of private television stations from influence of state
- to ensure independence of private television stations from interests of their owners
- to increase editorial independence in private television
- to foster balanced and impartial reporting
- to ensure pluralism and diversity in media ownership and prevent monopolist position
- to raise public awareness

Policy Recommendations

The proposed policy recommendation are based on a comparative approach to the private television in Slovakia and Poland. Thus, recommendations simultaneously look at both countries with an effort to point at possible areas for a policy transfer from one case to the other and vice versa.

1. DIVERSIFICATION OF COMPOSITION OF BROADCASTING COUNCILS

Broadcasting Councils have crucial decision making powers over the private television stations. Their independence is a precondition of free television broadcasting. In order to enhance diversity and pluralism in the Councils, it might be useful to consider modifying the rules of appointment of their members.

Appointment: Diversity of Council membership shall be enhanced by broadening the pool of institutions that nominate the Council members to include diverse institutions representing various branches of power: Parliament, President, Constitutional Court, and Supreme Court.

This has been to certain extent case in Poland, where the Council members are appointed by three institutions (Sejm, Senate and President), while in Slovakia by one only (Parliament). However, diversified nomination of the Broadcasting Council members did not prevent nomination along party lines.

Nomination: The supervisory Broadcasting Councils shall be depoliticised. Members of Broadcasting Council shall be outstanding personalities with impeccable reputation. Active politicians and members of political parties shall not be considered for members of the Broadcasting Councils. There should be space for nomination of the Broadcasting Council's members by representatives of non-state institutions, such as professional media and journalists institutions, civic associations operating in the areas of audio-visual, mass information means, culture, science, education.

This has been to certain level the case in Slovakia, where civic associations and professional institutions can come with proposals for candidates for broadcasting supervisory councils. Moreover, some of these independent candidates were elected by the Parliament, which enhanced diversity and independence of the Broadcasting Supervisory Councils.

2. CODE OF MEDIA CONDUCT AND MONITORING

Political culture is crucial to the freedom of media, which cannot be achieved through any kind of technically perfect regulations, but stems from shared democratic values and attitudes.

Development of Code of Conduct: Development of Code of Conduct will help the media to clearly set commonly accepted standards of unbiased and impartial reporting. The Code of Conduct shall also help to raise the public awareness of the issue of balanced and impartial reporting. In case of success, raised awareness of the audience might potentially become another incentive for private broadcasters to provide their viewers with objective and neutral reporting.

There have been efforts to introduce a self-regulatory Code of Conduct both in Poland and Slovakia. Most of the efforts failed, as they were not endorsed by majority of media outlets. Remarkable exception was the Code of Conduct by Memo '98 before the parliamentary elections in 2002, which was endorsed by all major media.

Monitoring of Code of Conduct: Systematic monitoring of the observance of the Code of Conduct and endorsement of the self-regulation mechanism by all relevant broadcasters are crucial to its success. The Code of Conduct shall be run by an independent institution capable of monitoring how the Code is observed. This might be either a specialised NGO or a watchdog group, journalist association, or a joint body created by the above mentioned. The Code of Conduct shall help to enhance the editorial independence of private media.

MEMO'98 in Slovakia has been an example of successful and respected monitoring of politically relevant media content, its impartiality versus biased reporting and of observance of principles of balanced reporting according to a strict methodology.

European Perspective: Lack of balanced and impartial reporting by private media is not restricted to the post-communist countries of Central and Eastern Europe. There is

a number of concerns about objectivity of politically relevant reporting in television broadcasting in EU member states, most notably Italy. There is a need to create a European wide independent capacity to monitor the media and their behaviour, as there is a serious lack of exact data on politically relevant broadcasting in Western Europe.

3. OWNERSHIP REGULATION

Media diversity is one of the main preconditions ensuring political and cultural pluralism and effective citizen participation in democratic decision-making processes. Deregulation of media ownership is a contemporary global trend. Regulations that would substantially restrict the ability of a media company to broaden its activities to include various types of media would run against this trend and weaken domestic media enterprises in Poland and Slovakia before their accession to the EU and opening to the EU internal market. At the same time, excessive media concentration distorts competition and ultimately leads to domination of the market by few companies or to a creation of a monopoly. Media concentration also leads to reduction in number of independent information sources and to greater uniformity of content. Mass media in dominant market positions allow its owners, managers and editors to use and abuse their programmes for own purposes.

Definition: Media ownership regulations shall focus on preventing domination and monopoly, instead of disqualifying certain media company from expanding into other media sectors. Therefore, there is a need to clearly define the understanding of both of this terms and quantify them as percentage of market share separately in each market.

Public Debate: There is a need to start public and expert discussion on how to best protect the media diversity and plurality. Regulation of media ownership is a way of protecting existence of several independent sources of information. Media ownership shall be designed in such way that it would prevent concentration of such media enterprises that would create a media company dominating the market in one or several media sectors.

The Polish Government has proposed an amendment of the Broadcasting Act, which is controversial mostly due to its anti-concentration regulations. The draft has polarised the political scene and strongly antagonised mass media and the Government. Without having first clearly defined policy on how to ensure plurality of mass media, it will never be clear whether Government draft is intended to promote plurality, or is actually designed to restrict independent mass media.

Informal Media Groups: The public debate shall also deal with the existence of informal media groups, which are formally not linked by ownership, but mutually support each other and utilise synergies by sharing some costs.

This has been the case in Slovakia, where the Broadcasting Act forbids cross-ownership. However, this has not prevented creation of a media group around TV Markíza that is not based on concentration of ownership, but on informal links and synergies between various types of media.

European Perspective: The public debate on ownership regulation shall be started also at European level, as media concentration limiting the media diversity is an issue also in some of the EU member states. Moreover, globalisation processes have made the issue a truly international one in the course of the last decade. Thus, the issue of ownership regulation shall be dealt with also at the EU level.

4. PLURALITY OF INFORMATION AND SANCTIONS

In cases of partisan and biased reporting by the media, the supreme oversight institution – the Broadcasting Council shall have the power to impose sanctions on the broadcaster. An independent and authoritative Broadcasting Council shall play a crucial role in overseeing the compliance of electronic mass media with the law and conditions set in the licences. This requirement is based on the assumption that private broadcasters have public service role – which needs to be defined in the law. The Broadcasting Law and the licences shall include requirement that broadcasters ensure plurality, impartiality and objectivity, especially on their programmes. Precise and unambiguous wording of these clauses shall minimise danger of manipulation due to judgemental decisions and clearly set basic standards for balanced and impartial reporting.

Slovak Broadcasting Act requires the broadcaster to ensure ‘universality of information and plurality of opinion within the broadcast programme service; objectivity and impartiality of news programmes and current affairs programmes; opinions and evaluating comments must be separated from information of a news character; and programmes and other elements of the programme service broadcast within election campaigns comply with special regulations.’

Independent Broadcasting Council shall be empowered with means of enforcing the Broadcasting Law and conditions set in the licences. Without these powers, the Broadcasting Council cannot fulfil its role and mission of an independent and authoritative oversight and supervisory body over media. There shall be different levels of sanctions, from such as warning, ordering a correction, suspension of certain programme, up to fines and ultimate sanction of withdrawal of broadcasting licence for repeated breach of licence conditions. Sanctions must be precisely set by the law minimising space for judgemental decisions.

There is experience with sanctions by Broadcasting Council in Slovakia. The Broadcasting Act systemised sanctions for breach of obligations on contents into four categories: warning on infringement of law, broadcasting of an announcement about infringement of law, suspension of broadcasting of programme or a part of thereof, and fine.

5. IMPROVEMENT OF MEDIA STUDIES EDUCATION

There is a lack of understanding the role of media as an independent watchdog of the Government and whole political scene. Mass media often do not fulfil their watchdog role of critical scrutinisers of political actors, but rather act as partisan supporters of certain political formations. There is a lack of modern education in media studies in Central and Eastern Europe. University education in the field of media offers journalism courses, but fails to provide modern media studies courses, including media law courses. Introduction of such courses into universities’ curricula could be assisted by domestic and international non-governmental organisations, watchdog and monitoring groups working in the area of protection of media freedoms. Increased understanding of the role and function of media at the university level could translate into a more sophisticated public debate on the role of media. This in turn could have effect on public awareness and raising of political culture.