

Greece

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1. LEGAL FRAMEWORK

1.1 DESIGNATION AND LEGAL DEFINITION OF THE MEDIA REGULATORY AUTHORITY

The media regulatory authority in Greece is the Greek National Council for Radio and Television (NCRTV or ESR in Greek), based in Athens. The NCRTV was established in 1989 by the law 1866 and has as its remit the supervision and regulation of the radio/television market. In theory it was created to ensure the maintenance of objectivity and quality within broadcasting, but in practice it worked as a buffer between the partisan interests of the government of the day and the vested interests of the broadcasting companies. Its establishment was modelled on the French supervisory authority of broadcasting, Haute Autorité (HA). Subsequently it was entrusted with new responsibilities, defined in new laws (2173 of 1993, 2328 of 1995, 2644 of 1998).

Until 2001 the responsibilities and the legal status of its members were regulated through legislative provisions. Since 2001 (after the revision of the Greek Constitution) these matters now have constitutional status. More specifically, the NCRTV was included in the independent authorities by the Seventh (Z') Revisionary Greek Parliament. According to the revised 15th article of the Greek Constitution (2nd paragraph) "radio and television shall be under the direct control of the state" and the NCRTV, as an independent administrative authority, is entrusted with the supervision of the broadcasting sector.

The specific legal framework regulating the operation of the NCRTV now consists of the executive constitutional law 3052/2002, the law 2863/2000 as well as the laws regarding the operation of public (1730/1987) and commercial broadcasting (laws 3952/2007, 2328/1995, 2644/1998, 3310/2005 and presidential decrees 109/2010, 77/2000, 310/1996).

There also exists an internal rule ratified by the decision of the Minister of Press and Media (20291/E/6.9.2002), aimed at regulating the internal operation of the body.

1.2 RELATIONSHIP WITH SELF-REGULATORY AND CO-REGULATORY MEDIA STRUCTURES

The NCRTV is not formally linked with the interdisciplinary instruments of self-regulation, designed to contribute to the smooth function of the media market. Such instruments are the Auditing Firm of Research Measuring Mass Media (EEEM-MME in Greek) as well as the Civil Society for Measuring Ratings of the Radio Stations in Attica (AEMAR in Greek). Other institutions, representing attempts at self-regulation in the media field, are the Authors Association of Daily Newspapers of Athens (ESIEA in Greek) and the Union of Magazines and Electronic Press Journalists (ESPIT in Greek). These authorities are members of the Pan-Hellenic Federation of Journalists Unions (POESY in Greek). The members of ESIEA and POESY commit themselves to implementing and guarding a set of fundamental principles, included in the *Code of Professional Ethics and Social Responsibility*, as approved in the general meetings of the authorities.

Additionally, the private TV channels are required to have their own Ethics Committee, which is in charge of examining all emerging ethical issues. A new Bill that has recently been tabled in Parliament, which is aimed at restructuring the public service broadcaster (ERT), refers to the establishment of a three-member Ethics Committee responsible for examining issues of ethics relating solely to the public service radio/television channels (Galani, 2012). However, given that in Greek society elections are imminent there is no guarantee that the new government will leave the proposed Bill unchanged.

2. FUNCTIONS

2.1 THE REGULATION IN DIFFERENT MEDIA SECTORS

The responsibilities of the media regulatory authority, NCRTV, cover only the broadcasting sector of broadcasting. These responsibilities have not been changed since the emergence of the body. They have been redefined in the Constitution revision of 2001. This redefinition is still in force, dictating the present operation of the Council.

The telecommunications sector and the technical infrastructure are regulated by the National Commission of Telecommunications and Postal Services (NCTP or EETT in Greek), established in 1992 by the law 2075. It is an independent authority controlling and supervising the market of electronic communications (companies of fixed and mobile telephony, wireless communications and internet) as well as the postal market (EETT, 2012). It is empowered to: a) supervise and control the network/services providers of electronic communications, b) impose the relevant sanctions, c) manage the register of electronic communications providers, d) issue codes of ethics for the provision of networks and services in the electronic communications field, e) ensure compliance with the legislation on electronic communications, f) regulate matters regarding consumer protection in the electronic communications and postal services sector.

The press field is not subject to any regulatory authority, however in the Constitution (article 14) the freedom of the press is enshrined as an institutional guarantee (Karakostas, 1998: 19).

2.2 *THE NCRTV'S TASKS*

According to the revised Constitution, the NCRTV is expected to perform the following functions:

- Supervise radio and television programmes in terms of content so as a) to meet the aims of objective and equal transmission of information, news, literature and art products (as provided in the Constitution), b) to ensure the quality level of programmes, the respect of human dignity, the protection of children and youth.
- Set codes of conduct for news broadcasts, advertising and entertainment programmes, which are ratified by Presidential Decree.
- Issues statutory notices, grants, renews and revokes the licenses of the terrestrial radio and television stations as well as any permits and approvals under existing broadcasting regulation.
- Addresses public or private broadcasters with instructions, recommendations or questions and expresses opinions on the application of the provisions of relevant laws and regulations.
- Keeps a register of the Media Enterprises, including information regarding the ownership of media companies and enterprises operating in the wider media field.
- Verifies compliance with the provisions relating to proprietary restrictions on business ownership of radio or television stations and publishes information regarding the ownership of radio and television stations.
- Expresses its opinion towards the Minister of Interior Affairs regarding the persons appointed as members of public service broadcaster's Board (ERT SA).
- Supervises compliance with the provisions governing the operation of public and private broadcasters and imposes the prescribed administrative sanctions.

Subsequent to the Constitution Revision (of 2001) the media regulatory body has been exclusively empowered to exercise control and impose sanctions in the broadcasting field. The prior central role of the Minister of Press and Mass Media (who issued enforceable administrative acts on the responsibilities of the NCRTV) was replaced by a simpler one which lies in reviewing the legality of the decisions taken by the media regulatory authority. Consequently, the direct state control over broadcasting, the supervision of compliance with the existing broadcasting legislation and the administrative implementation or enforcement of the law are issues coming under the exclusive competence of the NCRTV. Moreover it is competent to undertake public consultation with the players of the broadcasting landscape. However, despite all these responsibilities, it lacks self-regulatory competence.

2.3 THE REGULATION IN THE ADVERTISING FIELD

In the field of advertising, except for the code of conduct issued by the NCRTV, attempts have been made at self-regulation. As a result the regulation of advertising is also based on the *Greek Code of Advertising and Communication*, defining the rules of professional conduct and ethical behavior that must be followed by all those involved in advertising (namely advertisers, companies or authorities to be advertised, advertising media as well as principals and representatives of all these forms of communication). The Code refers to the advertising of all kinds of products and services, and to all forms of commercial and social communication (EDEE, 2012).

The application of the ethical standards in commercial communications, as defined in the *Greek Code of Advertising and Communication* (SEE, 2012 b), is guaranteed by an independent civil company, of non-profit character, named Council of Communication Control (SEE in Greek). It is in charge of the operation of Boards (primary and secondary one) which have the exclusive competence to judge – automatically or after a complaint – the advertising compliance with the principles of the *Greek Code of Advertising and Communication*. The Council of Communication Control (SEE), since its establishment (December 2003), has been a member of the European Advertising Standards Alliance (EASA). The media regulatory authority (NCRTV) is in collaboration with the Council of Communication Control and is informed of its decisions (SEE, 2012).

2.4 REGULATION AND CYBERSPACE

The NCRTV's functions do not cover the vast space of the internet. In essence, Greece lacks a regulatory entity dedicated to monitoring or supervising online content. The only type of protection provided to internet users derives from a police authority, named Sub-direction of Electronic Crime Prosecution, whose remit is to prevent, investigate or repress crimes and antisocial behaviours, committed through the Internet or other electronic communication means (Hellenic Police, 2012).

3. LEGITIMIZING/UNDERLYING VALUES

The regulation in the broadcasting field is justified by a series of values, included in the Greek Constitution. According to Article 15 (paragraph 2), the direct state control over broadcasting, which is under the exclusive jurisdiction of the NCRTV, aims at ensuring the following values: objective and on equal terms transmission of information, news, works of literature and art, quality level of programmes (mandated by the social mission of broadcasting and by the cultural development of the country), respect of human value as well as protection of children and youth (Mavrias & Spiliotopoulos, 2008: 31-32). These values are protected by the operation of the media regulatory authority, the NCRTV.

On the other hand the values evoked by the Authors Association of Daily Newspapers of Athens (ESIEA in Greek) in order to justify the need for self-regulation through compliance with the *Code of Professional Ethics and Social Responsibility* are quite different. These are

values related to a) safeguarding the freedom of information and expression, the autonomy and dignity of journalists, b) shielding the freedom of press, c) ensuring the social role of journalist in the globalised and oligopolistic communication field and d) resisting any attempts at state influence or other influence over the work of journalists (ESIEA, 1998). Similar values are also protected by other associations of journalists throughout Greece, which have drawn up relevant codes of conduct.

4. PERFORMANCE

In its daily activity the NCRTV conducts meetings in order to perform the duties decreed in the relevant laws:

- Examines the content of specific radio or television programmes and imposes sanctions in the form of fines on the broadcasting companies which are deemed to have violated the broadcasting law.
- Considers requests on the part of broadcasters related to the withdrawal or amendment of already imposed administrative sanctions.
- Issues suggestions, opinions, guidelines and recommendations addressed to all broadcasters.
- Issues a wide range of decisions related to various topics (such as broadcasters' licensing, revocation of certificates of broadcasters' legal operation, closure of television/radio stations and interruption of specific programmes' transmission).

Any act of the NCRTV related either to the license of the broadcasters or to the sanctions against them is an enforceable administrative act that can be challenged before the Council of State as long as an application for annulment is made.

Moreover, the Board members and the specialised scientists of the media regulatory authority participate, on a regular basis, in scientific conferences with the aim of promoting the work of the authority and broadening their knowledge on subjects related to their responsibilities.

In general, the activities implemented by the self-regulation entities do not conflict with those of the media regulatory authority.

5. ENFORCEMENT MECHANISMS / ACCOUNTABILITY

To ensure compliance with the decisions of the NCRTV the law enables the media regulatory authority to impose a number of administrative sanctions and measures. In case of violation of the law (national, European, international) regarding broadcasting services and copyright or in case of violation of broadcasting ethics the NCRTV can decide *ex officio* (or on the basis of a request on the part of the Minister of Press and Mass Media or after a complaint) to impose the following sanctions: a) recommendation for compliance with a specific legal provision along with notice of imposition of other penalties, b) fine, c) temporary suspension of up to three months or termination of the transmission of a

specific programme, d) temporary suspension of up to three months of any programme's transmission, e) temporary suspension of station's license or revocation of station's license, f) moral sanctions (such as compulsory transmission of notice related to imposed sanctions). In urgent cases of obvious violation of the broadcasting legislation the President of the media regulatory body may order the postponement or the interruption of specific (radio/television) programmes' transmission. The broadcaster is notified of the decision in the most expedient way. Within three working days the NCRTV in plenary session finally decides on the transmission or not of the programme.

Additionally, according to the law 3548/2007, the National Commission of Telecommunications and Postal Services (NCTP or EETT in Greek) is empowered to order the immediate interruption of a television station's transmissions when it is officially confirmed the instigation of jamming in the Communications of the Armed Forces, of the Civil Aviation, of the public service broadcaster (ERT), of the Hellenic Telecommunications' Organization (OTE) and of any other legally functioning network or operator. In case the television station fails to comply with the rules, the NCTP shall inform the NCRTV, which may order the immediate shutdown of the station.

The media regulatory authority is accountable to the Prime Minister, to the Parliament President and to Minister of Press and Mass Media through an activities' report drawn up every year until the 31st of March and submitted to them. That report is published in a specific edition of the National Printing Office.

As to the Board Members of the NCRTV the law establishes cases of incompatibility with other public offices and professional activities so as to avoid any form of pressure exerted on them. More specifically the incompatibility regime governs their membership with positions such as that of the Minister, Vice-minister, Parliament Member, General or Special Ministry Secretary, military, security forces servant, civil servant and servant in a political party. Moreover, the NCRTV members during their term and three years after leaving office are not allowed to have any kind of relationship with an organization subject to supervision by the media regulatory body.

6. Institutional organization / composition

The NCRTV Board consists of seven members: the President, the Vice-President and another five persons, subject to personal and functional independence, a feature guaranteed by the constitutional provision of article 101A.

In theory, the members of the NCRTV's Board are personalities distinguished by their scientific knowledge or work experience background and their contribution to public life, in fields related to the delegated responsibilities. In practice, they are selected by the political parties according to their position in the Parliament. Today the composition of the Board includes a Vice-President of the Supreme Court, three journalists, one lawyer, a professor of Modern Greek Literature and one of Computer Engineering and Informatics. The selection of the Board members is based on a Conference of the Parliament Presidents. Their decision seeks unanimity on the part of the parliament or at least a majority of four fifths (4/5). The members have a four-year term of office on the Council Board, eligible to renewal once.

The personnel of the NCRTV are divided in three categories: specialized scientific staff, administrative staff, and staff on a contract basis. The staff members, who have been

given their positions according to their qualifications, cover the needs of four departments (NCRTV, 2011):

- Section on legality and licensing, in charge of examining the application forms regarding the provision or renewal of licenses given to radio/television stations of free reception or to stations of subscription-based broadcasting services. It is composed of 17 members.
- Section on transparency control, responsible for keeping the register of media enterprises and carrying out a number of audit works, as specified by the provisions of presidential decrees and laws. It consists of 13 members.
- Section on programme quality, whose task is to supervise the quality of the broadcasting services and consider any redress applications. It includes 22 members.
- Section on logistics and technical support, whose remit is to ensure the proper functioning
- of the media regulatory authority, support technically the implementation of any responsibilities, prepare and implement the budget as well as the salary scale of the staff. It consists of 23 members.

The NCRTV operates in plenary or according to scaled teams, established by the plenum in order to examine specific issues or topics of general interest. On decision of the plenary session decisive responsibilities for minor issues may be transferred to the scaled teams, which amount to six (NCRTV, 2011 c: 15):

- The first one deals with ethics, examines the complaints of citizens and supervises the ethics of programmes' quality.
- The second one is concerned with controlling transparency.
- The third one considers applications for licensing television stations, licensing networking of radio and television stations as well as granting certificates of legal operation of radio stations.
- The fourth one deals with audience shares measurement, controls the compliance with the principles of political pluralism and with the values of access right to television broadcasting on the part of the political parties.
- The fifth one considers applications regarding the allocation of digital broadcast frequencies to regional or local stations.
- The sixth one controls and evaluates the so-called "Panoptis System".¹

At the end of 2011 the number of persons employed in the NCRTV amounted to 46 (NCRTV, 2011 c: 14). Over the last months the NCRTV has undergone a drastic decrease in the staff members. At first it took place the elimination of seven vacant posts of permanent staff with an employment relationship of public governance (NCRTV, 2011 b) and two months later the same process applied to fifteen vacant posts of staff working under private law for an indefinite period of time (NCRTV, 2012). When needs of additional staff arise,

¹ "Panoptis system" is a tool assisting the media regulatory body in recording and storing the broadcasting flow on a 24-hour basis.

the selection of the personnel is based on the issuing of official governmental notices, published on the website of the media regulatory body as well as in the press.

7. FUNDING

The media regulatory authority is funded by the state budget only. The total budget of the NCRTV in 2010 amounted to €3,126,000. According to the Council's chairman, most of the expenses come from the staff salaries, the facilities rent and the contracts signed for the safety and the cleaning of the building (Petroutsou, Maniatis, Papageorgiou, 2010). In February 2010 the Greek government asked all the independent authorities to cut down on their operating expenses by 25% for the next three-year period (2010-2012) (Petroutsou, Maniatis, Papageorgiou, 2010). On the website of the media regulatory body there are annual activities' reports (covering the period 2001-2011), however they do not include details regarding its financial performance.

8. REGULATION IN CONTEXT

The configuration of the media field has been influenced by three long-lasting characteristics of the Greek nation: a) weak civil society, where the state has dominant and expanded functions in the politico-ideological sphere, b) shortage of self-regulation in the politico-ideological sphere, c) sovereignty of patronage politics (Papathanassopoulos, 2004: 91). These factors have given rise to a regime, where the state is allowed to interfere drastically in the politico-ideological superstructure and exercise tight control over the broadcasting media. In general, Greece represents a small media market, where an oversupply of media services traditionally exceeds demand (Papathanassopoulos, 1999).

To be more precise, the Greek media market is characterized by an overcrowded broadcasting environment, consisting of 135 private national and local television channels and 890 private local radio stations (Papathanassopoulos, 2010: 222). These commercial broadcasters coexist with the public service broadcaster (ERT SA) comprising three nationwide television channels (ET1, NET, ET3), one worldwide television channel (ERT world) and 29 radio stations (7 based in Athens, 3 based in Thessalonica and 19 regional stations across the country).

In effect, all private national and local TV stations technically speaking are semi-illegal since they operate on a temporary legal basis (every six months the state renews their licenses until some future government decides the day when the official licenses will be granted). In fact, the channels lack official broadcasting licences due to the state's inability and reluctance to set the television field in order officially. In this cloudy regulatory regime the dominance of commercial broadcasters has been undeniable since the deregulation of the broadcasting field (1989). As a result, the decline in viewership of the public service broadcasting services is a traditional feature of the broadcasting scene.

In Greece the broadcasting services are mainly provided by analogue terrestrial TV, which is the main platform adopted by 99% of the audience. The Greek broadcasting market virtually lacks cable television and satellite television seems to be a neglected field, even

though the deregulation of the broadcasting system started with the retransmissions of satellite channels via the terrestrial frequencies. Since the beginning of the new century digital satellite television has been embraced by a small part of the Greek society, now representing approximately 13% of the TV audience. Digital terrestrial television has penetrated the Greek audience at a rate of 20%. The penetration of IPTV stands at 3.5%, while to date there are no mobile TV services. Greece is planning to switch off analogue broadcasting by the end of 2013. However, given that so far there is no official provision of digital broadcasting licenses and no official specification of properties to be used for antenna parks, the target is reasonably in doubt.

According to Eurostat, Internet has approximately entered half Greek households. In 2010 46% of them have internet connection and in terms of broadband connection exclusively the corresponding figure stands at 41% (Vergi, 2011: 3 & 5). According to the Observatory for the Digital Greece (Pappas, 2011: 2), in the Greek society as a whole the penetration of fixed broadband is at the level of 19.9% on January 1st, 2011. That means a remarkable increase of 17.5% compared to the corresponding penetration of 2010, however the gap between Greece and the rest of Europe is still wide. The penetration of mobile broadband (either via 3G mobile phones, or via mobile internet cards for PC) at the end of 2010 stands at 24.6% (Pappas, 2011: 18). This considerable adoption of mobile broadband can be mainly attributed to the rapid increase in the use of 3G mobile phones. Placing Greece in the European context, it is quite below the average penetration of mobile broadband.

9. IGNORED DIMENSIONS

Over the first years of its operation the NCRTV was an inactive institution. Particularly in the 1990s it was traditionally associated with features such as inconsistency of actions, inefficiency and slackness with regard to the duty of exercising control on radio and television. The failure of the authority in the audit work was reflected in the fact that most of the fines imposed on the delinquent television stations remained unpaid (Leandros, 2000: 209).

One of the chronic problems afflicting the institution lies in its inability to resist the political patronage. Over the 1990s this flaw, according to Papathanassopoulos (2004: 64), derived from the fact that it was “an independent authority for the supervision of the [broadcasting] sector, without a legal personality, of a decentralized [...] public service institution”. In the past the potential of the political power to interfere in the institution was dictated by the fact that most of the members’ appointment was a political decision derived from the three biggest political parties.

Although such an authority is in the last analysis an illusion of liberalism by permitting the politicians to show their distance from the media, it took some years for the NCRTV to get real power, since up to 2000 it could only advise the government but not take decisions, meaning that the central government was still in a position to maintain control over the state electronic media. Thus, the NCRTV could not play a major role in the broadcasting landscape, suffering from an inherent inability to have substantial powers. That is the reason why it has been characterized a “simple observer of the broadcasting events” (Papathanassopoulos,

1993: 253), falling far short of its creators' expectations. Its virtual absence, especially at the beginning of the broadcasting deregulation, contributed to the rise and evolution of the private broadcasters in a disorderly manner. In essence, the commercial players managed to demonstrate flexibility in matters related to programming, advertising and journalistic ethics with a view to increasing profits. For this lack of substantial action by the NCRTV the blame can be put on the political power of the country, which turned out to be reluctant to delegate to the media regulatory authority important responsibilities.

In 1998 and 2000 there seem to have been attempts aiming at upgrading the operation of the NCRTV. Its real activation started with the Seventh (Z') Revisionary Greek Parliament. It was believed that since it became an independent administrative authority and was constitutionalized (2001), it could solve the problems of lack of real independence and correct policy. The new authority, as emerged by the Seventh Revisionary Parliament, was charged with a highly difficult task: the arrangement of a traditionally anarchic media field overwhelmed by interests (Papathanassopoulos, 2004: 65).

Over the last years the work of the independent administrative authority has been challenged even by the Parliamentary Committee in charge of Institutions and Transparency (Petroutsou, Maniatis, Papageorgiou: 2009). Recently a decision taken by the Council of State has come to enhance the impression of unreliability accompanying the work of the media regulatory body. The Court ruled unlawful the independent authority's Board over the period 2007-2008. As a result, one decision of that period taken by the NCRTV was put into question and underwent cancellation (I.O.M., 2011: 2). More recent decisions are also threatened with cancellation in case of appeals to the Council of State (Petroutsou, Maniatis, Papageorgiou: 2011).

Generally, over the last year the NCRTV has been highly marginalized due to a series of decisions taken by the Council of State. These are decisions that afflicted not only the operation of the media regulatory body but also the entire edifice of the broadcasting market (Papachristoudi, 2011). In short, the Council of State:

- Undermined the sanctionary policy of the independent authority.
- Put into question a wide range of fines, issued by the media regulatory body.
- Recognized as unlawful the broadcasting legislation. The long-term regime of "temporary legitimacy" of the broadcasting market was considered to be a case of arbitrariness regarding the occupation of the broadcasting frequencies, which traditionally constitute a public good.

In reality, the effective and efficient operation of the media regulatory authority has never been achieved due to the lack of the necessary independence, a flaw that can be attributed to a range of long-lasting facts:

- Lack of self-regulatory competence.
- Limited administrative and financial autonomy.
- Reliance on the involvement of the Minister of Press and Mass Media when it comes to procedural matters.
- Admission of its decisions to legality review by the Ministry of Press and Mass Media.

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