

The Communicational Paradigm of the Information Society: The case of Media Pluralism in Europe and in Latin America

Jeroen Verschakelen¹, Peggy Valcke¹, Noemí Olivera²

¹ iMinds - ICRI – KU Leuven, Sint-Michielsstraat 6, 3000 Leuven – Belgium,
jeroen.verschakelen, peggy.valcke}@law.kuleuven.be

² GECSI-Grupo para el Estudio de la Complejidad en la Sociedad de la Información-, Facultad de Ciencias Jurídicas y Sociales, Universidad Nacional de La Plata, Argentina,
nolivera@jursoc.unlp.edu.ar

Abstract. Whereas the development of Information Society has caused a deep change in the communicational paradigm of the twentieth century, the predominance of neoliberal economic policies has allowed a significant market concentration. All at national, regional and international levels, both in Europe and in Latin America, policy makers have responded to these two factors, designing policies that are aimed at allowing not only individual's freedom of expression but also pluralism in a field where digitalization and convergence can only enhance the effects of economic concentration. In the following paragraphs we analyze the case of Media Pluralism since it appears to be a meaningful example of what has, has not and should be done in order to face the expected and emerging consequences of the ongoing changes.

Keywords: media, pluralism, media content, convergence

1 Introduction

"While the media face radical changes and restructuring due to new technology and global competition, maintaining media pluralism is crucial for the democratic process..." [1]

"Communication – understood as a lively and civilized debate among citizens – is the lifeblood of democracy. The media are its veins and arteries. Information they provide should be comprehensive, diverse, critical, reliable, fair and trustworthy." [2]

Whereas the development of Information Society has caused a deep change in the communicational paradigm of the twentieth century, the predominance of neoliberal economic policies has allowed a significant market concentration. All at national, regional and international levels, both in Europe and in Latin America, policy makers have responded to these two factors, designing policies that are aimed at allowing, not only individual's freedom of expression, but also pluralism in a field where digitalization and convergence can only enhance the effects of economic concentration.

On the one hand, while there is broad consensus in Europe about the importance of media pluralism for democracy and identity formation, there are still widely diverging views on how to regulate the matter. The Member States of the European Union (EU) have different cultural, political, and regulatory traditions –which explain their sometimes contrasting approaches towards media pluralism-. Not surprisingly the European Commission has taken a prudent stance on media pluralism in recent years and shifted its strategy for media pluralism from regulating to monitoring [3].

On the other hand, in Latin America, governments are currently making significant efforts in order to pass regulations aimed at overcoming the consequences of the market concentration process. This process, started in the second half of the 20th century, received a strong push in the '90, according to the neoliberal policies of the days [4]. These ongoing policies are intended to grant media pluralism, some of them just in terms of market and geographic concentration –such as in Argentina-, others also in terms of contents –as in Ecuador-.

2 The different concepts of Media Pluralism

Many appeals to Media Pluralism can be found these days almost everywhere. But there is much work to be done before considering such appeals. To begin with, as regards as the media sector, the topic might be approached from, at least, two different points of view, one related to the economic aspect of the activity and the other one, fully connected to the object of it, which is, in few traces, the diffusion of information. In other words, the first one looks at the market share of the media and the second one is focused on granting the public access to whatever contents might exist.

Such appeals to Media Pluralism are found in both discourse and legislation as much in Europe as in Latin America. But the underlying concepts of Pluralism are certainly quite different in both regions, especially in what is related to the above-referred economic aspect. Whereas in Europe this angle of ‘pluralism’, not only in the media sector, but as regards to public services in general, means that the state should neither keep nor acquire a monopolistic position in the market, in Latin America it is media corporations who hold monopolistic positions and policies related to ‘pluralism’ are aimed to grant competence, and in so doing, freedom of expression. Another difference, certainly significant, is that, whereas in Europe the discussion about this aspect seems to be settled, in Latin America, talking in terms of regional average, is just taking its first steps.

3 Media pluralism in Europe: short overview

In Europe, the concept of media pluralism is dealt with at two different levels. On the one hand, there is the Council of Europe, an intergovernmental organization which aims to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and

the rule of law. On the other hand, the European Union has also made a considerable contribution to the work in this area.

3.1 Council of Europe

3.1.1 Recommendation R (99) 1

Within the framework of the Council of Europe, two recommendations concerning media pluralism have been adopted, the first of which dates back to 1999. In its Recommendation No. R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism [5], a comprehensive definition of the concept “media pluralism” is lacking. However, the Explanatory Memorandum specifies that there are two categories of media pluralism: political pluralism and cultural pluralism. Moreover, the Explanatory Memorandum does contain some sort of definition: “Diversity of media **supply**, reflected, for example, in the existence of a plurality of *independent and autonomous media* (generally called structural media pluralism) as well as a *diversity of media types and contents* (views and opinions) made available to the public”. At the same time, it is stressed that pluralistic supply doesn’t always coincide with what is actually **consumed** (the demand side). The Council of Europe further highlights the importance of “access to pluralistic content” and the necessity that the media “enable different groups and interests to express themselves”.

To the Council of Europe, it was immediately clear that media pluralism is not merely a negative right that requires member states to abstain from taking certain measures that could hamper this democratic objective. Instead, media pluralism is conceived as a value requiring active intervention from governments, and so the Council of Europe suggests that member state should take certain measures aimed at promoting media pluralism.

For instance, it states that national authorities should define thresholds for maximum influence of a commercial company in one or more media sectors. To that end, specific authorities should be established which will have to supervise mergers and other concentrations. Furthermore, national authorities should ensure that a variety of media reflecting different political and cultural views is available. Moreover, they should promote the production and broadcasting of diverse content, and ensure that public service broadcasting keeps playing an important role in the media landscape. Finally, they should consider subsidizing print and broadcast media, especially the local and regional ones.

3.1.2 Recommendation Rec (2007) 2

The second Council of Europe Recommendation was adopted on the 31st of January 2007 [6]. In this instrument, the Council of Europe recalls that “media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information”. The Council goes on to stress the importance of the media in “fostering public debate, *political pluralism* and awareness of diverse opinions, notably by

providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas”. However, no comprehensive definition of “media pluralism” is to be found in this Recommendation.

Just like in the 1999 Recommendation, the Council of Europe states that media pluralism requires active intervention by member states: they should “adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed”.

This brings us to the recommended measures. The Council of Europe puts forward four different categories of measures that member states should consider taking: measures to ensure structural pluralism, content diversity, media transparency and scientific research. First of all, **structural pluralism** concerns the presence of a “sufficient variety of media outlets provided by a range of different owners, both private and public”. In line with the 1999 Recommendation, it is stated that member states should regulate media ownership, by defining maximum influence thresholds based on audience share, circulation, turnover/revenue, share capital and/or voting rights. They should also promote public service media and ensure access and interoperability. Secondly, measures of a behavioral rather than structural nature should be adopted to ensure **content diversity**. Examples of these types of measures include the stimulation of content that promotes “critical debate”, “wider democratic participation”, “intercultural and inter-religious dialogue”, etc. Furthermore, member states should also try to ensure content diversity in the allocation of licenses and through must-offer or must-carry rules. Thirdly, measures should be adopted that encourage **media transparency**: member states should ensure that the public has access to information on who participates in media companies, what their interests are, who exercises influence on programming and editorial policy, what support measures a media company receives and which procedures exist to exercise one’s right to reply and complaint. Finally, member states should also support **scientific research** in this area, so as to gain more insight into these issues and the potential solutions.

3.1.3 ECtHR case law

3.1.3.1 *Centro Europa 7*

In the *Centro Europa 7* case before the European Court of Human Rights [7], the applicant claimed that the failure of the Italian state to allocate to it the necessary frequencies for television broadcasting caused a breach of its right to freedom of expression. In its judgment, under “relevant law and practice”, the Court recalls the two Recommendations on media pluralism addressed above. Moreover, the Court specifies that “[t]here can be no democracy without pluralism”, and “[i]t is in the essence of democracy to allow *diverse political programmes* to be proposed and debated...” In this regard, “[i]t is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market. It is necessary in addition to allow effective access to the market so as to

guarantee diversity of overall programme **content**”. Finally, the Court reiterates that to ensure media pluralism, “in addition to its negative duty of non-interference the State has a *positive obligation* to put in place an appropriate legislative and administrative framework to guarantee effective pluralism”. In other words, media pluralism does not merely require abstention from governments, it also requires active intervention. The Court goes on to conclude that the government’s failure to allocate frequencies constituted a violation of art. 10 ECHR.

3.2 European Union

Within the framework of the EU, efforts were undertaken in the nineties to achieve more harmonization in the area of media pluralism, but these initiatives eventually failed due to the political sensitivity of the issues at hand. Since then however, several instruments concerning media pluralism have been adopted, the most important of which will be discussed below.

3.2.1 Commission Staff Working Document

In a Staff Working Document on “Media pluralism in the Member States of the European Union” [8], the Commission declares that “[t]he European Union is committed to protecting media pluralism as an essential pillar of the right to information and freedom of expression”. When it comes to a definition of the notion of media pluralism, the Commission admits that is a very broad concept: “Media pluralism is a concept that embraces a number of aspects, such as **diversity of ownership**, variety in the sources of information and in the range of **contents** available in the different Member States”. Furthermore, the Commission observes that for the most part, the focus has been on ownership regulation. However, ownership regulation is not sufficient to ensure media pluralism: “[e]nsuring Media pluralism, in our understanding, implies all measures that ensure citizens' **access** to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power.”

The Commission goes on to address political and economic influences in media enterprises, media concentration (including cross-border concentration) and media content. It moreover distinguishes external pluralism (pluralism at the level of the media landscape as a whole) from internal pluralism (pluralism within one media company), which can be achieved through programme requirements, obligations in the law or license, as well as structural measures concerning the composition of management boards or boards responsible for programme/content selection. Further, the Commission stresses the importance of a balanced “dual system” comprising both commercial and public broadcasting services. Finally, the impact of new technologies (like digital television and the internet) is discussed. The document concludes with a call for research concerning indicators for media pluralism, and also contains an annex with country profiles.

3.2.2 High Level Group report

On January 21st 2013, the High Level Group on Media Freedom and Pluralism presented its report “A free and pluralistic media to sustain European democracy” [9]. The report states that “[the media] have to be pluralistic, as well as inclusive, offering a wide range of *different views and opinions* and reflecting the diversity of a country’s population. The concept of pluralism embraces both *cultural* and *linguistic* pluralism, taking account of the needs of minorities, reflecting geographical diversity as well as local and regional priorities”. Furthermore, the report contains a comprehensive definition of media pluralism: “Media pluralism is a concept that goes far beyond media ownership... It embraces many aspects, ranging from, for example, merger control rules to content requirements in broadcasting licensing systems, the establishment of editorial freedoms, the independence and status of public service broadcasters, the professional situation of journalists, the relationship between media and political actors, etc. It encompasses all measures that ensure citizens’ access to a variety of information sources and voices, allowing them to form opinions without the undue influence of one dominant opinion forming power.” The report further distinguishes between internal and external pluralism, the former referring to pluralism within a particular media organization and the latter referring to pluralism in the media landscape as a whole.

The report further identifies “political influence, undue commercial pressures, changing media landscape with new business models, or the rise of new media” as challenges to be tackled in the area of media pluralism. The High Level Group goes on to recommend a whole range of measures, including: making the EU competent for media freedom and pluralism at Member State level, creating more harmonization for cross-border media, according a special role to media pluralism in the enforcement of competition law, promoting pro-active assessments of media environments and markets by competition authorities, stimulating the teaching of media literacy, promoting European news coverage, making Member State accession dependent on standards of media freedom and pluralism, promoting journalistic freedom, creating a monitoring agency charged with the task of reporting about pluralism at the national level, etc.

3.2.2.1 Recent developments

After the failed attempts at harmonization in the nineties, media pluralism is now back on the EU agenda. As a result of the publication of the High Level Group report, the Commission is setting up public consultations on this report (along with public consultations on the independence of audiovisual regulators) which will run from the 22nd of March until the 14th of June 2013. The Commission seeks discussion on these matters, and citizens are invited to participate in the consultations.

3.3 Partial Conclusions

As Valcke has observed [10], a uniform legal definition of “media pluralism” is nowhere to be found in European law. Legislators have focused primarily on diversity of content and sources, instead of exposure to and use of pluralistic content, and as such, the focus has been solely on the supply side, leaving out the consumption side of the discussion. However, as the Council of Europe has observed in its 1999 Recommendation, “pluralistic supply doesn’t always coincide with what is actually consumed”, a fact also highlighted in a European University Institute policy report on media pluralism [11]. Overall, the Council of Europe and the European Commission agree on the need for governments to not merely abstain from interfering, but also to actively intervene to promote media pluralism: it is not merely a negative, but also a positive duty for Member States. Furthermore, distinctions can be made on three different levels. On the level of the subject matter, we can distinguish political pluralism and cultural pluralism. On the level of the types of measures, we may draw a distinction between structural and behavioral pluralism. And as far as the scope of pluralism is concerned, we can contrast internal pluralism with external pluralism. There are numerous measures that said institutions have proposed to achieve media pluralism, but there is general agreement on the fact that ownership regulation (including supervision of concentrations in the media sector), public service broadcasting, content regulation (including must-carry rules) and regulation of the journalistic profession have an important role to play in this regard.

4 Media pluralism in Latin America: short overview

As Becerra and Mastrini have observed [4], if the press had been strongly linked with the local oligarchies during the 19th Century, in the sixties and seventies of the 20th Century, this is the days of massive diffusion of radio and television, the hegemonic sectors were relevant among media corporations shareholders. Then came the nineties and the enormous concentration process that took place in most profitable economic activities; media sector was not an exception.

It was in this context that the Annual Report of the Special Rapporteur for Freedom of Expression 2004 –Organization of American States- [12] devotes Chapter V “Indirect Violations of the Freedom of Expression” to “The impact of the concentration of media ownership”, a topic that in the previous Report had only been considered in paragraph 17 of the chapter on Evaluation of Freedom of Expression in the Hemisphere [13].

The first paragraph of the aforementioned Chapter V, Report 2004, says “[C]ontinuing its study of indirect violations of the freedom of expression, the Office of the Special Rapporteur for Freedom of Expression has prepared the following report on the concentration of media ownership and its impact on the free circulation of ideas. This study aims to describe initial approaches to the issue, considering that it merits special attention, **and proposes joint efforts for the Member States to develop measures on the concentration of media ownership**”. Even though the appeal to “joint efforts” does not show much knowledge of the region and the nature

of the links among the Member States, this might be considered the starting point of public concern, discussions and policies regarding the media in Latin America.

Latin America is, somehow, similar to Europe in the sense that, being a region which members face many common problems, due to history, societies, traditions and political ideas, each state is likely to face the problem according to its own possibilities. Moreover, even if many integration processes coexist in the region, none of them has the characteristics of the European Union. This is, they are, in general terms, political rather than regulative processes.

It can be said that the contemporary governments of many Latin American countries share political viewpoints and ideas about the most suitable policies to cope several problems they must all face in their countries. To sum up, there is a trend that many observers, in an attempt to disqualify them, describe as 'populist'; they ignore, in so doing, valuable opinions, such as those of Laclau [14]. In fact, most of these governments intend to enhance social inclusion and reduce economic inequality, and in so doing, confront corporations and other established powers.

For these reasons, even if very few joint efforts of the Member States to develop measures on the concentration of media ownership can be expected, from 2004 on discussions, policies and even positive laws can be found in many Latin American countries.

4.1 A brief inventory of the state of the topic in different countries

Latin America is a cultural and linguistic region formed by more than twenty political units that speak romance languages –Spanish, Portuguese and French-, a number that fluctuates depending on the criteria used to delimit the concept.

Even if the discussion on media pluralism/concentration of media ownership is widely widespread in Latin America, it is not in every country that the topic has reached the state of 'political issue'. In the following paragraphs we describe, in a few traces, how the discussion has evolved in these last ones.

4.1.1 Venezuela

By 2009 the 80% of broadcasters and TV channels belonged to the private sector, whereas just a 9% were public; the others belonged to community organizations. Moreover, all the private media were concentrated in the hands of 32 families [15]. In this scenario, and after having retired the licences of broadcasters accused to have taken part in the coup de etat that took place in 2002 [16], Conatel (National Telecommunications Commission) set several broadcastings a date, so as to audit the state of their licences. Several of them intendedly ignored this call. The government decided not to renew the licences of 34 radios and 2 tv channels which, due to different reasons –deceased licensees; absense of mandatory administrative processes- had been operating illegally for years. Many of these media started to broadcast either in public squares or by Internet [17].

4.1.2 Bolivia

The Plurinational Legislative Assembly of Bolivia passed on July 29, 2011 the Telecommunications and ICT General Law. This law establishes that the sharing of the broadcasting frequencies must be: 33% for the State; 33% for commercial operators; 17% for community sector and 17% for indigenous people and peasants [18].

4.1.3 Ecuador

The Constitution approved in 2008 in Ecuador ordered the Legislature to approve, within 365 days, several laws, including a media law. The government of President Correa did not have a majority sufficient to accomplish the mandate as regards this law. After the elections on February 2013, a media law was approved in June.

The Organic Communication Law establishes that communication is a public service and that the frequencies must be redistributed, assigning 34% to community media, 34 % to public media and 33% to private media –presently the 90% of them is in private hands-. The law forbids prior censorship, establishes the principle of subsequent responsibility and penalizes ‘media lynching’ [19].

The law has been loudly criticized by local media owners, international media groups and the guilds that represent their interests [20].

4.1.4 Brazil

Brazil is the hugest market of the south cone of Latin America. There is neither press nor broadcasting or television. All press, broadcasting and television are regional; there are no media of national coverage. In the case of radio and tv, whereas the structure of property is divided among the great cities, the contents are similar all over the country.

Globo Group, originally formed in the sixties, is the most relevant media group in Brazil. Due to the investments it received in the nineties from Time Life (USA), the group has displaced most of its competitors, achieved national coverage and, by means of its soap-operas is even in the international market.

During President Lula’s government (2002-2010), the group used all its lobby capacity to induce the government to adopt the Japanese standard for digital television, instead of the European one, which the telecoms preferred. It has also shown concern about the expansion of these corporations [21].

Even if President’s Lula attitude toward the media was ‘moderate’, has talked many times during President Dilma Rousseff government in favor of media pluralism and the need of passing regulations to achieve it. He has recently said in Argentina that “[W]hen we criticize the media, they say we attack them; when they attack us, they say it is democracy” [22].

4.1.5 Uruguay

Although the media are highly concentrated in Uruguay, due to the limited size of its market, there are no great media groups. Both in the press and the audiovisual sector, the market is distributed among three groups, which have jointly developed the cable television system.

Since 2005 the government is in the hands of a center-left party, the Frente Amplio, which has not shown up to now major interest in adopting any decisions that might affect the commercial interests within the media sector. Eventhough, in 2008 it was passed a law about community broadcasting which is considered to be at the forefront at global level. [21].

A project of a media law has recently been submitted to the Congress [23]. President Mujica claims that it is not a ‘gag law’, as the media have said, but a law that is in the line of the OAS Rapporteur for Freedom of Expression and the United Nations documents about the issue.

4.2 Argentina. Audiovisual Media Law

Since 1983, when democracy was recovered, there had been in Argentina wide consensus on the need to abrogate the dictatorship’s law and enact a law that fulfills the civic and participatory styles of democracy. Both President Alfonsín (1988) and President De la Rúa (2001) submitted to the Congress projects that could not be discussed [24], due to media groups pressure. In 2009 President Fernández de Kirchner submitted the project of the current law, Audiovisual Media Law, N° 26522.

4.2.1 History of the project

The Coalition for a Democratic Broadcasting was created in 2004. Its member are press unions, universities, social organizations, community radios, small commercial radios, human rights organizations, brought together by the Argentinean Community Radios Forum (FARCO). On August 27, 2004 (Day of Broadcasting) the Coalition launched the “Citizens Initiative for a broadcasting law for democracy” –”The 21 points”-.

Four years later, on August 2008, the Chamber of Deputies declared “The 21 points” to be ‘of interest’. From then on, and during a year, 24 Forums, that took place all along the country, discussed the document. There were more than 80 discussion meetings, which mean, adding letters and e mails with contributions, more than 15,000 opinions. During this social debate of the project on the ‘for’ side were center-left parties, community broadcasters, all national universities (public), trade unions, social leaders, Human Rights organizations, United Nations, National and International Journalists and press workers associations. On the other side –the against one-, there were a relevant sector of the opposition (righties), huge multimedia and aational and international media owners guilds.

Finally, in August 2009: President Fernández de Kirchner submitted to the Congress a project based on “The 21 points” with the amendments suggested during the participative discussion.

4.2.3 Main characteristics of the law

An unusual legal technique has been used in this law. There are plenty of explanatory notes that expose the legal sources of the norms and/or the contributors of each amendment made to the initial project. In Argentina, some codes have notes that expose the sources, but no law resembles this one in this aspect.

Apart from this curious character, the analysis of the 165 ruling articles -166 is formal- shows that the spirit of this is a law is to protect and widen democracy. Moreover, considers that access to information is a condition to democracy.

The law distinguishes three types of providers -State, private for-profit and private non-profit-, each of which shall hold one third of the frequencies.

The law receives social practices, i.e. community radios; local languages. These social practices were even forbidden in its antecedent, Law 22.285, from 1980, and had given place to plenty of litigation.

To sum up, this is a law for the transition from analogue broadcasting to interactive and digital audiovisual media. But there is still a relevant pending issue, the role of telecoms regarding audiovisual media.

4.2.4 The controversies along the past almost four years

Fully committed with the idea that the concentration of media ownership restricts freedom of expression and the right to information, in this topic the aim of the law is to block the configuration of monopolies and oligopolies. The law restricts the concentration, and puts limits to the quantity of licenses and for type of media. Moreover, “[H]olders of service licenses which, as of the date of enactment, do not meet the requirements herein established, or were the holders of a greater number of licenses or having a corporate composition different than the one allowed, shall comply with the provisions of this law within a term of 1 year after the enforcement authority has established the transition mechanism” (Law, art.161); a process called ‘disinvestment’

These norms (either the law itself or merely arts.45 and 161) have caused a waterfall of litigation against the law, allowed by the characteristics of Argentinean legal system.

- The province of San Luis filed a lawsuit in Supreme Court (CN. art.32) challenging the constitutionality of the law (Oct.30, 2009).
- Some opposition deputies promoted an action seeking a ‘declaration of certainty’ about the nullity of the law (Nov. 6, 2009). They alleged that the Regulations of the Chamber were not respected during the treatment of the project because the session started an hour and a half later).

- Grupo Clarín, the hugest multimedia group, sued over unconstitutionality of art.41, 45 & 161 and obtained, as Provisional remedy, the Suspension of those articles enforcement (Dec. 16, 2009).
- CODELCO, an ONG that claims to represent ‘users’ sued in Salta over the unconstitutionality of arts. 45, 62, 63, 64, 65 & 161. The Suspension of those articles enforcement was ordered as Provisional remedy (Dec. 18, 2009).
- The opposition deputy Thomas sued for nullity based on ‘unconstitutionality’, obtaining, once more, as provisional remedy the suspension of the law enforcement (Dec. 21, 2009)

And these are only a few examples of the litigation that followed the Congress decision aimed to mitigate the concentration of media ownership.

4.2.4.1 The lawsuit of Grupo Clarín:

Even if when a State’s decision is involved, the competence belongs to the Contentious jurisdiction, Clarin Group sued at a Civil and Commercial Court, challenging the constitutionality of the articles 41, 45 and 161. The suspension of those articles enforcement was ordered as a provisional remedy on December 16, 2009. After several interlocutory orders, on May, 2012 the Supreme Court fixed December 7, 2012 as the end to the provisional remedy.

On December 6, 2012 the first sentence on the principal action was passed. The judge decided that Clarin has only argued about private property, not about freedom of expression, so the challenge of the constitutionality that was not the proper action, since economic damages can be discussed elsewhere. Having decided that the law is constitutional, the provisional remedy is removed. The sentence was immediately appealed.

Not unexpectedly, the Chamber’s decision was to declare, on April 17, 2013, the unconstitutionality of some paragraphs of articles 45 and 48, strictly those that would force the disinvestment as regards the licenses handled by members of Clarin Group. The government appealed. Now is the time of the Supreme Court.

Believe it or not, all this litigation gave place to unexpected outcomes. The judgments delivered on the different actions against the law have brought up to the surface that ‘the justice’ –the judiciary- is neither blind nor neutral. The ongoing debate about the ‘democratization’ of the judiciary, where even many judges and public prosecutors and defenders are involved shows, better than any theoretical digressions, the uneasiness in culture [25].

4.3 Partial conclusions

In The Bill of Rights in Cyberspace [26], Suñé Llinás says that freedom of expression and information is nowadays a fiction, since it is monopolized by those who he calls ‘the owners of the microphones’, and after all, the owners of the mass media. The preceding paragraphs show the validity of the assertion, at least for Latin America. Many efforts have been done in several countries in the recent years in order to start working on the economic side of media pluralism, this is, the concentration of media

ownership. But the situation remains either, at different stages, in the state of discussion –Brazil, Uruguay- or, de facto, those who have lost their licenses –due to their own illegal behavior-, reorganize their businesses in order to broadcast from abroad –Venezuela- or, the law has been passed, but is not completely applicable –Argentina-. The case of Ecuador is extremely recent to forecast the evolution of its application.

In Latin America the issue is far to be settled. The positive news is that the debate about the effect of the concentration of media ownership over freedom of expression and the right of information is being done on the surface. Next debate shall be about media pluralism as regards contents and the demand side. The participatory and collaborative characteristics of society within the Information Society allow us to expect that it shall come soon.

The distribution of the frequencies among different sectors, let us say State, Market and Civil Society so as to avoid the particularities of each national system, seems to be a relevant step towards media pluralism, since the interests of each sector shall have a vehicle to make its voice heard. In the words of the Council of Europe, the distribution of frequencies shall “enable different groups and interests to express themselves”.

There is, nevertheless, a ghost that, being a pending issue in all the laws that have been passed in Latin America, stalks most discussions about the topic in the region. It is the role that the telecoms shall have in the next future scenario. As it has been said in this section, telecoms are much interested in entering the media market, if they do, then triple play and even quadruple play shall be a fact.

5 Conclusions

As said above, the Explanatory Memorandum of the Recommendation No. R (99) 1 [5] contains some sort of definition of media pluralism. “Diversity of media **supply**, reflected, for example, in the existence of a plurality of *independent and autonomous media* (generally called structural media pluralism) as well as a *diversity of media types and contents* (views and opinions) made available to the public”.

If in the European Union the concern about information and the media is related to guarantee the public to have access to a variety of viewpoints regarding each topic, in Latin American countries the most important problem regarding information and the media is the harming effect of the concentration of media ownership on democracy [27]. For these reasons, while in Europe monitoring the actual policies regarding the media contents in each country seems to be the most accurate policy, in the Latin America’s countries where they have been able to pass media laws, despite the lobby against not only those projects but any law, a sectorial distribution of ownership seems to be considered the possible guarantee.

Digitalization is changing not only most of the structural characteristics of the current media system. By means of social networks and whatever participatory platforms might be developed in the near future, it also changes the relationship between news producers and consumers. And in so doing, contributes one of the most

relevant aspects of the communication paradigm of the Information Society that is being shaped before our eyes.

But, in the mean time, media pluralism has raised to the heights of being a value, most probably due the evolution of the concept of Human Rights, which can be said to be the moral history of mankind,. Being so, it deserves all attention that can be paid in each country, so as its recognition is fully naturalized in the new paradigm.

References

1. Reding, Viviane (Information Society and Media Commissioner, EC). Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe's media landscape, Press Release IP/07/52, Brussels, 16 January 2007. http://europa.eu/rapid/press-release_IP-07-52_en.htm
2. Wallström, Margot. (Vice-President of the Barroso Commission –EC-). Media pluralism: Commission stresses... (2007) op. cit.
3. Valcke, P.. A European Risk Barometer for Media Pluralism: why assess damage when you can map risk? Journal of Information Policy, vol. 1, 185-216 (2011)
4. Becerra, M. y Mastrini, G. *Periodistas y magnates. estructura y concentración de las industrias culturales*. Buenos Aires: Prometeo (2006)
5. Council of Europe Committee of Ministers, Recommendation No. R (99) 1 of the Committee of Ministers to member states on measures to promote media pluralism, 19 January 1999, http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281999%29001&expmem_EN.asp.
6. Council of Europe Committee of Ministers, Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007.
7. European Court of Human Rights 7 June 2012, application no. 38433/09, Centro Europa 7 srl and Di Stefano v. Italy (<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/>)
8. Commission Staff Working Document: Media pluralism in the Member States of the European Union, SEC(2007) 32.
9. A free and pluralistic media to sustain European democracy. The Report of the High Level Group on Media Freedom and Pluralism, <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>.
10. Valcke P. "Looking for the User in Media Pluralism Regulation: Unraveling the Traditional Diversity Chain and Recent Trends of User Empowerment in European Media Regulation" in *Journal of Information Policy* 2011, 287-320 (2011).
11. European University Institute, Robert Schuman Centre for Advanced Studies, "European Union Competencies in Respect of Media Pluralism and Media Freedom", RSCAS PP 2013/01, <http://cmpf.eui.eu/publications/policyreport.aspx>.
12. Annual Report of the Special Rapporteur for Freedom of Expression 2004. See Complete Report in HTML <http://www.oas.org/en/iachr/expression/docListCat.asp?catID=39&IID=1>
13. Annual Report of the Inter-American Commission on Human Rights 2003. Volume III. Report of the Office of the Special Rapporteur for the Freedom of Expression, Chapter II: Evaluation of the Situation of Freedom of Expression in the Hemisphere, para. 17. <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=195&IID=1>
14. Laclau, Ernesto. On Populist Reason, Verso, London (2005)

15. Deronne, Thierry. Au Venezuela, la bataille populaire pour démocratiser le "latifundio" des ondes. Le grand soir (08/04/2009) <http://www.legrandsoir.info/Au-Venezuela-la-bataille-populaire-pour-democratiser-le.html>
16. Espinoza, Miguel. Participación de los medios privados en el Golpe de Estado de 2002, en Venezuela. Aporrea. (21/12/2012) <http://www.aporrea.org/actualidad/a156322.html>
17. Sánchez Fabiola, Radios desafian a Chávez operando por Internet, *The Associated Press*, Nacion.com, Costa Rica, (08/03/2009). http://www.nacion.com/ln_ee/2009/agosto/03/mundo2047709.html
18. Página 12, Argentina (30/07/2011). Ley de medios, boliviana. <http://www.pagina12.com.ar/diario/elmundo/4-173372-2011-07-30.html>
19. Página 12, Argentina (25/06/2013). Ecuador, con nueva Ley de Medios. <http://www.pagina12.com.ar/diario/ultimas/20-223031-2013-06-25.html>
20. El País (Montevideo, Uruguay). Ecuador aprueba su ley de medios. Amplia mayoría vota el texto pese a que recibió críticas. Montevideo, <http://www.elpais.com.uy/mundo/ecuador-aprueba-ley-medios.html>; CNN México. Ley de medios en Ecuador, ¿afecta la libertad? Uno de los cambios en la ley de medios ecuatoriana es el del artículo 30, que indica que "revelar secretos de gobierno está penado". <http://mexico.cnn.com/videos/2013/07/12/ley-de-medios-en-ecuador-afecta-la-libertad>; El Universo (Guayaquil, Ecuador). Instituto Internacional de Prensa critica nueva ley de medios en Ecuador (Viernes, 12 de Julio, 2013). <http://www.eluniverso.com/noticias/2013/07/12/nota/1152511/instituto-internacional-prensa-critica-nueva-ley-medios-ecuador>
21. Mastrini, Guillermo y Becerra, Martín. Estructura, concentración y transformaciones en los medios del Cono Sur latinoamericano. Structure, Dossier. En: Comunicar 36, ps.51-59 (01-03-2011), www.revistacomunicar.com/verpdf.php?numero=36&articulo=36
22. La Mañana de Córdoba Jueves 16 de Mayo de 2013. Lula y los medios: "Cuando criticamos a la prensa dicen que los atacamos, pero cuando ellos atacan dicen que es democracia". http://www.lmcordoba.com.ar/nota/128342_lula-y-los-medios-cuando-criticamos-a-la-prensa-dicen-que-los-atacamos-pero-cuando-ellos-atacan-dicen-que-es-democracia
23. Página 12. Jueves, 23 de mayo de 2013. Ley de medios uruguaya. <http://www.pagina12.com.ar/diario/elmundo/4-220617-2013-05-23.html>
24. Magnani, Rocío. Ley de Servicios de Comunicación Audiovisual. Encuentro, 29/11/2012 http://www.encuentro.gov.ar/sitios/encuentro/Noticias/getDetalle?rec_id=114241
25. Freud, Sigmund. *Obras completas de Sigmund Freud. Volumen XXI - El porvenir de una ilusión, El malestar en la cultura, y otras obras (1927-1931)*. 2. *El malestar en la cultura (1930)*. Traducción José Luis Etcheverry. Buenos Aires & Madrid: Amorrortu editores
26. Suñé Llinás, Emilio. Declaración de Derechos del Ciberespacio, IEDI (2008) http://190.7.110.123/pdf/7_convencionesDerechoInformatico/documentacion/conferencias/Los_Derechos_Humanos_en_el_Ciberespacio.pdf
27. Behrens, Peter-Alberto and Sanden, Florian. Medienpolitik und Demokratie in Lateinamerika. Von Medienkonzernen und Provinzsendern. Konrad-Adenauer-Stiftung. Programa Regional de Medios de Comunicación y Democracia en Latinoamerica. Serie Länderberichte, Argentinien, 3. April 2013, <http://www.kas.de/medien-lateinamerika/de/publications/33969/>