

## MEDIA OWNERSHIP IN BULGARIA: STATE OF PLAY AND CHALLENGES

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Transparency of media ownership and media pluralism are directly related to fundamental constitutional principles, rights and freedoms such as independence and freedom of the media, freedom of expression, pluralism of opinions and citizens' right to information. Consistent application of these democratic principles is required to prevent the vicious practice of using the media as an instrument for state capture.

### Legal framework for disclosing ownership of the media

There is no uniform legal framework in Bulgaria governing ownership of the media.<sup>1</sup> There are specific provisions concerning print and electronic media ownership. However, most of these provisions do not concern media distributing information differently such as news agencies, internet-based media, etc.

#### Electronic media

Regulation of electronic media is the most comprehensive one. It provides for an institutionalised supervision of compliance with the existing legal requirements for the operation of electronic media. A general provision in the *Radio Television Act* declares guarantees for the independence of media service

<sup>1</sup> There are distinct views in Bulgaria and abroad regarding the different treatment of print and online media and the reasons for the enhanced regulation of electronic media. The Bulgarian Constitutional Court has ruled in favour of regulation of radio and TV operators but against regulation of print media (decision no. 7 of 1996).

#### KEY POINTS

- Publicly available and accessible information about the electronic media does not always allow to establish their ultimate owner.
- Despite the existence of a register of ownership of print media, weaknesses in the imposition of sanctions and the broad administrative discretion allow violations of the requirement for submission of information to go unpunished.
- The restrictions on media ownership by off-shore companies provide for some exceptions that allow circumventing the law.
- There are no special tests for evaluating media pluralism when assessing concentration and determining abuse of dominant market position; this is valid in regard to all types of media.
- The existing self-regulatory mechanisms are not effective enough to establish and counteract violations of the media rules of ethics.

providers in Bulgaria<sup>2</sup> from political and economic interference (Article 5, para 1). Censorship of media services in any form is expressly prohibited (Article 5, para 2). The law sets out identical principles for the operation of public and private media service providers,<sup>3</sup> specifying the limits of freedom of expression, the right to information etc. (Article 10). The identical regulation of the relations between owners and management bodies of media service providers, on the one hand, and contracted journalists, on the other hand, is also envisioned as a guarantee of media independence. Journalists and creative staff members contracted by the media service providers should not receive instructions and guidelines about their work from persons or groups different from the management bodies of the media service providers (Article 11, para 2). In addition, owners and management bodies of media service providers and contracted journalists may arrange for editorial rules in the area of political journalism to guarantee protection of the journalists against external interferences, their liberty and personal responsibility, ethical-professional rules for their work, as well as procedures for dispute resolution (Article 11, para 5 and 6).

However, implementation of the statutory guarantees and compliance with the promulgated principles and rules depends on the actual ownership of the media and the manner in which it is exercised, as well as by the funding and the purposes for which it is granted.

Under the *Radio and Television Act*, ownership is relevant factor when issuing an individual licence for radio and TV programmes.<sup>4</sup>

Two of the obstacles for issuing a licence are related to ownership. Sole traders and legal persons who cannot prove ownership of their assets or capital in accordance with Article 6 of the *Counteracting Money Laundering Act* as well as legal persons in which they or their shareholders and partners have a share may not apply for a licence (Article 105, para 4, items 3 and 4).

The licensing procedure set forth in the *Radio and Television Act* requires the following documents to be submitted:

1. **documents proving the origin of the capital for the last three years**, including a certified financial statement;
2. **documents certifying the equity composition and ownership**;
3. **a list of the media enterprises in which the applicants are shareholders or partners** (Article 111, para 2, items 1 to 3).

The Council for Electronic Media (CEM) is the body that issues and revokes licences. It also verifies that the submitted documents are in order and that the statutory requirements are met. CEM must also keep a **public register** with five distinct sections (Article 125k of the *Radio and Television Act*).<sup>5</sup> Data about the persons exercising **control over the operator management** must be entered for all sections of the register.

There is data in the different sections of the register accessible on CEM website about the persons exer-

<sup>2</sup> The law defines “media service provider” as a natural person, a sole trader, or a legal person who bears editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised; “radio or TV operator” is a provider of linear media services (programmes) for radio or TV on the basis of a programme schedule (Article 4, paras 1 and 2).

<sup>3</sup> According to the law private providers are all providers that are not registered or licensed as public ones. The law sets forth specific requirements for the public providers and additional requirements for the national public providers such as the Bulgarian National Television (BNT) and the Bulgarian National Radio (BNR). Article 42, para 2 of the Radio and Television Act further stipulates that BNT and BNR shall exercise operational management over the assets extended to them until enactment of the law.

<sup>4</sup> Since 2001 the Council for Electronic Media is entrusted with the regulatory functions on national level, including the issuance of licences.

<sup>5</sup> The five sections are as follows: (1) Bulgarian radio and TV programmes broadcast in Bulgaria through cable and satellite; (2) foreign programmes broadcast in Bulgaria through cable and satellite, set up in a EU Member State or a State party to the European Economic Area Agreement or by other foreign persons; (3) licensed radio and TV programmes broadcast via existing and/or new electronic communications networks of land radio relay channels in analogue or digital mode; (4) on-demand media services; (5) enterprises broadcasting Bulgarian and foreign programmes.

cising control. However, this data is insufficient for the purpose of transparency. Some of the leading private TV providers (Nova TV, TV7, etc.) are owned by foreign persons registered in another State or in an offshore zone. For example according to data in the register about an operator, a Bulgarian single-stock company, the person exercising control is registered in the UK, while a board of directors comprising several persons is specified as the sole owner of the operator. Indeed, the unique identification number allows for checks in the Company Register. Such a check, however, may only reveal the size of the capital of the registered Bulgarian company, as well as data about the current status such as registered head office, scope of business and persons authorised to represent the company. Thus regardless of the publicly accessible information, the ultimate owners of electronic media may still not be revealed.

## Print media

General provisions of the Constitution, criminal law, copyright, and election law as well as some specific laws such as the *Access to Public Information Act* and the *Personal Data Protection Act* apply in relation to print media.

Amendments made in 2010 to the *Mandatory Deposition of Print and Other Works Act* introduce express provisions for the identification of the ultimate owner (the natural person(s)) of the publisher of print works. A definition of “ultimate owner” is provided.<sup>6</sup> The new provision of Article 7a, para 1 requires the publisher of **print periodicals** produced in Bulgaria to publish information about the practical owner in the first issue for every calendar year. In case the publisher is a public company within the meaning of the *Public Offering of Securities Act* or under the legislation of

the country where it is established, the institution exercising supervision over the company in question has to be specified.

The law envisions that in case the practical owner changes, information about this must be published in the first issue of the print periodical following the change. In addition, within seven days of releasing the first issue of the periodical for every calendar year, the publisher must submit a declaration to the **Ministry of Culture** specifying the practical owner. The Ministry must publish the information contained in the declaration on its website within 10 days after receipt. The publisher must ensure that information about the practical owner is kept up to date on its website, if applicable. The duty to declare the information falls upon both the publisher and the distributor of periodicals.

These legislative amendments are a step forward to more transparency as regards ownership of print media. Nevertheless, they were criticised as early as they were adopted. There are no guarantees for disclosing equity<sup>7</sup> that secures the media financially and by which ownership is acquired; the loopholes allowing to circumvent the transparency requirements remain, etc. For these reasons it is doubtful whether the amendments to the law are really designed to disclose the ultimate owners.<sup>8</sup>

Besides criticism regarding legal provisions themselves, their application is another matter: is control exercised and are penalties imposed in case the legal requirements are not met? Data in a series of surveys point to some progress<sup>9</sup> as regards declaration of facts identifying particular owners. At the same time they give examples of failure to declare publicly known facts such as change of ownership.

<sup>6</sup> Natural persons who are the final beneficiaries of the ownership in the legal person that individually or through associated persons owns shares of the publisher

<sup>7</sup> Regarding why it is necessary to declare the origin of money and analyse financial flows in acquisitions etc. cf. <http://www.mediapool.bg/senki-zad-sdelkata-news177825.html>

<sup>8</sup> Cf. “Is there a chance for transparent media ownership?”, *Dnevnik Daily* of 14 July 2010, at [http://www.dnevnik.bg/analizi/2010/07/14/932764\\_ima\\_li\\_shans\\_za\\_prozrachnostta\\_na\\_mediinata\\_sobstvenost/](http://www.dnevnik.bg/analizi/2010/07/14/932764_ima_li_shans_za_prozrachnostta_na_mediinata_sobstvenost/) (in Bulgarian)

<sup>9</sup> Vesislava Antonova, “Semi Transparency”, *Capital Weekly* of 20 January 2012 at [http://www.capital.bg/biznes/media\\_i\\_reklama/2012/01/20/1749497\\_polovinchata\\_prozrachnost/](http://www.capital.bg/biznes/media_i_reklama/2012/01/20/1749497_polovinchata_prozrachnost/)

A study conducted by Media Democracy and Konrad Adenauer Foundation in the period from January to December 2014 shows that a series of important changes in media ownership that occurred in 2014 have not been recorded neither in the Ministry of Culture register, nor on the respective publishers' websites (for example changes concerning *Troud Daily*, *Yellow Troud Weekly*, publications of New Bulgarian Media Group Holding, etc.).<sup>10</sup>

Data published in another study point to owners interfering in the work of journalists, advertisers exercising pressure on owners, susceptibility to influence due to losses and internal censorship. The study identifies some of the 'dark' sides of Bulgarian media: unhealthy servicing of the ones in power, unclear ownership and existing corrupt practices on three levels, journalists, editors-in-chief, and owners.<sup>11</sup>

As of 30 January 2015 data (including names of owners who are natural persons) contained in 73 publishers' declarations about ownership of 136 print periodicals (newspapers and magazines) are published in the register of print media ownership available at the website of the Ministry of Culture.<sup>12</sup> The number is substantially lower compared to the number of published periodicals in previous years according to data of the National Statistical Institute.

Apparently small penalties (fines vary from BGN 300 to BGN 3,000, and up to BGN 5,000 for repeated violations) cannot prevent violation of statutory duties. Furthermore, the procedure for imposing sanctions by the mayor of the respective municipality, without expressly regulating the procedure for notifying the sanctioning body about the violation,<sup>13</sup> and allowing for a wide margin of administrative discretion, in fact exempts these violations from penalty. Journalist investigations corroborate the

fact that for the five years after the amendment to the *Mandatory Deposition of Print and Other Works Act* was introduced, publishers of periodicals fail to submit the required data and there is not a single fine imposed in this regard.<sup>14</sup>

The problem of identifying ownership and the persons exercising control is valid for both print and electronic media.

## General requirements for disclosing ultimate owners

Recourse is made to different mechanisms in order to conceal practical media owners such as offshore companies, joint-stock companies with bearer securities, trust companies, etc. *The Economic and Financial Relations with Companies Registered in Privileged Tax Regime Jurisdictions, Persons Related to Them and Their Ultimate Owners Act* ("the Economic and Financial Relations Act") entered into force on 1 January 2014. Its purpose is to make clear who are the practical owners of offshore companies that operate in various economic fields in the country, including the media market. The law aims to rule out absorption of public funds and management of financial resources by these companies contrary to the public interest and to prevent tax evasion.

The law introduces a definition of a "company": any legal person, unregistered partnership or another structure, whose status is determined by the law of the country where it is registered, regardless of the form of association, establishment, registration or other similar criteria.

The law restricts access of offshore companies and persons who are directly or indirectly related to them to 28 operations among which are "**incorporation or acquisition of a person applying for or having been**

<sup>10</sup> Cf. "The Crisis of Trust in the Media Gets Deeper", Capital Weekly of 3 February 2015, at [http://www.capital.bg/biznes/media\\_i\\_reklama/2015/02/03/2465224\\_krizata\\_na\\_doverie\\_v\\_mediite\\_se\\_zadulbochava/](http://www.capital.bg/biznes/media_i_reklama/2015/02/03/2465224_krizata_na_doverie_v_mediite_se_zadulbochava/)

<sup>11</sup> [http://www.kas.de/wf/doc/kas\\_14389-1442-1-30.pdf?141117155224](http://www.kas.de/wf/doc/kas_14389-1442-1-30.pdf?141117155224)

<sup>12</sup> <http://mc.government.bg/page.php?p=58&s=429&sp=67&t=63&z=436>

<sup>13</sup> The law and the Rules and regulations for its implementation do not set out a procedure for notifying the municipality about a violation or such whereby the municipality itself may seek information from the Ministry of Culture or the National Library.

<sup>14</sup> Anelia Nikolova, "Transparency Unwanted", 6 January 2015, at <http://prnew.info/tag/ministerstvoto-na-kulturata/>

granted a radio and TV operator licence under the *Radio and Television Act*” and “incorporation or acquisition of a person who is publisher of print periodicals” (Article 3, items 20 and 21). At the same time, the law envisions some exceptions to this prohibition such as where an offshore company is directly or indirectly involved in a print periodicals publishing company and the latter has submitted information about ultimate owners who are natural persons under the *Mandatory Deposition of Print and Other Works Act*.

Persons to whom the prohibitions applied used to be under the obligation to comply with the law within six months of its entry into force on 1 January 2014 by removing the offshore companies from their composition, unless they fell under some of the envisioned exceptions.<sup>15</sup>

Exceptions are admissible and may be relied upon insofar as these are entered in the Company Register. Data allowing the identification of the ultimate owners who are natural persons is also subject to registration on the basis of a declaration certified by a notary and drawn in accordance with a model approved by the Minister of Justice. Three types of circumstances are subject to registration: data about the ultimate owners; data about the offshore companies; the respective exception upon which the company relies.

However, this registration only became possible in practice after the amendments made in 2014 to Regulation No. 1 of 14 February 2007 about keeping a Company register and ensuring access to it. These amendments provide for a procedure for disclosing

data about the ultimate owners in case of two of the altogether four exceptions. This amendment is in relation to the practical application of the *Economic and Financial Relations Act*. Pursuant to Article 6, para 1 of the Act, circumstances regarding the ultimate owners of offshore companies must be entered in the file of the Bulgarian company of which the offshore company is a member or vice versa, or which is an “associated person” within the meaning of § 1 of the Additional Provisions of the *Commerce Act*.<sup>16</sup>

The law provides for administrative penalties for applying the exceptions relying on false data. The penalties vary from BGN 50,000 to BGN 500,000 and up to BGN 1 million for a second violation. In addition, licences and permits issued on the basis of false documents or data are revoked. The penalties are considerably graver than the ones envisaged for failure to declare ownership of print media. Violations are established by the competent administration body and the penalties are imposed by its head or an official authorised by him or her. There is no publicly accessible data about imposed penalties in this regard either.

The short span of time during which the law has been in force does not possibly allow for an elaborate analysis of its application. But even in this early stage some obstacles and problems may be spotted. For example, the very broad legal definition of “associated persons” could put off multinational companies with offshore subsidiaries. Another problem is that offshore zones themselves usually prevent establishing the association between equity owners of local persons and offshore companies.<sup>17</sup>

<sup>15</sup> The exceptions are exhaustively listed in Article 4 of the Economic and Financial Relations Act.

<sup>16</sup> The definition of associated persons is too broad and comprises spouses, lineal descendants, four degree collateral relatives, and third degree affinity relatives; employer and employee; two persons where one takes part in the management of the other person’s company; partners; a company and a person owning more than 5 % of the shares with voting rights; persons whose work is controlled, directly or indirectly, by a third party; persons who jointly control, directly or indirectly, a third party; two persons where one is the commercial representative of the other; two persons where one has made a donation in favour of the other; as well as those persons who take a direct or indirect part in the management, control, or capital of another person(s), and thus may arrange between themselves different terms and conditions than the ones usually applicable.

<sup>17</sup> Vyara Ivanova, “The New Economic and Financial Relations with Companies Registered in Privileged Tax Regime Jurisdictions, Persons Related to Them and Their Practical Owners Act”, 2014, <http://www.lawfirm-bg.org/новият-закон-за-икономическите-и-финансови-отношения-с-дружествата-регистрирани-в-юрисдикции-с-префе~58~4>

## General requirements regarding access to information

In the context of different legal regulations of the two major types of media, there are general requirements for transparency regarding management and ownership of the media. These requirements are set forth in the *Access to Public Information Act* which governs the access by media to public information (Article 18, items 1, 2 and 5). Citizens and legal persons are entitled to access to information regarding:

- persons who take part in the management of the respective mass media or exercise effective control over its management or operation;
- economically associated persons who take part in the management of other mass media, which allows them to exercise effective control over their management or operation;
- information about the financial results of the mass media owner and distribution of its products.

The law makes access by media to public information conditional on compliance with and proportionality of the principles of transparency and business freedom and the protection of personal data, trade secrets and confidentiality of sources who have required anonymity (Article 19).

## Concentration of the media market – state of play and challenges

As actors on a market, media fall under the regulation of the Commission for the Protection of Competition (CPC) which oversees concentration among undertakings, prohibits anti-competitive agreements, decisions and concerted practices, as well as abuse of dominant position.

In 2010, when a new draft law on electronic media and further regulation regarding concentration of media were discussed, the Commission for the Protection of Competition issued an opinion on the compliance of the legislative proposal with the *Protection of Competition Act*.<sup>18</sup> The Commission explains that in its assessment of the influence on the market of a certain concentration it relies solely on an economic analysis. At the same time the Commission admits that certain regulatory considerations regarding the media market such as guaranteeing pluralism and freedom of expression are not taken into account when overseeing concentrations. In its opinion the Commission admits that *“it is possible that the Commission for the Protection of Competition allows a concentration while that merger or acquisition of media undertakings is not allowed by the regulatory body regarding pluralism.”*<sup>19</sup> Such an oversight however is not premised in any Bulgarian law. The Commission opinion as regards the nature of the supervision it exercises in the media sector is supported by its case law.

For example, when reviewing the concentration notification whereby Central European Media Enterprises Ltd, Bermuda, acquires Balkan News Corporation EAD, Sofia and TV Europe B. V., the Netherlands,<sup>20</sup> the Commission for the Protection of Competition took note only of the market share of the respective media, that is audience share and advertisement market share. At the same time, as it acknowledges that rating is largely an abstract cognitive notion for advertisers, *“the audience share plays a limited role in establishing the market share of a particular TV operator”*.<sup>21</sup> The Commission does not take into account factors such as the potential impact of the concentration on media content and the public significance of this impact.

Unlike Bulgaria, in a number of European States<sup>22</sup> there are special rules concerning supervision of

<sup>18</sup> CPC, Decision no. 1498 of 25 November 2010.

<sup>19</sup> Ibid, p. 12

<sup>20</sup> CPC, Decision no. 385 of 8 April 2010.

<sup>21</sup> Ibid, p. 20.

<sup>22</sup> Ireland, Great Britain, and Germany. An elaborate overview of the practice in the different states and justification of the so called double control of media pluralism by both economic and non-economic means may be found in Ognyanova, Nelly (2014) “EU Media Policy and Law”, Chapter Five “Media Pluralism”, pp. 247-304.

mergers and acquisitions in the media sector. To rule out the possibility that a media business or person has an excessive interest in one or more media sectors, the so called “*public value test*” is introduced. In Great Britain this test is applied to BBC Radio and Television and has two components: an assessment of the public value (made by BBC trust)<sup>23</sup> and a market impact assessment (made by the competition authority).<sup>24</sup>

There are tendencies towards concentration in the area of press distribution as well. Some of the factors that contribute to these developments are the possibility for a publisher to be a distributor at the same time; the aggregation of ownership in non-transparent way; and the established political dependencies. Establishing a dominant position in this sector impedes the distribution of small publishers’ works, especially periodicals and magazines.<sup>25</sup>

In this regard in 2011, on the occasion of media publications and signals submitted to the Commission for the Protection of Competition, the latter launched a sector analysis of the press distribution market.<sup>26</sup> An interesting fact is that in the course of conducting the analysis the Commission established that the actors themselves had no precise estimate of the distribution of market shares, even as regards their own market share. This fact alone contradicts any market logic and casts doubts as to whether the market functions on purely market principles.

On the basis of the conducted analysis the Commission for the Protection of Competition found that in the period from 2009 to 2011 there was a pooling

of the established distributors on the market aiming at optimising their costs and effecting economies of scale and scope.<sup>27</sup> This horizontal and vertical integration impeding the entry of new actors on the market led to concentration of the market. One of the conclusions made by the regulatory authority was that there were no transparency and clear rules of operation in this sector. To this end the Commission recommended to the stakeholders to start a dialogue to overcome some of the identified structural problems, including through steps such as:

- Elaborating special legal regulation for publishing and distributing print works, without interfering with freedom to conduct business;
- Introducing strict accountability measures for print run delivered and sold, including accountable sales through fiscal devices.<sup>28</sup>

Against the backdrop of the abovementioned problems regarding unavailable market data and the lack of specific legal regulation, the next decision of the Commission for the Protection of Competition regarding press distribution allowed concentration on grounds that the transaction in question “*will not lead to establishing or strengthening a monopoly position on any of the analysed markets which could impede effective competition.*”<sup>29</sup>

The case law of the regulatory authority regarding media concentration in Bulgaria clearly demonstrates that further regulation and supervision are required to guarantee that non-market principles such as media pluralism are taken into account in analyzing transactions falling under competition law. It is considered that effective guarantees of media

<sup>23</sup> The BBC Trust, <http://www.bbc.co.uk/bbctrust/>

<sup>24</sup> OFCOM (Independent regulator and competition authority for the UK communications industries), <http://www.ofcom.org.uk/>

<sup>25</sup> Rayna Nikolova, “On the state of play of print media: Some legal notes”, [http://www.nbu.bg/PUBLIC/IMAGES/File/departments/mass%20communications/research/Rajna\\_Nikolova\\_prolet\\_2014.pdf](http://www.nbu.bg/PUBLIC/IMAGES/File/departments/mass%20communications/research/Rajna_Nikolova_prolet_2014.pdf)

<sup>26</sup> CPC, decision no. 1454 of 28 October 2013.

<sup>27</sup> Ibid, p. 79.

<sup>28</sup> Ibid, p. 81.

<sup>29</sup> CPC, decision no. 1455 of 28 October 2013, „Tabak Market AD, Sofia plans a concentration by acquiring control over the following companies: National Distribution Agency EAD, Sofia; Varna Pres Avramova and Family Ltd, Varna; Odesos-M Ltd, Varna; Alexandrov Press Ltd, Varna; Ita Ltd, Varna, Bobby Press Ltd, Burgas; Comecs 92 EOOD, Sofia; Vest Press PA EOOD, Haskovo; Distribution of Print Works AD, Sofia.

plurality do not include only self-regulation measures, but also the introduction of a body that conducts non-economic analysis and ongoing assessments of the influence of media outlets.<sup>30</sup>

However, no such measures are envisioned on political level. In the beginning of 2015 the Government endorsed a *Programme for Stable Development 2014 – 2018*. A measure previously discussed, namely designating a unit in the public administration to advise on proposed media mergers and acquisitions on the basis of preliminary assessment so as to rule out ‘significant influence’ on the media environment, has not made it in the Programme. The formal reason is that supervision of concentrations fall within the powers of the Commission for the Protection of Competition.

## Self-regulation and civil initiatives for transparency of media ownership

### Self-regulatory bodies

Strong self-regulation and visible civil campaigns are some of the instruments that media professionals and civil society may employ to counteract concentration of ownership and subsequent abuse of dominant position for political or corrupt purposes. Although it may not replace the regulatory authorities and fill in the gaps in the legislation, self-regulation is a strong tool against media content manipulation, a rifle tool of media owners.

In Bulgaria, professional organisations act as self-regulatory bodies. They operate on different levels: associations of media, of journalists, of advertisers, etc. The best-established organisations in Bulgaria are the **Union of Bulgarian Journalists** and the **Bulgarian Publishers’ Association**.

The Bulgarian Publishers’ Association is a not-for-profit organisation set up in 2000. It unites print publishers for protecting “freedom of the press, journalists’ independence and for encouraging journalists’ work with a view to objectively informing the general public”.<sup>31</sup> Publishers of the most widely circulated national and regional print works are members therein. They have endorsed a *Code of Ethics of the Bulgarian Media*, which has been acknowledged by a number of professional associations such as the Bulgarian Radio and TV Operators’ Association, Bulgarian Media Coalition, Bulgarian Publishers’ Association, Union of Bulgarian Journalists and Media Development Centre Foundation, as well as by individual national and regional media. The self-regulation system on the basis of this Code of Ethics was completed in 2005 when a National Council for Journalist Ethics, a foundation, was set up to apply and interpret the Code. Two ethics commissions have been established at the Council, an Ethics Commission for Electronic Media and an Ethics Commission for Print Media. The Commissions have fixed compositions. They review and rule on alleged violations of the Code of Ethics. In addition, they issue recommendations and opinions.

The Code of Ethics of the Bulgarian Media does not expressly look into ownership concentration and media pluralism but nevertheless clearly specifies the instruments for exerting political or economic pressure. The Code of Ethics promulgates fundamental rules for collecting and providing credible information, editorial independence and relationships between media, singling out the principle of public interest as the only one justifying violations.

Pursuant to the *Rules of the Ethics Commissions for Print and Electronic Media*<sup>32</sup> they review complaints filed by victims against publications in electronic or print media. Conflicts may be resolved via mediation. The Commissions may also issue reprimands. A reprimand “states the Commissions’ disapproval

<sup>30</sup> Nelly Ognyanova, Freedom for whom. Everybody supports media plurality, even media empires, 25.01.2015, <https://nellyo.wordpress.com/>

<sup>31</sup> <http://sib.bg/>

<sup>32</sup> The full text is available at: <http://www.mediaethics-bg.org/index.php?do=45&lang=bg>



of the disputed material's form or content."<sup>33</sup> This self-regulation system however is not used to its full potential. By the beginning of 2015, the Ethics Commission for Electronic Media has issued as many as 14 decisions, one recommendation and two opinions since it was established. The Ethics Commission for Print Media has issued 28 decisions, two opinions and three recommendations.

In 2011, editions close to the controversial publisher Irena Krasteva and her son Delyan Peevski stepped out of the Bulgarian Publishers' Association and in 2012 established an alternative Bulgarian Media Union.<sup>34</sup> The Union endorsed a *Professional Code of Ethics of the Bulgarian Media*. In the end of 2014, the Union set up its own Ethics Commission. Pursuant to the *Rules for Implementing the Professional Code of Ethics*, the Commission consists of 10 members falling under the following quotas: 1) journalists 2) independent members, and 3) owners. The tenth member is elected by the General Assembly of the Bulgarian Media Union. The Ethics Commission shall meet to review complaints of alleged violations of the Code of Ethics and if it establishes such violations, it shall require that the other party is offered the right of reply or an apology. By the beginning of 2015, the Commission has not reviewed a single complaint. However, it has issued five declarations, opinions and open letters.

*The Professional Code of Ethics of the Bulgarian Media* considers several aspects of media ethics: provision of information, sources, protection of copyright and related rights, right of reply, editorial independence, and relationship between media, on the one hand, and between media and print distributors, on the other.

The professional Code refers directly to the issue of media concentration. Section 6.3 reads as follows: „*Members of the Bulgarian Media Union reaffirm their position that the general public must know who owns and controls media. In compliance with statutory requirements they publish annually, or in case of*

*a change, detailed information about the ultimate owner and notify the Minister of Culture accordingly. To enhance publicity of information, the Bulgarian Media Union keeps an elaborate register of the new members' ownership on its website*". Media that are members of the Bulgarian Media Union are frequently accused of editorial dependence and attempted manipulation of the general public opinion in favour of their owners' political or economic interests.

Another section of the Professional Code of Ethics reads that “[m]edia shall not take advantage of their position to exert political or economic pressure or in their own favour, nor succumb to political and/or economic influence which could compromise their discretion and objectivity of information.”

After the establishment of the Bulgarian Media Union media that remain in the Bulgarian Publishers' Association are those related to Sega Daily and the Economedia Group.

The National Self-regulation Council is another organisation with self-regulatory functions relevant to media pluralism. This is an association of advertisers. In 2009, the National Self-regulation Council adopted *National Ethical Rules in Advertising and Commercial Communication in Bulgaria*.<sup>35</sup> They concern mostly the content of commercial communication. One of the aspects of ethics in advertising is directly related to commercial influence, namely the clear distinction between paid publications (advertisements) and editorial publications.

The growing share of public institutions and political parties among advertisers enhances the risk of blurring the border between editorial and paid publications, especially during election campaigns. There is not a single complaint concerning such a violation, according to the case law (published on its website) of the 11-member Ethics Commission that applies the National Ethical Rules. At the same time, data in the surveys show that the political context

<sup>33</sup> Ibid.

<sup>34</sup> <http://bmu.bg/bg>

<sup>35</sup> Accessible at: <http://www.nss-bg.org/kodeks.php>

directly affects not only media's political orientation but their self-regulation capacity as well. The political instability in 2014 which blocked any self-regulation is a case in point.<sup>36</sup>

## Social media and informal associations

Information and communications technology development has stepped up the role of social media in two ways. On the one hand, social media have become an alternative source of information which exposes poor media practice and the interests behind, while on the other hand, they help grow informal associations that promote media independence and media pluralism. According to Bulgarian law, content generated online is not considered to be a media and hence is not subject to regulation.

The influence of social media on media pluralism has not been studied yet. There have been, however, some publications by affected persons who exposed manipulations and defamation in the media, as well as instances of boycotting certain media. Many blog posts publish journalist investigations, a taboo for a number of mainstream media. These initiatives gain wider and wider attention due to the deficit of trust in professional journalists, registered also in a study by Reporters Without Borders.<sup>37</sup>

One of the most large-scale citizens' initiatives regarding media ownership is the *European Citizens' Initiative for Media Pluralism*. It is part of the European Initiative for Media Pluralism, which seeks public support for an EU directive aimed at counteracting media ownership concentration, guaranteeing independent media supervision, defining clearly conflict of interest, cutting off use of media to political ends, and building a common European monitoring system for media independence. If the petition gets 1 million signatures, it is binding on the European institutions.

<sup>36</sup> Cf. data in a survey conducted by Konrad Adenauer Foundation and Media Democracy Foundation, "The crisis of trust in media goes deeper", 3 February 2015, at [http://www.capital.bg/biznes/media\\_i\\_reklama/2015/02/03/2465224\\_krizata\\_na\\_doverie\\_v\\_mediite\\_se\\_zadulbochava/](http://www.capital.bg/biznes/media_i_reklama/2015/02/03/2465224_krizata_na_doverie_v_mediite_se_zadulbochava/)

<sup>37</sup> Reporters Without Borders (2009): *Bulgaria. Resignation or Resistance: Bulgaria's Embattled Press Hesitates*, [http://en.rsf.org/IMG/pdf/rsf\\_rep\\_bulgaria\\_en.pdf](http://en.rsf.org/IMG/pdf/rsf_rep_bulgaria_en.pdf), last accessed on February 3, 2015.

<sup>38</sup> Cf. the ranking made by Reporters Without Borders, 2015 Press Freedom Index at <http://index.rsf.org/#/>

## Conclusions

The most substantial deficiencies of the Bulgarian media model are lack of transparency regarding ownership; concentration of ownership; monopoly position on the distribution market; poorly developed self-regulation mechanisms. These deficiencies impede counteracting trade in influence and other corrupt practices as well as concentration and hidden control over media. Even when established violations of statutory requirements have remained unpunished. At the same time, the Bulgarian legislation does not respond to the dynamic developments and new challenges such as online media and their potential or the risk of manipulation.

The perception is that media are supervised not only by specialised regulatory authorities but rather by the media owners' economic and political interests and above all by anonymous equity behind. There have been instances where supervisory public authorities have also stepped in to protect such political or economic interests, way beyond the scope of their powers (e.g. the penalty imposed by the Financial Supervision Commission on Capital Weekly in relation to the Corporate Commercial Bank case). In the context of fragmented oversight, such practices are a dangerous precedent.

## Major deficiencies

- Low trust in media independence. Most recent data show that media enjoyed the trust of hardly some 17 % of the Bulgarian citizens in 2014. At the same time, the freedom of speech in Bulgaria has hit its lowest level ranking 106<sup>th</sup>.<sup>38</sup>
- High levels of non-transparency as regards to ownership and funding. Despite the legislative changes, loopholes remain and allow for excessive concentration, circumventing the law

and concealing the practical owners. The blurred picture of media ownership in practice restricts citizens' right to information.

- Small penalties for failure to declare ownership of print media and practical impunity for violations made by publishers and media services providers.
- No effective regulation and self-regulation, inefficient supervision.
- Unofficial relations with the ones in power: media and journalists are often subjected to pressure and censorship and often act as caterers of politicians and business interests.
- No clear and objective criteria for access to public and European financing.
- Lack of political will for a genuine and comprehensive reform of the media market.

## Recommendations

- Legislative amendments that will guarantee better media independence.
- Further development of the legal framework on all types of media as regards transparency,

supervision and sanctions.

- Legal and institutional guarantees against media concentration and abuse of dominant position; clearly set rights and obligations of the regulator in the field of media concentration and clear distribution of powers between the media regulator and other regulatory bodies; legal and institutional guarantees against the establishment of dominant position in distribution.
- A mechanism for sustainable financing of public media and supervision of how they perform their public mission.
- A mechanism for transparent distribution of public funds to media, bound with compliance with statutory requirements.
- Measures for genuine protection of the right to information, also by adopting legislation and guarantees for investigative journalism.
- Developing self-regulation mechanisms in areas where appropriate.
- Effective measures for protecting media pluralism, considering setting up a specialised unit or an individual body to carry out non-economic analyses and monitor the actual influence media exert.

