



**THE FREEDOM OF SPEECH AND THE RIGHTS OF OWNERS AND EDITORS OF
THE MASS MEDIA**

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Abstract

Mass media freedom is frequently restricted at different levels. In this thesis I will examine the limitation of the editorial and journalists' freedom of speech by the owners of Mass Media. For these purposes I will compare two jurisdictions: the United Kingdom and Russia. The first is a good example of mass media freedom and another one shows how apparent mass media freedom can result in total fiasco in practice. I will look at the legislative and self-regulatory instruments governing the relationship of owners vis-à-vis editors and editors vis-a-vis journalists. I will also illustrate my research with recent cases from the UK and Russia.

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Introduction

As the ECHR ruled in 1999, the duty of the press is to impart information and ideas on matters of public interest. The journalistic freedom includes a degree of exaggeration or even provocation. The interest of democratic society enables the press to exercise its role of “public watchdog”.¹ The role of the press and other mass media is hard to exaggerate. The mass media has long been called “the forth branch of the government” due to the huge influence it has on peoples’ perceptions. As a “branch”, mass media is expected to be independent from the state and other branches and is given a sufficient margin of appreciation to keep the balance among other branches.

The news media are central to the functioning of democratic state, while entertainment and other programs in the mass media influence the society more generally. The way mass media are operated and who owns and controls a mass media are “fundamental in determining whether the democratic process works as intended or whether it falters or is subverted”². Mass media are mostly expected to provide the audience with different views, contributing into the marketplace of ideas, that is an important part of democracy.³ At the same time nowadays more and more media fall under the control of a limited number of giant corporations and “extremely wealthy and willful people, especially when such people are inclined to use the powerful media or mass communication for their own political or economic purposes”.⁴ In result the information, mass media provide, gets more and more censored and filtered. The state also remains an independent actor maintaining its interests

¹ Bladet Tromsø and Stensaas v. Norway (Application No. 21980/93, 20 May 1999).

² Dean Alger, *Megamedia*, (Rowman and Littlefield Publishers, Inc., 1998), 1.

³ See John Milton, “Areopagitica” in *Areopagitica and Other Political Writings of John Milton* (Indianapolis, Liberty Fund, 1998); John Stuart Mill, *On Liberty* (London, Penguin Books, 1985).

⁴ Dean Alger, *Megamedia*, 2.

sometimes through the ownership on mass media and sometimes indirectly attempting to influence editorial decisions⁵.

Most countries nowadays have special provisions in their constitutions and legislations, that 1) establish freedom of speech; 2) specify the guarantees for the mass media and journalists to execute such freedom. In practice, however, the journalist's freedom of speech is a very controversial issue. The reason is, that we all obtain information from the media, more or less rely on it, exchange ideas and images.

Journalists will be the last segment in the chain of persons creating mass media. This chain will include 1) the state, sometimes being the authorized owner of the mass media and sometimes indirectly interfering into the policy of mass media; 2) owners, giving life to mass media through financing and being entitled or legally restricted from working out editorial policy; 3) editors, specifying the policy of mass media, although the question is to that level they can interfere within the activity of the journalists; 4) journalists, who are definitely free to express their opinion, but whether or not this opinion is published or expressed in practice will mostly depend on the editorial policy.

In the UK concern about the nature of ownership and control of the media has been expressed almost since the development of modern mass media. The principal reasons have been formulated as the need "to keep the market open for newcomers and to prevent any tendency towards editorial uniformity and domination by a few groups".⁶ The first reason refers to regulation of competition in general, the second refers to pluralism as an important element of the freedom of communication.⁷

⁵ The indirect, hidden interference by state or owner is frequently characterized as "unseen hand" interference, as it is rarely visible to the public.

⁶ Home Office, "*Broadcasting in the 90s: Competition, Choice and Quality*" (White Paper, 1988) para. 6.48. in Thomas Gibbons, *Regulating the Media*, (London, Sweet & Maxwell, 1998), 204.

⁷ Thomas Gibbons, *Regulating the Media*, (London, Sweet & Maxwell, 1998), 204.

In Russia the history of private, non state owned mass media is rather short in comparison to the UK. It starts in the nineties, relatively quickly gets marked with the notorious NTV case⁸ and returns to strict censorship and high concentration of the state as an indirect owner, as of now.

In this thesis I would like to examine the limitation of the editorial and journalists' freedom of speech by the owners of Mass Media. For these purposes I am going to compare two jurisdictions: the United Kingdom and Russia. The first is a good example of mass media freedom and another one shows how apparent mass media freedom can result in total fiasco in practice. I will look at the legislative and self-regulatory instruments organizing the relationship of owners vis-à-vis editors and editors vis-a-vis journalists. I will also illustrate my research with recent cases from the UK and Russia.

The State participation will be presented from two sides: 1) a state being a direct owner of the mass media (as is the BBC case); 2) and a state being an indirect owner or "supervisor" of the mass media (which is a common story in Russia).

The thesis consists of three chapters. In the first one I will describe and compare the legislative approach to regulating the relationship among owners, editors and journalists in the UK and Russia. The second will deal with industry guidelines and self regulations on the relationship vis-a-vis editorial and journalist freedom in the UK and Russia. In the third chapter I would like to comment on the mechanisms of unofficial internal restrictions and provide some examples of how gaps in legislation result in practical aspects.

An evident limitation of this research paper is lack of transparency inside of the mass media sphere. As a result most of my examples of the "unseen hand" interference will be based not on court cases, but rather on articles and sometimes even on journalists' blogs.

⁸ See Chapter III for details.

Chapter I. Legislative approach to regulate the relationship among owners', editors' and journalists' freedoms in UK and Russia.

In this chapter I would like to introduce the basic regulations on the mass media and relationship among owners', editors' and journalists' freedoms in UK and Russia. First of all it is important to mention that the approach to regulate mass media in these two countries is completely different. Russia uses public law mostly, providing a relatively broad regulation of the freedom of speech, declaring basic rights and freedoms of mass media, but leaving the detailed regulation of owners', editors' and journalists' freedoms behind. Little attention is paid to the mechanisms of realization of these freedoms and factors, influencing them, such as finance, governance and participation in the editorial policies of mass media. UK regulations are not dealing much with the general freedom of speech aspects, but pay all their attention to the guarantees of the pluralism of views presented in mass media and guarantees for their realization. In result, such matters as ownership, concentration control, editorial policy and, therefore freedoms of all the three participants (owners, editors, journalists) are the key issues. The way methods for guarantying these freedoms are is also different: not much is said in the UK legislation, while private regulations, ownership bias and internal policies are the most common sources.

1.1. United Kingdom

From the very beginning I would like to note, that the UK legislation divides mass media into separate groups, which are regulated differently. Most examples in this paper refer to broadcasting and press, as the UK has some specific regulations for each of them. BBC has a special status of the public broadcaster and at the legal level it is regulated differently than other, private mass media.

In the United Kingdom the freedom of speech is established under the Human Rights Act⁹ (hereinafter the “*Human Rights Act*”). According to the Article 10¹⁰:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

Disregarding the prohibition of censorship, Article 10 of the *Human Rights Act* has a reservation clause stating that the provisions of the article shall not prevent the state from requiring the licensing of broadcasting. The reason for such a specific requirement in the very text of the constitutional document is that licensing plays an outstanding role in regulating the UK mass media. The reason is that UK has a long saga of private mass media. Historically, the state interference into them is very minimalistic. “Although interference in editorial policy was rarely admitted, there was often a pervasive proprietorial interest in what was published”.¹¹ Mass media are treated almost as ordinary commercial companies, which mean that mass media are mostly regulated not through public law restrictions, but through the private law regulations on ownership, competition and licensing, i.e. regulation is reduced in favor of the market processes. There are three reasons for this. The first is that sources of finance may interfere with editorial independence. The second is that concentration of ownership may reduce media pluralism; and the third is that anti-competitive practices may reduce the choice and quality of service, available to readers and audiences.¹²

The competition regulation plays a key role in the regulation of the mass media ownership in the UK. As expressed by David Glencross, whether such a regulation is

⁹ The Human Rights Act, (1998, c.42), available at <http://www.legislation.gov.uk/ukpga/1998/42/contents>

¹⁰ The Human Rights Act, (1998, c.42), Schedule 1, Part 1, Article 10.

¹¹ Stephen Koss, “The Rise and Fall of the Political Press in Britain” (1990) in Thomas Gibbons, *Regulating the Media*, 206.

¹² Thomas Gibbons, *Regulating the Media*, 179.

adequate and sufficient depends on the way it is characterized. If media companies are regarded as suppliers of particular consumer products (broadly entertainment) than there is no need to treat them in a special way. If the media is associated with free communication, pluralism of ideas and market place of ideas, “the economic criteria for competition may be insufficient to allow a diversity of viewpoints to reach the readership or audience”¹³. When it comes to private mass media UK’s legislation generally does not focus that much on the freedoms of owners opposing the freedoms of editors. The concept of “impartial mass media” is weak here (with the exception for the BBC)¹⁴; the understanding of the journalists’ freedom seems to be read as a freedom to choose the employer. An owner of mass media is free to specify the policy of the media. The greatest concern is that in case of concentration of ownership the coverage of political issues, news and other important programs will become similar and the concept of the pluralism of views will not be realized. In result, special attention is paid to the application of competition policy that enables the risks of concentrated media ownership to be reduced. For example, the First Royal Commission on the Press¹⁵, noting the way ownership of the press was becoming increasingly concentrated, was already drawing attention to the possible dangers of monopoly power for the media. The concern was that “the ability of the press to select news, determine its presentation and subject it to analysis could cause the monopolist to exercise a strong influence over the public opinion”¹⁶. There was no sufficient competition to encourage accuracy and efficiency. Therefore, although “there is no regulation of press content in the United Kingdom, the economic activities of newspaper companies are governed by general competition law and its aim to

¹³ See David Glencross, “Television Ownership and Editorial Control” (1996), 2nd *Yearbook of Media and Entertainment Law* 3-19.

¹⁴ See Chapter II for details.

¹⁵ A number of Royal Commissions were established through the history to investigate the existing situation within the media and initiate legislation.

¹⁶ Royal Commission on the Press, “*Report*” (1949) Cmd. 7700, para 274. See also Royal Commission on the Press, “*Final Report*” (1977), Cmnd. 6810, chap.14. in Thomas Gibbons, *Regulating the Media*, (London, Sweet & Maxwell, 1998), 209.

reduce monopolistic concentrations of ownership.”¹⁷ The press concentration is also restricted thought the mergers legislation¹⁸.

The Human Rights Act has one more article, relevant for the purposes of this research. According to Article 12 of the *Human Rights Act* a publication generally cannot be restrained before the trial, in particular (among other things) the court should regard journalistic materials and extent to which such material should appear before the public and possible public interest for the material to be published. Of course, this Article can be widely used for claims of private individuals, trying to ban certain materials discrediting them. However it seems to me that there is a possibility to apply this Article to cases, where journalists’ private investigations are banned for the reasons of editorial policy, but remain matters of high public interest.

The UK legislation provides for some other restrictions on the ownership. The first ones are “deadlock provisions” – none of the shareholders can have privileges in controlling the media.¹⁹ This is definitely ownership protection provision. But at the same time it means, that should there be a conflict between an editor and one of the owners, other owners make take sides. The second group of limitations are restrictions over the ownership of the media through the licenses²⁰. Foreign ownership of domestic media companies is restricted for the reasons of economic or cultural protectionism.²¹ For example, individuals not having appropriate connections with UK (i.e. not being UK or European Union residents) cannot become the holders of the license.

¹⁷ Thomas Gibbons, *Regulating the Media*, 209.

¹⁸ Fair Trading Act, (1973), sec. 58 (providing that merger of the newspapers, altogether producing more than a fixed amount of copies per day requires the consent of the relevant Minister).

¹⁹ Thomas Gibbons, *Regulating the Media*, 213.

²⁰ Broadcasting Act (1996), Schedule 2.

²¹ Thomas Gibbons, *Regulating the Media*, 104.

The question remains, however, which level of concentration can be considered as diversity. There has always been a fear that a large portion of media output will be dominated by several powerful voices. “Previously, in the era of press “barons”, it was less difficult to identify the source of finance and control. The ownership of the mass media is less clear today, due to diffuse power of large companies”.²²

1.2. Russia

Unlike UK’s, Russian legislation does not have special subdivision between various types of mass media. Many of them have no special regulation at the legislative level. In the absence of federal laws on television and radio broadcasting many rules in relation to licensing aspects can be regulated by presidential decrees and governmental directives.²³

According to Paragraph 1 Article 29 of the Russian Constitution²⁴ (hereinafter the “Constitution”) everyone shall be guaranteed the freedom of ideas and speech. The following paragraphs of the same Article specify that “no one may be forced to express his views and convictions or to reject them”²⁵; “everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way”²⁶; “the freedom of mass communication shall be guaranteed” and “censorship shall be banned”²⁷ (for the purposes of these thesis some irrelevant parts of Article 29 were not presented). Such wide declarative provisions create an illusion that Russia is a country of the pluralism of views, where

²² Thomas Gibbons, *Regulating the Media*, 206.

²³ See Andrei Richter, *Media Regulation: Foundation Laid for Free Speech*, in *Russian Media Challenge*. (ed. by Kaarle Nordenstreng, Elena Vartanova and Yassen Zassoursky), (Kikimora Publications, Series B: Helsinki, 2001).

²⁴ The Constitution of the Russian Federation, 12 December 1993.

²⁵ The Constitution of the Russian Federation, 12 December 1993, Article 29, Paragraph 3.

²⁶ The Constitution of the Russian Federation, 12 December 1993, Article 29, Paragraph 4.

²⁷ The Constitution of the Russian Federation, 12 December 1993, Article 29, Paragraph 5.

journalists are free to express any ideas, and no one, neither the state, nor the owners of mass media, or the editors can interrupt into their activities. It is definitely not so.

The mass media performance in Russia is regulated by the special law “On Mass Media”²⁸ (hereinafter the “*Media Law*”). I would like to remind that, unlike UK’s, Russian legislation does not separate between the press and the broadcaster, so the *Media Law* is regulating the activity of all types of the mass media. Article 47 establishes journalists’ rights and freedoms. The main of them is contained in paragraph 9: right to set forth one’s personal judgments and assessments in reports and materials intended for publication under his signature. The most controversial article of the Media Law (and the most appropriate one for the purposes of this research) is Article 19: The Status of the Editorial Office. According to the last paragraph of this Article:

“The editorial office shall be directed by the editor-in-chief, who discharges his powers on the basis of the present Law, the office’s statutes, the agreement concluded between the founder²⁹ and the editorial office (editor-in-chief). The editor-in-chief shall represent the editorial office in its relations with the founder, publisher, distributor, private citizens, their associations, enterprises, institutions, organizations and state organs, and also in court. He shall bear responsibility for the fulfillment of the requirements made on the activity of a mass media by the present Law and other legislative acts of the Russian Federation”.

There are a number of mysteries’ here. First, the editor tends to have a specific status, representing the mass media editorial office in its relations with various institutions, including the founder. Because of this provision the status and role of the editor change significantly, as he is treated not as an employee, appointed by the owner (which would be, more or less a normal attitude in the UK), but as an independent actor, partly opposing the owner and being the buffer zone between him and the “editorial office” (i.e. journalists). Further examining of the Article 18 of *the Media Law* shows that the editors position is even similar to the position of the co-owners, as the owner may transfer his rights and duties to a

²⁸ Federal Law “On the Mass Media” No. 2124-1 dated 27 December 1991.

²⁹ “Founder” tends to be synonym to “owner” as in the text of the Media Law.

third person with the consent of the editor and the co-owner. This is a very unusual restriction of the ownership rights and freedoms.

The second mystery is an “agreement concluded between the founder and the editorial office” (hereinafter the “*Foundation Agreement*”). The legal nature of the *Foundation Agreement* is not evident, so it is hard to identify if it is a random employment agreement or a specific editor-founder contract, regulating, above other things, editorial policy. The answer to this question is partly contained in Article 22 of the *Media Law* that establishes that the *Foundation Agreement* “shall determine the production, property and financial relations” between owner and editor: “the order of assignment and use of monetary resources on the upkeep of the editorial office, the allocation of profit, the formation of funds and the compensation for losses, the obligations of the founder to provide proper production, welfare, living and working conditions of the editorial office’s employees”. Although it is important to note, that the Russian Civil Code³⁰ does not provide for such a specific type of the agreement, so the nature of the *Foundation Agreement* still remains unclear, even though we know the content of this agreement.

What is probably most appropriate for the purposes of this research is that under Article 18 of the *Media Law* is that the owner has no right to interfere into the activity of a mass media (there are several exceptions to this rule, provided for under the *Media Law*). This situation seems rather bizarre: the owner is expected to establish the media, to finance it, but under the legislation he has no right to specify or interfere into the editorial policy. As it is seen from the UK example, one of the main interests for the owners to invest into the media is the possession of the ground to share their views. The money is not the reason to establish a mass media, as mass media rarely brings any profit, on the opposite, in the best

³⁰ Civil Code of the Russian Federation No. 51-FZ dated 30 November 1994.

case it does not bear losses. A rhetoric question is what should then motivate the owners to participate in the mass media in Russia?

Returning to the provisions of the Article 18 of *the Media Law*, the only way the owner can “interfere into the editorial freedoms” is that the owner is “free to oblige” the editor to publish free of charge and within the specified period of time a message or material on his behalf (“the statement of the founder”). However the statement of the founder is also subject to certain limitations: the maximum scope of the founder’s statement shall be determined by the statutes of an editorial office, its agreement or any other contract concluded with the founder.

Similar to UK legislation, Russian Media Law establishes some restrictions over the ownership of mass media. Among other limitations there is a special requirement that a citizen of another state or a stateless person who is not domiciled in the Russian Federation cannot act as a “founder” of mass media.³¹ The wording of this article raises many practical questions. As briefly mentioned above, the text of *the Media Law* uses the word “founder” for the proprietor of the mass media. At the same time the word “founder” can have two meanings here. In the broader meaning “founder” can be understood as the proprietor of the mass media, as it seems to be understood by the drafters of the *Media Law*. In a more narrow meaning and in case of using a textual approach “founder”³² is not a proprietor of a mass media, but the one who establishes it. This clumsy wording of Article 7 of *the Media Law* results in confusion and manipulations in practice.

³¹ *The Media Law*, Article 7.

³² “Founder – the person who endows an eleemosynary corporation or institution, or supplies the funds for its establishment”, Henry Campbell Black, M.A., *Black’s Law Dictionary* (St. Paul, Minn. West Publishing Co., 1990).

Comparison

The approach to initial mass media regulation in the UK and Russia is very different. The UK legislation provides for a very brief coverage of the freedom of speech aspects, but focuses more on the regulation of ownership. The greatest concern here is concentration of ownership, which has to result in the absence of the pluralism of views. As long as concentration, licensing, financing, governance are regulated, the freedom of speech seems secure at all levels. On the other hand such system allows to have little fear regarding owners' influence on the editorial policy. Editors and owners are simply free to apply for jobs in mass media, whose politics correspond with their private views. In a way, such system is much more transparent.

Russian legislation originally deals more with the freedom of speech aspects and freedoms of owners, editors and journalists from each other. However the laws are not so efficient in practice, as the legislative techniques are relatively weak, provide for many misunderstandings and leave gaps, which can be covered by the decrees by government. Such decrees are much easier to change and as Chapter III will show they can be used for manipulations.

The only strong similarity is that both the UK and Russia see potential threat in foreign participation in the mass media ownership and strongly restrict it.

Chapter II. Industry Guidelines and Self Regulations on the relationship vis-a-vis editorial and journalist freedom in UK and Russia.

Industry guidelines and self regulations can play an important role in providing editorial and journalist freedom. They can either cover gaps in the legislation or establish additional, more detailed governance. Industry guidelines are very common in regulating mass media in the United Kingdom. For the Russian Federation any non-state established regulation in a public sphere is still a challenge.

2.1. United Kingdom

It is not new for the UK to have self-regulatory organizations. “British tradition and practice have long looked with favor upon giving important legal powers of self-regulation to organized groups. Self-regulation has always existed in the legal and medical professions, and has permeated many other fields in which regulation is thought necessary; it is somewhat reminiscent of the type of authority exercised for so long by the medieval guilds.”³³

One of the first and still existing journalists’ organizations in UK (and Ireland) is NUJ – National Union of Journalists. The organization was founded in 1907. NUJ is one of the biggest journalists' unions in the world, with 38,000 members. As a trade union NUJ’s primary purpose is to protect the rights and freedoms of the journalists. NUJ has a Code of Conduct and internal regulations on ethics, mandatory for its members. These are rather basic documents without no detailed regulations³⁴. Unfortunately, although NUJ is worth mentioning, its regulations do not contribute much into this research.

³³ R. Cushman, “The Independent Regulatory Commissions” (OUP, New York, 1941), 550-551 in Tony Prosser, *Law and the Regulations*, 1997, 37.

³⁴ National Union of Journalists official webpage, <http://www.nuj.org.uk/>

Ofcom was introduced under the Communication Act 2003³⁵. It is a communications regulator dealing with various mass media as well. Ofcom is funded by fees from the industry for regulating broadcasting and communications networks, and grant-in-aid from the Government and is accountable to the Parliament.³⁶ Ofcom has many specific guidelines dealing with particular matters, but mostly on resolving complaints on the conflicts, forwarded to Ofcom. Although such guidelines may be considered to be internal Ofcom regulations, their impact on the mass media is sufficient.

The Press Complaints Commission (the “PCC”) is a special body established to deal with public complaints on the press. However it also established a code of practice for journalists. *The PCC Editors Code of Practice* was first published in 1991 and was revised a number of times (last changes were made in October 2009). The majority of the *The PCC Editors Code of Practice*’s provisions deal with the issues relating to accuracy of reporting and intrusions into privacy. Nevertheless, *the PCC* has a significant influence on the press, and, for example, in its Annual Report and Accounts it encouraged the newspapers to write guarantees of independence into editorial contracts³⁷.

Mass media frequently have internal self-regulations. Although the influence of the owner’s views on the editorial decisions is clear, it might be useful to have the possibility to locate the source and scope of the influence and protect the freedoms of all the participants. As editors and journalists are the employees of owners, the principle way to protect them is by contract. There are several examples below on how the agreements can be drafted.

An interesting solution for creating editorial constraints on relationship between editors and owners can be found in the management of “The Guardian” and “The Observer”.

³⁵ *Communications Act*, 2003.

³⁶ Ofcom official web page: <http://www.ofcom.org.uk/about/what-is-ofcom/>

³⁷ The PCC Annual Report and Accounts (1997).

The newspapers are owned by “The Guardian and Manchester Evening News plc” which is itself owned by “The Scott Trust”. Editors are employed in such a way that the newspapers “shall be carried on as nearly as may be upon the same principles as they have heretofore been conducted”.³⁸ Since the “The Scott Trust” selects its own members, it introduces its own values which it advances in selecting its editors. However, once the editors are chosen, the trustees do not intervene in editorial policy.³⁹

Another approach for limiting proprietorial influence on editorial decisions has been the appointment of independent directors to safeguard editorial values in cases of newspaper mergers. Examples were the purchase of “The Times”, first by “Thomson” and later by “News International” and “Lonrho’s” takeover of “The Observer”, The Monopolies Commission regarded such appointments a little more than symbolic⁴⁰, since the directors cannot efficiently control the newspaper’s policy and can only resort to publishing their disagreements with the company”.

A specific approach to regulating ownership, editorial and journalist freedoms is used towards the BBC. The BBC is the largest broadcasting organization in the world. As established in Article 3 of the BBC Charter⁴¹ (hereinafter the “BBC Charter”), BBC has a public nature; it exists to serve the public interest; and its main object is the promotion of its Public Purposes. According to Article 4 of the BBC Charter its Public Purposes are the following:

³⁸ P. Schlesinger, “The Scott Trust” (1986, reprinted 1991), 7 in Thomas Gibbons, *Regulating the Media*, 208.

³⁹ Thomas Gibbons, *Regulating the Media*, 208.

⁴⁰ Monopolies Commission, “The Times and Sunday Times” (1967-67) H.C. 273 in Thomas Gibbons, *Regulating the Media*, 209.

⁴¹ *Copy of the Royal Charter for the Continuance of the British Broadcasting Corporation*, Presented to Parliament by the Secretary of State for Culture, Media and Sport by Command of Her Majesty (2006), available at http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

a)sustaining citizenship and civil society;

(b)promoting education and studing;

(c)stimulating creativity and cultural excellence;(d)representing the UK, its nations, regions and communities;

(e)bringing the UK to the world and the world to the UK;

(f)in promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.

BBC has a special outstanding status among the broadcasters of the UK. As is evident from the paragraphs above it is neither a state owned broadcaster, nor a private one. Instead it has a vague status of being in the public ownership. ⁴²The BBC has a specific independent position; although it is not even stated clearly from whom in particular the BBC should be independent (from the owners and /or form the state). As governed in Article 6 of the BBC Charter the BBC is independent, and it shall be “independent in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs”. The BBC’s editorial freedom is restricted only by its internal documents, but not by the state or by its owners.

To understand how the BBC remains independent from the state or owners (whoever can be considered owners in the BBC’s specific situation) one should be familiar with the way the BBC is financed, governed and get acquainted with the BBC Editorial Guidelines⁴³.

Under Clause 75 of the Agreement⁴⁴ (hereinafter the “*BBC Agreement*”), the government pays a grant to the BBC in respect of its Home Service. The grant is paid annually, although in monthly installments; this grant represents most of the BBC’s income.

⁴² Thomas Gibbons, *Regulating the Media*, (London, Sweet & Maxwell, 1998), 180.

⁴³ See *An Agreement Between her Majesty’s Secretary of the State for Culture, Media and Sport and the British Broadcasting Corporation*, presented to Parliament by the Secretary of the State for Culture, Media and Sport by Command of Her Majesty (2006), clauses 75 (2), 76 for the details of commercial financing

⁴⁴ *An Agreement Between her Majesty’s Secretary of the State for Culture, Media and Sport and the British Broadcasting Corporation*, presented to Parliament by the Secretary of the State for Culture, Media and Sport by Command of Her Majesty (2006)

The source of the grant is the revenue obtained from the fees payable for broadcasting reception licenses. At present, licenses are issued and the fees are set by the government, under sections 1 and 2 of the Wireless Telegraphy Act 1949⁴⁵. Previously, the money from the license fees did not pass through the BBC but was collected by the Post Office on behalf of the Home Office and paid into the Consolidated Fund. After this collection of the money Parliament was supposed to approve the grant to be made to the BBC. The grant was equal to the amount of the revenue from the license fees after the deduction of collection and administrative costs. Now, the BBC is itself responsible for fee collection on the grounds that it “has the greatest interest in the fee’s efficiency and accessibility”.⁴⁶

Some minor, secondary income is derived from (a) marketing BBC products, such as publications and videos or programs (b) providing “commercial services” funded by advertisements, subscription, sponsorship, pay-per-view, or other alternatives, whether free-to-air or encrypted.⁴⁷

The reason for such unusual mechanism of financing (through directly paid license fees) is that it enables the BBC to remain free from any commitment “to pursue any objective whatsoever other than the full realization of the purposes of broadcasting”.⁴⁸ The idea behind has been to secure public service broadcasting from economic influences, ensuring that commercial forces would not lower standards and not to allow the BBC to become controlled by sources of financial power. To reach that aim, a way of providing public finance was required and a predictable source of income tied to the license fee has been regarded as

⁴⁵ For an account of the system and its enforcement see Peacock “Committee on Financing the B.B.C.” (1986) Cmnd. 9824, paras 4341. in Thomas Gibbons, *Regulating the Media*, 180.

⁴⁶ Broadcasting Act (1990), s.180; Thomas Gibbons, *Regulating the Media*, 180.

⁴⁷ *Copy of the Royal Charter for the Continuance of the British Broadcasting Corporation*, Presented to Parliament by the Secretary of State for Culture, Media and Sport by Command of Her Majesty (2006),

⁴⁸ (Pilkington), “Report of the Committee on Broadcasting” 1960 (1962) Cmnd. 1753, para 495 in Thomas Gibbons, *Regulating the Media*, 180.

superior to the alternative of financing the BBC directly out of taxation. Financing the BBC through taxation has been thought to be constitutionally incorrect, because it would interfere with the BBC's political independence. Finance from taxation would result in parliamentary supervision, involve government in detailed scrutiny of programming policy (including matters of cost and content) with the danger that improper pressure would be brought to bear. In this situation the license fee system seems to be a convenient mechanism for creating a constitutional distance between broadcasters and politicians⁴⁹.

This method has some disadvantages, however. BBC's efforts to increase the fee (due to inflation reasons), for example, turned out to be a difficult issue, as it provoked the discontent of the public. As a result the Home Secretary was placed to balance the interests of the BBC with the interests of the license fee payers.⁵⁰ The question is, however, if such "balancing" can already result in influencing the broadcaster for political objectives.

Under the *BBC Charter* the BBC is governed by the BBC Trust, which sets the strategic direction of the BBC development and has a duty to represent the interests of license fee payers. The Executive Board bears the operational responsibility, being responsible for delivering the BBC services and running the organization in compliance with the strategy, defined by the BBC Trust. The Executive Board is responsible before the BBC Trust for its performance.⁵¹ Such a structure is aimed to keep the editorial decisions at the discretion of the editors, as long as they satisfy the strategy. However, whichever decisions the editors are

⁴⁹ Thomas Gibbons, *Regulating the Media*, 180 - 181.

⁵⁰ (Annan) "Report of the Committee on the Future of Broadcasting" (1977), Cmnd. 6153, n.1, para. 57 in Thomas Gibbons, *Regulating the Media*, (London, Sweet & Maxwell, 1998), 181.

⁵¹ *Copy of the Royal Charter for the Continuance of the British Broadcasting Corporation*, Presented to Parliament by the Secretary of State for Culture, Media and Sport by Command of Her Majesty (2006), Constitution, Articles 7 – 11.

considering to make, they should be in compliance with the BBC Editorial Guidelines⁵² (hereinafter the “*BBC Guidelines*”).

Being a public service broadcaster the BBC is the only UK mass media that is officially under the impartiality obligation, which has a significant influence on its editorial policy and relationship among owners, state, editors and journalists. Altogether with the methods of financing and governance the BBC’s independence is also reached through the BBC internal regulations; guaranties and mechanisms incorporated into them. Such regulations are the *BBC Charter*, the *BBC Agreement* and in particular the *BBC Guidelines* that regulate editorial policy.

As stated in Section 4 of the *BBC Charter*⁵³ “impartiality lies at the heart of public service” and it applies to all the BBC output and services, including television, radio, online, international services and commercial magazines. The BBC is under the obligation to be “inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected”⁵⁴.

The [Agreement](#) requires the BBC to treat controversial subjects with due impartiality in news and other output “dealing with matters of public policy or political or industrial controversy”. In the *Guidelines* the BBC implies impartiality to a wider circle of its programming. Although, for sure, there are many particular exceptions from this general declaration, for example, as the *Guidelines*’ Section 4 Introduction specifies, impartiality does not mean “absolute neutrality”.

⁵² The BBC Editorial Guidelines (2010), available at <http://www.bbc.co.uk/guidelines/editorialguidelines/guidelines/>

⁵³ Copy of the Royal Charter for the Continuance of the British Broadcasting Corporation, Presented to Parliament by the Secretary of State for Culture, Media and Sport by Command of Her Majesty (2006).

⁵⁴ The BBC Editorial Guidelines (2010), Section 4, Introduction.

The main principle of independence in editorial policy from the external interests is implicit in Article 14.1 of *the BBC Guidelines*: “The BBC's reputation, in the UK and around the world, is based on its editorial integrity and independence. Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by outside interests, political or commercial pressures, or any personal interests.” Further provisions of *the BBC Guidelines* ensure the fulfilment of this declaration by banning undue prominence and contributions, personal benefits and many other actions, potentially leading to influence on editorial policy through financing⁵⁵.

It is hard to imagine the editors or journalists of the BBC having a public conflict with the BBC “owners” represented by the BBC Trust (although the recent Editorial Process for the coverage of the Israeli-Palestinian conflict is an interesting example⁵⁶). However the traces of the old conflicts involving editors and journalists are evident from the provisions of the BBC Guidelines (if we presume that regulations come out of practice). For example, according to Article 4.4.31 “BBC staff and regular BBC presenters or reporters associated with news or public policy-related output may offer professional judgements rooted in evidence. However, it is not normally appropriate for them to present or write personal view programmes and content on public policy, on matters of political or industrial controversy, or on 'controversial subjects' in any area”. It is evident that due to the impartiality obligation the BBC staff (mostly journalists, but editors as well) may only “offer” materials, containing their personal views on the covered issues, but they are not necessarily authorised to share them with the BBC audience. This implies certain restrictions on the journalist’s freedom of speech though the editorial policy.

⁵⁵ *The BBC Editorial Guidelines* (2010), Articles 14.4.8, 14.4.9 and other Articles of Section 14.

⁵⁶ See Chapter III for details.

Some of the external activities of the BBC staff members are also restricted though the Conflicts of Interest provision of *the BBC Guidelines* (Section 15 of *the BBC Guidelines*). According to the Introduction to Section 15 of *the BBC Guidelines* the principles of conflict of interest apply equally to everyone who makes the BBC content. The relevant persons (i.e. content makers) should not have inappropriate outside interests, which could undermine the integrity and impartiality of the programmes and content they produce for the BBC. The BBC staff is required to declare formally any personal interest, that can affect their work. The most radical examples of where the BBC Guidelines see potential threat to the BBC impartiality are the following: intention of a member of BBC staff to stand as a candidate in a national or local election⁵⁷; the BBC News journalists (and other staff) writing one-off article on news and other politics related issues⁵⁸; training individuals or organizations on how to present themselves in the media.⁵⁹ In all the three cases an editor or line manager should be contacted in advance.

The abovementioned examples are definitely a mechanism to restrict the activity of the journalists (and other staff involved) through the editorial policy. However one should keep in mind that although at the first glance *the BBC Guidelines* may look very restrictive (due to the BBC public broadcaster status and its impartiality obligations), in practice such a detailed regulation of the editorial policy helps to make it clear, simple and avoid many potential conflicts in the future. In fact the BBC Guidelines are a good example of proper regulation of the relationship among journalist, editors and other “external interests”, no matter if such interests are expressed by Government, the BBC Trust, commercial sources and other.

⁵⁷ *The BBC Editorial Guidelines*, (2010) Article 15.3.5.

⁵⁸ *The BBC Editorial Guidelines*, (2010) Article 15.3.6.

⁵⁹ *The BBC Editorial Guidelines*, (2010) Article 15.3.9.

1.2. Russia

As already mentioned in Chapter one of this thesis, Russian legislation does not pay much of attention to the regulation of the ownership of mass media. Such important aspect as the concentration of mass media ownership is not covered and concentration check is not a pre-condition for obtaining a licence⁶⁰. Accordingly many mass media are owned by the same or affiliated companies and people.⁶¹ This leads to limitation of the diversity of views as many existing Russian mass media are just copies of each other as approaching the presentation of information is similar. Although under the Article 19 of *the Media Law* the owner has no right to interfere into the activity of the mass media (so concentration of ownership should not be a big deal), in reality owners' interference into editorial policies tends to be common practice.

Interference from the side of the owners usually takes three forms: limitation of financing, "recommendations" and coincidence of an owner with an editor (when the two of them is one person). There are two main types of mass media ownership in Russia. 1) State-owned mass media, which can be owned by the state directly or through associated companies. This is relevant for all the main Russian broadcasters and many newspapers. Under such circumstances the state ownership usually follows political purposes and interference into the editorial policy is usually realized through "recommendations" or playing with financial sources. 2) Limited quantity entertaining broadcasters or smaller newspapers where editors are at the same time owners of mass media⁶². This practice allows

⁶⁰ Andrei Richter, *Post-Soviet Perspective on Licensing Television and Radio*, IRIS plus: legal observations of the European audiovisual observatory, http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus8_2007.pdf.en

⁶¹ Polina Vasilchenko, *Russia's Broadcast Media Structure: Ownership and (In-)dependence from the State*, (Budapest, Hungary 2008), 10, (on file with author).

⁶² Information about the ownership in mass media is not mandatory public: information on the common corporate structure was received from the interview with Ekaterina Nikitina, legal counsel of one of the Russian Mass Media.

the owners to specify editorial policy but leaves room for restricting journalists' freedoms through the means of financing, such as salaries.

From time to time attempts are made to protect journalist's rights through various journalists' and editor's organizations and their codes of conduct. At the moment there is no national organization of the editors, while the main journalists' self-regulatory organization in Russia is the Union of the Journalists (hereinafter the "*RUJ*"), and most journalists seek membership in it. The RUJ declares, that its main aims and tasks are:

- protection of the journalists' freedoms, their economic, professional and creative interests, honor and dignity;
- cooperation in affirming and realization of the mass media freedoms, strengthening the legislative database for all the participants of the information process;
- formation of the culture of honest and free journalism, support of the pluralism of views and independence of the mass media;
- development of the system of the journalistic education and increasing the level of the Russian journalism⁶³.

Disregarding this declaration, not much can be done by *the RUJ* to enforce these principles. *The RUJ's* powers can be widespread only on its members. So *the RUJ* realizes its tasks through three main mechanisms and activities:

1. International cooperation. *The RUJ* is a member of the International Federation of Journalists, it cooperates with the United Nations, the UNESCO, the Council of Europe, the European Commission and the International Press Institute.
2. It initiates various competitions and prizes for the journalists and editors. This should be treated as an effort to use positive motivation to increase the quality of journalism and protect journalistic freedoms.

⁶³ Russian Union of Journalists official webpage: <http://www.ruj.ru/projects/90let/081027-1.htm>

3. Members of *the RUJ* accept the Code of Professional Ethics of the Russian Journalist (the “*Russian Journalist Code*”). The *Russian Journalist Code* is a relatively short document (especially in comparison to *the BBC Guidelines*). It contains very general provisions on the journalist’s freedoms, ethics and conduct. Its most crucial provision is that should a journalist’s mission result in violation of the principles of the Russian Journalists Code, a journalist should refuse to fulfill such mission.⁶⁴ I am not sure this requirement is easy to realize in practice though.

While independent organizations seem to be inefficient in providing for additional regulations of mass media, at the private level *the Foundation Agreement* (an agreement between owners and editors, see Chapter 1 for details) could be supportive. Unfortunately, that does not necessarily happen in practice. As described in the First Chapter of this thesis, the nature of such agreement is not so clear, as all the specific agreements, existing under the Russian legislation are systematized in *the Russian Civil Code* and this particular one is not there. This leaves an opportunity for manipulations.

The Foundation Agreement may define the order of financing of the editorial office by owner, distribution of profit, creation of the funds, specify the powers of the editor and the order of publication of the “statements of the founder” in Mass Media. The order of the “statements of the founder” publications may include: the frequency of such publications, the maximum extent of each of them or the maximum extent within a particular period time or the placement on the pages of the press, provided for the publications of the “statements of the founder”, the right of the editor (or its absence) to correct the owners’ statement stylistically or comment on it and many other. The editor’s duties regarding the issuance of

⁶⁴ *The Code of Professional Ethics of the Russian Journalist*, approved by the Congress of the Russian journalists on 23 June 2003, Russian Union of Journalists official webpage, <http://www.ruji.ru/about/codex.htm>

mass media can also be specified. The problem with such agreement is that the *Mass Media Law* requirements to it have recommendatory, not mandatory nature.⁶⁵

Another aspect of the *the Foundation Agreement* use is that (1) it is not mandatory where editorial office is more than 10 persons⁶⁶; (2) there is no sanction for its absence. For these reasons bigger mass media holdings rarely have it and smaller ones (as already mentioned) often have an owner and an editor represented by one person, so there is no need for such agreement. One more way to manipulate *The Foundation Agreement* is to incorporate it into the body of the labor agreement with the editor⁶⁷. Although, formally, the provisions of the labor agreement can also be negotiated, not each editor will be inspired to negotiate his freedom of speech together with his salary.

The most common example of the *the Foundation Agreement* is a foundation agreement between the Government of the Russian Federation (owner) and editor of “Российская газета” (*Rossiyskaya Gazeta*). The Government of the Russian Federation owns the newspaper directly, and foundation agreement was made public as it had to be approved by the resolution of the Government.⁶⁸ Although all the provisions recommended under *the Media Law* were included into this foundation agreement, it does not provide for any specific regulations on dividing the roles of the owner and the editor in definition of the editorial freedom and realization of the freedoms of owner, editor and journalists.

⁶⁵ Andrei Richter, “*Правовые Основы Журналистики*”, Издательство Московского Университета, 2002, 39 (Foundations of the Journalism, Publishing House of the Moscow University, 2002, 39).

⁶⁶ Interview with Ekaterina Nikitina, legal counsel of one of the Russian Mass Media.

⁶⁷ Galina Arapova, Alexander Gliskov, Dmitry Shishkin, Комментарий к закону РФ “О Средствах Массовой Информации”, Библиотека Центра Экстремальной Журналистики, статья 22 (Commentary to the Russian law “On Mass Media”, Library of the Center for Extreme Journalism, Article 22), http://www.library.cjes.ru/online/?a=con&b_id=78&c_id=9291

⁶⁸ Resolution of the Government of the Russian Federation No.157 dated 28 February 1994.

1.3. Comparison

The United Kingdom and Russia have some similarities in adjusting mass media through industry guidelines and internal regulations. Unfortunately, industry guidelines and journalists and editors organizations perfectly working in the UK have little development or influence in Russia as a mean to protect editors and journalists freedoms. At the same time Russia provides for more options for the owners' influence through finance sources, as ownership and finance issues are not regulated neither through the legislation, nor through self-regulatory organizations.

As for the specific types of agreements between owners and editors, both countries do not tend to be successful in their use. The UK has not particular requirements or criteria for such agreements, which means that the content and mechanisms are always unpredictable. Russia has a more developed doctrine of the content, but the practice of implication of the agreements is rather poor, as they are not mandatory.

As for the BBC, its well developed guidelines remain a good example of preliminary coverage of many possible conflicts. However it is not certain, if similar guidelines could function in a private-owned mass media, where absolute impartiality is not in the interest of any of the participants.

Chapter III. Mechanisms of unofficial internal restrictions in the UK and Russia

In this chapter I am going to give examples of relationship among owners, editors and journalists that mostly appear from the gaps in legislation and resulting in practical aspects. Examples, provided in this chapter are mostly “anekdotal evidence”, not court cases as they usually do not reach the court.

3.1. United Kingdom

Unlike Russia, mass media regulations in the UK tend to focus more on the ownership than on the content. We only know that Article 10 of *the Human Rights Act*⁶⁹ guarantees freedom of expression “without interference by public authority and regardless of frontiers” (but this is not a specific mass media regulation). Private owned media are not under the obligation to remain impartial and the owners are relatively free to govern editorial policy. In result of the owners’ freedom to specify the policy of mass media, there are not many notorious episodes of the efforts to influence the editors and journalists: the policies of particular media and its owners are predictable. At the same time in a model, where an owner suddenly changes his political, economic, religious or other views conflicts between owners, editors and journalists will be unavoidable.

Those conflicts that got covered by mass media mostly show owners, editors and journalists opposing the governmental interference, i.e. fighting against state censorship. Sometimes it is even about the potential interference. For example, the way in which national newspapers attempted to drive David Mellor, a minister responsible for media regulation in John Major’s (1992–1997) government out of office because of “alleged sexual peccadilloes”

⁶⁹ The Human Rights Act, (1998, c.42), Schedule 1, Part 1, Article 10.

was thought to be because of the press' belief that he was going to introduce a new privacy law. This privacy law would have "shackled media exposure of celebrities"⁷⁰.

As already described in Chapter 2, the BBC, being a public broadcaster is under the impartiality obligation, but the editor - journalist relationship is regulated in detail in the Code of Conduct. As for the owner - editor relationship, there is a potential risk. However the BBC has a public duty mostly to its viewers and listeners, because they are the license fee payers who keep BBC journalists in jobs, not to the Government. "Political pressure is applied on the BBC from time to time; in fact, governments spend a great deal of time and money attempting to manage the political news agenda across all media outlets"; nevertheless "one government media adviser was forced to resign after sending an e-mail to colleagues on 11 September 2001, suggesting it was 'a good time to bury bad news'" and "accusations of 'spin' over substance in its political communication have dogged the Blair government almost since its inception"⁷¹.

Returning to the BBC, the recent conflict between the BBC and the state and the BBC's "owners" happened in January 2009. The BBC rejected to transmit an appeal by the Disasters Emergency Committee (DEC), believing that such action would compromise the impartiality of its coverage of the Middle East conflict. DEC, which is an organization of the aid agency in Britain, claimed that aid from the appeal would be made available to Israeli victims of Hamas rocket attacks, while The Times had materials, discovering other distribution of aids. More than 50 MPs have signed a parliamentary motion calling on the BBC to rethink its position, main archbishops criticized the BBC's position and 11,000 complaints came from the public. Other main TV channels transmitted the application. The

⁷⁰ Stephen Coleman, *The Media: an Introduction to the UK Resource*, (British Council, 2006).

⁷¹ Stephen Coleman, *The Media: an Introduction to the UK Resource*.

BBC's management, however, insisted on its position and expressed concerns regarding "undue interference" into its editorial independence.⁷²

Although I did not come across any other example of the interference into the BBC's editorial independence, a note, prepared by the BBC News Management to the Panel on the "Editorial Processes for Coverage of the Israelipalestinian Conflict" shows, that coverage of the Middle East political situation has never been an easy task.⁷³

Unfortunately or luckily no other examples of the interference into editors' or journalists' freedoms in UK could be found.

3.2. Russia

Russia is notorious for its media wars at the Yeltsin's and Putin's time. One of the most famous cases is the NTV case, which can actually be used as a map of censorship technologies.

NTV was one of the first private-owned mass media. Its slogan has always been "новости наша профессия" ("news is our profession"). As it follows from the wording news and programs covering economic, political and social aspects were specialization of this TV channel and covered most of its broadcasting time. In 1996 NTV was a crucial element of Boris Yeltsin's successful elections and one of the most influential TV channels. In 2000 the new parliament elections were supposed to take place. Boris Yeltsin was in need of support from mass media to win both of these elections (the intention was to avoid the opposition in the parliament and strengthen the president's position for upcoming presidential elections).

⁷² Patrick Foster, "BBC Rejects Pleas of 50 MPs and 11,000 Viewers Over Broadcast", *The Times*, (26 January 2009), <http://www.timesonline.co.uk/tol/news/uk/article5585250.ece>

⁷³ BBC News Management to the Panel on the "Editorial Processes for Coverage of the Israelipalestinian Conflict", http://www.bbcgovernorsarchive.co.uk/docs/reviews/bbcnews_middleeast_editorial.pdf

NTV owners, editors and journalists played an incredible role in the Parliament elections campaign, supporting the opposition and constantly criticizing the state politics, while other, mostly state-owned TV channels supported the current President, Boris Yeltsin and his team.⁷⁴ The results of the elections were favorable for Boris Yeltsin. However, surprisingly, on New Year's Eve of 2000 Boris Yeltsin resigned appointing Vladimir Putin as his "heir" and acting president and forcing early presidential elections. Putin's team wanted to avoid a repeat of experience of the previous years, where mass media had a top role in gaining public's support for one or another candidate.⁷⁵ That's how a war against NTV (being one of the most influential private mass media in 2000) started.

In 2000 the government had little opportunities to influence a mass media. NTV was owned by Media Most, a company which itself belonged to Vladimir Gusinsky, one of the Russian oligarchs. In 1999 Gusinsky was already offered some "financial support" in return to loyalty to the president.⁷⁶ The question whether such state interference into editorial policy is legitimate is rhetoric. One more interesting issue however is that the state tried to impose censorship on the editorial policy through the owner, who, under the Article 18 has no right to influence the editorial policy. Later on other measures were taken to censor NTV programs.

⁷⁴ The European Institute for the Media concluded that media coverage of the 1999 parliamentary campaign was "considerably worse" than coverage of the 1999 parliamentary elections. It also criticized state-owned TV Channels (ORT and RTR) for failing to meet their public-service obligations and undermining the public's "ability to come to a well-informed conclusion about who deserves their confidence". EIM preliminary report on media coverage of 1999 parliamentary elections, released on 20 December 1999 in Monroe E. Price, Andrei Richter, Peter K. Yu, *Russian Media Law and Policy in the Yeltsin Decade: Essays and Documents*, (Kluwer Law International, 2002), 282.

⁷⁵ Monroe E. Price, Andrei Richter, Peter K. Yu, *Russian Media Law and Policy in the Yeltsin Decade: Essays and Documents*, (Kluwer Law International, 2002), 273 – 284.

⁷⁶ The fact of this offer was covered in various interviews and programs. NTV's version was outspoken in "Итоги" (Itogi), 14 November 1999 and "Сегодня" (Segodnya), 11 November 1999. For Sergei Stepashin's version (Prime Minister at the time) see "Сегодня" (Segonya) on 12 November 1999. For the interview with Alexandr Voloshin (Head of the President's Administration of the time) see "Комсомольская правда" (Komsomolskaya Pravda), 3 August 1999.

One of the measures against NTV was the state propaganda, aimed to influence journalists views. As Putin's major concern was his role in a war in Chechnya, any coverage of this issue, different to the officials' position on the matter, was not welcomed. State officials were suggesting, that journalists have "a patriotic duty to assist the war effort": "When the nation mobilizes its forces to solve some task, that imposes obligations on everyone, including the media".⁷⁷ Another measure was imposing special accreditation requirements for entering the military zone. Following various cases of violation and avoiding this rules by the journalists, the government re-interpreted the license regulations (in 1999), establishing that license operators that received multiple warnings from the government could lose their rights to renew the broadcast licenses.⁷⁸ As this state enforcement measures did not lead to required result, NTV was attacked at the ownership, editorial and journalist level.

One of the NTV and Media-Most shareholders' was Gazprom, a company with the huge state participation. Media-Most possessed a \$211-million loan from Gazprom, which Gazprom claimed under the influence of Vladimir Putin in February 2000. NTV was weakened in financial battles and on the night of April 13-14 2001 Gazprom representatives took control over the TV channel with the assistance of armed guards and changed the management.⁷⁹ An interesting detail in this story is that Gazprom was a minority shareholder, who could initiate the change of the NTV management only with the support of another minority shareholder, a small American company. As explained in the Chapter I of this paper,

⁷⁷ Sergei Yasterzhembsky interview to Kommersant on 21 January 2000 in Monroe E. Price, Andrei Richter, Peter K. Yu, *Russian Media Law and Policy in the Yeltsin Decade: Essays and Documents*, (Kluwer Law International, 2002), 285.

⁷⁸ Monroe E. Price, Andrei Richter, Peter K. Yu, *Russian Media Law and Policy in the Yeltsin Decade: Essays and Documents*, 285.

⁷⁹ Monroe E. Price, Andrei Richter, Peter K. Yu, *Russian Media Law and Policy in the Yeltsin Decade: Essays and Documents*, 285 - 290.

Article 7 of *the Mass Media Law* bans foreign participation in the ownership of mass media. This fact was transmitted by mass media but without a particular result.

At the beginning Gazprom management was seeking compromise with the journalists. When the editor offices independence argument was raised by the journalists⁸⁰, Gazprom suggested to keep the existing editor in chief in his office, but to appoint a new CEO. The journalists opposed that in this situation a CEO, legally not authorized to interfere into editorial policy will gain financial control. Censoring certain activities will be easily realized through manipulating financial sources, for example by not providing a journalist with the money for a business trip. The NTV stuff considered that the editors and journalists freedoms would be violated through the ownership control.⁸¹ In result of the conflict the editor was changed and many outstanding journalists left the channel, opposing the appointment of the new editor and censorship.

Although the media wars and NTV events happened ten years ago, journalistic society claims that situation with censorship did not change much.⁸² One of the most recent episodes from Russia is “Artemiy Troickiy case”. Artemiy Troickiy is an iconic figure in the Russian journalistic, being the first editor of “Playboy, Russia”, one of the very first music critics, visiting professor of the Lomonosov Moscow State University and many other. He was also a journalist in a program “Osoboe mnenie”⁸³ broadcasted by “Эхо Москвы” (“Echo Moskvi”) radio station. Artemiy Troickiy intended to broadcast a new song during this program. The

⁸⁰ The NTV journalists claimed, that under the provisions of Article 19 of the Media Law the owners could not interfere into the editorial office activity, including such matters as appointing of the editor, <http://www.tv6.h1.ru/ntv/talks.php>

⁸¹ “ТВ-6 и свобода слова, Спецпроект: Апрель 2001” (TV-6 and Freedom of Speech, Special Project: April 2001), <http://www.tv6.h1.ru/ntv/talks.php>

⁸² Comment from the editor of one of the main Russian radio stations: “There is still a ban on criticizing Vladimir Putin on the radio stations. We can criticize any official, but not the president”. The restriction comes from the owners, as the proprietors as state affiliated companies.

⁸³ “Особое мнение» (“Separate Opinion”).

song was protesting against the flashers on government related and government affiliated cars (there are public protests against this flashers on cars in Russia). In particular, it was evaluating a traffic accident, caused by a flasher equipped car owned by the vice-president of LUKOIL. According to the witnesses the vice-president was driving a car himself. In result of the accident two women died. Deputy Editor-in-Chief banned the transmission of the song as not being “format” of the radio station⁸⁴. In result of the conflict the Artemiy Troickiy was fired.

Although this conflict looks like a private editorial policy misunderstanding between an editor and a journalist, one should keep in mind the ownership aspects. Echo Moskvi is owned by Gazprom Media Holding, controlled by the state. LUKOIL and Gazprom Media Holding are also affiliated.⁸⁵

Comparison

The most remarkable thing about the presented examples is that any example from the UK ends with the victory of the editorial policy protection regulations. In the three UK examples journalists, editors and, where appropriate, owners collectively opposed limitations and restrictions of their freedoms, and even a possibility of such interference raised concerns and mobilized the mass media society.

In comparison, all the above mentioned examples from Russia resulted in violation of editors’, journalists’ or owners’ freedoms. It was not my intention to select particular types of examples, showing the poor statement of the journalists’, editors’, owners’ freedoms and low level of realization of freedom of speech in Russia. Unfortunately, I did not come across

⁸⁴ Artemiy Troickiy’s blog, “*Бойкотировать ЛУКОЙЛ!*” (“Boycotting LUKOIL!”, 2 March 2010), <http://www.echo.msk.ru/blog/troitskiy/660788-echo/>

⁸⁵ *Lukoil and Gazprom Neft Established a Joint Venture* (Press Release, 28 December 2007) http://www.lukoil.ru/press.asp?div_id=1&id=1329

many positive examples. Altogether this indicates a low level of regulation or implementation of regulation on mass media.

Conclusion

In the Introduction to this thesis an issue of the importance of the role of mass media was tackled. If mass media is the “fourth branch of the government” it has to be independent from the state and other branches and be given sufficient rights and efficient mechanisms to realize its powers, as it helps to keep the balance between the other branches. If this condition is not fulfilled, it might indicate problems in the democracy of a given state.

In the UK legislation freedom of speech and mass media freedom are left in a shadow. But the relationship between owners’, editors’ and journalists’ freedoms is central to mass media regulation, well balanced and contributes into the regulation of entire mass media industry. The fact, that owners are free to specify the editorial policy together with the editors makes the relationship of owners vis-à-vis editors much more transparent. Editors are aware of the owners’ views in advance, through the agreements between them. Although there is no guarantee that no conflict will occur in the future, internal regulations and agreements between the participants leave a chance for consensus. The relationship between editors and journalists is also relatively evident: various editorial guidelines make editorial policies more predictable, even though they may restrict journalist’ freedoms from the very beginning. Of course, the UK regulation of mass media has some disadvantages, for example, it seems that the journalists, employed by the BBC have to “sacrifice” some of their freedoms realized within their private life outside the office. However the situation with ensuring owners’, editors’ and journalists’ freedoms is generally favorable.

Compared to UK, Russia definitely has some problems in realization of the owners’, editors’ and journalists’ freedoms. The state interference (through ownership or indirectly) is still a common thing, so there is always a risk for private owners’ interests. Owners’ rights are restricted regarding the transfer of ownership, involvement into the activity of mass media

and specifying its editorial policy. As a result the relationship of the owners vis-à-vis editors lacks transparency and financing is frequently used as an efficient method to manipulate the editors. The journalists, being the last in the chain are influenced by this complicated state-owner-editor relationship and their freedoms are getting restricted.

It could be useful for Russia, to implement some of the UK experience. For example, to accept, that mass media both (1) plays its social and public role in providing information and (2) exists as a business enterprise, and no owner is interested in investing money into a company, which does not bring financial or other profit. Or, that mass media, as a business enterprise, cannot be regulated through public laws only. It also needs some private law and industry regulations. And, of course, improving the existing legislation on mass media by polishing its technique, covering gaps and providing specific regulations for specific types of mass media could be extremely helpful.

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