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LA PROMESA ETERNAMENTE APLAZADA DE LA AUTORREGULACIÓN DE LOS MEDIOS DE COMUNICACIÓN EN PORTUGAL

THE EVER-DELAYED PROMISE OF MEDIA SELF-REGULATION IN PORTUGAL ⁽¹⁾

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Resumen

A pesar del consenso razonable de que la autorregulación es una manera especialmente apropiada para garantizar que los medios de comunicación asumen su responsabilidad social, mientras que preservan la libertad de prensa, la experiencia portuguesa demuestra lo difícil que es establecer mecanismos creíbles y eficaces de autorregulación – lo que, en última instancia, ven contribuyendo para el mantenimiento (o refuerzo) de instrumentos de regulación externa a la actividad periodística, basados en leyes y suponiendo la participación más o menos directa del Estado. Y eso implica que el ‘edificio regulatorio’ para los medios de comunicación queda seriamente incompleto.

Palabras clave: medios, periodismo, ética, responsabilidad social, autorregulación

Abstract

Despite the reasonable consensus that self-regulation is an especially appropriate way to try to ensure that mass media meet their social responsibilities, while preserving press freedom, the Portuguese experience has shown how difficult it is to establish credible and effective mechanisms of media self-regulation, which ultimately contributes to the maintenance (or reinforcement) of regulatory instruments external to the journalistic activity, based on laws and on the direct or indirect involvement of the State. And this implies that the ‘regulatory building’ for the media continues to be seriously incomplete.

Keywords: media, journalism, ethics, social responsibility, self-regulation

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1. INTRODUCTION

The issue of media regulation has always been a controversial one: being for or against it, and to what extent, depends on the political, ideological and cultural points of view one may have regarding the role of media in society and the balance between *freedom* and *responsibility* in its activity.

The more liberal traditions always tended to emphasize the pole of freedom (freedom of speech, freedom of the press, freedom of the so-called ‘marketplace of ideas’) and, therefore, to refuse any direct or indirect interference from the State or other external entities in order to regulate media activity. According to this perspective, free market, associated with the free choice of people to consume or to reject this or that particular medium, achieves some kind of indirect regulation (allegedly promoting what has quality and punishing what is bad), without putting freedom at stake.

On the opposite side, perspectives associated with the theory of the social responsibility of the media – developed particularly in the sequence of the Hutchins Commission work, in the USA in 1947, and of its famous report ‘*A Free and Responsible Press*’, and later systematized in the classic ‘*Four Theories of the Press*’ (SIEBERT *et al.*, 1956) – tend to emphasize the pole of media responsibility towards society and, accordingly, to favor some kind of regulatory instruments for the media. The underlying rationale is twofold: (i) the role of news and information is so important and so sensitive for citizenship in a democratic society that society itself must have some possibilities of guaranteeing that media meet their responsibilities and are brought to account in some way; and (ii) the market alone, with its very particular logics of profit, doesn’t guarantee by itself, through a kind of ‘invisible hand’, the necessary conditions of pluralism, participation, independence, comprehensiveness and respect for everybody’s fundamental rights that are legitimately expected from media activity.

Between these two extreme poles, there is a variety of intermediate positions, depending not exactly on a simple ‘yes’ or ‘no’ answer to the claim for media regulation, but rather on the concrete ways it is conceptualized, framed and put in practice. A more or less balanced choice among instruments of *State regulation* (translated into the law and/or into statutory entities), of *co-regulation* (where public powers somehow cooperate with private involvements), or of *self-regulation* (relying exclusively upon the free and voluntary initiative of media companies and/or

of media professionals) may be decisive for anyone to have an opinion more ‘in favor’ or more ‘against’ any regulatory interference with media activity.

The balance of power between these different forms of media regulation (and particularly between state-centred regulatory bodies and professionally-based mechanisms) differs quite considerably from country to country. In spite of that, it should be stressed that the overall regulatory construct is designed to induce change in the name of the ‘public interest’ and it is the ongoing result of different (often conflicting) views regarding the role of the state in society (FIDALGO & SOUSA, 2007: 2).

2. HISTORICAL OVERVIEW

Portugal lives in a democracy only since 1974. It is useless to look at the issue of media self-regulation before that time, because the complete absence of freedom of expression, in a regime of political dictatorship and of state censorship over the press, didn’t guarantee the basic pre-conditions for an autonomous journalistic activity.

Right after the democratic revolution of 25th April 1974, when press freedom was recovered, important items were introduced in the legal framework, starting with the Constitution itself, voted by the new elected Parliament. Together with the respect for everybody’s fundamental rights, the Constitution devoted one whole article (art. 37) to “freedom of expression and of information”, another one (art. 38) to “freedom of the press and of the media”, and a third one (art. 39) to “media regulation”. This last one, in its more recent formulation², defined in seven points the main purposes to be followed by an “independent administrative entity” in charge of media regulation. This entity is supposed to guarantee:

- a) the right to information and to press freedom;
- b) non-concentration of the media;
- c) the independence of the media from political and economic power;
- d) the respect for personal rights, freedoms and guarantees;
- e) the respect for the professional rules of the media professions;

² The Portuguese Constitution has been revised a couple of times since 1976, although these articles didn’t change in essential terms. The changes were mostly related to the kind of entities to whom the tasks of media regulation were assigned.

- f) the possibility of expression and confrontation of divergent opinions;
- g) the use of political broadcasting time and the right to reply.

The “administrative entity” presently in charge of this task (since the beginning of 2006) is the Regulatory Entity for the Media - ERC (*Entidade Reguladora para a Comunicação Social*), but the fact is that Portugal has already a thirty year tradition of media regulation, although up to 1989 the regulator merely covered the media in the public sector. ERC is the successor of the High Authority for the Media - AACS (*Alta Autoridade para a Comunicação Social*), created in 1989, and the first regulatory entity to have the responsibility for both private and public media (and for print as well as for broadcast media, either radio or television).

The purpose of this paper is to look specifically at the issue of media self-regulation, and, therefore, not too much attention will be paid to regulatory instruments clearly (and exclusively) depending from the State. Still, they may have some interest in terms of contextualization, on one hand, and insofar the ‘regulatory building’ for the media should be also regarded as a whole, on the other hand. Actually, the present model of ERC is an evident model of ‘state regulation’, which “is not to be confused neither with self-regulation (...) nor with co-regulation”, as the minister who ran this process explained in his time (SILVA, 2007: 18). In spite of this, it must be mentioned that ERC itself, according to its Statute (see Art. 9), is also supposed “to promote co-regulation and to stimulate the adoption of mechanisms of self-regulation”³ among the entities pursuing media activities – which hasn’t been done with much success so far.

Besides this, the Portuguese experience in democracy shows very often some kind of (more or less deliberate) confusion between state regulation and self-regulation, together with some confusion between *legal prescriptions* – which obviously are a responsibility of the State and of the political power – and *ethical concerns* – which are a responsibility of media professionals and of media companies and, therefore, should be kept outside the range of the political institutions. Several examples could be pointed where it is more correct to talk about ‘induced self-regulation’ (CARVALHO, 2009) or ‘regulated self-regulation’ (SCHULZ & HELD, 2004) – a concept that may be regarded as ‘a mixture’ of two more ‘pure forms’ of regulation: ‘command-and-control regulation’ and ‘self-regulation’ (*ibid.*: p. 5). Concerning the actors behind these processes, the middle-term concept of ‘regulated self-regulation’ implies that

³ See <http://www.erc.pt/index.php?op=conteudo&lang=pt&id=68&mainLevel=folhaSolta>, art. 9.

‘the State should abandon its role of hierarchical control, and aim instead to influence the processes at work in society’ (*ibid.*: p. 4).

This concept raises some controversies, of course, particularly among the professional group of the journalists, who always prefer to emphasize the advantages of self-regulating their own activities, without any interference from third parties, mainly the State – often regarded with natural suspicion. But the fact is that, as far as the Portuguese experience is concerned, the professional group always showed some difficulties in dealing autonomously (and efficiently) with these issues, which helped to open the door to some involvement by the State. As CAMPONEZ (2009: p. 519) puts it, ‘journalists tend to be better in the rhetorical defense of self-regulation than in the real construction of mechanisms that make it effective’. On the other hand, some experiences of ‘pure’ professional self-regulation, inside or outside journalism (for example in the case of Professional Orders), now and then suggest a kind of corporatist derive, through which the professional groups act as very closed, self-protecting communities, apparently more concerned with the defense of their members than with their accountability to society. Because of this, and in accordance with relevant scholars who have studied these issues, such as AZNAR (2005) and BERTRAND (1999, 2008), we argue that the ‘regulatory building’ for the sensitive area of the media should find ways to involve all the partners of the information process in democratic societies – State, media companies, media professionals, public at large –, through a balanced mix of mechanisms of command-and-control regulation, of co-regulation (which is close to ‘regulated self-regulation’) and of self-regulation. In Portugal, such a balanced mixture is still to be found, and, as a consequence (or also as a cause), self-regulatory instruments for the media haven’t developed so efficiently as the instruments of state regulation or of ‘induced self-regulation’.

The rise and fall of the Portuguese Press Council – which existed from 1975 to 1989 and was ‘the first experience of media regulation in the country’ (CARVALHO, 2009) – illustrates with eloquence some of these questions. It was created right after the democratic revolution of April 1974, even before the new democratic Constitution was made. But, unlike the experience of many countries⁴, where Press Councils are the result of a free and voluntary commitment of the media companies and media professionals, it was created by law and was funded by the State. Still, there wasn’t any direct involvement of the State (or the government) in its activity, or even in its composition: the members were journalists (appointed by their professional organizations),

⁴ See, among them, the well-known case of the United Kingdom and of its well-known *PCC – Press Complaints Commission*.

editors-in-chief, representatives of media companies' management and representatives of the public (some appointed by the Parliament, some co-opted by the council itself). In spite of its weaknesses and shortcomings, mostly due to the peculiar political situation that Portugal lived at the time, this Press Council was a very interesting experience in terms of media regulation and many people, particularly among journalists, still miss it (FIDALGO, 2009a). Although it should be regarded as an example of 'regulated self-regulation', or 'co-regulation' – given the involvement both of public and private entities in its launching and its constitution – it dealt with the issues of media accountability in a way that was not at all achieved by the organisms that eventually replaced it. Actually, both the High Authority for the Media (AACS) in a first moment (from 1990 to 2006) and the Regulatory Entity for the Media (ERC) in a second moment (from 2006 onwards) were clearly instruments of State regulation ('command-and-control regulation'), depending from the political power, and with little (or not at all) representation from the regulated or the public.

That's why the end of the Press Council in Portugal, according to some opinions, meant "a breakdown of legitimacy in the ethical supervision of the media (...) that was never fulfilled again" (CARVALHO *et al*, 2005: p. 52). And that's also why, more recently, new attempts have been made together by the Journalists' Union (SJ) and the National Association of Media Companies (API) to re-launch a Press Council in the country.

3. SELF-REGULATION AT THE LEVEL OF THE PROFESSIONAL GROUP

It must be underlined that the professional group of the Portuguese journalists has always showed, to some extent, much concern about the need to self-regulate the activity of its members in the ethical and deontological issues. Actually, the long-standing efforts of this group to build and to obtain the public legitimization of journalism as a true 'profession', with a specific (and somehow privileged) juridical statute, can't be dissociated from that concern. The commitment of the professional group to supervise and to discipline its members regarding their ethical responsibilities was somehow offered as the counterpart of the specific professional statute that was granted them by the political power (FIDALGO, 2008). In this context, the Portuguese journalists prepared and approved an Ethics Code⁵ – whose last version dates from 1993 – and

⁵ Once again, the obligation for the Portuguese journalists to have an Ethics Code is a legal obligation, inscribed in the Journalists Statute – a law approved by the Parliament – although it is also guaranteed that this Code will be freely elaborated and

they created an Ethics Council, intended to supervise the good observation of that Code. A Code of Ethics or a Code of Conduct, as we know, is perhaps the most popular and overspread instrument of self-regulation of journalistic activity: ‘Codes of ethics developed as intramedia mechanisms among news professionals are typically understood as the most effective agent of self-regulation’ (CHRSTIANS & NORDENSTRENG, 2004: p. 14)

As far as the Portuguese case is concerned, a problem emerged from the very beginning, and became more sensitive as time went by: all these initiatives were developed by the Journalists’ Union (following, step by step, the process led by the French journalists’ union in the first decades of the 20th century⁶), and this circumstance made it more difficult to implement a truly, effective self-regulatory mechanism, acknowledged and respected by all professionals. Since Portuguese journalists are free to join the union (and, actually, about 60% of them don’t⁷), there was always some controversy about the legitimate jurisdiction of the union over the non-members, with these last ones increasingly refusing that jurisdiction. If not in legal terms, at least in practical terms this circumstance somehow weakened the journalists’ Ethics Council and helped to contest its legitimacy, thus spreading the feeling that journalists, as a whole (and not just as a group of union members), didn’t really take good care of their self-regulation in ethical matters.

Several attempts were discussed, in the last two decades, in order to create a more comprehensive organization to look after the ethical issues of the journalistic activity. The possibility of having an Ethics Council totally independent from the Journalists’ Union was debated, but never got the collective approval: only a minor change was introduced in recent years, deciding that the Ethics Council should be elected in separate lists from the other organs of the union, thus stressing some degree of independence from the labor organization. But it didn’t have any particular consequence.

In 2007-2008, a new movement emerged among Portuguese journalists, trying to build a new organization, totally independent from the union and designed to act as a legitimate partner ‘in all the discussions concerning relevant issues for the journalists’ professional group, namely

approved by the professional group, through its representative associations. This means another example of ‘regulated self-regulation’, or even of ‘compulsory self-regulation’, as CAMPONEZ (2009: p. 461) prefers to call it.

⁶ This process culminated with the approval in 1935, by the French Parliament, of a law that granted a Professional Statute to the journalists and made it symbolically concrete through the institution of their Professional Chart.

⁷ According to the Journalists’ Union (SJ, 2010), in December 2008 it had a total of 2.978 members, when the last official figures indicate that there are ca. 7.000 professional journalists (that is to say, journalists with a Professional Chart) in the country.

self-regulation and access to the profession'⁸. During a couple of months this movement – called *Movimento Informação é Liberdade (MIL)* – informally gathered some hundreds of journalists, who signed a petition (originally dating from June 2007) criticizing a set of new laws allegedly intended to diminish freedom of speech and freedom of the press (as was the case of a new version of the Journalists' Statute). But, besides the protest, this group claimed that it was up to the journalists themselves, and only to them, to take care of ethical issues through self-regulatory mechanisms, and concluded:

The undersigned journalists publicly express their total commitment to assume that challenge of self-regulation [of ethical issues] and that control [of access to the profession], promising to develop from now on all the necessary efforts with that purpose (N/A: 2007).

In January 2008, this group had a large meeting in Lisbon and announced the intention of creating a formal organization, with an elected board. But it was its last public demonstration; from then up to the present day, nothing else was heard from the *MIL*⁹. The last post of the group's weblog dates from 30th January 2008¹⁰.

Since journalists didn't move forward, the State did. The various legal initiatives that had been prepared finally were approved by the Portuguese Parliament: a new version of the Journalist Statute, voted in November 2007, enlarged the powers of the Commission of the Journalists' Professional Chart, specifically saying that from now on, this Commission would take the responsibility of supervising (and sanctioning) the situations in which journalists disrespect their ethical duties. Although the Government who put these changes in practice, through the voice of its minister for the media sector (SILVA, 2007), based on the ideas of some scholars (MOREIRA, 1997), insisted that this was a mechanism of 'professional self-regulation' or of 'inter-professional self-regulation' (MOREIRA, 2004), we argue that it is, once again, a clear example of 'regulated self-regulation'. This new regulatory instrument for ethical issues was imposed by law, and even the ethical duties of journalists, as they are defined in their Code of Ethics, were translated into the law – a controversial decision for all those (and the professional group of journalists among them) who criticize the so-called "juridification" of the ethical norms and values. It is a fact that the Commission of the Journalists' Professional Chart is

⁸ The only external activity of this informal group was the creation of the weblog *Movimento Informação é Liberdade* - <http://movimentoinformacaoliberalidade.blogspot.com/> - from where this quotation was taken.

⁹ The premature death of one of the leading journalists of this movement, Mário Bettencourt Resendes, who at the time was already fighting a cancer, may help to explain the quick demobilization.

¹⁰ See <<http://movimentoinformacaoliberalidade.blogspot.com/2008/01/mil-em-marcha.html>>.

almost entirely composed by journalists (five of them elected by their peers and five appointed by the association of the media companies), but it is presided by a judge and, above all, it is a mandatory mechanism imposed by law. Self-regulation, by definition, ought to be an output of free and voluntary initiative of journalists, or of journalists and media companies together, without any interference from the political power. But the argument raised by the Government who put this model in practice always points to the sensitive point of this question: if the journalists are not able to take care of their own affairs, in what regards their unavoidable ethical duties, then someone must do it, in the name of the public interest. And the State makes that step forward.

Regardless of who is to blame for this new regulatory mechanism, the fact is that the recent changes in the law went deeper in the movement of turning journalists' moral duties into legal obligations: the new Commission of the Journalists' Professional Chart has the power to supervise the respect for the norms of the Ethics Code and, accordingly, to impose sanctions (material sanctions, not moral ones) whenever these norms are broken. With this clear 'juridification' of the ethical principles and norms, 'the legislator, in practical terms, actually captured journalistic self-regulation', as it is argued by CMPONEZ (2009: p. 522). In this context, it is difficult to claim that we are still in the genuine domain of professional self-regulation, even if most of the persons who are in charge of this task are professional journalists.

More recently (December 2008), a new initiative in the domain of journalistic self-regulation was announced in Portugal, as said before: a joint effort, both by the Journalists' Union (SJ) and the Media Owners Association (API), in order to re-create a Press Council, strictly self-regulatory, similar to the ones that exist in most countries (FIDALGO, 2009b).

In spite of some diverging opinions between the two partners of this idea, the fact is that a joint "Mission Group", composed by three representatives from the SJ and three from the API started working on this project. The points to be discussed and negotiated have been defined as follows: (1) 'to identify and to evaluate the existing partial self-regulatory agreements in the media sector'; (2) 'to identify and to characterize the needs for self-regulation in the sector'; (3) 'to select possible models for a self-regulatory mechanism in the sector, namely in what concerns its competences and attributions, the scope of its intervention, the nature of its deliberations, as well as its composition, funding and rules of functioning' (API/SJ, 2008). There are still no public results of the group's work (a first progress report had been promised to February 2009, and a second one to May 2009, but nothing has been shown yet), although representatives of both

parts, when interviewed by us, still show some optimism about its outcome: the president of API said that ‘the media owners continue to be very interested in this project’ (PALMEIRO, 2009) and the president of the SJ said the same about the journalists’ commitment, although he insisted that self-regulation in the country is even more necessary for the media companies than for the journalists, ‘because these ones have already a Code of Ethics and an Ethics Council, to whose control they must submit’ (MAIA, 2009).

Apparently, the re-creation of a Press Council won’t be very easy in the near future. Adding to the differences of opinion (and some lack of mutual trust) between media professionals and media owners, we have the whole regulatory framework of the country, built precisely when (and because) the late Press Council was extinguished in 1990. Its re-creation would most probably require important adjustments in other existing organisms (or even their extinction), which depends on the will of the leading political forces. And the experience of recent years, either under the government of the social-democrats or under the socialists, didn’t show much openness towards a scenario where genuine self-regulation should take care of the media misconducts in terms of ethical principles and moral values.

The law that created the Media Regulatory Entity (ERC) in 2005 clearly said that the whole regulatory framework for the country would be incomplete until mechanisms of self-regulation and of co-regulation were added to the legally defined scope of that entity. But the fact is that nothing else appeared since then. So, the framework remains incomplete – and rather unsatisfactory for most of the media actors, as well as for the public.

4. SELF-REGULATION AT THE LEVEL OF THE NEWSROOM

In spite of all the hesitations, shortcomings and failures of the journalists’ professional group in their efforts to achieve some genuine self-regulation for their activity, other self-regulatory instruments have been put in practice on the more confined level of the newsroom. Once again, some of them were prescribed by law – the most well-known example is the one of the *newsroom councils* –, although there is no external interference at all in their functioning, but some others are the result of the pure voluntary will of journalists, owners and managers of a media outlet – as it is the case of the *press ombudsman*.

4.1. Newsroom Councils

Every media company with a newsroom of at least five professional journalists must have a newsroom council, composed by journalists elected by their peers. The institution of newsroom councils draws from the constitutional prerogative of journalists' participation in the editorial orientation of the news media they work in (art. 38). The establishment and the functioning of these particular committees are inscribed in both the Journalist's Statute and in sectorial laws. The Press Law, for example, details (art. 23) the role of the newsroom council. Indeed, it covers a considerable ground: it has a say in the nomination of the newsroom directorship, in the editorial statute of the medium, and plays a role in the appreciation of ethical and disciplinary issues. The newsroom council represents the vision of the professional body of journalists regarding fundamental labor and deontological questions. It implies that the direction of a newspaper, radio or TV station cannot decide by itself in crucial issues such as editorial orientation or disciplinary matters.

Somehow, the Constitution and the media laws intended to guarantee power distribution in the newsrooms (FIDALGO & SOUSA, 2007: p. 17). This preoccupation dates back to the mid-1970's revolutionary period when the first Press Law established the institution of press councils in all newsrooms with much wider powers than today. At the time, newsroom councils had binding powers in matters such as the nomination of the directorship or editorial options. Today the dynamics and effective relevance of newsroom councils varies considerably amongst newsrooms, as most of its attributions are merely advisory. However, generally Portuguese journalists strongly value this institution (FIDALGO, 2002), which may be regarded as a stimulating self-regulatory instrument.

4.2. Press Ombudsman

Another instrument of this kind, and more clearly self-regulatory (because it doesn't depend on any legal prescription, as far as the press is concerned¹¹), is the ombudsman: a person whose job is to listen to readers' complaints and to analyze and criticize the newspaper in its own pages. Apart from the ombudsman for public television and the ombudsman for public radio (existing since 2006), some private newspapers voluntarily decided to have such a self-

¹¹ The same doesn't apply to public radio and public television, where there is also an ombudsman, but in this case because of a legal disposition, approved in 2006, in the context of the public service remit.

regulatory and self-critical voice in their house, thus trying to be more transparent to their audience and to help to improve the quality of information and the ethical standards of the journalists. Three out of the four more relevant national dailies in the country (*Diário de Notícias*, *Público* and *Jornal de Notícias*, the exception being the popular *Correio da Manhã*) had an ombudsman in recent years, although only *Público* still keeps one nowadays.

From 1997 – when the first ombudsman was appointed by *Diário de Notícias* – to the present day, more than one dozen former journalists and/or media scholars received complaints, critics and commentaries from different audiences and weekly discussed them (in more indulgent or more severe ways) in the pages (or broadcasting time) of the media they work for. And in spite of diverging opinions about the real efficacy of the ombudsman’s role in order to actually improve professional and ethical standards in journalism, it seems to be a rather positive self-regulatory mechanism in three different levels: (1) the symbolic attitude of having a medium self-criticized in its own pages; (2) a more transparent and interactive way of dealing with the publics’ doubts and demands; (3) some dissuasive power inside the newsroom, helping to develop a more reflexive effort in the day-by-day routines and, thus, to prevent damages and mistakes (FIDALGO, 2009a).

4.3. Other internal mechanisms

Other instruments intended to make media more transparent – and, therefore, more accountable – to their publics have been put in place, at the level of media companies and newsrooms. Every Portuguese medium must have an Editorial Statute, where its general orientation and purpose is publicly assumed, as a sort of formal commitment to respect the principles and values of a free and responsible press. But these Editorial Statutes are, for most cases, rather general and vague; this is the reason why some media decided to develop them into more detail, in the form of a real “mission statement”, sometimes translated into an internal Code of Conduct. This is the case of newspapers like *Expresso* or newsmagazines like *Visão*.

Other relevant Portuguese media, such as the quality daily *Público*, went a step further and made an extensive Style Book, where a set of technical internal rules is defined, but also a series of more concrete commitments in what concerns ethical principles and deontological

norms¹². And these instruments actually help the readers to bring the newspapers to account: now and then, for example when they address a complaint to the ombudsman, they will quote an item if the Style Book, asking why that specific commitment was not respected.

Columns devoted to media criticism have also been created by some newspapers, thus developing some regular activity of media scrutiny – which also contributes to a self-regulatory attitude. And, of course, the new (and easier) possibilities of interaction with the audience offered by the internet and by the on-line environment also enlarged the opportunities for (self) criticism, formerly reduced to the small area of the ‘letters to the editor’.

5. CONCLUSIONS

The rationale underlying the large preference for self-regulation among professional journalists (and among media companies) points to the belief that, as Victoria Camps wrote, self-regulation ‘is the better way to combine the need for norms with the exercise of freedom’ (*apud* CAMPONEZ, 2009: p. 519). Furthermore, self-regulation has the advantage ‘to dislocate the normative adjustment of the media from the State – with its juridical-administrative regulation – and from the market – with its economical regulation – to the *civil society*, with its *ethical regulation*’ (AZNAR, 2005a: p. 14, emphasis by the author). And this helps to ‘make more effective the demand for responsibility made by society to the media’, without risking ‘to restrain their freedom’ and also avoiding the lack of morality typical to the market (*ibidem*).

For all these reasons, media self-regulation ‘could be regarded, to some extent, as an ideal way, either in journalistic or in democratic and constitutional terms’ (BERNIER, 1998: p. 69). Its main advantages may be summed up in three points: (1) it is the best way to balance the need for responsibility with the imperative of freedom in media activity; (2) it has the ability to put together the main actors of the media process in a joint and voluntary effort to assume their unavoidable ethical duties; (3) it may play a pedagogical role in social terms, contributing to a better knowledge (and a more qualified scrutiny) of the journalistic activity. It shouldn’t be forgotten that, although pursued on a voluntary, non compulsory basis, self-regulation is ‘a form of regulation and not the absence of it’ (MOREIRA, 1997: p. 52-53); it is also ‘a form of

¹² It should be noticed that the national Code of Ethics of the Portuguese journalists is a very short document, only with 10 points (which somehow recalls the model of the “Ten Commandments”), and doesn’t go into much detail when it comes to the journalists’ duties. The internal codes of conduct prepared by some media are much more detailed on the subject.

collective regulation’ (*ibidem*, emphasis by the author), necessarily involving a collective organization that establishes certain rules for its members – and, therefore, not to be confused with individual self-control.

These items help us to identify some ambiguities or misunderstandings now and then associated to self-regulation, and responsible for its alleged weaknesses. Professional groups (and journalists are not an exception here) may tend to transform self-regulation into some kind of corporatist mechanism of self-defense, used to ‘clean the dirt’ inside the house and to avoid any kind of direct or indirect interference from outside, or used to keep some professional privileges untouched. When a collective organization is more committed to preserve and to enhance a strong *esprit de corps* than to really take care of its members’ responsibilities in ethical issues, it risks losing credibility (and legitimacy) in terms of real self-regulation. And the outcome may be more a kind of de-responsibilization than a real means of accountability.

Besides *legitimacy*, the question of *efficacy* also arises now and then: since self-regulatory mechanisms tend not to have the power to impose material sanctions, apart from moral sanctions (as is the case, for instance, of a public condemnation of ethical misbehavior), many voices doubt that it actually punishes those who misbehave in ethical terms and really helps to improve media social responsibility.

Specifically in what regards the journalists’ professional group (and their socially sensitive mission of fulfilling everybody’s right to comprehensive, independent and accurate information), a third objection is more and more frequently raised: the *self-centered character* of self-regulation, as it usually is exercised – which tends to exclude the public from all these processes and debates. And it seems rather clear, nowadays more than ever in the past, that the public is not just the passive ‘receiver’ of messages coming from the media; on the contrary, it is an active actor and partner of public communication and, therefore, it must have a say in the information process. The ‘need to match professional ethics, of a more corporatist character, with a broader social dialogue’ (CAMPONEZ, 2009: p. 193), particularly in an environment where ‘the citizen moves from the audience to the arena’ (NORDENSTRENG, 1997), is increasingly claimed by those who study media regulation¹³. In this context, there seems to be a trend, among scholars usually very committed with media self-regulation, in order to increasingly favor *co-*

¹³ Authors like RODRIGUEZ (2010: p. 277) suggest a distinction between two types of self-regulation: ‘professional self-regulation’ (depending exclusively on the professional group of journalists) and ‘communicative self-regulation’ (bringing together all the subjects of the communicative process in what concerns public information, that is to say, journalists plus media companies plus audience). But both are considered useful and necessary.

regulation mechanisms – where there is a broader involvement of all the actors of the public information process, among them the State itself, charged with the task of helping to protect the public interest. It is not necessarily a question of replacing self-regulation with co-regulation, or of avoiding the specific responsibilities attached to the sensitive social role of professional journalists, but instead a way of developing a set of complementary mechanisms and instruments of public regulation, all of them useful for specific purposes.

The proposal of a model of ‘democratic co-regulation’, made by BERNIER (2009), may be inscribed in this trend. Considering that there has always been some confusion between the concepts of self-regulation and self-discipline – the latter consisting of a real power to sanction the disrespect of deontological norms defined by the former –, he suggests this alternative of ‘democratic co-regulation’ in order to fill the gaps of exclusively professional-centered self-regulation, as well as in order to prevent the temptations of dangerous interferences by the State in the media field:

We should exploit innovative mechanisms that, on one side, take into account the undeniable advantages of journalists’ normative self-regulation and, on the other side, take into account their impotence to assume a real self-discipline. These mechanisms also underline the importance of guaranteeing that the good observation of deontological norms is put in the hands of credible institutions, independent from political, economical or religious powers (BERNIER, 2009).

Bernier insists that co-regulation includes elements traditionally associated to self-regulation, together with elements of the public regulation domain, stressing once again the complementary character of all these instruments. He also insists that the suggestion of a model of democratic co-regulation is based, before anything else, on the assumptions that ‘there must be a free press’ and that journalists ‘must have the largest professional autonomy’. Without these conditions, which ‘severely limit the possibilities of State interference’, co-regulation risked to be ‘a new face of censorship’ (*ibidem*). In two words, the overall idea is that ‘democratic co-regulation can take profit from self-regulation advantages and, simultaneously, cover its limitations’ (*ibidem*).

The question of limits and dangers around professional self-regulation has also been analyzed by prominent media researchers as Clifford Christians and Kaarle Nordenstreng (2004), who insist on the ‘risks of self-centered professionalism’ and point to the need to ‘emancipate

professionalism from its antidemocratic tendencies’ (CHRISTIANS & NORDENSTRENG, 2004: 20). Again, they insist on the role of citizens, together with the role of professionals, as far as the public communication process is concerned, and argue for a change from a ‘media-centered paradigm’ to a ‘citizen-centered paradigm’. In what concerns media ethics, this new approach is not without consequences as well: more than specific professional ethical norms, the basic commitment should be with a set of ‘universal ethical principles’, a kind of ‘citizen-ethics’ shared by all the actors involved in the media process (*ibidem*).

These are examples, among others, of the interesting debates going on about the challenging issue of media accountability, and of the ways this accountability should be adequately met in contemporary societies. One important point, as can be learned from the Portuguese experience described above, is the need for journalists to confront themselves with the weakness of self-regulatory mechanisms being always rhetorically praised but seldom made effective in practical terms. A second relevant point is the need for journalists to be conscious of the lack of credibility of self-regulatory instruments that turn to be self-centered means of corporatist self-defense, with no connection with the legitimate claims of the audience for a real accountability. Finally, it seems rather clear that a general model of ‘de-centered regulation’ (BLACK, 2002) is more adequate for modern, complex democratic societies, and, in this context, a coherent and enlarged mix of regulatory mechanisms and instruments (self-regulation, co-regulation, hetero-regulation) is perhaps the best way to protect press freedom and freedom of speech but, at the same time, to ensure a socially responsible – and accountable – use of that freedom.

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